

The Novelty
Talkies,
Bhatinda
v.
The Punjab State
and another
Mahajan, J.

The result of the aforesaid discussion is that the order, annexure 'G', being without jurisdiction and being *mala fide* is quashed. In the result the application of the petitioner for grant or renewal of a licence would be deemed to be pending and the District Magistrate is directed to consider and decide the same according to law. The petitioner will have his costs, which I assess at Rs. 100.

B.R.T.

APPELLATE CIVIL

Before D. K. Mahajan, J.

GURDIT SINGH,—Appellant.

versus

EMPLOYEES STATE INSURANCE CORPORATION,—

Respondent.

F.A.O. 89 of 1959.

1960
March, 7th

Employees State Insurance Act (XXXIX of 1948)—Section 53 and Rules 4 and 5 in the Second Schedule—Scope of—Insured leaving widow and aged parents—Widow remarrying—Dependants' benefit—Whether parents entitled to.

Held, that the provisions of sub-section (2) and sub-section (3) of section 53 of the Employees State Insurance Act, 1948, are mutually exclusive. Rule 4 in the Second Schedule covers cases under section 53(2) and Rule 5 those under section 53(3). It is significant that in Rule 4 while providing for the contingency of remarriage, it is not provided that the dependants' benefit will go to the parents, whereas Rule 5 only comes into play in case the deceased person does not leave a widow or a legitimate child or children. Thus when an insured person dies leaving a widow and aged parents and the widow remarries and does not claim the dependants' benefit, the parents also are not entitled to claim that benefit.

First appeal from the order of Shri Gurdip Singh, Sub-Divisional Magistrate, Batala, dated the 9th July, 1959, refusing to recognize the applicants (parents) as the dependants of the deceased Boota Singh under the Employees State Insurance Act.

K. N. TEWARI, M. R. MAHAJAN, for the Appellant.

HAR PARSHAD, for the Respondent.

JUDGMENT

MAHAJAN, J.—This is an appeal under section 82 of the Employees' State Insurance Act (No. 39 of 1948), against the order of Sub-Divisional Magistrate, Batala, dated the 9th of July, 1959, refusing to recognize the parents as the dependants under the Act after the remarriage of the widow of the deceased. Mahajan, J.

Boota Singh was working in the Sardar Foundry Works at Batala. On the date when he died he was working on the grinding machine, when he met with a fatal accident. At the date of his death, he left a widow, Amarjit Kaur, and his aged parents. The widow remarried on the 25th of March, 1958. It seems, she never claimed dependants' benefit under the Act. The present application was made by the aged parents. This application was opposed by the Corporation on the ground that Boota Singh had left a widow and, therefore, the parents were not entitled to the dependants' benefit. This objection of the Corporation prevailed with the Insurance Court and their claim was rejected. Dissatisfied with this, as I have already said, the parents have come up to this Court in appeal.

The contention of Mr. Tewari, learned counsel for the appellant, is that as the widow has remarried, therefore, the parents, being the only

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surviving dependants, are entitled to the dependants' benefit. In order to determine this matter, it is necessary to set out the relevant provisions of the Employees' State Insurance Act. Section 53 of the Act is in these terms.

[His Lordship then read section 53 and continued.]

Second Schedule lays down how the benefit is to be determined and to whom it is to be paid. It is only necessary, in this connection, to set out rules 4 and 5 of the Second Schedule, which are in these terms—

[His Lordship then read rules 4 and 5 and continued:]

If these provisions are read together, it is abundantly clear that sections 53(2) and 53(3) are mutually exclusive. Rule 4 covers cases under section 53(2) and rule 5 those under section 53(3). It is significant that in rule 4 while providing for the contingency of remarriage it is not provided that the dependants' benefit will go to the parents, whereas rule 5 only comes into play in case the deceased person does not leave a widow or a legitimate child or children.

It seems to me that these provisions of the Act do work a hardship on the parents, who are really dependant on the deceased, but this is a defect, which the legislature can only supply. The Courts are merely concerned to interpret the provisions of the law as they stand and they cannot add to the same.

For the reasons given above, this appeal fails and is dismissed, but there will be no order as to costs.

B.R.T.