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New Jersey Court of Errors and Appeals

Elizabeth Halbeisen,
Petitioner-Appellee,
vs.
H. Koppers Company,
Defendant-Appellant.

On Appeal.

BRIEF FOR APPELLEE

Sat below: TRENCHARD, BERGEN and KALISCH, *JJ.*

I.

The situation involves a judgment entered in proceedings under the Workmen's Compensation Act. The quantum of the award is not questioned. Every element necessary to a recovery on the part of the petitioner was admitted in the trial court, except dependency. In other words, the sole question submitted to the trial Court was whether or not there were dependants of the decedent. The learned trial Court found that dependency existed, therefor a finding for the petitioner necessarily followed. On certiorari, the Supreme Court has affirmed the judgment. The opinion of the Supreme Court appears later.

II.

Dependency is a question of fact. *Havey vs. Erie Railroad Co.*, 88 N. J. L. 685. *Miller vs. Public Service Railway Co.*, 84 N. J. L. 174. *Muzik vs. Erie Railroad Co.*, 86 N. J. L. 695. It is the settled law of this State that the determination of facts by the trial Court is final in matters of this nature, and the trial Court has found as a fact that dependency exists. The act itself provides that only questions of law may be raised on certiorari.

In re McArdle vs. Mallers, Ill. Ind. Bd. No. 1128, March 2, 1916, an award to the father was confirmed. The board said the facts proved contribution rather than dependency and that although the facts clearly showed that the father was not in need of the support of the deceased, yet dependency existed.

Partial dependency is sufficient to support an award. *Jackson vs. Erie R. R.*, 86 N. J. L. 550. *Walz vs. Halbrook, Cabot & Rollins Corporation*, 170 N. Y. App. Div. 6.

> "A person is dependent when relying upon and requiring contributions from the funds of a minor child to a family fund, to support the various members of such family."
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> *Newmann vs. Frank Dry Goods Co.*, Ind. Indus. Bd. April 25, 1916.

In re McGill vs. City of Imperial, 2 Cal. Ind. Acc. Comm. 21 (1915), an employee had contributed to the support of his mother and sisters for a considerable period of time, but for nine months previous to his death had failed to contribute. The board in affirming an award said, "The presumption was that deceased would have continued to contribute to applicants' support had circumstances permitted."

In re Krauss vs. George H. Fritz & Son, 87 N. J. L. 321, a minor son contributed to the general family fund. The son was killed. These facts justified a finding of dependency. The award was affirmed by the Court of Errors.

A dependent is "one who looks to another for support or help," *Jackson vs. Erie R. R.,* 86 N. J. L. 550.

The decedent, who was burned to death in the appellants' employment, was a minor and is survived by a mother, father and two sisters, one of whom is a minor (27-28). The decedent lived at home with his parents (27). His earnings were brought home and turned over to the mother, who used such earnings for general household expenses (28). These earnings were necessary to meet household expenses (28). The decedent had $300 in bank (28). With the consent of the decedent (30), part of this sum was withdrawn in small amounts and used in the home for general expenses (29). This was necessary because the father did not always earn enough to meet household expenses (29). While the decedent had not worked long enough at the place where he was killed to receive wages, he had agreed to bring his pay home and give it to his mother (30). Of the money which the decedent had in bank $200 was turned over to the father and used to pay the father's employees (33). During a period when the decedent had no employment he collected bills and delivered signs for his father and helped his mother about the house (34).

III.

The appellant, in its brief, states that the decedent, in the case at bar, had worked only two days previous to his death. This is not so. The dece-

dent had worked a full week (p. 30, l. 30) and had earned a full week's pay which he had agreed to turn over to his mother (30).

The appellant also states that no authority appears for the use, by the father and mother, of the money which the decedent had in bank. This also is not so. The money was withdrawn with the consent of the decedent and also with the consent of the grandmother, from whom the money had come (p. 30, l. 22).

The case mentioned in the appellant's brief as being similar to the case at bar is, in our opinion, entire dissimilar. This case depends entirely on conversations with the deceased son, who said, "If there was anything he could do to help his mother, he would." There is no proof or intimation of proof that the decedent, in the cited case, contributed anything to the support of his family. In the case at bar the decedent had, in the past, contributed his wages to the general support of his family, had permitted his bank account to be withdrawn and used by his father and mother, had done considerable work connected with his father's business, had helped his mother about the house and had earned a week's wages in the prosecutor's employment, which he had agreed to turn over to his mother. In addition to this, the mother testifies that the earnings of the decedent were necessary to make both ends of the household expenses meet (p. 28, l. 13, *et seq.*). Again the decedent, who had spent a short time in college, had practically agreed not to make an effort to return to college because his earnings were needed in the home (p. 32, l. 17, *et seq.*).

IV.

The only theory upon which the appellants position can be considered is that no facts were presented from which dependency could be inferred. We contend that ample proof of dependency appeared and respectfully submit that the judgment of the Supreme Court should stand.

The contention that the statute can only apply to conditions at the time of death is not sound, since, if that were so, the sole support of a large family might be prevented from working for a long period of time by sickness and if he should be killed upon return to work, no award could be made to dependents, because at the time of death wages already earned and collected were not being used by the dependents.

Although it had not been paid, the decedent had earned a week's wages, and had promised to turn this very money over to his mother.

V.

We doubt the sufficiency of the grounds assigned for this appeal. No reasons appear for alleged error on the part of the Supreme Court and the Supreme Court did not find "proof of dependency," but merely determined that proof justifying the determination of the learned trial Court had been presented.

VI.

In the case at bar the Supreme Court has handed down the following opinion:

"*Per Curiam:*

The writ in this case brings up for review a judgment of the Camden County Court of Common Pleas for compensation under our Workman's Compensation Act on account of the death of Charles J. Halbeisen, Junior, an employee of H. Koppers Company.

Every element necessary to support the judgment was admitted in the court below except dependency; in other words, the sole question submitted to the Court below was whether or not there were dependents of the decedent's, and that is the sole question argued here. The record shows that it was also agreed that while the mother was the petitioner, any award made should be made in favor of the father.

The trial Judge found that dependency existed, and therefore a finding for the petitioner necessarily followed, the trial Judge further saying (finding 6) 'that by law Charles J. Halbeisen, the decedent's father, was alone entitled to compensation at the rate of twenty-five per centum of decedent's wages.'

We are inclined to think that the finding of the trial Judge upon the question of dependency has evidence to support it, and that being so, on familiar principles, the judgment must be affirmed.

The evidence tended to show that the decedent was a minor between twenty and twenty-one years of age, and that he is survived by a mother, father and two sisters, one of whom is a minor. The decedent lived at home with his parents. His earnings were brought home and turned over to the mother who used such earnings for general household expenses. These

earnings were necessary to meet the household expenses. As a sidelight, there was evidence tending to show that at one time the decedent had $300 in bank; that with the consent of the decedent, part of this sum was withdrawn in small amounts and used in the home for general expenses, and that this was necessary because the father did not always earn enough to meet household expenses.

The evidence also tends to show that while the decedent had not worked for H. Koppers Company long enough to receive wages (he had worked but one week at the place where he was killed), yet he had agreed to bring his pay home and give it to his mother.

The evidence also tended to show that during a period when the decedent had no employment, he collected bills and delivered signs for hrs father and helped his mother about the house.

In view of all this evidence we think that the finding of the trial Judge had evidence to support it.

The judgment will be affirmed, with costs."

We respectfully urge that the judgment of the Supreme Court be affirmed.

Respectfully submitted,
WESCOTT & WEAVER,
Attorneys for Appellee.

NEW JERSEY COURT OF ERRORS AND APPEALS

CAMDEN COUNTY.

ELIZABETH HALBEISEN,
Petitioner-Appellee,
vs.
H. KOPPERS COMPANY,
Defendant-Appellant.

On Certiorari.
On Appeal.

BRIEF FOR APPELLANT.

This is a writ of certiorari to the Camden County Common Pleas to review the award of compensation; the Supreme Court sustained the award.

FACTS.

Charles J. Halbeisen, the son of petitioner-respondent, was killed at the plant of the defendant. For a year preceding his death he had been attending Rutgers College (p. 31), and during this period was dependent upon a scholarship and the contributions of his sister (p. 30), the week preceding his death he had secured employment with the defendant-prosecutor but had received no wages, working only about two days (p. 32), and he had for at least

that period contributed no wages to the support of anyone.

It further appeared that some trust fund left him by his grandmother had in part been used in the year 1911 in his father's business (p. 33), the authority for the use of this fund does not appear.

ARGUMENT.

The Sole Question Raised is Dependency.

Dependent has been defined as meaning "dependent for the ordinary necessaries of life suitable for a person of the same class and position."

Dazy vs. Apponaug Co., R. I.—4 N. C. C. A. 594 (1914).

A substantially similar definition to that given in the Rhode Island case, *supra,* is adopted by the Ohio Commission, which defines it as meaning "dependents for the ordinary necessaries of life for a person of that class and position in life, taking into account the financial and social position of dependent."

In re Hora, Ohio, Ind. Comm., Nov. 5, 1914, quoting I—Bradb. Work. Comp. (2nd Ed.) 571.

The statutes define dependency only inferentially and leave it as a question of fact to be determined by proof showing the existence and extent of the dependency, that is, whether it is partial or total.

Our courts have determined partial dependency to be actual dependency, awarding full compensation if partially dependent.

Jackson vs. Erie Railroad Co., 91 At. Rep. 1035.

But we are unable to find any authority which would seem to have handled the rule as flexibly as the Pleas Judge in the present case.

His reasoning is contained in the following excerpt from his opinion:

> "It was debated as to whether he would return to college at the beginning of the fall term of the college.
>
> "The mother testified that it was uncertain whether he would return, as the family could not afford it. If it was the purpose for him to return, it could hardly be claimed that he had dependents. But this question was undetermined and for that reason I feel constrained to come to the conclusion that they were dependents, and that the matter should be decided on the occupation of the decedent at the time of the accident, and not speculate as to the future" (p. 20).

In this connection the trial Judge failed to consider that there had been no supply of money or necessaries for the preceding year and that at the time of death no wages had been received by the deceased son, and that no earnings had been collected or paid.

It cannot seriously be urged that the use of the trust fund of decedent would bring this case within the classification of dependent. The most that could

be urged would be that they were funds loaned for the use of parent, to be returned, upon proper accounting.

Where a mother received occasional sums from a son by a former husband, and it was shown that such sums were sent to her on request, and at irregular intervals, such payments by the son were held to be in the nature of occasional gifts and not regular contributions for support, and the mother, therefore, was not entitled to a death benefit under the Workmen's Compensation Act, as a dependent of such son.

Turley vs. Bible Institute Co., 1 Cal. Ind. Comm. Dec. (No. 21 1914) 62.

The following case seems identical wtih the present case:

> "The mother of a deceased employee was held not to be dependent upon the earnings of her son for support where it appeared that he had been attending college, and about two weeks before his death had secured employment with a railway company as a conductor; that for a year previous to his death he had been attending college, where he became indebted to about four hundred dollars for board, books, etc.
>
> "The claim for compensation was based on several conversations with her son, during his employment in which he said that if there was anything he could do to help his mother he would."

The decision of the arbitration committee was affirmed by the Industrial Accident Board. *In re Britten,* Mass. Work. Comp. Cas. (1912) 9.

The view which we urge is that the trial Judge had no facts supporting dependency and was therefore not warranted in making an award. And that there was no legal evidence to warrant such finding under the authority of *Bryant vs. Fissell,* 86 At. Rep. 458.

Moreover we urge that the statute can only attach at the time of death, and not at some future period of time when earnings may be given to the parent.

The Supreme Court erred in sustaining the award.

That the Supreme Court erred in allowing the award to stand upon the theory that there was evidence of dependency seems apparent.

The entire assumption of the opinion (p. 42) is that decedents earnings were brought home; that they were necessary to meet the household expenses.

We are unable to understand to what earnings the Court refers. Decedent was going to college and had been for the preceding year (p. 31). He had earned nothing, but in fact had been a liability, assisted in part by his sister (p. 34).

He had brought home no earnings, he had rendered no service during that period.

We insist that the statute must attach at the time of decedent's death. There was no dependency at that time, nor had there been for at least a year previously. In fact decedent had, after graduating from the high school, from which he obtained a scholarship, gone directly to Rutger's College.

It seems only fair to assume that his entire antecedent life was that of a diligent school-boy, with no time for any other occupation.

The Supreme Court further finds (p. 43) that during a period when the decedent had no employment, he collected bills and delivered signs for his father and helped his mother about the house.

The fact remains that he was just out of college for the summer; that he had been at college for the preceding year; that during that time he had borrowed from his sister moneys to assist him through his course; that upon his return to his home for the summer holidays he procured employment, where he worked for about a week when he was killed. What opportunity had decedent to perform the services indicated, so as to come within the control of the Employers Compensation Act?

The Act of 1913, page 305, section 12, regulating distribution in this case, says "The term dependents shall apply to and include any or all of the following who are dependents upon the deceased, at the time of the accident or death."

This is a case toward which we extend every feeling of sympathy and feel that the law should not triumph; yet, if our interpretation of the law is correct, recovery should be denied.

In view of the evidence we feel that the Supreme Court erred in sustaining the award, and that there was no proof to support such finding.

Respectfully submitted,

HOWARD L. MILLER,
Attorney for and of Counsel with Appellant.

Southern Bond