

1938

Present : Poyser S.P.J.

ROSA MARIA *v.* JAYAWARDENE.

362—P. C. Colombo.

Workmen's compensation—Claim by sister of deceased workman—Test of dependency—Ordinance No. 19 of 1934.

The deceased workman contributed to the maintenance of his sister, the applicant, till two years before his death, when he obtained employment in mines at Anuradhapura. After obtaining employment he ceased to contribute to her support. Shortly before his death the deceased had written to his sister and aunt saying that he was coming for the New Year with money.

Held, that the evidence was not sufficient to establish that the applicant was a dependant of the deceased.

A PPEAL from an order under the Workmen's Compensation Ordinance.

J. R. Jayawardana (with him *R. G. C. Pereira*), for appellant.

No appearance for respondent.

November 11, 1938. POYSER S.P.J.—

This is an appeal under Workmen's Compensation Ordinance, No. 19 of 1934. The Commissioner found that the applicant was a dependent of the deceased workman and the only question that arises on this appeal is whether there was sufficient evidence before him to justify such finding.

The relevant facts as found by the Commissioner are as follows:—The deceased workman contributed to the maintenance of the applicant, his sister, till two years before his death. The deceased then obtained employment in the mines at Anuradhapura and after obtaining such employment ceased to contribute to his sister's support. That evidence of itself is certainly not sufficient to establish that the applicant was in fact a dependant of the deceased. Dependency, however, may exist in certain cases without any actual payment being made at the time dependency is claimed. In deciding whether or not there is dependency the facts to be considered are past events and future probabilities, see *Lee v. George Munro*¹. There were in this case payments to the applicant in

¹ 21 B. W. C. C. 401.

the past, but what were the future probabilities that the deceased would resume such payments? The only evidence on this point is that the deceased had written a letter to his sister and aunt saying he was coming in the New Year with money. There was no evidence that he was going to give such money to his sister or to resume payments to her. I do not think this evidence is sufficient to bring the case within the principles laid down by Lord Justice Sankey in the case above referred to. It should be noted that in *Lee v. George Munro (supra)* the facts were very different. It was a claim by a widow and the deceased workman had supported his wife regularly and continuously, but at the time when he met with his accident he was only earning a very small amount, which did not permit of his supporting his wife. In the other case referred to by the Commissioner, namely, *Robertson v. Hall Brothers Steamship Co.*¹, the facts also are very different to those in this case. In that case a father claimed to be a dependant of his son. The son had for some four years contributed towards his father's upkeep, but did not during the last two or three months before his death make any contribution, but during such time he was mostly out of England. It was held that there was sufficient evidence to find that the father was in fact a dependant.

In this case, as stated before, I do not think there was sufficient evidence before the Commissioner to justify his finding. The appeal is accordingly allowed and the award in favour of the applicant set aside.

Appeal allowed.

