



05/19/50 LIBERTY MUTUAL INSURANCE CO. ET AL. v.

59 S.E.2d 731 (1950) | Cited 0 times | Court of Appeals of Georgia | May 19, 1950

STATEMENT OF FACTS BY WORRILL, J.

This is a workmen's compensation case. Frank Fuller was killed by an accident arising out of and in the course of his employment with International Minerals and Chemicals Company at East Point, Georgia. It was admitted that his earnings were \$38.56 per week. It was admitted on the hearing that the claimant, Amanda Haygood, was the sister of the deceased and was dependent upon him. The only question on the hearing was the extent of the claimant's dependency. The claimant testified that the deceased had sent her money every week since 1941, that "he gave me \$10.00 a week for groceries and house rent and other necessities and sometimes \$8.00 for doctor's bills and clothing sometimes he give me \$20.00 per week," that "sometimes he give me \$15.00 or \$14.00, sometimes \$20.00," that sometimes he would send her a "ten and five and sometimes a twenty dollar bill, and sometimes in one dollar bills, but always be that ten dollar bill." Further on, on direct examination the following questions were propounded and answers given: "Q. Now, I will ask you, since 1941 have you received money from any other source except Frank Fuller? A. No, sir, I get a check every once in awhile, not so much but Frank was the only one, you know, to help me. Q. Now, Amanda, if you will refresh your memory you get old-age pension of \$23.00? A. Yes, that is the only thing I have got but what my brother don't give me. Q. How long have you been getting this \$23.00? A. Oh, the \$23.00, I guess I begin to get it last year, in April -- in May, the 17th of May, last year I got \$23.00, besides then I didn't get anything, I got \$14.00, that is what I got." There was other evidence tending to corroborate the testimony that the deceased contributed to the claimant's support, but nowhere else other than in the statements quoted above was any evidence to support a finding that the claimant was wholly dependent on the deceased. There was evidence tending to show that the claimant was permanently and totally disabled and unable to work to support herself. The director made findings of fact that the deceased contributed \$12.00 per week to the claimant, that she was partially dependent on him and awarded compensation based on those findings of fact in the amount of \$5.10 per week for 300 weeks.

The employer and insurance carrier appealed to the full board, which found that the claimant was wholly dependent upon the deceased and awarded compensation for 300 weeks at \$16.39 per week (the rate of compensation for a total dependent under the law). The employer and insurance carrier appealed to the superior court which affirmed the award, and they excepted.

While it is true that findings of fact, made by the State Board of Workmen's Compensation, are, in the absence of fraud, conclusive upon the courts where there is any evidence to support them, nevertheless, construing the testimony as a whole adduced upon the hearing of this workmen's



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compensation case before the director, and upon which evidence the full board based its findings and award, the finding that the claimant was only partially dependent upon the deceased was demanded, as a matter of law, and the award of the full board based on total dependency was not authorized, and the superior court erred in not remanding the case to the board in order that findings and an award based on such partial dependency and under the formula provided in the Code, Ann. Supp. § 114-413(c) could be made.

