

## THE MEANING OF “DEPENDANTS” FOR THE PURPOSE OF COMPENSATION UNDER THE LABOR PROCLAMATION: CASE COMMENT

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Decisions of the Cassation Division of the Federal Supreme Court (hereinafter Cassation Division) rectify basic errors of law<sup>1</sup> in final court decisions and also enhance the harmony and predictability of statutory interpretation in Ethiopian courts. The Cassation Division has published its decisions in ten consecutive volumes. As some of the Cassation Division’s decisions evoke critique,<sup>2</sup> I would like to make some comment on its decision in *Cassation File No. 36194*.<sup>3</sup> In this case, the Cassation Division has rendered decisions on several issues, including:

- the meaning of work related injury/accident;
- dependants benefit in case of work related fatal accidents; and,
- the circumstances in which a spouse of a victim of work related fatal injury is entitled to get compensation from an employer who commits no fault.

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<sup>1</sup> Note that, the interpretations of a law by the Cassation Division on its judgments are binding on both federal and regional courts at all levels, including, regional state cassation divisions. *See* Federal Courts Proclamation Re-amendment Proclamation No.454/2005, Article 2(4). It reads:

“Interpretation of a law by the Federal Supreme Court rendered by the Cassation Division with not less than five judges shall be binding by federal or regional [courts] at all levels. The Cassation Division may, however, render a different interpretation some other time.”

<sup>2</sup> *See, e.g.,* Dejene Girma (2009), ‘Tell me why I need to go to court: A Devastating Move by the Federal Cassation Division’ *Jimma University Journal of Law* (Vol. 2 No.1), pp.114-135. Dejene Girma criticizes the constitutionality of a judgment rendered by the Cassation Division on April 19, 2007 in Cassation File No. 20938.

<sup>3</sup> የፌዴራል ጠቅላይ ፍርድ ቤት ስበር ችሎት ውሳኔዎች ቅጽ 8 (2003) ገጽ 167-172. (Decisions of the Cassation Division of the Federal Supreme Court, 2010, Amharic, pp. 167-172). Note that, on the soft copy released on the Federal Supreme Court website, the case is found on pages 162 to 167.

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This comment examines the interpretation of the Cassation Division on the latter issue, i.e. its finding on the issue formulated in the decision: ‘*when does a spouse of a deceased victim of work-related accident get compensation from an employer who commits no fault?*’ This comment examines the decision of the Cassation Division in light of the relevant canons of statutory interpretation and based on the relevant provisions of the Labor Proclamation (Proclamation No. 377/2003, hereinafter the Labour Proclamation).

### **Overview of the Case<sup>4</sup>**

The cassation petition was submitted to the Cassation Division of the Federal Supreme Court by the husband of the deceased (hereinafter the Petitioner) representing himself and his daughter. He is now the minor’s guardian. The Petitioner stated that the death of his wife and the mother of his minor child in a car accident is a work-related accident/injury as the accident occurred during her return from Hawassa to Addis Ababa after having accomplished the task assigned to her by the Respondent.<sup>5</sup> The Petitioner claimed the payment of costs and other benefits, including, funeral expenses and dependants’ compensation pursuant to Article 110 of the Labor Proclamation.

The Cassation Division ruled that there is work related injury, and further rendered decisions on the issue of dependents’ compensation where the worker’s death is attributable to work related injury. The Court noted the right of survivors of the deceased to get pension, gratuity or compensation pursuant to Articles 107(1)(c) and 110(2) of the Labor Proclamation, and framed the issue as to the persons who can claim compensation from the employer (Respondent).

The Court held that Article 110(2) of the Labor Proclamation entitles the spouse, children under the age of eighteen and parents of the deceased who were supported by the latter to be considered the dependants of the deceased. However, the Court stated that the law does not define the word ‘*dependent*’, and it resorted to providing meaning for the word ‘*dependant*’ embodied in Article 110(2) of the Labor Proclamation.

The Court held that even though the Labor Proclamation does not define the word ‘*dependent*’, one can give a meaning to it based on the general framework of Article 110 of the Proclamation. It further stated that the word ‘*dependant*’ refers to an individual who relies on the deceased for his/her basic necessities of life, such as, food, shelter, clothing and medical expenses.

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<sup>4</sup> This general overview primarily focuses on the issue of dependant’s compensation. It does not discuss other issues in the case.

<sup>5</sup> The deceased was working at the Respondent’s organization as a project coordinator from 25/08/1996 E.C to the date of her death 09/12/1997 E.C.

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It was thus held that “Article 110(2) does not entitle compensation to a spouse that does not prove that he/she cannot fulfill his/her basic necessities by himself/herself”. The Court further made reference to Article 112 of the Labor Proclamation and decided that the provision exempts the dependant’s benefits under Article 110(2)(a) of the Labor Proclamation from any kind of tax, assignment, attachment or deduction because it has the rationale of enabling a spouse that uses the compensation to cover his/her livelihood.

This, according to the Court, indicates that Article 110(2)(a) envisages the beneficiary of compensation to be a spouse who really needed economic support of his/her late partner in his/her livelihood. The Court thereupon reached at the conclusion that, a spouse capable of fulfilling his/her necessities is not entitled to compensation under Article 110(2)(a) of the Labor Proclamation.

The Cassation Division thus denied the payment of compensation to the Petitioner by invoking Article 110(2)(a) of the Labor Proclamation and stating that he has enough income to sustain his life. With regard to the deceased’s daughter, however, the Cassation Division decided that she is entitled to compensation pursuant to Article 110(2)(b) of the Labor Proclamation as the daughter requires the economic support of the deceased to sustain her life and education.

## **Comment on the Decision of the Cassation Division**

### **1. The need to apply the clear reading of the law**

When the law is clear no further interpretation is needed. This is because the words themselves are presumed to express the intention of the legislator, unless the literal reading is susceptible to a meaning which is clearly unintended by the law maker. By virtue of Article 110(2) of the Labour Proclamation “[t]he following shall be considered dependants:

- a) the worker’s widow or widower;
- b) children of the deceased worker who are under eighteen years of age;
- c) any parent who was being supported by the deceased worker.”

Article 110(2)(a) clearly considers the deceased’s spouse dependant without attaching any condition while the condition of non-attainment of eighteen years is attached to the dependant status of children (Article 110/2/a). The provision that deals with parents (i.e. Art. 110/3) considers parents of the deceased as dependants subject to the condition of “*their being supported by the deceased worker.*” The pre-condition of “being supported by the deceased” thus only applies to parents and not to the spouse of the deceased. As Mahari Redae

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notes, “the law automatically considers a widow/widower whose spouse dies due to work related injury the dependant of the deceased spouse”.<sup>6</sup>

In short, the law does not attach any precondition for a widow/widower to be considered dependant to the deceased spouse. This is apparently because spouses are dependants to one another owing to the bond of matrimony which involves mutual support and care for one another not only in the material domain but also in the social, psychological, emotional and spiritual aspects of the relationship. The decision of the Cassation Division thus goes against the rules of statutory interpretation because it has interpreted the word ‘*dependant*’ under Article 110(2)(a) of the Labor Proclamation while the provision clearly considers spouses as dependants without attaching a condition.

A title or caption of a provision does not control its meaning. If a provision is clear its meaning should not be restricted by a title/caption found at its heading and one should not interpret it in light of the general framework of the law.<sup>7</sup> The interpretation given by the Court based on the general framework of the law (while the clear meaning of the word can be deducted from Article 110(2) of the Labour Proclamation) is thus against canons of interpretation.<sup>8</sup>

## **2. The Reference of the Court to Article 112 of the Labour Proclamation**

The Cassation Division refers to Article 112 of the Labour Proclamation to substantiate its argument on the necessity of the spouse’s economic dependence as a precondition to be regarded as ‘dependant’. The Court held that Article 112 of the Labour Proclamation exempts the compensation given for dependants from any kind of tax, assignment, setoff or attachment because it intends to give the compensation for a spouse that needs the money to cover his/her livelihood expenses. However, this is an assumption that has not been backed by analysis of documents such as the minutes of the legislature or *exposé des motifs* of the drafters. In fact, laws and policies take various factors into account in exemptions and other waivers. In the absence of analysis on legislative intent, the intention behind Article 112 cannot substantiate the interpretation pursued by the Cassation Division of the Federal Supreme Court.

It is to be noted that other disability benefits are also exempted from any kind of tax, attachment, assignment and setoff. This does not, however, warrant the

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<sup>6</sup> Mahari Redae (2009), *Employment and Labor Law Teaching Material*, (Sponsored by Justice and Legal System Research Institute), unpublished, p.82.

<sup>7</sup> The Cassation Division rendered its decision basing itself on the general framework of the provision. This includes the caption of Article 110 of the Labour Proclamation.

<sup>8</sup> A court can interpret a clear law only if it ascertains that the intent of the legislator is inconsistent with the literal reading of the provision.

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assumption that economic dependence is a decisive factor in disability benefits. In fact, a victim may be economically self-sufficient, and still be entitled to disability benefits. This is because the victim's economic status cannot be a factor that determines entitlement. Moreover, funeral expenses are freed from any of the above restrictions, and this is not related with the economic conditions of the deceased's family, heirs or legatees. The legislator may thus allow tax and other exemptions for several reasons other than the factor mentioned in the decision of the Cassation Division.

### **3. Assessment of Compensation under the Labour Proclamation and its Implications**

Article 110(3)(a) of the Labour Proclamation allocates fifty percent of the five year salary of the deceased to his/her widow/widower as compensation. The provision requires the amount mentioned (i.e. 50% of the compensation) to be paid to a widow or widower (who falls under Article 110(1)(a) of the Labour Proclamation) irrespective of economic status. Had economic dependence been the rationale behind the stipulation, a flat rate of 50% would not have been allocated because the degree of economic dependence varies among different widows/widowers. In this regard, the cumulative reading of Article 110(1)(a) of the Labour Proclamation with the latter sub-article reinforces the argument that the economic dependence of the deceased is not required by the Proclamation. In short, all widows/widowers are equally treated as dependants of the deceased for the purpose of compensation under Article 110(2)(a) of the Labour Proclamation.

Article 110(3) of the Labour Proclamation allows equal compensation for all widows/widowers based on the deceased's salary at the time of the latter's death. This shows the contradiction between Article 110(3)(a) of the Labour Proclamation and the meaning given to the word '*dependant*' by the Cassation Division of the Federal Supreme Court. If the legislator had intended to consider the economic dependence of the widow/widower under Article 110(3), the provision would have provided that, "*the spouse shall be entitled to the compensation to the extent necessary to cover his/her livelihood, provided that the compensation to be paid shall not exceed fifty percent of five times the annual salary of the deceased worker*". In other words it would not have entitled all widows/widowers the flat rate of fifty percent. The Cassation Division has thus erred by disregarding the cumulative reading of Articles 110(2)(a) and 110(3)(a) of the Labour Proclamation.

### **Conclusion**

Unless there is absurdity or contradiction with the purpose in view, a legal provision that is clear cannot be interpreted in a manner different from its

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reading. However, the Cassation Division has, in *Cassation File No. 36194*, resorted to the interpretation of Article 110(2)(a) of the Labor Proclamation while in fact, the reading of the provision, as discussed above, considers a widow or a widower as *dependant* irrespective of economic dependence on the deceased.

While the provision incorporates no precondition in the entitlement of the widow/widower to compensation due to his/her spouse's death in work related injury, the Court requires the former to be economically dependent on the deceased. The Cassation Division's decision thus disregards the careful considerations that could have easily been inferred from the cumulative reading of 110(1)(a) and the rule of compensation embodied under Article 110(3). The Cassation Division is thus expected to rectify this interpretation in future cases that involve the same issue so that widow/widowers who lose their spouses in work related injury would not continue being denied of the compensation to which they are entitled. \_\_\_\_\_■

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