

*Widow's Benefit - Parliament  
Muzamil - Tana in the air*

*C.P.A. 3*



DGR/SH/21

Commissioner's File: CG/016/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR WIDOWS BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the social security appeal tribunal given on 3 May 1990 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 3 May 1990.

3. The question for determination by the tribunal was whether the claimant was entitled to widow's benefit from and including 18 July 1989. This depended upon whether her marriage to Abdullah Khan ("the deceased") (which took place on 17 August 1969 in Pakistan in accordance with Islamic law, a law which permits polygamy) was at the date of the deceased's death in fact monogamous. And this question in turn depended upon whether an earlier marriage in 1962, which also took place in Pakistan, in accordance with Islamic law, was still subsisting. Evidence was presented by the claimant indicating that the deceased had pronounced Talaq on 8 April 1988 in the United Kingdom in respect of his first wife, thereby bringing his marriage to her to an end. However, the tribunal, upholding the decision of the adjudication officer, decided that the pronouncing of Talaq in the United Kingdom did not have the effect of terminating the first marriage, and in consequence the marriage to the claimant could not be regarded as monogamous.

4. Section 16(1) of the Domicile and Matrimonial Proceedings Act 1973 reads as follows:-

" 16. - (1) No proceedings in the United Kingdom, the Channel Islands or the Isle of Man shall be regarded as validly dissolving of marriage

unless instituted in the courts of law in one of those countries."

It is not in dispute that the pronouncement of the Talaq by the deceased was not made in a court of law. It follows that the first marriage was not validly dissolved.

5. The tribunal got the position right when, in giving reasons for their decision, they said as follows:-

"Both marriages of Abudullah Khan were celebrated according to Islamic Law but the second marriage was also celebrated according to English Law in Bradford Registry Office according to the claimant, although a certificate of marriage was not produced. Even so Abdullah Khan regarded his first marriage as legally binding on him and accepted that there was a polygamous marriage. For some reason or other he decided to terminate his first marriage according to Islamic Law by pronouncing Talaq which was done in the United Kingdom but he did not chose to terminate that marriage by divorce proceedings in an English court of law. The tribunal therefore conclude that the claimant's marriage was polygamous since the first marriage had not been terminated in accordance with Domicile and Matrimon[ial] Proceedings Act 1973. This being so, by virtue of the Social Security Regulations the Claimant is not entitled to Widow's Benefit."

6. After the proceedings before the tribunal the claimant's representative put in further evidence suggesting that the deceased had pronounced a Talaq in Pakistan, and that this was effective to dissolve the first marriage and would be recognised in this country. This contention is of no assistance to the claimant, because the evidence referred to was not put before the tribunal. The tribunal were required to reach a decision on the evidence presented to them. On that evidence, they were entitled, and in my view obliged, to reach the conclusion they did. Accordingly, I see no grounds for my interfering with their decision.

7. It follows from what has been said above that I have no option but to dismiss this appeal.

(Signed) D.G. Rice  
Commissioner

(Date) 4 May 1993