

Dependency

William Joseph was a 36-year-old citizen of Haiti. He worked for HiLo Trucking Company located in New Jersey. He has been employed there for four years, mostly full-time. There would be periods of time that he would not work and would be laid off. He had an apartment in New Jersey where he lived by himself. He did have a person who he considered his wife and infant son, 2 years old, who lived in Haiti. No marriage certificate could be produced. His wife was pregnant with his child. He also had three other children with three different women whom he never married. The children were ages 9, 6 and 4. William would occasionally return to Haiti to live with his wife and infant child during his layoff periods. This combined was about two months per year. He supported or tried to support all of the children as well as his wife.

William worked for HiLo Trucking Company for about four years commencing in 1998. HiLo Trucking Company was located in Kearny, New Jersey. On July 1, 2002 while driving, his normal route from New Jersey to Connecticut the truck that he was driving drove off the Tappan Zee Bridge in New York State. William was killed instantly. At the time of the accident, Mr. Joseph's gross average weekly wage was approximately \$800 per week plus some incentives as well as reimbursement of costs. His incentives or bonuses averaged approximately \$100 per week in the six months prior to his death however they were closer \$160 per week in the year prior to his death. The maximum rate for 2002 was \$629 per week for total permanent disability and for dependency benefits.

The respondent stipulated to employment, and that the accident occurred while the course of employment. Wages were in dispute. There was an initial vague allegation of suicide.

The funeral bill was \$5000 to be paid by a friend but was remained unpaid.

Throughout the course of the case, one of the mothers and her child could not be located.

Eventually the respondent conceded that the petitioner was in the course of his employment when he died. The remaining issue was wage and most significantly the amount of the benefit how the benefits were going to be divided.

The wife residing in Haiti regularly received \$100 per week for "support". There was no breakdown as to whether any of that support was directed to the wife. With regard to the other three children, one of which could not be located, there was proof of sporadic payments that probably averaged about \$2000 per year each of the two children. There were no child support orders.

Questions:

1. What is the difference between conclusively presumed and actual dependents?
2. What was the classification of each of the above potential dependents, statutory dependent, actual dependent or neither?
3. Issues involving the wife. She was a resident and citizen of Haiti and never traveled to the United States. There was no marriage license. How do you get beyond lack of proof of an actual marriage and if the wife is not a statutory dependent how do you prove actual dependency? Did the facts show that Mr. Joseph and his wife "lived" together?
4. What is the status of the three other children, Are they actual, statutory or neither?
5. What was the respondent's position with regard to the child that could not be found?
6. What is the status of the unborn child?
7. What is the wage and rate?
8. What is considered to be "support" in calculating benefits?
9. How are dependency benefits calculated? There was a different formula in 2002 then there presently is
10. How would the division of benefits change if the wife either married or commenced employment?
11. How do the benefits change when each child turns 18? College?
12. Ethical considerations in representing all dependents?
13. Are surrogate papers necessary?

14. At one point, the respondent's attorney proposed a section 20 for all dependence. Was this appropriate for a Section 20?

Pre 2004 State

34:15-13. Death, compensation for; computation and distribution

Except as hereinafter provided, in case of death, compensation shall be computed, but not distributed, on the following basis:

- a. For one dependent, 50% of wages.
- b. For two dependents, 55% of wages.
- c. For three dependents, 60% of wages.
- d. For four dependents, 65% of wages.
- e. For five or more dependents, 70% of wages.
- f. The term "dependents" shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or the occurrence of occupational disease, or at the time of death, namely: husband, wife, parent, stepparents, grandparents, children, stepchildren, grandchildren, child in esse, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters, niece, nephew. Legally adopted children shall, in every particular, be considered as natural children. Dependency shall be conclusively presumed as to the decedent's spouse and to the natural children under 18 years of age of a decedent who were actually a part of the decedent's household at the time of the decedent's death. Every provision of this article applying to one class shall be equally applicable to the other. Should any dependent of a deceased employee die during the period covered by such weekly payments the right of such dependent to compensation under this section shall cease but should the surviving spouse of a deceased employee remarry during such period and before the total compensation is paid the spouse shall be entitled to receive the remainder of the compensation which would have been due said spouse had the spouse not remarried, or \$1,000.00, whichever is the lesser. The foregoing schedule applies only to persons wholly dependent, and in the case of persons only partially dependent, except in the case of the surviving spouse and children who were actually a part of the decedent's household at the time of death, the compensation shall be such proportion of the scheduled percentage as the amounts actually contributed to them by the deceased for their support constituted of his total wages and the provision as to a minimum of 20% of the average weekly wage as set forth in paragraph a. shall not apply to such compensation. In determining the number of dependents, where the deceased employee was a minor, the number of persons dependent upon the deceased employee shall be determined in the same way as if the deceased employee were an adult, notwithstanding any rule of law as to the person entitled to a minor's wages.

g. Compensation shall be computed upon the foregoing basis. Distribution shall be made among dependents, if more than one, according to the order of the Division of Workers' Compensation, which shall, when applied to for that purpose, determine, upon the facts being presented to it, the proportion to be paid to or on behalf

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of each dependent according to the relative-dependency. Payment on behalf of infants shall be made to the surviving parent, if any, or to the statutory or testamentary guardian.

h. If death results from the accident or occupational disease, whether there be dependents or not, expenses of the last sickness of the deceased employee shall be paid in accordance with the provisions for medical and hospital service as set forth in section 34:15-15 of this Title. Also the cost of burial, not to exceed \$2,000.00 shall be paid to the dependent or other person having paid said costs of burial. In the event that the said dependent or other person has paid less than \$2,000.00 the said dependent or other person shall be reimbursed in the amount paid and, if the costs of burial exceed the amount so paid, the difference between the said amount and \$2,000.00 or so much thereof as may be necessary to pay the cost of burial, shall be paid to the undertaker or embalmer. In the event that no part of the costs of burial has been paid, the amount of such cost of burial, not to exceed \$2,000.00, shall be paid to the undertaker or embalmer.

i. In computing compensation to those named in this section, except husband, wife, parents and stepparents, only those under 18 or over 40 years of age shall be included and then only for that period in which they are under 18 or over 40; provided, however, that payments to such physically or mentally deficient persons as are for such reason dependent shall be made during the full compensation period of 450 weeks.

j. The maximum compensation in case of death shall be subject to the maximum compensation as stated in paragraph a. of section 34:15-12 of this Title and a minimum of 20% of average weekly wages per week as set forth in paragraph a. above, except in the case of partial dependency as provided in this section. This compensation shall be paid, in the case of a surviving spouse, during the entire period of survivorship or until such surviving spouse shall remarry except that any earnings from employment by the surviving spouse after 450 weeks of compensation have been paid shall be deducted from the compensation thereafter payable to said spouse and, in the case of other dependents, during 450 weeks and if at the expiration of 450 weeks there shall be one or more dependents under 18 years of age compensation shall be continued for such dependents until they reach 18 years of age at the schedule provided under paragraphs a. to e. of this section.

Amended by L.1938, c. 36, p. 111, § 1; L.1945, c. 74, p. 387, § 6; L.1953, c. 159, p. 1403, § 1; L.1956, c. 141, p. 570, § 3; L.1966, c. 126, § 2, eff. March 1, 1967; L.1979, c. 283, § 6, eff. Jan. 10, 1980.

2021 New Jersey Revised Statutes

Title 34 - Labor and Workmen's Compensation

Section 34:15-13 - Death benefits, burial expenses; computation and distribution.

Universal Citation: NJ Rev Stat § 34:15-13 (2021)

34:15-13 Death benefits, burial expenses; computation and distribution.

34:15-13. Except as hereinafter provided, in case of death, compensation shall be computed, but not distributed, on the following basis:

- a. For one or more dependents, 70% of wages.
- b. (Deleted by amendment, P.L.2003, c.253).
- c. (Deleted by amendment, P.L.2003, c.253).
- d. (Deleted by amendment, P.L.2003, c.253).
- e. (Deleted by amendment, P.L.2003, c.253).
- f. The term "dependents" shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or the occurrence of occupational disease, or at the time of death, namely: husband, wife, parent, stepparents, grandparents, children, stepchildren, grandchildren, child in esse, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters, niece, nephew. Legally adopted children shall, in every particular, be considered as natural children. Dependency shall be conclusively presumed as to the decedent's spouse and to any natural child of a decedent under 18 years of age or, if enrolled as a full-time student, under 23 years of age, who was actually a part of the decedent's household at the time of the decedent's death. Every provision of this article applying to one class shall be equally applicable to the other, except for the surviving spouses of members of the State Police or members of fire or police departments or forces who die in line of duty. Should any dependent of a deceased employee die during the period covered by such weekly payments the right of such dependent to compensation under this section shall cease, but should the surviving spouse of a deceased employee, other than the surviving spouse of a deceased member of the State Police or member of a fire or police department or force who died in line of duty, remarry during such period and before the total compensation is paid, the spouse shall be entitled to receive the

remainder of the compensation which would have been due the spouse had the spouse not remarried, or 100 times the amount of weekly compensation paid immediately preceding the remarriage, whichever is the lesser. If the deceased was a member of the State Police or member of a fire or police department or force who died in the line of duty, the compensation shall be paid to the surviving spouse during the entire period of survivorship, even if the surviving spouse remarries, but the surviving spouse shall not receive a lump sum payment pursuant to this subsection. The foregoing schedule applies only to persons wholly dependent, and in the case of persons only partially dependent, except in the case of the surviving spouse and children who were actually a part of the decedent's household at the time of death, the compensation shall be such proportion of the scheduled percentage as the amounts actually contributed to them by the deceased for their support constituted of his total wages and the provision as to a minimum of 20% of the average weekly wage as set forth in subsection a. of R.S.34:15-12 shall not apply to such compensation. In determining the number of dependents, where the deceased employee was a minor, the number of persons dependent upon the deceased employee shall be determined in the same way as if the deceased employee were an adult, notwithstanding any rule of law as to the person entitled to a minor's wages. Nothing in this subsection pertaining to the surviving spouse of a member of the State Police or member of a fire or police department or force who died in the line of duty shall be construed to entitle the surviving spouse to resumed payments of compensation if that surviving spouse received a lump sum payment pursuant to this subsection or remarried prior to the effective date of P.L.2013, c.62.

g. Compensation shall be computed upon the foregoing basis. Distribution shall be made among dependents, if more than one, according to the order of the Division of Workers' Compensation, which shall, when applied to for that purpose, determine, upon the facts being presented to it, the proportion to be paid to or on behalf of each dependent according to the relative-dependency. Payment on behalf of infants shall be made to the surviving parent, if any, or to the statutory or testamentary guardian.

h. If death results from the accident or occupational disease, whether there be dependents or not, expenses of the last sickness of the deceased employee shall be paid in accordance with the provisions for medical and hospital service as set forth in R.S.34:15-15. In addition, the cost of burial and of a funeral, not to exceed \$5,000, shall be paid to the dependent or other person having paid the costs of burial and the funeral. In the event that the dependent or other person has paid less than \$5,000 for the costs of burial and the funeral, the dependent or other person shall be reimbursed in the amount paid and, if the costs of burial and the funeral exceed the amount so paid, the difference between the said amount and \$5,000 or so much thereof as may be necessary to pay the cost of burial and the funeral, shall be paid to the undertaker or embalmer or the dependent or other person having paid the costs of burial and the funeral. In the event that no part of the costs of burial and the funeral have been paid, the amount of such cost of burial and the funeral, not to exceed \$5,000, shall be paid to the undertaker or embalmer or the dependent or other person who is to pay the costs of burial and the funeral.

i. In computing compensation to those named in this section, except husband, wife, parents and stepparents, and except as otherwise provided in this section, only those under 18 or over 40 years of age shall be included and then only for that period in which they are under 18 or over 40; provided, however, that payments to such physically or mentally deficient persons as are for such reason dependent shall be made during the full compensation period of 450 weeks.

j. The maximum compensation in case of death shall be subject to the maximum compensation as stated in subsection a. of R.S.34:15-12 and a minimum of 20% of average weekly wages per week as set forth in subsection a. of R.S.34:15-12, except in the case of partial dependency as provided in this section. This compensation shall be paid, in the case of a surviving spouse, other than a surviving spouse of a member of the State Police or member of a fire or police department or force who died in the line of duty, during the entire period of survivorship or until such surviving spouse shall remarry and, in the case of other dependents, during 450 weeks and if at the expiration of 450 weeks there shall be one or more dependents under 18 years of age, compensation shall be continued for such dependents until they reach 18 years of age, or 23 years of age while enrolled as a full-time student, at the schedule provided under subsection a. of this section. If the deceased was a member of the State Police or member of a fire or police department or force who died in the line of duty, the compensation shall be paid to the surviving spouse during the entire period of survivorship, even if the surviving spouse remarries, but the surviving spouse shall not receive a lump sum payment pursuant to subsection f. of this section.

amended 1938, c.36; 1945, c.74, s.6; 1953, c.159; 1956, c.141, s.3; 1966, c.126, s.2; 1979, c.283, s.6; 1990, c.122, s.2; 1995, c.185; 2003, c.253, s.1; 2013, c.62; 2020, c.116, s.2.