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WORKMEN'S COMPENSATION—PRESUMPTION OF DEPENDENCY BY WIDOW—Deceased abandoned his wife about two years before he was killed in defendant's employment. Although he continued to visit her from time to time, there was no evidence of a continuance of the conjugal relationship. Decedent contributed nothing to the support of the plaintiff, but used his entire income to support a concubine. Held, plaintiff's demand for benefit payments rejected¹ upon finding that she was neither "living with" nor actually dependent upon the deceased within the contemplation of the Workmen's Compensation Act.² *Slaughter v. Liberty Mutual Insurance Company*, 33 So. (2d) 86 (La. 1947).

Persons eligible for benefits under Section 8, Subsection 2, are divided into those conclusively presumed dependent and those who must show actual dependency.³ A wife "living with" her husband at the time of the accident and death is conclusively presumed to be dependent upon him. Once this presumption is established, she is relieved from the necessity of proving actual dependency and receives the entire quota of compensation allowable to a widow. If it is necessary to prove actual dependency, however, she must show the extent to which she was dependent upon the deceased and compensation will be awarded proportionate to that part of the deceased husband's wage which has been contributed to her support.⁴ Obviously, it is to the widow's advantage that she be adjudged to have been "living with" her husband within the meaning of the Workmen's Compensation Act.

In conformity with the policy of our law to favor permanence of the marital institution,⁵ the cases reveal a definite tendency on the part of the courts to find a "living with" wherever possible. They have consistently held that a mere physical separation is not sufficient to deprive the widow of the presumption established in her favor.⁶ Courts of other jurisdictions have made similar find-

1. Factors enumerated as controlling were "the fact of living apart for a time, coupled with the determination by the husband to preserve that status, plus the failure on his part to render support for his wife. . . ." This decision is in agreement with those of *Moy v. Schuylkill Products Co.*, 209 La. 782, 25 So. (2d) 542 (1946) (which presented a set of facts substantially similar to those in the case at bar) and *Haynes v. Loffland Bros. Co.*, La. App. [Orl.] Docket No. 18,786 (March 1, 1948).

2. La. Act 20 of 1914, § 8(2)(A), (D), (K), as amended by La. Act 242 of 1928 [Dart's Stats. (1939) § 4398].

3. *Bradley v. Swift & Co.*, 167 La. 249, 119 So. 37 (1928).

4. *Supra* note 2.

5. Arts. 89, 120, 139, La. Civil Code of 1870.

6. *Oliphant v. Louisiana Long Leaf Lumber Co.*, 7 La. App. 521 (1927); *Books v. Keen & Woolf Oil Co.*, 120 So. 99 (La. App. 1928); *Laurent v.*

ings.⁷ Yet, where there has been an obvious severance of the marital relation, particularly in situations involving moral turpitude on the part of the claimant, recovery is usually denied.⁸ Disruption of conjugal relations by mutual consent has been deemed to destroy the presumption of dependency.⁹ However, in the light of our public policy as reflected in the jurisprudence, that rule would seem to apply only to voluntary separations in which there was a mutual acknowledgment of incompatibility and mutual intent to sever the marital bonds permanently. In other cases the courts have considered the particular situation to determine whether the necessary factors which would warrant the finding of a "living with" were present. In this inquiry, the courts have been primarily concerned with evidence of financial support by the deceased,¹⁰ the frequency and nature of his visits,¹¹ the couple's status in the public eye,¹² and the cause for the separation.¹³ Where the separation has resulted from economic necessity, there has been a decided effort to find either a "living with" or actual dependency.¹⁴

In the case at bar, the court expressed regret that it was possible for a husband to deprive his wife of the benefits of the Workmen's

Dendinger, Inc., 126 So. 600 (La. App. 1930); Harris v. Louisiana Oil Refining Corp. 127 So. 40 (La. App. 1930); Robinson v. Standard Oil Co. of La., 191 So. 145 (La. App. 1939).

7. Northwestern Iron Co. v. Industrial Commission of Wis., 154 Wis. 97, 142 N. W. 271 (1913); in re Nelson, 217 Mass. 467, 105 N. E. 357 (1914); Bullman v. Lyman-Richey Sand & Gravel Corp., 144 Neb. 342, 18 N. W. (2d) 403 (1944).

8. Knox v. Louisiana Long Leaf Lumber Co., 138 So. 139 (La. App. 1931); Rollins v. Foundation Co., 154 So. 674 (La. App. 1934); Gloston v. Industrial Lumber Co., Inc., 159 So. 618 (La. App. 1935); Woodard v. Murphy Iron & Boiler Works, 172 So. 397 (La. App. 1937).

9. Milton v. Long-Bell Lumber Co., 165 La. 336, 115 So. 582 (1928), where, although the plaintiff and deceased were separated only three or four months, the court found no "living with," emphasizing the fact that the plaintiff acquiesced in the abandonment; Zuvicoh v. Schnyder, 137 So. 379 (La. App. 1931).

10. See Oliphant v. Louisiana Long Leaf Lumber Co., 7 La. App. 521 (1927); Books v. Keen & Woolf Oil Co., 120 So. 99 (La. App. 1928); Keyhea v. Woodard-Walker Lumber Co., 147 So. 830 (La. App. 1933); Dupree v. Monroe Sand & Gravel Co., 18 So. (2d) 845 (La. App. 1943).

11. See Fulton Bag & Cotton Mills v. Fernandez, 159 So. 339 (La. App. 1935); Ross v. Armour Fertilizer Works, 168 So. 353 (La. App. 1936); Robinson v. Standard Oil of La., 191 So. 145 (La. App. 1939); Moy v. Schuylkill Products Co., 209 La. 782, 25 So. (2d) 542 (1946).

12. See Harris v. La. Oil Refining Corp., 127 So. 40 (La. App. 1930); Ross v. Armour Fertilizer Works, 168 So. 353 (La. App. 1936).

13. See Fulton Bag & Cotton Mills v. Fernandez, 159 So. 339 (La. App. 1935); McCaskill v. Lyon Lumber Co., 154 So. 479 (La. App. 1934); American Mutual Liability Insurance Co. v. Sanders, 177 So. 498 (La. App. 1937).

14. Books v. Keen & Woolf Oil Co., 120 So. 99 (La. App. 1928); Harris v. La. Oil Refining Corp., 127 So. 40 (La. App. 1930); Fulton Bag & Cotton Mills v. Fernandez, 159 So. 339 (La. App. 1935), where the court ruled that so long as plaintiff could reasonably expect the deceased to return, just so long did she remain a dependent wife.

Compensation Act by merely abandoning his marital duties. This same attitude was manifested in *Moy v. Schuylkill Products Company*.¹⁵ However, in both cases the courts recognized that any remedy in this situation rested exclusively within the sphere of legislative action.¹⁶

The present state of the law is unsatisfactory.

As the result of the death of her husband, the plaintiff has lost not only the right to institute proceedings to compel support, but also the opportunity to effect a reconciliation. In cases where the plaintiff has spent a long period of service as a housewife, she will probably experience a difficult period of readjustment, during which time part of her support must necessarily come from other sources. In this period she may be further handicapped by parental obligations. From the standpoint of domestic economy and social policy, she still represents a part of the marital institution. Thus, aside from the purely moral aspect, practical considerations call for legislative action to prevent the continued perpetration of this injustice.

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15. See note 1, *supra*.

16. 33 So. (2d) 86, 88 (La. 1947).