

**Workmen's Compensation—Divorce—Interlocutory Decree—
Minor Dependents—Compensation—Wife.**

Where there are minor dependents under the age of sixteen and where the mother has been granted an interlocutory decree of divorce compensation should not be granted to either the minors or the mother without a hearing and an opportunity of all claimants to present their claims.

Jerome G. Locke, Esq.,
Chairman, Industrial Accident Board,
Helena, Montana.

February 13, 1925.

My dear Mr. Locke:

Your letter was received relative to the case of Tom Violette, accidentally killed near Lolo, Montana, who left six children, two of whom are under the age of sixteen years, and a former wife living in Washington, to whom an interlocutory decree of divorce was granted in that state on July 8, 1924.

You state the question now arises whether a part of the compensation shall be awarded to the former wife to whom the interlocutory decree was granted or whether such decree has the same effect as a full decree of divorce and bars any compensation right she may have had.

Section 2865, R. C. M. 1921, defines a "beneficiary" as including "a surviving wife or husband and a surviving child or children under the age of sixteen years."

Section 2876 provides:

"'Wife' or 'widow' means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury."

In order to determine whether the wife in this case is entitled to any part of the compensation it will be necessary to know what the decree of divorce contained with respect to alimony or support.

In the case of London Guarantee & Accident Co. v. Industrial Commission (Cal.) 184 Pac. 864, the industrial accident commission awarded compensation to the wife and also to the mother of the deceased on account of death of the husband and son. The wife had obtained an interlocutory decree and the question arose on the contention that the former wife was not entitled to compensation under the provisions of the California compensation act which provided that if the wife was

living with the husband at the time of his death or if he was legally liable at the time of his death for her support she is conclusively presumed to be wholly dependent for support upon her husband so as to be entitled to compensation under the act as such dependent. The court, in discussing the effect of the interlocutory decree upon her right to compensation, said:

“The interlocutory judgment, although not final, was conclusive between the parties for the purposes of that action during the period elapsing before the final judgment should be entered, unless by some proceeding or agreement it became in some manner modified. Perhaps the wife would have had the right during that interval to apply in that action for further relief in the way of support and maintenance or for alimony, but until she did so the rights of each with respect to the personal marital obligations of the other remained as declared by the interlocutory judgment, and it was binding on each of them. It is true it had no effect on the operation of the statutes which declare her rights in the property of which he dies possessed, nor upon the statutes declaring the status of the property acquired by him during the marriage, because, until the final judgment, the marriage status continues. But the personal obligations between them remain in abeyance until changed by some subsequent action or agreement which is binding upon the husband. They are, by virtue of the interlocutory judgment, living separate by agreement, and if that judgment makes no provision for her support by him, they are living separate by an agreement which does not provide for her support, and under section 175 he is not, during that interval, personally liable for her support. The judgment has the effect of a contract for that purpose. Until that contract is in some manner changed, either in the action or in some independent proceeding, of by a reconciliation, her right to support is suspended. In the present case no change was made in their status up to the time of his death. They were living apart under this contract evidenced by this judgment. He was not at that time legally liable for her support, and, therefore she does not come within the aforesaid provisions of the workmen’s compensation act. It follows that the award cannot be sustained. It will be necessary for the commission to readjust the matter under the principles we have stated, giving the wife no compensation whatever and allowing the mother such compensation as the evidence may show she is entitled to under the provisions of the act.”

The California court held that the wife was not entitled to support by reason of the fact that no provision was made in the decree for her support and that unless the decree had been changed by agreement of the parties in that regard or by the court in a proper proceeding it was conclusive. This question has never been decided by our supreme court, and for that reason a hearing should be held and the former wife required to present her claim, if she makes any claim adverse to that of the child-

ren. This for the reason that regardless of the provisions of the decree it will be necessary to ascertain whether it has been modified by a subsequent agreement as regards the question of the wife's support.

In other words, your board should not undertake to decide as between the former wife and the children under sixteen years of age which is to receive compensation, as against the other, without giving them an opportunity to present their respective claims.

Very truly yours,

L. A. FOOT,

Attorney General.