

GAHC010161302019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

MFA 182 of 2021

United India Insurance Co. Ltd,
Having its registered and Head Office at 24 Whites Road,
Chennai 600014
and one of the Regional Office at
G.S. Road, Dispur, Guwahati-781005

.....Appellant

-Versus-

1. Julekha Begum,
Wife of Late Samsher Khan
Resident of Village: Rangali Pathar,
P.O. Naharkatia,
P.S. Naharkatia,
District: Dibrugarh (Assam)
PIN: 786613

.....Respondent/Claimant

2. Sri Amrik Singh,
S/O Late Babu Singh,
House No. 23, Bidya Mandir Path,
Lalmati, Guwahati,
District:- Kamrup (Metro), Assam,
PIN:- 781029

.....Respondent/Owner of
Vehicle No. NL-02/D-5495(Tanker)

For the Appellant : Mr. AJ Saikia, Advocate.

For the respondents : Mr. B Baruah, Advocate.

- BEFORE -
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 27-04-2023

JUDGMENT (CAV)

Heard Mr. AJ Saikia, learned counsel for the appellant as well as Mr. B Baruah, learned counsel for all the respondents.

2. This is an appeal under Section 30 of the Workmen's/Employee's Compensation Act, 1923 (hereinafter in short EC Act) against the judgment and award dated 18.01.2019, passed by the Commissioner, Employee's Compensation, Dibrugarh in EC Case No. 2/2015.

3. The brief facts of the case is that the respondent No. 1 as claimant had filed the EC Case No. 2/2015 before the Court of the Commissioner, Employee's Compensation, Dibrugarh, Assam for claiming compensation for the death of the victim Kamal Khan in a motor vehicle accident which has taken place on 15.08.2014 during the course of employment as the driver of vehicle bearing No. NL-02/D5495 (Tanker). The present appellant was impleaded in the said EC Case being insurer of the alleged tanker and contested the case by filing written

statement denying its liability in the said case.

4. In support of her case, the claimant side had examined the claimant as sole witness and exhibited some documents and the opposite parties did not adduce any defence witness. On the basis of the materials on record, the learned Commissioner had passed the judgment and award directing the appellant to make payment of Rs. 10,70,520/- along with 6% interest with effect from the date of filing of the case to the respondents No. 1/claimant.

5. Being highly aggrieved and dissatisfied with the judgment and award as aforesaid, the appellant prefers this appeal on quantum of compensation.

6. The principal contention advanced by the learned counsel for the appellant is that the learned Trial Court had committed a grave error in considering the monthly wages of the deceased as Rs.11,00/- for the purpose of computing the compensation. He submitted that the Trial Court had failed to take into consideration, the notification issued under Section 4(1B) of the EC Act by which the Central Government had notified that a sum of Rs.8,000/- would be the monthly wages that would have to be reckoned as the maximum wages for the purpose of determining compensation under the EC Act. It is also the submission of the learned counsel for the appellant that when a claim for compensation was made under the EC Act in respect of a deceased employee whose monthly wages exceeded Rs.8,000/-, then, notwithstanding the actual wages of the employee and even if it was in excess of Rs. 8,000/-, for the purpose of determining compensation under the EC Act, the Courts have to consider the monthly wages of the deceased as Rs. 8,000/- only. He also submitted that since the Trial Court, under the impugned order, had taken into consideration the actual monthly wages of the deceased employee, which was in excess of Rs.8,000/-, for the purpose of determining the compensation and

this had resulted in an award, which was in excess of the maximum prescribed, it could not be sustained.

7. The learned counsel for the respondents on the other hand contended that the award of the Trial Court was lawful and proper and there was no illegality in the judgment passed by the Trial Court. He submitted that intent of the statute, which is a piece of a social welfare legislation, is clear and it is to ensure that a just compensation be paid to an employee. He further submitted that the statute has now not stipulated an outer limit to the compensation payable and it had only prescribed a minimum compensation payable to the dependents of a deceased.

8. The learned counsel for the respondents has also argued that the statutory scheme was that 50% of the actual monthly wages had to be taken as the criteria for determining compensation and this was because the law makers acknowledged the fact that an employee would spend about 50% of his wages on himself and the remaining 50% of the wages would be earmarked for his dependents. Learned counsel for the respondents further submitted that this 50% of the monthly wages, when multiplied by the relevant factors depending on the age of the deceased would result in a lumpsum amount which would satisfy the needs of the dependents in the absence of the bread winner of the family on account of his death during the course of and arising out of his employment.

9. Learned counsel for the respondents also submitted that if it was the intention of the Parliament, to fix a ceiling on the monthly wages to be reckoned for the purpose of compensation, there would have been a clear indication in Section 4(1) of the EC Act. He contended that the intent of the Parliament that there should be no outer limit was clear from the fact that Explanation II

to Section 4(1) of the EC Act which was found in the statute till 2009 and which had provided for holding that an employee was deemed to earn a sum of only Rs.4,000/- even if his monthly wages exceeded Rs.4,000/-, had been omitted in its entirety by the Amending Act of 45 of 2009 and this clearly indicated that the Parliament had decided to do away with the capping of monthly wages and thereby fixing a maximum sum receivable as compensation by the dependents of a deceased employee.

10. In other words, the learned counsel for the respondents submitted the fact that a deemed maximum income of Rs.4,000/- which had been stipulated in Explanation II to Section 4(1) of the EC Act was omitted in its entirety by an Amending Act, by itself, manifest the intent of the Parliament, which was to allow an employee to receive compensation on the actual monthly wages that he was drawing and not to restrict compensation payable on the basis of a statutorily prescribed deemed monthly wages. He has submitted that the Trial Court had rightly considered the actual monthly wages for the purpose of determining the compensation and therefore, no fault could be found with the judgment of the Trial Court.

11. I have considered the submissions of the learned counsels for the parties.

12. The appeal was admitted on 17.11.2021 on the following substantial question of law:-

“Whether the Commissioner, Employee’s Compensation, Dibrugarh incorrectly hold the income of the deceased to be Rs.11,000/- !”

13. In order to appreciate the controversy on hand, a brief overview of the law governing compensation payable to an employee would be necessary. The EC Act covered persons employed in factories, mines, plantations etc., and sought to provide for compensation in case of an accident that occurred during the

course of employment or as a result of contracting occupational diseases. The liability to pay compensation rested on the Employer under the Act and the Act was thus a piece of legislation to ensure a sense of social security for workmen.

The administration of the provisions of the EC Act was to be effected by Commissioners and detailed regulatory provisions and Rules were made to ensure that the objectives of the Act were fulfilled.

14. By a series of amendments, the applicability of the Act has been enlarged to apply to establishments irrespective of the number of employees employed and also the class of employees and also in omission of some of the restrictive clauses and inclusion of additional occupational diseases, which ultimately led the Parliament to rename the Act by substituting the word "Workmen's" with the word "Employee's" in the year 2010. The relevant provisions of the Act read as under:

"2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context,-

(c) "**compensation**" means compensation as provided for by this Act;

(m) "**wages**", includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident fund or a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment;

3. Employer's liability for compensation.- (1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable -

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to--

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee,

4. ***Amount of compensation.***- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(a) where death results from the injury:- an amount to (fifty per cent) of the monthly wages of the deceased (employee) multiplied by the relevant factor, or an amount of (one lakh and twenty thousand rupees), whichever is more,

(b) where permanent total disablement results from the injury:- an amount to (sixty per cent) of the monthly wages of the injured (employee) multiplied by the relevant factor, or an amount of (one lakh and forty thousand rupees), whichever is more:

Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).

Explanation I.--For the purposes of clause (a) and clause (b), "relevant factor", in relation to a employee means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due.

(c) where permanent partial disablement result from the injury:- (i) in the case of an injury specified in Part-II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

15. A plain reading of Section 4(1) would indicate that whenever death resulted from an injury, the employee would be entitled to receive a sum of compensation, which would be calculated by multiplying 50% of the monthly wages that the deceased employee was drawing with the relevant factor as prescribed in Schedule IV to the Act.

16. To put it simply, under Section 4 (1) (a) and (b), 50% of the monthly wages drawn by the employee would be the multiplicand and the relevant factor would be the multiplier, for the purposes of determining the compensation that the heirs of an employee or an employee would be entitled for death or injury arising out of an accident which occurred during the course of and arising out of the employment.

17. The term 'wages' has been defined under Section 2(m) of the Act. It is an inclusive definition which states that the wages would include any privilege or benefit capable of being estimated in money, other than the travelling allowance or the value of any travelling concession or a contribution paid by the employer towards any pension or provident fund or any sum paid to cover any special expenses. Thus, the definition of 'wages' indicate that any privilege or benefit capable of being estimated in money apart from those specifically excluded allowances will have to be construed as wages.

18. A significant factor to be noticed in Section 4(1)(a) and (b) of the Act is that, the law guarantees a minimum amount of compensation. If the employee was earning a monthly wage, which when multiplied by the relevant factor did not obtain a compensation at Rs.1,20,000/-, by virtue of the guarantee provided under Section 4 (1) (a) and (b), he would nevertheless be entitled to a minimum sum of Rs.1,20,000/-.

19. Before the Act was amended by Act 45 of 2009, Explanation II to Section 4(1) (a) and (b) stated that if the monthly wages of a workman exceeded Rs.4,000/-, for the purposes of Section 4(1) (a) and (b), the monthly wages would be deemed to be Rs.4,000/- only. Thus, prior to 2009, even if a workman was earning in excess of Rs.4,000/- as monthly wages, for the purposes of determining compensation, his monthly wages was deemed to be only Rs.4,000/-.

20. However, by the Amending Act 45 of 2009, the Explanation II to Section 4(1) (a) and (b), which provided for the deemed income of Rs.4,000/- was omitted in its entirety. It is to be borne in mind that if at all if the Legislature wanted to cap the monthly wages of an employee, the Explanation II to Section 4(1) (a) and (b) would be simply amended to say that the wages of the

employee for the purposes of clause (a) and (b) would be the sum as may be notified by the Central Government by issuance of a notification. The fact that the Legislature consciously omitted the entire Explanation II i.e., the deemed monthly wages clause expressly implies that the Legislature intended to do away with capping of compensation to an outer limit.

21. The effect of this omission of Explanation II was that the Commissioners were now obliged to consider 50% of the actual wages that was being drawn by the employee for the purposes of determining the compensation instead of the earlier maximum sum of Rs.4,000/-. This, in turn, resulted in doing away with the capping of compensation and would thus entitle the heirs of an employee to a larger sum of compensation.

22. However, the learned counsel for the appellant in order to get over the language employed in Section 4(1)(a) of the EC Act relied upon Section 4(1B) of the EC Act, which states that the Central Government may, by a notification in the Official Gazette specify for the purpose of Sub-section (1), such monthly wages in relation to an employee as it may consider necessary. He submitted that the Central Government had issued a notification under Section 4(1B) of the EC Act stating that the monthly wages of an employee was Rs.8,000/- and in view of the said notification, the Trial Court was bound to consider the monthly wages of the deceased employee as Rs.8,000/- notwithstanding the fact that his monthly wages was Rs.11,000/-.

23. The answer to this contention of the learned counsel has been answered by the Apex Court in its recent pronouncement rendered in the case of ***K.Sivaraman & Others Vs. P.Sathishkumar & Another*** [Civil Appeal No.9046 of 2019 (arising out of SLP (C) No.18110/2019) disposed of on 13.02.2020] - (2020) 4 SCC 594. The Apex Court, while dealing with a case

relating to a claim arising under the Act, has held as follows at paragraph 26:

"Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs.4,000 even where an employee was able to prove the payment of a monthly wage in excess of Rs.4,000. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing to all employees compensation for accidents which occur in the course of an arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the Legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment."

24. The Apex Court has thus clearly held that the objective of the Amending Act 45 of 2009 was to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them.

25. In view of the said ratio laid down by the Apex Court, the argument of the learned counsel for the appellant that the monthly income of the deceased employee - should have been capped at Rs.8,000/- cannot be accepted.

26. Thus, in line with the ratio of the Apex Court, the actual monthly income of deceased will have to be taken into consideration while determining the amount of compensation and the Trial Court has therefore rightly taken into consideration the actual monthly income at Rs.11,000/-, which was not disputed as the monthly wages of the deceased by the Employer during trial. The order of the Trial Court determining the compensation by taking into consideration his actual monthly wages cannot, therefore, be found fault with.

27. It may also be pertinent to state here that in the case of ***Jaya Biswal and***

Others Vs. Branch Manager, IFFCO TOKIO General Insurance Company Limited and another, reported in ***AIR 2016 SC 956*** which is also a case in relation to an accident which occurred on 19.07.2011 i.e., after the Amending Act 45 of 2009 was enacted, the Apex Court in paragraph 25 of the said judgment had actually determined the monthly wages of the deceased therein at Rs.10,000/- and calculated the compensation by construing the monthly wages at Rs.10,000/-, thereby leading to the inference that there was no capping of the monthly income of the employee at Rs.8,000/-.

28. It is, therefore, clear that for the purposes of calculating the compensation in respect of death resulting from an injury, the actual monthly wages drawn by the deceased employee would have to be taken into consideration and not the monthly wages notified under Section 4(1B) of the EC Act.

29. In view of the judgment rendered by the Apex Court, I am of the view that there is no merit in the contention of the learned counsel for the appellant and by affirming the judgment of the Trial Court, this Court dismisses this appeal.

30. In the result, appeal is dismissed. There is no order as to cost. The amount in deposit shall be disbursed to the claimant in terms of the judgment of the Trial Court.

31. Send down the LCR.

JUDGE

Comparing Assistant