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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.11.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **V.RAMASUBRAMANIAN**

AND

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**

C.M.A. (MD) .No.344 of 2015

1.K.Sivaraman

2.S.Pooranam

3.S.Tamilarasi

4.S.Krishnamoorthy

: Appellants/Petitioners

Vs.

1.P.Sathishkumar

2.The Manager,

M/s.Reliance General Insurance Company Ltd.,

1st Floor, Geejay Arcade,

141/71, Thiruvankadasamy Road West,

R.S.Puram, Coimbatore 641 002.

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Commissioner of Workmen Compensation Act 1923, against the ex-parte order dated 26.03.2014 made in W.C.No.74 of 2011, on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Madurai.

For Appellant : Mr.K.Sivaraman

Party-in-person

For Respondent No.1 : Mr.P.Sathishkumar

For Respondent No.2 : Mr.G.Maruthiah

JUDGMENT

[Judgment of the Court was delivered by **N.KIRUBAKARAN, J.**]

This Civil Miscellaneous Appeal has been preferred by the claimants aggrieved over the quantum of Rs.4,33,060/- awarded by the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Madurai, for the death of the first appellant's son namely S.Dineshkumar, during the course and out of employment under the first respondent.

2. The case of the appellants is that the first appellant's son - S.Dineshkumar was employed under the first respondent as a Driver. While he was on duty, driving a **(*)Trailor the lorry**, which was opposite direction, hit the vehicle driven by the first appellant's son, resulting in his death and therefore, the Claim Petition was filed claiming compensation.



3. The first appellant examined himself as PW-1 and EX-P1 to EX-P11 were marked. Even though **(*)EX-P5** the salary certificate issued by the first respondent, states that a sum of Rs.32,000/- was stated to be the monthly of the first appellant's son, namely the deceased, in the absence of any other concrete evidence to prove that the first appellant's son was earning a sum of Rs.32,000/-, except the salary certificate issued by the first respondent, the Commissioner took a sum of Rs.4,000/- as monthly income, as per the Minimum Wages Act, 1948, by applying the relevant factor and determined a sum of Rs.4,33,060/-. As against the same, the present Civil Miscellaneous Appeal has been filed.

4. The above Civil Miscellaneous Appeal was admitted on the following question of law:-

"Whether the award passed by the learned Deputy Commissioner of Labour, dated 26.03.2014, is correct in law"?.

5. The first appellant argued in person stating that a sum of Rs.32,000/- was the monthly income earned by his son and it is proved by **(*)EX-P5**, the salary certificate and therefore, he seeks to enhance the compensation.

6. On the other hand, the learned counsel for the second respondent - Insurance Company would submit that though the Insurance Company remained exparte, the Commissioner rightly went by the law and passed the award, which cannot be challenged by the appellants.

7. We have considered the above submissions. A perusal of the records would reveal that the Commissioner rightly determined the monthly income at Rs.4,000/-, even though the first appellant filed **(*)EX-P5**, the salary certificate, to show that his son was earning a sum of Rs.32,000/- per month. A close scrutiny of the said document would reveal that the said certificate was issued by the first respondent, the owner of the first appellant's son, stating that the deceased was earning about a sum of Rs.32,000/-, including 7% commission. No doubt, the salary certificate, **(*)EX-P5**, would show that totally, a sum of Rs.32,000/- was stated to be the earning by the deceased. However, no one was examined from the first respondent company, which issued **(*)EX-P5**. Unless the author of the document is examined before the Commissioner, it is impossible to take the said certificate as proof of the salary of the deceased. In view of that position only, the Commissioner rightly ignored **(*)EX-P5** and went by the Minimum Wages Act 1948 and determined a sum of Rs.4,000/- as monthly income. Applying the relevant factor, a sum of Rs.4,33,060/- was rightly determined. However, the first appellant would submit that he would like to examine witnesses from the first respondent company or the person, who issued **(*)EX-P5**, the salary certificate and seek additional compensation.

8. Taking into consideration of the above and also the submission made by the first appellant that he is having confidence that he



would get evidence from the first respondent company to prove the monthly income of his deceased son at Rs.32,000/-, it is appropriate to send back the matter to the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Madurai, only for the purpose of determining the additional compensation, if it is proved by the first appellant.

9. Accordingly, this Civil Miscellaneous Appeal is disposed of and the matter is sent back to the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Madurai, only for the purpose of determining the additional compensation, if it is proved by the first appellant. It is made clear that a sum of Rs.4,33,060/-, already awarded, is directed to be paid to the appellants. The appellants and the respondents shall extend their full co-operation for the early disposal of the case. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(C.S. -I)

**(*)Corrected as per order dated
15/12/2015 in C.M.A. (MD)No.344/2015**

Sd/-

Assistant Registrar(C.S.II)

/True Copy/

Sub Assistant Registrar

To

To be substituted order copy already dispatched on 02.12.2015

The Commissioner for Workmen's Compensation
and Deputy Commissioner of Labour,
Madurai.

+lcc to Mr.K.Sivaraman, Party-in-Person, SR.No.66869

akm/02.12.2015 /3p-3c/

RG.JGB-DP/SAR-I 22/12/2015 3P:3C

**JUDGMENT MADE IN
C.M.A. (MD) .No.344 of 2015
23.11.2015**