IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

C.M.A.No.895 of 2015

1. Periyannan
2. Meenakshi .... Appellants

vs

1. K.Udhayakumar
2. M/s.United India Insurance Co.Ltd
   No.134, Silingi Buildings,
   IV Floor, Greams Road, Chennai 6 .... Respondents

Appeal filed under Section 30 of the Workmen Compensation Act, against the award dated 24.02.2015 and the same was received through post and the cover on 19.03.2015 and made in W.C.No.205 of 2013 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellants : Mr.F.Terry Chellaraja

For Respondent-1: R1- Ex-parte before Tribunal

For Respondent-2 : Mr.D.Bhaskaran

J U D G M E N T

The claimants are the appellants, who are the parents of the deceased employee.

2.The deceased Ramadass was 25 years old and he met with a motor accident and died on 30.04.2013. He was employed as a driver for an auto bearing Registration No.TN-07-BH-7500 belonging to the first opposite party / first respondent for five years on a monthly salary of Rs.8,000/- per month in addition to Rs.150/- as batta per day. He died, when a car bearing registration No.TN-06-F-8530 collided with the auto and he sustained fatal injuries. It is stated that the said accident took place during the course of employment and the claimants are entitled to claim compensation from the second respondent/Insurance Company, being the insurer of the offending vehicle.

3. The Deputy Commissioner, Labour Commissioner-II, after

considering the case on its own merits, had awarded a sum of Rs.8,39,995/- as compensation.

4. It is not in dispute that the deceased was employed with the first respondent and that the accident occurred during the course of employment. It is relevant to mention that the first respondent has not let in any evidence to show that the deceased was not his employee or there was no such accident on the date specified. Hence, the finding of the Commissioner that there was an accident on 29.04.2013 involving the vehicle belonging to the first respondent, which had a valid insurance policy.

5.Insofar as the compensation payable is concerned, the driving licence of the deceased, which was marked as Ex.P.5 shows that the deceased was born on 14.01.1988, based on which, his age was assessed as 25 years. It is the specific case of the claimants that the deceased was earning about Rs.8,000/- per month, in addition to Rs.150/- as batta per day. Since no document was filed by them to prove the income, the Commissioner has adopted the minimum wages payable as per G.O.Ms.No.2D, No.64, Labour and Employment Department dated 23.07.2009 at Rs.7,699/- and adopting 216.91 factor, based on the age, a sum of Rs.8,34,995/- with Rs.5,000/- for funeral expenses, was awarded as total compensation. The said award is now under challenge.

6.Employee's Compensation Act is a welfare legislation enacted to secure compensation to poor workmen, who suffered injuries at their place of work or during the course of employment. The intention of the legislation is to benefit the workers and their dependents in case of death of workmen due to accident caused during and in the course of employment. The liability of the employer is defined in Section 23 of the Employee's Compensation Act. In order to prove that the workman / dependents are entitled for a compensation, the following facts have to be proved.

(i) There was an accident.

(ii) The accident had a connection with the employment.

(iii) The accident was in the course of employment.

Once the above factors are proved, the employer cannot avoid its liability. Admittedly, there is no challenge to the above finding given by the Labour Commissioner.

7.The questions that arise for consideration here, which are raised as substantial questions of law are.

a) Whether the Deputy Commissioner of Labour-II was right in fixing the minimum wages under the Minimum Wages Act?

b) Whether the Deputy Commissioner of Labour-II was right in not awarding interest at the rate of 12% per annum from the date of accident excluding 30 days from the date of accident.

8. After amendment made to Section 4(1B) of the Employees' Compensation Act, 1923, the monthly wages specified for the purpose of Section 4(1) is Rs.8,000/-.

9.The learned counsel appearing for the Insurance Company pointed out that when the upper limit is Rs.8,000/- in awarding compensation under Section 4(1) of the Act, the award of the Labour Commissioner is correct. However, it has to be seen that none of the parties have produced any document on record to prove the exact amount of wages earned by the deceased at the time of accident. In the absence of any evidence, the Labour Commissioner has resorted to the Minimum Wages Act. Therefore, considering the age and the nature of the work, the wages of the deceased was taken as Rs.7,699/- by the Labour Commissioner. As stated earlier, after amendment on 18.01.2010, when the upper limit of the minimum wages is fixed at Rs.8,000/-, this Court is inclined to fix the income at Rs.8,000/-. Considering the fact that he was an auto driver, daily batta is payable and even presuming that Rs.50/- is payable as daily batta, the monthly income can be fixed at Rs.9,500/-The first respondent will be the best person to produce the evidence with respect to the payment of salary to the deceased and he should have either produced documents with respect to the same which he should have maintained, or atleast should have filed his counter and contested the same. Having failed to do so, the monthly income of the deceased is taken as Rs.8,000+Rs.1,500/= Rs.9,500/-. Then, a sum of Rs.10,30,322.50 [50/100 x 216.91 x 9500] is awarded as compensation to the claimants. So far as the funeral expenses is concerned, the Tribunal awarded a sum of Rs.5,000/-, which is not disturbed. Hence, the award of the Commissioner is enhanced from Rs.8,39,995/- to Rs.10,35,322.50, which is payable to the claimants by the Insurance Company. Thus, the first question is answered in favour of the appellants.

10. As regards payment of interest is concerned, the Deputy Commissioner of Labour-II erred in awarding interest at the rate of 12% only if the Insurance Company failed to pay the award amount within 30 days from the date of receiving the order copy. However Section 4(A) of Workmen Compensation Act provides that the award amount should be paid at the rate of 12% per annum from the date of accident excluding 30 days from the date of accident. As per the decision of the Division Bench of this Court reported in ***2010 (2)***

TNMAC 80 (DB) (N.GANESAN -VS- THILAGAVATHI AND ANOTHER), which confirms the above legal position also, the appellants are entitled for interest on the compensation payable 30 days after the date of accident (i.e) from 29.05.2013.

11. This appeal is allowed as indicated above. No costs.

06.04.2017

srn

To

1. The Commissioner for Workmen's Compensation-II
   (Deputy Commissioner of Labour-II),
   Chennai.

2. The Record Keeper,
   V.R.Section, High Court, '
   Madras.

PUSHPA SATHYANARAYANA.J

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