



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.04.2017  
Pronounced on : 1.06.2017

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CORAM :

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**  
**AND**  
**THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**C.M.A. (MD) No.1134 of 2016**

1.K.Sivaraman,  
2.S.Poornam,  
3.Thamilarasi  
4.Krishnamoorthy ... Appellants/Petitioners  
Vs.

1.P.Sathish Kumar

2.Reliance General Insurance,  
Re. through its Manager,  
1<sup>st</sup> floor, Geejay Arcade,  
No.141/71, Thiruvenkataswamy Road,  
West R.S Puram,  
Coimbatore - 641 002. ... Respondents/Respondents

**Prayer:** Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the orders dated 04.03.2016 and 11.05.2016, passed in W.C.No.74 of 2011, on the file of the Deputy Commissioner for Workmen Compensation, Madurai

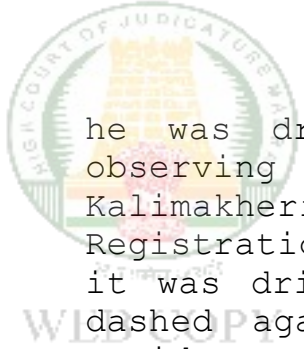
For Appellants : Mr.K.Sivaraman  
(Party in person)  
For Respondents :Mr.G.Maruthaiah for R2  
:No Appearance for R1

**JUDGMENT**

**(Judgment of the Court was delivered by P.VELMURUGAN, J.)**

This Civil Miscellaneous Appeal is filed by the claimants against the orders dated 04.03.2016 and 11.05.2016, passed in W.C.No.74 of 2011, on the file of the Deputy Commissioner for Workmen Compensation, Madurai.

2. The case of the claimants before the Commissioner for Workmen's Compensation is that the deceased viz., Dinesh Kumar was working under the 1<sup>st</sup> respondent as a driver of the trailer bearing Registration No.TN 28 AB 1933 and on 31.01.2008 at 4.30 a.m., when



he was driving the trailer in a slow and steady manner by observing the traffic rules in N.H.12, Naya Road, near Kalimakheri, Koda District, Rajasthan, a Truck bearing Registration No.MH 19 Z 1696 came from the opposite direction and it was driven by its driver in a rash and negligent manner and dashed against the 1<sup>st</sup> respondent trailer and because of the accident, the said Dineshkumar died due to the accidental injuries and the said accident had occurred during the course of his employment with the 1<sup>st</sup> respondent. The 1<sup>st</sup> petitioner is the father, 2<sup>nd</sup> petitioner is the mother, 3<sup>rd</sup> petitioner is the sister and 4<sup>th</sup> petitioner is the brother of the said Dineshkumar. Since due to the death of Dineshkumar, they lost the income and hence, they have filed petition for compensation before the Commissioner. The first respondent's vehicle was insured with the second respondent and hence, the first and second respondents are jointly and severally liable to pay the compensation.

3.Though sufficient opportunities were given to the respondents, they had not chosen to appear before the Tribunal either by person or through counsel and hence, they were set exparte.

4.Before the Tribunal, the first petitioner was examined as P.W.1 and Exs.P.1 to 11 were marked. On the side of the respondents, no one was examined and no document was produced.

5.After considering all the facts and circumstances of the case and oral and documentary evidence let in by petitioners, the Commissioner for Workmen's Compensation awarded a sum of Rs.4,33,060/-.

6.Aggrrieved by the award passed by Commissioner for Workmen's Compensation, the petitioners have filed C.M.A.(MD) No.344 of 2015 before this Court. This Court, after hearing the matter, disposed of the appeal by order dated 23.11.2015 and sent it back to the Commissioner for Workmen's Compensation, only for the purpose of determining the additional compensation, if it is proved by the first petitioner herein. Thereafter, the Commissioner for Workmen's Compensation had taken up the matter for hearing, Wherein, the employer of the deceased Dineshkumar/the first respondent was examined as P.W.2 and after hearing both sides, the Commissioner had passed an award dated 04.03.2016 awarding compensation as Rs.4,33,060/- as awarded earlier. Therefore, the petitioners have filed the present civil miscellaneous appeal for enhancement of compensation.

7.Heard both sides and perused the materials placed on record and oral and documentary evidence and the award passed by the Commissioner.

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8.Points for Consideration:



1. Whether the accident had occurred during the course of employment of the deceased with the first respondent?
2. What is the quantum of compensation?
3. Whether the petitioners are entitled to interest towards the compensation from the date of petition or from the date of the accident?
4. What are the reliefs the petitioners entitled to?

**Point No.1:**

9. It is an admitted fact that the deceased was working under the first respondent. When the deceased was working under the 1<sup>st</sup> respondent as a driver, he drove the trailer bearing Registration No. TN 28 AB 1933 in a careful manner by observing the traffic rules in N.H.12, Naya Road, near Kalimakheri, Koda District, Rajasthan, a Truck bearing Registration No. MH 19 Z 1696 came from the opposite direction and dashed against the trailer and because of the accident, the said Dineshkumar died and the said accident had occurred during the course of his employment with the 1<sup>st</sup> respondent. In order to prove the employment and accident had occurred during the course of employment, P.W.1, who is the father of the deceased was examined. After the remand, the first respondent, the employer of the deceased Dineshkumar, was examined as P.W.2 and he had admitted the employment and liability, further he had spoken about the salary certificate issued to the deceased employee and hence, the Commissioner has correctly held that the deceased was working with the first respondent and the accident had occurred during the course of the employment of the deceased with first respondent. Further the said respondent has not filed either cross appeal or cross objection by challenging the appeal. This point is answered accordingly.

**Point No.2**

10. With regard to the quantum of compensation is concerned, the Commissioner has held that even though in the proof affidavit, P.W.1 has stated that the deceased was earning Rs.32,000/- per month, no document has been produced to prove the same and since the respondents have not denied the income of the deceased and they were set exparte, came to the conclusion that the monthly income of the deceased was Rs.32,000/-, he fixed as Rs.4,000/- as per the Workmen's Compensation Act and awarded Rs.4,33,060/-. Even after the matter was remitted back to the Commissioner for determining the additional compensation, the Commissioner awarded only Rs.4,33,060/- stating that even though as per Ex.P5, salary certificate, the monthly salary of the deceased was Rs.32,000/- per month, as per Section 4(1)(a)(b) (Explanation II) of Workmen's Compensation Act, 1923, the Commissioner can only fix a maximum of Rs.4,000/- as monthly income, irrespective of the workman's salary.



**Birajdar V. Sujata Ashok Pokhakar** reported **2017 ACJ 119**, wherein, the High Court of Bombay has relied upon the judgment of the Hon'ble Apex Court in the case of **New India Insurance Co.Ltd, Vs. V.K.Neelakandan (1999) 2 Sec 256**, the relevant portion of the judgment in paragraphs 9 to 11 are extracted here under;

"9. From the pleadings raised in the memo of appeal and the points raised in the arguments advanced by the learned Counsel appearing for the respective parties, the question for my determination in the present appeal is:

" Whether the benefit of Government Notification dated 31.5.2010 whereby the monthly wages for the purpose of sub-section (1) of Section 4 of the Employees Compensation Act, 1923, are prescribed at the enhanced rate of Rs.8000/- can be extended while assessing the compensation in the present case though the accident in question, had occurred on 23.11.2009 i.e. prior to coming into effect of the notification dated 31.5.2010 ?"

Learned Commissioner has assessed the compensation holding the income of the deceased to the tune of Rs.4,000/- per month having regard to the income limit provided under Section 4 of the Employees Compensation Act. It is true that the limit of the deemed income for assessment of compensation under the provisions of the Workmen's Compensation Act was increased to Rs.8,000/- per month vide notification dated 31st May, 2010 whereas the accident in question had occurred on 23.11.2009. Therefore, ostensibly, it appears that the learned Commissioner has not committed any mistake in assessing the compensation holding the income of the deceased on the basis of deemed income limit as was in existence on the date of the accident. Respondent no.1 has also advanced similar argument and has supported the award passed by the learned Commissioner.

10. In view of the judgment of the Honourable Apex Court relied upon by the appellants, in the case of **New India Assurance Co.Ltd. Vs. V.K.Neelkandan and others (cited supra)**, however, the interpretation as has been made by the learned Commissioner that the increase in the deemed income vide notification 31st May, 2010, has to be prospectively made applicable, cannot be sustained has to be rejected. The Honourable Apex Court in the judgment cited supra has held that the Workmen's Compensation Act, being a Special Legislation for the benefit of the labour, any benefit, if is conferred on the workmen, and the said benefit is available on the date when the case is finally adjudicated, the said benefit should be extended to the



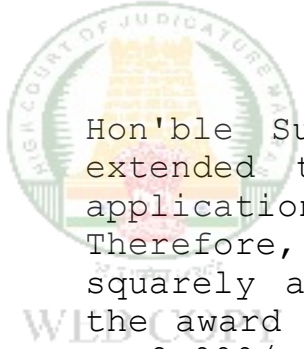
11. The facts in the case of **New India Assurance Co.Ltd. Vs. V.K.Neelkandan and others (cited supra)**, were thus: the accident had taken place in the year 1981. As per the law operating at the relevant time, the deemed limit for the income of the workman was Rs.1,000/- per month. The compensation in the said matter was, however, claimed stating the wages of the deceased workman to be Rs.1800/- per month, which were being actually received by the said deceased workman. The compensation was, however, assessed by the Commissioner under the Act, deeming the wages as Rs.1,000/- per month. In the meanwhile, Section 4 of the Act was amended in 1995 by Amendment Act (30 of 1995) whereunder the deemed income was increased from Rs.1,000/- to Rs.2,000/-. In the aforesaid background, the Honourable Apex Court ruled that the benefit conferred on the workman available on the date when the case is finally adjudicated was liable to be extended to the workman. The Honourable Apex Court, therefore, enhanced the amount of compensation by calculating the same on the basis of the actual wages of Rs.8000/- being drawn by the deceased workman".

12. In this regard it is worthwhile to refer to the Notification S.O.No.1258(E), dated 31.05.2010 and the same is extracted here under:

" S.O.1258(E) - In exercise of the powers conferred by sub-section (1B) of Section 4 of the Employee's Compensation Act, 1923, (g of 1923), the Central Government hereby specified, for the purpose of sub section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the Official Gazette, namely;- Eight thousand rupees."

13. In the present case, after remanding the matter back to the Commissioner, P.W.2, the employer of the deceased was examined, who has stated that the deceased was paid Rs.32,000/- including food expense, however he was paid only Rs.25,000/- as monthly salary. Considering the said decision along with the facts of the present case, in the instant matter, though the salary of the deceased workman was proved to be Rs.32,000/- per month, the Commissioner has assessed the compensation deeming the income of the deceased workman to the tune of Rs.4,000/- per month having regard to the limit of income as provided under section 4 of the Act, which was in existence on the date of accident. Even though the accident had occurred on 31.01.2008, admittedly, the petition, before the workmen's compensation Commissioner was filed on 28.01.2011 and the same was decided by the Commissioner on 4.03.2016. It is thus evident that in view of the judgment of the





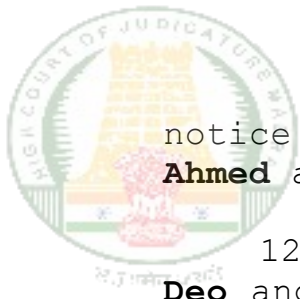
Hon'ble Supreme Court cited supra, the Commissioner must have extended the benefit as was available on the date when the application so filed by the claimant was finally adjudicated. Therefore, this Court is of the view that the above decision is squarely applicable to the facts of the present case and hence, the award has to be modified. Accordingly, this Court has fixed Rs.8,000/- as monthly income of the deceased, the compensation payable to the petitioners would come to Rs.8,61,120/- (50 per cent of the wages i.e. Rs.4,000/- multiplied by the multiplicand of 215.28 as per the age of 26 years of the deceased). Further, the Commissioner has granted Rs.2,500/- towards funeral expenses and considering the raise in price in all materials and cost of living, the same is enhanced to Rs.25,000/-. Accordingly, the petitioners are entitled to compensation of Rs.8,86,120/-. This point is answered accordingly.

### **Point No.3**

14. With regard to the interest is concerned, the Commissioner has awarded 12% interest from the date of filing the claim petition, only if default is committed in payment of compensation. The question as to whether the interest is payable from the date of accident or from the date of order of the Commissioner for Workmen's Compensation, is no longer *res integra*. This issue was decided in the Judgment of **Oriental Insurance Co. Ltd. V. Siby George, reported in 2012 ACJ 2126 (SC)**, wherein, at paras 11 to 13, it has been held as follows:

"16. The learned counsel for the appellant contended that the Commissioner for Workmen Compensation is not correct in awarding default interest from the date of accident. As per Section 4A(3) of the Employee's Compensation Act, 1923, the Commissioner has power to award interest only if default is committed after the order of Deputy Commissioner. This contention of the learned counsel for the appellant is unsustainable. The compensation is payable from the date of accident. As the compensation is payable from the date of accident, interest is also payable from that date. The question as to whether the interest is payable from the date of accident or from the date of order of Commissioner for Workmen Compensation, is no longer *res integra*. This issue was decided in the Judgment reported in **2012 (2) TN MAC 395 (SC) [Oriental Insurance Co. Ltd. Vs. Siby George and others]**, wherein at paragraphs 11 to 13, it has been held as follows:

"11. The decisions in **Pratap Narain Singh Deo** was a Four-Judge Bench and in **Valsala** by a Three-Judge Bench of this Court. Both the decisions were, thus, fully binding on the Court in **Mubasir Ahmed** and **Mohd. Nasir**, each of which was heard by Two Judges. But the earlier decisions in **Pratap Narain Singh Deo** and **Valsala** were not brought to the



notice of this Court in the two later decisions in **Mubasir Ahmed** and **Mohd. Nasir**.

12. In light of the decisions in **Pratap Narain Singh Deo** and **Valsala**, it is not open to contend that the payment of compensation would fall due only after the Commissioner's order or with reference to the date on which the claim application is made. The decisions in **Mubasir Ahmed** and **Mohd. Nasir** insofar as they took a contrary view to the earlier decisions in **Pratap Narain Singh Deo** and **Valsala** do not express the correct view and do not make binding precedents.

13. In light of the discussion made above, we find no merit in the Appeal and it is dismissed with costs amounting to Rs.20,000/-. The amount of cost must be paid to the respondents within six weeks from today." This Judgment was referred to with approval by the Hon'ble Apex Court in the Judgment reported in **2014 (1) TN MAC 25 (SC) [Saberabibi Yakubbbhai Shaikh and others Vs. National Insurance Co. Ltd. and others]**. After extracting the above referred paragraphs, the Hon'ble Apex Court, in paragraph 12, held as follows:

"12. In view of the aforesaid settled proposition of law, the Appeal is allowed and the Judgment and Order of the High Court is set aside. The Appellants shall be entitled to interest at the rate of 12% from the date of the accident."

15. In view of the fact that the compensation and interest are payable from the date of accident, there is no infirmity in the impugned order of Commissioner for Workmen Compensation."

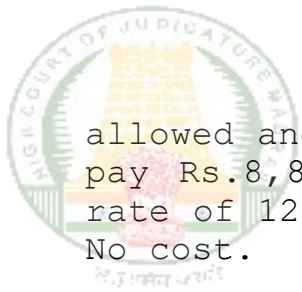
16. Therefore, considering the said decision along with this case, the Commissioner is not correct in awarding interest from the date of filing the claim petition, that too, only if default is committed. The compensation is payable from the date of accident. As the compensation is payable from the date of accident, interest is also payable from that date. Accordingly, the petitioners are entitled to 12% interest from the date of accident. This point is answered accordingly.

#### **Point No.4**

17. As already discussed above, the petitioners are entitled to compensation of Rs.8,86,120/- with 12% interest from the date of accident. This point is answered accordingly.

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18. In the result, this civil miscellaneous appeal is partly



allowed and the second respondent Insurance Company is directed to pay Rs.8,86,120/- to the petitioners along with interest at the rate of 12% per annum, from the date of accident viz., 31.01.2008. No cost.

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/True Copy/

Sd/-

Assistant Registrar(CO)

Sub Assistant Registrar

To

Commissioner for Workmen Compensation/  
Deputy Commissioner of Labour,  
Madurai.

+1cc to M/s. M.SIVARAMAN Advocate in SR. No.58216

+1cc to M/s. G.MARUTHIAH Advocate in SR. No.58195

Arul/dsk

JS/MMS/SAR.4/12.6.2017/8p-4c

**C.M.A. (MD) No.1134 of 2016**  
**1.06.2017**