



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.08.2017

Pronounced on:21.09.2017

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CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. No.556 of 2011

and

M.P.(MD)Nos.1 of 2011 and 1 of 2012

and

Cross Objection (MD)No.32 of 2012

C.M.A. No.556 of 2011:

The Superintending Engineer,
Tamil Nadu Electricity Board,
Theni Electricity Distribution Circle,
Theni.

... Appellant/Respondent

- Vs -

P.Lakshmi

... Respondent/Petitioner

Prayer: Appeal filed under Section 30 of Workmen's Compensation Act 1923, against the award dated 08.12.2010, passed in W.C.No.255 of 2008 on the file of Workman Compensation Tribunal, Madurai.

For Appellant : Mr.M.Mohan Babu
For Respondent : Mr.R.Thangasamy

Cross Objection (MD)No.32 of 2012:

P.Lakshmi

... Appellant/Petitioner

- Vs -

The Superintending Engineer,
Tamil Nadu Electricity Board,
Theni Electricity Distribution Circle,
Theni.

... Respondent/Respondent

Prayer: Appeal filed under Order XLI Rule 22 of the Civil Procedure Code against the award dated 08.12.2010, passed in W.C.No.255 of 2008 on the file of workmen compensation tribunal, madurai.

For Appellant : Mr.R.Thangasamy
For Respondent : Mr.M.Mohan Babu



C O M M O N J U D G M E N T

These Appeals are filed challenging the award, dated 08.12.2010, passed in W.C.No.255 of 2008, by the Commissioner of Labour, Madurai.

2. The claimant has filed an application under Section 22 of the Workmen's Compensation Act claiming a sum of Rs.3,00,000/- as compensation for the death of her husband in an accident arising during the course of employment on 07.06.2008, against the Electricity Board.

3. The respondent/Electricity Board has claimed that the deceased was not employed as a contract labour under the respondent/Electricity Board and he was working only as a daily wage for doing other works and not for electrician works and that the death had occurred only due to the negligence on the part of the deceased.

4. On 07.06.2008 at about 12 p.m., he met with an accident due to electrocution and he died. Ex.A1 is the copy of the First Information Report and the body was sent for postmortem, which is evident from Ex.A2. The claimant has preferred a claim before the Deputy Commissioner of Labour, Madurai. The learned Deputy Commissioner fixed the compensation as Rs.3,73,210/-.

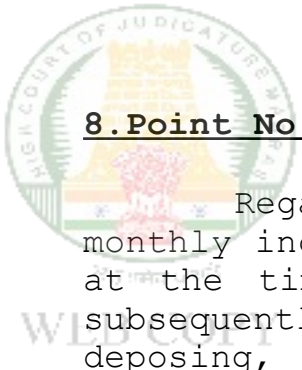
5. Aggrieved against the said award, the appellant/Insurance Company has come out with the present Civil Miscellaneous Appeal challenging the quantum and the respondent/claimant has come out with the Cross Appeal for enhancement of compensation. Since both the appeals arise out of a common award passed in W.C.No.255 of 2008 on 08.12.2010, these appeals are disposed of by this common judgment.

6. When this appeal was admitted the following questions of law have been framed:

i) Whether the award of Workmen Compensation Tribunal is fixing the monthly salary as Rs.3,600/- as against the claim of the petitioner at Rs.2,100/- without any evidence is sustainable?

ii) Whether the award of Workmen Compensation Tribunal ordering interest at the rate of 12% from the date of accident is sustainable in view of Section 4-A of Workmen's Compensation Act, 1923 and the Judgment of this Court reported in 2007 (3) CTC 378?

7. Heard the learned counsel for the Appellant/Electricity Board and the learned counsel for the respondent / claimant and perused the records carefully.



8.Point No.(i):

Regarding quantum, the learned Judge while fixing the monthly income of the injured as Rs.3,600/-, has clearly held that at the time of appointment, he was given Rs.70/- per day and subsequently, he was given Rs.120/- per day and P.W.1 while deposing, has stated that the deceased has been granted Rs.120/- per day from 2010 onwards and it is a specific finding by the learned Judge that the above contention was accepted by the respondent/Electricity Board and therefore, the Commissioner had fixed the salary at Rs.120/- per day and Rs.3,600/- p.m. which is reasonable and so, considering the age factor of the deceased, the amount fixed by the learned Deputy Commissioner is confirmed. I find no reason to interfere with the finding of the learned Deputy Commissioner of Labour, Madurai.

9.Point No.(ii):

In respect of the rate of interest, the learned counsel for the claimant has relied on a Judgement of this Court in **N.GANESAN v. THILAGAVATHI** reported in **2010 (2) TN MAC 80 (DB)**, wherein it has been specifically stated as follows:-

"19. The above said Section was further amended with effect from 15.9.1995 by amendment Act 30 of 1995 and the amended provision reads as follows:

4-A. Compensation to be paid when due and penalty for default.(1) Compensation under Section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and



(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

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Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed."

9.1. In the above Judgement, this Court has specifically held that if there is a default in payment, then the amount shall carry 12% interest. Hence, considering the fact that the prevailing interest rate for lending personal loan is at rate of 14.5%, I am of the view that 12% interest on default payment is reasonable and hence, there is no infirmity in the order passed by the Commissioner of Labour, Madurai.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the learned Commissioner of Labour, Madurai, in W.C.No.255 of 2008, dated 08.12.2010. The Cross Appeal filed by the claimant is also dismissed. The appellant/Electricity Board is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the cross appellant/claimant is permitted to withdraw the same, without filing any formal application before the Tribunal. No Costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (Crl side)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner of Labour,
Workmen compensation tribunal,
Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



+ 1 CC TO MR.R.SenthilKumar, ADVOCATE IN SR No.71227
+ 1 CC TO MR.T.Arul, ADVOCATE IN SR No.80273
MK/KK/SAR-2/23.10.2017/5P/5C

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Pre-Delivery Judgment made in
C.M.A. No.556 of 2011

and

M.P. (MD) Nos.1 and 2 of 2011

and

Cross Objection (MD) No.32 of 2012
21.09.2017