

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2607 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal under Section 30 of the Workmen's Compensation Act, 1923 is filed by the applicant viz., Abdul Rukia Begum in W.C. No.115 of 2002 (F) on the file of Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Nizamabad, not satisfied with the award of Rs.1,52,496/- granted as compensation, by the order dated 30.04.2003, on the main ground that an amount of Rs.4,000/- ought to be taken as monthly earnings in view of the Explanation to Section 4 of the Workmen Compensation Act, 1923 (for short 'WC Act').

2. The substantial questions of law have been mentioned in paragraph No.3, thus:

“a) Whether Commissioner acted contrary to law for not awarding total claim or more as the workmen sustained 100% functional disability?

b) Whether Commissioner acted against Ruling of Apex Court for not awarding interest from the date of petition to till realisation?

c) Whether Commissioner got powers to reduce the wages of Workmen or percentage of disability inspite of no contra evidence?”

3. Heard Sri K.M. Mahender Reddy, learned counsel for the appellant - applicant and Sri Naresh Bairapaneni, learned counsel for respondent No.2 - insurer.

4. The present appeal stood dismissed against respondent No.1 for default by the order dated 15.12.2015, which, of course, has no significance in deciding the controversy in the present appeal.

5. The fact-situation as to the death of the workman viz., Abdul Wahed, husband of the applicant, occurring in a road accident on 08.09.2001, while discharging duties as Cleaner on DCM Van bearing No.AP - 1- U - 878 under the employment of respondent No.1 is not disputed. The insurance policy issued by the insurer concerning the DCM Van being in force at the time of accident is also not in dispute.

6. Before the Commissioner, the case set out was that the deceased working as cleaner, drawing a salary of Rs.5,500/- per month besides Rs.200/- per day as *batta*. The applicant, who is wife of the deceased, examined herself as PW.1 besides marking Exs.A-1 to A-6. On behalf of respondent No.2, insurer, except marking a photostat copy of the insurance policy as Ex.B-1, no witnesses were examined.

7. The Commissioner, having appreciated the evidence on record, holding that the insurer is liable to pay compensation under the Act, declaring that the death of the deceased did occur while discharging duties under the employment of respondent No.1, taking

the wages and *batta* of the deceased at Rs.1,800/- per month, age as 45 years, age factor of 169.44, arrived compensation at Rs.1,52,496/- and awarded the same.

8. Now, the learned counsel for the appellant stating that by virtue of Explanation II to Section 4 of the WC Act would insist for fixation of monthly wages at Rs.4,000/- by placing reliance on the decision of the Hon'ble Supreme Court in **Mohd. Ameeruddin v. United India Insurance Company Limited**¹. Learned counsel also placed reliance in **The Oriental Insurance Company v. Siby George**² to grant interest from the date of accident.

9. Per contra, the learned counsel for the insurer would submit that Explanation II to Section 4 of the WC Act, makes it abundantly clear that it provides for upper limit of cap but not the amount to be considered for determining the compensation. It is according to him, where monthly wages of a workman exceed Rs.4,000/-, for the purpose of Clauses (a) and (b) of Section 4 of WC Act, it shall be deemed to be Rs.4,000/- only. For better appreciation, Clauses (a) and (b) of Explanation II to Section 4 of WC Act since relevant, are extracted, thus:

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

¹ (2011) 1 SCC 304

² (2014) 2 SCC 298

(a) where death results from the injury – an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of eighty thousand rupees, whichever is more.

(b) where permanent total disablement results from the injury. – an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor : or an amount of ninety thousand rupees, whichever is more;

Explanation I:- XXX XXX XXX

Explanation II:- - Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be four thousand rupees only.”

10. Explanation II to Section 4 of WC Act would clearly mandate that where monthly wages are proved and exceed Rs.4,000/-, the monthly wages of the deceased shall be deemed to be Rs.4,000/- only for the purpose of Clauses (a) and (b), and, therefore, what is contended by the learned counsel for the applicant, does not reflect the correct position. In fact, in **Mohd. Ameeruddin¹** compensation was granted in the context of provisions of the Motor Vehicles Act, 1988. There is no such bar or prohibition laid down under the provisions of the Motor Vehicles Act. The object being to determine just and adequate compensation, which is not so in a claim under the provisions of the WC Act. Second reason is that, determination of

compensation is based on the mandate of the statute, and, therefore, certainly, within four corners of what is inlaid by the provisions of Section 4 of WC Act, the claim is to be adjudicated upon.

10. This apart, there is nothing on record to prove that the deceased was really drawing Rs.5,500/- per month. His monthly salary was Rs.2,200/-, as projected by the appellant. No witnesses were examined and no documentary proof is forthcoming and, therefore, it is difficult to accept the same. On the other hand, what is worked out by the Commissioner by applying the principle clearly laid down by the statute, is the correct approach.

11. Determination of compensation is also based on contract between the insurer and the employer and the terms and conditions of the contract i.e., the insurance policy govern the principles for determining compensation unlike a claim under the Motor Vehicles Act.

12. In the present case, when there is lack of proof to show that the deceased was drawing a definite amount for want of legally acceptable evidence, basic wage is to be adverted to and as per G.O. Ms. No.30, then in vogue, the basic wage of a cleaner was Rs.1,437/-. The variable D.A. at 66.775 works out to Rs.435/- and thus, his monthly wage was Rs.1,871/-. The Commissioner has taken Rs.1,800/- per month as the wage earned by the deceased. So, the same requires modification and instead of Rs.1800/- per month, the

wage earned by the deceased ought to be taken as Rs.1,872/-. Hence, when Rs.1,872/- per month is taken as the wages and age factor 169.44 is applied, it works out to Rs.1,58,596/- (Rs.1872/- x 50/100 x 169.44).

13. Accordingly, the applicant is entitled to a total compensation of Rs.1,58,596/- (Rupees one lakh fifty eight thousand five hundred and ninety six only) as against Rs.1,52,496/- awarded by the authority, and the same is accordingly granted. So far as rate of interest is concerned, the applicant is entitled to the same at 12% per annum from the date of accident in view of the ruling relied on by the learned counsel for the applicant in **Siby George²**. It would be apt to refer to paragraph No.9 which is thus:

“9. The matter once again came up before the Court when by amendments introduced in the Act by Act No. 30 of 1995 the amount of compensation and the rate of interest were increased with effect from 15.9.1995. The question arose whether the increased amount of compensation and the rate of interest would apply also to cases in which the accident took place before 15.9.1995. A three Judge Bench of the Court in *Kerala State Electricity Board vs. Valsala K.*, AIR 1999 SC 3502 answered the question in the negative holding, on the authority of *Pratap Narain Singh Deo*, that the payment of compensation fell due on the date of the accident. In paragraphs 1, 2, and 3 of the decision the Court observed as follows:

“1.The neat question involved in these special leave petitions is whether the amendment of Sections 4 and

4A of the Workmen's Compensation Act, 1923, made by Act No.30 of 1995 with effect from 15-9-1995, enhancing the amount of compensation and rate of interest, would be attracted to cases where the claims in respect of death or permanent disablement resulting from an accident caused during the course of employment, took place prior to 15-9-1995?

2. Various High Courts in the country, while dealing with the claim for compensation under the Workmen's Compensation Act have uniformly taken the view that the relevant date for determining the rights and liabilities of the parties is the date of the accident.

3. A four Judge Bench of this Court in *Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 SCC 289: (AIR 1976 SC 222: 1976 Lab IC 222) speaking through Singhal, J. has held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workmen by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim."

Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the order under challenge by enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand closed.

August 4, 2017.

A. SHANKAR NARAYANA, J

PV