

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N. SESHASAYEE

CMA.No.1311 of 2015

1. R. Lalitha
 2. R. Kannan
- ... Appellants/Applicants

Vs.

1. A.V. Arul (deceased)
 2. Reliance General Insurance Co.Ltd.,
Sri Lakshmi Complex, 1st floor
Bharathi Street,
Omalur Main Road
Swarnapuri,
Salem - 636 004.
- ... Respondents/Opposite Parties

3. A. Krishnaveni
 4. Minor N.A. Kavini
 5. Minor N.S. Shivani
 6. Nallaammal
- ... 3 to 6th Respondents/LRS of the Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act 1923 to enhance the award amount in W.C. No. 215 of 2011 dated 30.10.2013 on the file of Deputy Commissioner of Labour, Salem along with interest and cost.

For Appellants : Mr. Ma.P. Thangavel
For Respondents : Mr. S. Arun Kumar for R2

JUDGMENT

The Applicants in W.C. No.215 of 2011 on the file of the Deputy Commissioner of Labour, Salem has come forward with this appeal, wherein the chief challenge is regarding the monthly income of the victim, based on what the appellants claim to exert the schedule of income. Parties would be referred to by their rank before the Court below.

2. The brief facts are: Certain Rajendran who was working as a Driver under the first respondent, had died in

the course of his employment on 20.10.2010. His wife and son therefore have preferred a claim under the Workmen Compensation Act, and while determining the quantum of compensation the Tribunal had fixed the monthly income of the victim as ₹5,966/-. This is under challenge. Secondly, on the date of accident, the victim had completed only 53 years 8 months and 23 days. However, the Commissioner, under the Workmen Compensation Act has fixed his age as 54 years. Thirdly, the Commissioner has awarded only default interest payable subsequent to the award and not in terms of Section 4-A(2) of the Workmen Compensation Act.

3. When this case was admitted, the following substantial questions of law were framed :-

- (1) Whether the DCL, Salem is correct in not awarding the interest of 12% from 30 days from the date of accident ?
- (2) Whether the DCL, Salem is correct in not complying the Section 4-A (3) (a) and (b) for default of payment by the respondents ?
- (3) Whether the DCL, Salem is right in taking meager salary to driver, instead of taking salary based on the Minimum Wages Act, in the accident which was happened on 20.10.2010 ?

4. Heard Mr. Ma.P. Thangavel, learned counsel for the appellants and Mr. Arun Kumar learned counsel for the 2nd respondent Insurance Company.

5. The victim was a driver when he died while in the course of his employment on 20-10-2010. As per the notification No.S.O.1258(E) dated 31.05.2010, the minimum monthly wages fixed is ₹8,000/-. Since the accident has taken place on 20.10.2010, the minimum scheduled rate of wages would apply, and necessarily the Tribunal has in error in ignoring it.

6. Secondly, the Commissioner under the Workmen Compensation Court has relied on Ext.P-4, the driving licence of the victim, and has fixed his completed age as 54 years. The Driving Licence gives the date of birth of the victim as 27.01.1957, which would mean that he had not yet completed 54 years but has completed only 53 years. As per Schedule IV, the factor applicable is 142.68.

7. Factoring in the relevant factorials the compensation payable would be $(₹8,000 \times 142.68 \times 50/100)$ ₹5,70,720/-. The Tribunal has awarded a sum of Rs.5000/- towards funeral expenses, which remains unchanged. Therefore, the award of the Commissioner of the Workmen

Compensation Court is enhanced from Rs.4,20,025/- to Rs.5,75,720/-.

8. So far as payment of interest is concerned, the claimants are entitled to interest on the compensation amount, at the rate of 12%, from the 30th day of accident, i.e. 20.11.2010.

9. In the result, this appeal is allowed and the the respondent Insurance Company is directed to deposit the compensation amount, less the amount already deposited with interest 12% p.a. from the 30th day of the accident within a period of two months from the date of receipt of a copy of this order. Upon such remittance, the 1st petitioner is entitled to receive the entire compensation forthwith. No costs.

Sd/-

Assistant Registrar (CS v)

//True Copy//

Sub Assistant Registrar

avr
To

The Deputy Commissioner of Labour,
Salem

+1cc to Mr.S. Arun Kumar , Advocate SR.No. 45838

+1cc to Mr.Ma.P. Thangavel , Advocate SR.No. 45248

CMA.No.1311 of 2015

ASK(26/10/2018)

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