

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.424 of 2018

1. Ratha
2. Minor Hariharan
3. Minor Madhava
4. Minor Vanisha
- (Minors 2 to 4 are represented by through next friend and guardian mother 1st appellant)
5. Baby ... Appellants

Vs.

1. K.Murugavel
(Notice for R1 may be dispensed with for the time being)
2. Royal Sundaram Alliance Insurance Company Limited,
8/H1, Mangalam Building, Four Road, Salem. ... Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923 to set aside the order made in W.C.No.37 of 2012 on the file of the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Salem dated 03.09.2013 in respect of rate of interest and for other conventional damages.

For Appellants : Mr.C.Kulanthaivel

For 2nd Respondent: Srinivasan Ramalingam

JUDGMENT

The appellants herein are the claimants/petitioners in W.C.No.37 of 2012 on the file of the Workmen's Compensation Commissioner cum Deputy Commissioner of Labour, Salem.

2. The said claim was made seeking compensation for the death of a certain Nepolian, who is the husband of 1st appellant and father of the appellants 2 to 4, while he was in the course of his employment. The Tribunal has passed an award for Rs.6,06,552/- and directed the 2nd respondent to deposit the amount within 30 days, in default of which, directed it to pay

interest at 12% p.a., from the date of accident till the date of deposit.

3. The learned counsel for the appellants submitted that as per Section 4(A) of the Workmen's Compensation Act, interest is payable from 30th day of the accident and where delay in payment of compensation is unjustified, penalty is payable upto 50% under Section 4(3)(b) of the Workmen's Compensation Act, 1923. He also relied on the following Authorities:

(1) Pratap Narain Singh Deo v. Shrinivas Sabata and another [AIR 1976 SC 222].

(2) Oriental Insurance Co. Ltd., v. Siby George & Others [2012(2) TN MAC 395 (SC)].

(3) N.Ganesan v. Thilagavathi [2010(2) TN MAC 80(DB)].

4. Heard Mr.C.Kulanthaivel, learned counsel for the appellants and Mr.J.Chandran, learned counsel for the 2nd respondent.

5. The following substantial questions of law has arisen in this appeal:

'a) Whether the workmen's Commissioner was correct in directed to deposit the compensation without payment of interest and further whether the same is contrary to amended provision of Section 4 (A) of the Workmen's Compensation Act, 1923?

b) As not the Tribunal below erred in not entering a finding as to the justifiability of the appeal in payment of compensation and the consequences thereof?'

6.1 There is merit in the submission of the learned counsel for the appellants as regards the contention pertaining to awarding of interest. As per Section 4(A)(3)(a) of the Workmen's Compensation Act, interest shall be paid from the 30th day of the accident and here the Tribunal below has erred. Accordingly, this is rectified and the 2nd Respondent is directed to pay interest at the rate of 12% p.a., from the 30th day of the accident.

6.2. Sofar as payment of penalty is concerned, it requires a finding that the delay in payment of compensation is not justifiable. This requires the finding on fact and the same is not discernible from the award of the Tribunal. To the limited extent, the matter is remanded back to the Tribunal for determining if the appellants herein are entitled to the penalty in terms of Section 4(A)(3)(b) of the Workmen's Compensation Act.

7. In the result, the appeal is partly allowed and as regards payment of interest and the matter is remanded back to the Tribunal as regards to the payment of penalty. No costs.

s/d-
Assistant Registrar (CS VII)

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Sub-Assistant Registrar

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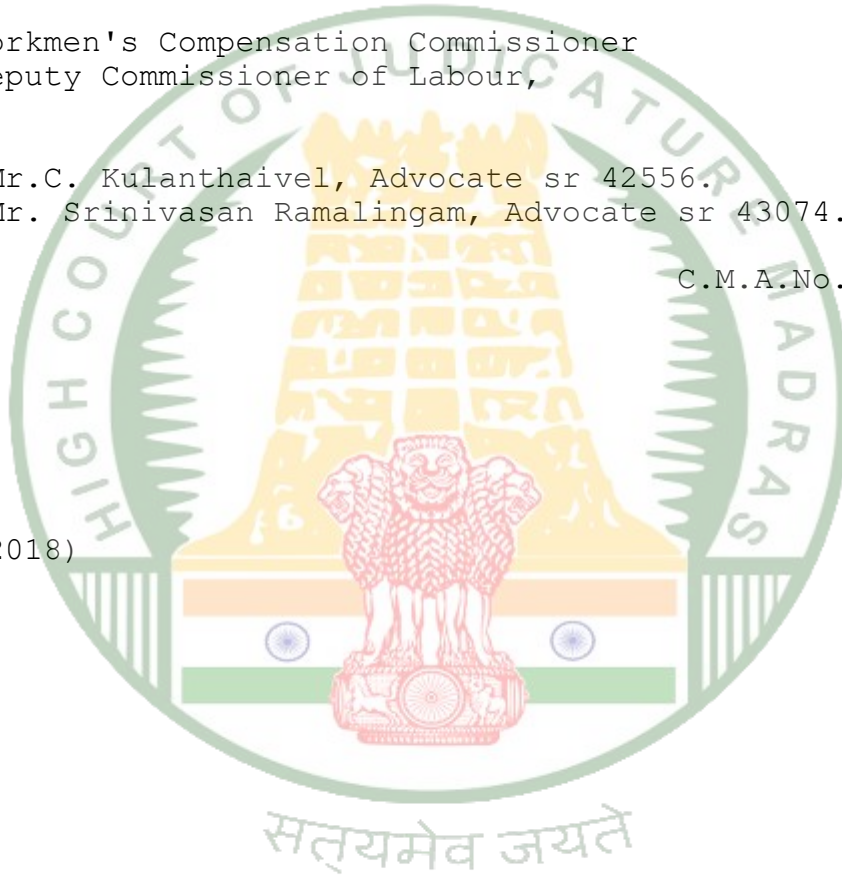
1. The Workmen's Compensation Commissioner
cum Deputy Commissioner of Labour,
Salem.

+1 CC to Mr.C. Kulanthaivel, Advocate sr 42556.

+1 CC to Mr. Srinivasan Ramalingam, Advocate sr 43074.

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KS (CO)
SP (02/08/2018)



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