IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07/11/19
Pronounced On	25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1027 of 2011

1.L.Tamilarasi
2.K.Krishnaraj
3.Mr.Sathiyaraj
4.L.Sathiya
5.Kaliyaperumal
6.Thangam ... Appellants/ Petitioner

vs

Management
Neyveli Lignite Corporation Ltd,
Neyveli. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the award passed by the Deputy Commissioner of Labour - II, for workmen's Compensation, Teynampet, Chennai-6, dt. 22.11.2009, received on 02.08.2010 made in W.C.No.284 of 2006.

For appellants : Mr.V.Ajoy Khose

For Respondent : Mr.N.Nithiyanandam

J U D G M E N T

The appellants were the claimants before the Deputy Commissioner of Labour-II, Tenampet, Chennai 6 in W.C.No. 284 of 2006. The said claim petition was filed by the dependents of late Lakshminarayanamurthy, the deceased employee of the respondent Neyveli Lignite Corporation after his death on 16.05.2002.

2.The deceased met with an accident on 20.09.1997 and was in coma. He was initially hospitalised with the respondent’s hospital and later shifted to Apollo Hospital, Chennai for further treatment. The deceased however never recovered from coma and was therefore discharged from service on 13.01.2001.

3.Based on the advice of the Medical Board held during December, 2000 the deceased was declared unfit and permanently disabled and was therefore liable to be discharged from service. Therefore, the deceased was discharged from service on 13.01.2001.

4.During the course of treatment, respondent-employer took care of the hospitalisation expenses of the deceased employee. The claimants were also paid 50% of the monthly salary/wages that was payable to the deceased as he was hospitalised and until his discharge from service. The amounts paid during hospitalization until his discharge/retirement of service has been set off by the respondent against the compensation claimed by the claimants stating that this amount is more than the compensation that is payable under the Workmen's Compensation Act, 1923.

5.His discharge from service was challenged unsuccessfully by the appellants herein in W.P.No.2112 of 2001 during his lifetime. Later, the deceased passed away on 16.05.2002. The writ petition was therefore dismissed as infructuous on 16.05.2002. Much, after the death of the deceased, the appellants had lodged the claim for compensation under the provisions of the Workmen’s Compensation Act, 1923 before the Deputy Commissioner of Labour on 07.01.2005 in W.C.No. 284 of 2005. The appellant stated that they were entitled to a compensation of Rs. 3,65,240/- under Section 4 (1)(a) & (b) and interest under Section 4 (A) 3 of the aforesaid Act.

6.According to the respondent, the dependents of the deceased Lakshminarayanamurthy who are the claimants/appellants herein were entitled to only compensation under Section 4(1)(d) of the Workmen’s Compensation Act based on the maximum ceiling limit under the provisions of the said Act 1923 as it stood during the material time.

7.Applying the maximum ceiling fixed under Explanation-I I of Section 4 (1) of the Act, the respondent stated that during his life time the deceased was entitled to compensation of Rs.2,27,472/-(Rs. 2000X 60/100 X189.56) as employment injury and therefore the claimants cannot claim further amount as compensation under Section 4(1)(a) and (b) of the Workmen’s Compensation Act, 1923 after his death.

8.Therefore, after deducting/setting off the amount of Rs. 2,19,934/- towards 50% of the monthly salary/wages, the respondent paid an amount of Rs. 7,538/- on 26.02.2003 as the balance amount of compensation under the Act. It is further submitted that even otherwise, since the accident took place on 20.09.1997 long before the ceiling was increased to Rs.4000 from Rs.2000, the compensation that was payable under section 4(1)(a) was only Rs.1,81,370/- and not Rs.3,65,240/- as was claimed by the appellants/claimants.

9.By the impugned order, the Deputy Commissioner of labour has accepted the contention of the respondent and thereby rejected the claim petition filed by the appellants/ claimants.

10.In the present appeal the appellants have raised the following substantial questions of law:-

i. When proviso (a) to Section 4(2) does not provide for adjustment of the half monthly payment with the lump sum compensation payable under Section 4(1) of the Act, whether the Commissioner for Workmen Commissioner is having power and jurisdiction to allow any adjustment that is the adjustment of half monthly payment under Section 4(1) of the Act.

ii. In the absence of any other provision enabling for adjustment of half monthly payment with the lump sum compensation whether the Commissioner has power and jurisdiction to allow adjustment of the half monthly payment with the lump sum compensation and dismiss the application and the claim.

iii. When the half monthly payment and the lump sum compensation or to independent and separate benefits provided in law to the claimants/workmen and in the absence of any provision for adjustment of any one of the said two benefits with the other, whether the commissioner is competent in law to dismiss the claim for compensation by allowing adjustment of the half monthly payment with the lump sum compensation.

11.Heard learned counsel for the appellants and the learned counsel for the respondent management.

12.It is the contention of the appellants that the amounts paid towards 50% of the salary/wages while the deceased was on their rolls cannot be set- off against the compensation that is payable under the provisions of the Workmen's Compensation Act, 1923.

13.Per contra, the learned counsel for the respondent management submits that the order passed by the Deputy Commissioner of Labour is well reasoned and requires no interference in this appeal. He further submits that the appeal filed by the appellants is liable to be dismissed. It is submitted that after receiving the compensation month on month basis when the deceased was alone and on their rolls, the appellants cannot once again ask for compensation under the Act separately after his death.

14.In this connection the learned counsel for the respondent drew my attention to the decision of this court rendered in the following cases:-

i. Pazhani J and others vs Subrayapillai and others, (2003) 3 MLJ 647;
ii. Pratab Narain Singh Deo Vs Srinvas Sabata (1976) 1 LLJ 235 AC.

15.I have perused the impugned order of the deputy Commissioner of labour and evidence and they relied upon documents.

16.According to the appellants/claimants they are entitled to compensation under Section 4(1)(a) and (b) of the Act, while according to the respondent management, the deceased was given compensation under Section 4(1)(d) of the Act during his lifetime, and since the appellants have themselves received the amounts month on month basis aggregating to an amount of Rs. 2,19, 934/- without demur, the claim has been correctly rejected by the Deputy Commissioner of Labour.

17.The Workmen's Compensation Act, 1923 is a welfare legislation and is intended to protect the interest of workmen who unfortunately meet with an accidents in the course of employment. Even if the employee suffers in employment injury on the last date of his service, he will be entitled to the compensation under the Workmen Compensation Act, 1923 the employer is statutorily it bound to compensate them for such injury or death resulting from such accidents.

18.Both Employees' State Insurance Act and the Workmen's Compensation Act provide for payment of mandatory compensation for the injury or death caused to the workman while in employment. Liquidated damages by way of compensation are accepted principles of compensation.

19.The question therefore that arises for consideration is whether subsistence salary/wages payable/paid during the period when an employee was under the rolls of the employer can be set off against the compensation determinable and payable under Section 4 of the Workmen’ Compensation Act, 1923.

20.Compensation underSection 4(1) can be summarised as follows:-

Sl.No	Event	Section	Compensation
1	where death results from the injury	4(1)(a)	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;
2	Where Permanent total disablement results from the injury	4(1)(b)	an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of twenty- four thousand rupees, whichever is more;
3	Where Permanent Partial Disablement results from the injury	4(1)(c)	i. in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and ii. in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;
4	Where temporary partial disablement results from the injury	4(1)(d)	a half-monthly payment of the sum equivalent to twenty- five per cent of monthly wages of injury the workman, to be paid in accordance with the provisions of sub- section 2.

21.In this case, the respondent-employer has paid 50% of the salary/wages to the deceased through the appellants' month on month basis to the appellants which has been set off against the compensation determined by them as payable to the appellants.

22.Section 4(2), (3) and (4) of the Workmen's Compensation Act, 1923 reads as under:-

> 2) The half- monthly payment referred to in clause (d) of sub- section (1) shall be payable on the sixteenth day—
>
> (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or
>
> (ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty- eight days; and thereafter half- monthly during the disablement or during a period of five years, whichever period is shorter: Provided that--
>
> (a) there shall be deducted from any lump sum or half- monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half- monthly payment, as the case may be; and
>
> (b) no half- monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.
>
> (3) On the ceasing of the disablement before the date on which any half- monthly payment falls due, there shall be payable in respect of that half- month a sum proportionate to the duration of the disablement in that half-month.
>
> (4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of 2 [two thousand and five hundred rupees] for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman

did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.

23.Thus, deduction is permissible only in case of temporary partial disablement resulting from the injury under Section 4(1)(d).

24.Amounts payable to an employee under an independent contract of service and/or under the terms and conditions of employment/service, in case of death under Section 4(1)(a) cannot be set off against the compensation that is payable under the provisions of the Workmen’s Compensation Act, 1923. Reference to the wages/salary in Section 4 of the Act is merely for the purpose of determining the compensation that is payable under 4 different situations noted above.

25.As long as the deceased workmen was alive and was undergoing treatment and was on the rolls of the employer, the liability to pay wages/salary was independent of the compensation payable under the said Act.

26.The Honourable Supreme Court in Suchitra Devi (Smt) v. Presiding Officer, Labour Court, (1996) 8 SCC 70 while dealing with a somewhat similar issue as in the present case, it refrained from going into the question as to whether the employer was entitled to deduct amounts paid to victims of the deceased after the accident.The court held that deduction was wholly unjustified with the following observation:-

> “We do not wish to go into the question as to whether the Management rightly deducted Rs 10,000 from the compensation amount or not. Keeping in view the ghastly tragedy and the misery which must have fallen on the family of the deceased workmen, we are of the view that the deduction made was wholly unjustified. We therefore set aside the impugned order of the Labour Court and the High Court and direct the Management to pay a sum of Rs 10,000 to each of the workman's heirs/family with 12% interest from 1-1-1983. The Management will calculate the amount payable to each of the heirs/family and make payment, within 6 months from today. The appeal is allowed in the above terms. No costs. ”

27.In the Matter of Maung Nyi (Deceased)* ILR (1933) 11 Rang 154, the issue was whether it is permissible for payments made to an injured workman before his death under s. 4(1)D of the Workmen's Compensation Act could be deducted from the compensation payable under section 4(1)A of the Act after the death of the workman?

28.Relevant passage from the said judgement reads as under:-

> The answer to the question propounded, in my opinion, turns upon the construction of the proviso to s. 4(1), which runs as follows:
> "Provided that there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment as the case may be."
> It may well be that the intention of the Legislature in enacting both the Indian and the English Workmen's Compensation Acts was to provide that the maximum compensation payable by the employer should be fixed, and that the employer should not be liable for any sum beyond the prescribed maximum. In the English Act in s. 8(2)(iii) it is laid down in respect of the lump sum payable on death that
> "there shall be deducted from the sum as above calculated the amount of weekly payments (if any) made to the workman before his death, so, however, as not to reduce the lump sum below two hundred pounds, and if such weekly payments have been redeemed under this Act there shall also be deducted the amount paid in respect of the redemption thereof."
>
> In the Indian Act, however, there is no such provision, and the Court has to construe the Act as it stands. Now, the right of the dependants to compensation upon the death of a workman is independent of the workman's right to compensation [see Williams v. Vauxhall Colliery Company, Limited[1]], and from the compensation deposited under s. 8
> (1) the only permissible deduction is in respect of funeral expenses [s. 8(4)]. It follows, therefore, that unless the deduction under consideration is permissible by reason

of the proviso to s. 4(1) it cannot be made from the lump sum payable to the dependants under s. 8.

Now, it is common ground that the deduction in dispute in the present case is a "payment or allowance which the workman has received from the employer by way of compensation during the period of disablement," and the answer to the question referred, in my opinion, depends upon whether the words in the proviso to s. 4(1) "to which the workman is entitled" apply to the words "any lump sum" or only to the words "half-monthly payments." It appears to me that the words "any lump sum" and also the words "half-monthly payments" are governed by the words "to which the workman is entitled." If the contention which the employer urges upon the Court were to be accepted the words "to which the workman is entitled" would be surplusage, and it would appear that these words were inserted in the proviso to s. 4(1) expressly to exclude any deduction, except in respect of funeral expenses, from the lump sum payable as compensation to the dependants under s. 8. Such a lump sum is not a sum "to which the workman is entitled," but is payable to the dependants in respect of their separate and independent right to compensation.

For these reasons I would answer the question propounded in the negative.

29.In my view, the compensation upon the death of a Workman is independent of the Workman's right to compensation and from the compensation deposited under Section 8. Payments made before cessation of employment as a part of the terms and conditions of employment/service of the deceased employee cannot be set off against the compensation that is payable under the Act.

30. As per Section 4(4) of the Workmen's Compensation Act, 1923 if the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of 2 (two thousand and five hundred rupees) for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.

31.Therefore, it would be improper to deny compensation payable to an employee/dependents of the deceased employee merely because the employer paid salary/subsistence salary/subsistence allowance/subsistence wages as the case may be during the period which the employee was on their rolls. There is no scope for deduction of amounts paid under Section 4(1)(d) when injury eventually results in death of an employee.

32.In view of the questions of law raised in this appeal are answered in favour of the appellants.

33.The respondent Management, Neyveli Lignite Corporation is directed to pay the a sum of Rs.3,65,240/- as per the following calculation to the appellants together with interest at 7.5% per annum from the date of death till the date of deposit.

Compensation	: 50% of monthly wages x relevant factor	
	: 50/100 x 4000 x 181.37	= 3,62,740/-
Funeral Expenses		= 2,500/-
Total		= 3,65,240/-

34. The present Civil Miscellaneous Appeal is allowed with the above observation. No cost.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1.The Management
Neyveli Lignite Corporation Ltd,
Neyveli.

2.The Deputy Commissioner of Labour - II,
Workmen's Compensation, Teynampet,
Chennai-6.

3.The Section Officer,
V.R.Section. High Court,
Madras.

+1cc to Mr.n.Nithiyanandam , Advocate SR.No. 98807

C.M.A.No.1027 of 2011

A.SK(21/01/2020)