

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2051 of 2008

1. S.Mary Celiya Fernando
2. Minor Selvi J.Anne Sheryl Victoria
3. Minor Selvan J.Anton Sunil Victoria
... Appellants/Claimants
(Minors 2 and 3 represented by Guardian
and Mother, 1st appellant)

vs.

The Deputy Chief Personal Manger/Mines II,
Neyveli Lignite Corporation Limited,
Neyveli-3, Cuddalore District. ... Respondent/Opposite Party

Civil Miscellaneous Appeal filed under Section 30 of the
Workmen's Compensation Act, 1923 against the Award passed in
W.C.No.17 of 2001 on the file of the Deputy Commissioner of
Labour-II, Chennai dated 30.01.2001.

For Appellants : Mrs.STP Kuillmozhi

For respondent : Mr.N.Nithianandam

JUDGMENT

This Civil Miscellaneous Appeal has been filed under
Section 30 of the Workmen's Compensation Act, 1923 against the
Award passed in W.C.No.17 of 2001 on the file of the Deputy
Commissioner of Labour-II, Chennai dated 30.01.2001.

2. Learned Counsel appearing for the appellants would
submit that the learned Deputy Commissioner of Labour has
erroneously passed the impugned award without even giving any
opportunity to the claimants to express their claims. The
learned Deputy Commissioner in the impugned award has acted
only as a Distribution Agent. Without notice, a sum of
Rs.1,79,490/- should not have been arrived at towards the
compensation payable to them, when the deceased was receiving
the monthly salary of Rs.7841.66p per month. Adding further,
it is stated that the deceased joined as Artivian Trainee on
30.10.1984 for a salary of Rs.500/- p.m., subsequently, he was
promoted as Technician Grade IV on 01.11.1986, thereafter
promoted as Technician Grade III on 01.11.1990 and Technician
Grade II on 01.11.1994 and at the time of his death, the

deceased was earning Rs.7841.66 p per month. Therefore, at the time of his retirement, namely, on 30.10.2015, if the present salary is taken into consideration, he would even get a total sum of Rs.17,91,749.90p. The deceased has got 15 more years of service.

3. In support of his submission, the learned Counsel for the appellant has also relied on a decision of the Hon'ble Supreme Court in New India Assurance Company Limited vs. V.K.Neelakandan and others reported in (1999) 8 Supreme Court Cases 256 to say that the compensation to be paid to the heirs of the workmen has to be calculated on the basis of the actual wages drawn by them, namely, Rs.1800/- p.m.

4. Per contra, the learned Counsel appearing for the respondent assailing the above argument stated that as per Section 4 of the Workmen's Compensation Act, 1923, the moment accident takes place in the premises of the employer, it is the prime duty and obligation on the part of the employer to submit a statement of Calculation to the Commissioner who is an authority under the Workmen's Compensation Act within 30 days and the amount also on the basis of the statement should have been deposited, failing which the employer will be running into the risk of paying penalty to be fixed by the Commissioner along with the interest on the amount payable by them. In an effort to comply with the said provision, a Statement of Calculation was prepared within 30 days and the same was also filed in this case.

5. By placing the Letter No.6767/REIV-2/GM/MII/2000-1 dated 25.07.2000 addressed by the Neyveli Lignite Corporation Limited, Neyveli-2 to the Commissioner of Workmen Compensation-II, Deputy Commissioner of Labour, Teynampet, Chennai-6, the learned Counsel for the appellants submitted that the deceased was receiving the last wages drawn at Rs.3373/- + VDA Rs.3173/- +IR+Rs.500/- that comes to Rs.7046/-. But as per Section 4 of the Workmen's Compensation Act, 1923, it has to be restricted to Rs.2,000/- Accordingly, Rs.7046/- was restricted to Rs.2000/-. In addition to Rs.2,000/-, age factor being 42 of the deceased on 178.49 was taken into account i.e. $2000 \times 178.49 \times 50/100 = \text{Rs.1,78,490/-}$. The Funeral Expenses amount of Rs.1000/- was also included totalling Rs.1,79,490/-. In this regard, it is pertinent to extract the letter here under:

"OFFICE OF THE GENERAL MANAGER/MINE-II
NEYVELI LIGNITE CORPORATION LIMITED/NEYVELI-2
LR.NO.6767/REIV-2/GM/MII/2000-1, DATED: 25.07.2000
To
The Commissioner of Workmen Compensation -II
Deputy Commissioner of Labour,
Teynampet,
Chennai - 600 006.

Sir,

Sub: Regular Estt. M II - Fatal Accident to Late
S.Johnson Victoria (CPF No.28729) Sr.Tech.
Gr.II/SME/MRR/MII - Fatal Accident - Deposit of
compensation amount - reg.

Ref: This office Lr.No.6767/DCPM/Fatal
Accident/CM/MII/2000,

Compensation amounting of Rs.1,79,490/- (Rupees one lakh seventy nine thousand four hundred and ninety only) is hereby presented by Demand Draft bearing No.717511 dat: 19.07.2000 drawn in favour of the Commissioner for workmen Compensation-II, Deputy Commissioner of Labour, Tyanampet, Chennai - 600 006 for deposit in respect of injuries resulting in the death of workman whose particulars are given below which occurred in 03.07.2000. The amount of compensation arrived at taking into account the wages and age factor (i.e)
Last Pay Drawn Pay Rs.3373+VDA Rs.3173+IR.Rs.500 =
7,046/- (Restricted to Rs.2,000/-)
Age Factor 42 Years 178.49
Amount of Compensation to be paid $2000 \times 178.49 \times 50 / 100$
=1,78,490 +Rs.1,000/- (Funeral expenses) Total
Rs.1,79,490/-

NAME: LATE S.JOHNSON VICTORIA

FATHER NAME: R.SAMATHANAM VICTORIA

LOCAL & PERMANENT ADDRESS: 104-A, TYPE -II QUARTERS,
BLOCK-7, NEYVELI-3,

HIS MONTHLY WAGES ARE ESTIMATED AT:Rs.7,046/-
BASIC+VDA

He was over age of 15 years at the time of his death. The said workman had prior to the date of his death received a sum of Rs.7,046/- as monthly wages. The detailed of dependants are furnished below.

HIS WIFE NAME: S.MARY CELIYA FENANDO, (39 YEARS)

HIS DAUGHTER: J.ANNE SHERYL VICTORIA, DOB: 06.03.19,
(9 YEARS)

HIS SON: J.ANTON SUNIL VICTORIA, DOB:26.03.94,
(6 YEARS)

They are residing at No.104-A, Type -II Qtrs Block-7, Neyveli - 607 803, Cuddalore District, Tamil Nadu.

The above said amount may be disbursed to the dependant of the deceased and copy of the same may be sent to this office.

We do not desire to be made a party to the proceedings for distribution of the aforesaid compensation.

Yours sincerely,

For NEYVELI LIGNITE CORPORATION
LIMITED/NEYVELI-2,

Sd/.*****

(DY.CHIEF PERSONNEL MANAGER/MINE-II)

Copy to the Chief Personal Manager/IR/P &A"

6. Based on the said letter dated 25.07.2000 showing the calculation statement, the Deputy Commissioner of Labour-II, Chennai, has passed the impugned award calling upon the claimants to collect the compensation amount of Rs.1,79,490/- on the basis of the apportioned made therein.

7. This Court while referring to Section 4 of the Workmen's Compensation Act, 1923, is of the view that when the deceased died on 03.07.2000 while drawing the monthly salary of Rs.7046/- at the age of 42, the maximum wages, as per Section 4 Explanation II of the Workmen's Compensation Act, 1923, where the monthly wage of a workman exceeds Rs.2000/-, his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be Rs.2,000/- only. Rs.2,000/- has been fixed as the outer sealing limit till 07.12.2000. By virtue of further amendment took place on 08.12.2000, it has been enhanced to Rs.4,000/-. In this regard, it is relevant to extract Section 4 Explanation II of the Workmen Compensation Act here under :

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

(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.

Section 4 Explanation II of the Workmen's Compensation Act, 1923:

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.'

8. But in the present case, as the monthly salary of the deceased was Rs.7046/- which was rightly reduced to Rs.2,000/- and his age being 42, the per centage factor was taken as 178.49, therefore, the calculation arrived at in the statement of Facts submitted by the Neyveli Lignite

Corporation before the Deputy Commissioner of Labour is perfectly in order. Therefore, this Court finds no merit in the present appeal.

9. At this Stage, the learned Counsel for the appellants submitted that the claimants have received the entire amount of compensation.

10. In the result, the Civil Miscellaneous Appeal fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner for Workmen's Compensation-II
(Deputy Commissioner of Labour-II),
Chennai-600 006.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s.S.T.P.Kuilmozhi, Advocate Sr.70664
+1cc to M/s.N.Nithianandam, Advocate Sr.70663

C.M.A.2051 of 2008

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