

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2018

Delivered on : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1222 of 2015

1.B.Suguna

2.Minor. Karthini

3.Minor. Devanath

(Minors rep. by N/F Mother Suguna)

4.Chinnusamy

... Appellants/petitioners

Vs.

1.M.Chinnusamy

2.The United India Insurance Company Limited,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal Town & District.

... Respondents/Opposite parties

(No relief sought against the 1st respondent,
hence notice may be dispensed with for
1st respondent in this appeal)

(Cause title accepted vide order of Court
dated 06.04.2015 made in MP.No.1/15
in CMA.SR.No.20760 of 2015)

Civil Miscellaneous Appeal filed under Section 30 of W.C.
Act, 1923, to enhance the award in the order dated 12.07.2013,
and certified xerox copy of the order issued only on 06.03.2015
in W.C.No.84 of 2008 on the file of Deputy Commissioner of
Labour, Salem.

For Appellants : Mr.Ma.Pa.Thanagavel,

For Respondents : Mr.T.Ravichandran (for R2)

JUDGMENT

The appellants are the applicants, who are the widowed wife,
minor Daughter, Minor Son and father of the deceased employee
namely, Balan seeking for enhancement of compensation.

2.The deceased Balan was 48 years old and he was employed as a driver in Lorry bearing Registration No.TN-28-P-1559 belonging to the first opposite party/first respondent on a monthly salary of Rs.8,000/- including bata. On 13.07.2007, at about 02.30 PM while he was driving Lorry near at the place of Daba, Kushtagi Police Station Jurisdiction, at Kyadigumpi, he sustained severe Heart Attack and he fell down on the ground and vomited blood and immediately he was admitted in Ilkal Government Hospital and were doctor examined and declared that he died. The applicants stated that the said accident took place during the course of employment and the applicants are entitled to claim compensation from the second respondent/Insurance Company, being the insurer of the offending vehicle.

3.The Deputy Commissioner, Labour Commissioner at Salem, after considering the case on its own merits, had awarded a sum of Rs.3,22,100/- as compensation. Dissatisfaction with the award, the present appeal has been filed by the appellants for enhancement of the award.

4.I heard Mr.Ma.Pa.Thangavel, learned counsel for the appellants and Mr.T.Ravichandran, learned counsel for the 2nd respondent and perused the material available on record.

5.It shows that, it is not in dispute that the deceased was employed with the first respondent and that the accident occurred during the course of employment. It is relevant to mention that though the second respondent has disputed the accident, but failed to produce any contra evidence to disprove the same. Hence, the finding of the Commissioner that there was an accident on 13.07.2007 involving the vehicle belonging to the first respondent, existence of employer-employee relationship and existence of valid insurance policy at the time of accident. It is pertinent to note that the respondent had not preferred any appeal and they have satisfied the award and hence the findings of commissioner with regard to liability is accepted.

6.Insofar as the compensation payable is concerned, the driving license of the deceased, which was marked as Ex.P.4 shows that the deceased was born on 15.06.1959, based on which, his age was assessed as 48 years. It is the specific case of the applicants that the deceased was earning Rs. 8,000/- per month including batta and other perks. Since no document was filed by them to prove the income, the Commissioner has adopted the minimum wages payable as per G.O.Ms.No.2D, No.47, Labour and Employment Department dated 01.08.2003 at Rs. 4,161.50/- and

adopting 159.80 factor, based on the age, and a sum of Rs. 3,19,600/- along with Rs. 2,500/- for funeral expenses, has been awarded as total compensation. The said award is now under challenge.

7.The Substantial questions that arises for consideration here are:

a) Whether the Deputy Commissioner of Labour, Salem was right in fixing the minimum wages under the Minimum Wages Act for accident happened in the year of 2007?

b) Whether the Deputy Commissioner of Labour, Salem was right in not awarding interest at the rate of 12% per annum from the date of accident?

8. The learned counsel for the appellants mainly canvassed his argument for enhancement that the deceased was working as driver earned Rs.8,000/- p.m. including batta of Rs.100/- per day, and produced driving license as Ex.P-4, but admittedly none of the parties (i.e.) applicants or employer/1st respondent not produce any document to prove the same. But he submits that the Employee's Compensation Act is a welfare legislation enacted to secure compensation to poor workmen, who suffered injuries or death during the course of employment. The intention of the legislation is to benefit the workers and their dependents in case of death of workmen due to accident caused during and in the course of employment. Mere technicalities will not affect the rights of the parties, hence he pray to fix notional of Rs. 4,000/-PM as per act apart from that add Rs. 100/- as batta per day by considering nature of work and other factors.

9.The learned counsel for appellants relied Judgment of the Hon'ble Apex Court reported in 2016 (1) TNMAC 289- Jaya Biswal And Others -Vs- Branch Manager, Iffco Tokio General Insurance Company Ltd. And Others, Para 23 it held as follows:

"23. Since neither of the parties produced any document on record to prove the exact amount of wages being earned by the deceased at the time of the accident, to arrive at the amount of wages, the learned Commissioner took into consideration the fact that the deceased was a highly skilled workman and would often be required to undertake long journeys outside the state in the line of duty, especially considering the fact that the vehicle in question had a registered National Route Permit. The wages of the deceased were accepted as Rs.4,000/- per month + daily bhatta of

Rs.6,000/- per month, which amounts to a total of Rs.10,000/-. The High Court did not give any reason on which basis it interfered with the finding recorded by the Commissioner on the aspect of monthly wages earned by the deceased. The impugned judgment does not even mention what according to the High Court, the wages of the deceased were at the time of the accident. Such an unnecessary interference on part of the High Court was absolutely uncalled for, especially in light of the fact that the Appellant Nos. 1 and 2 are old and have lost their elder son and they have become destitutes. Further, under the Payment of Wages Act, 1936, the onus is on the employer to maintain the register and records of wages, Section 13A of which reads as under:

13-A. Maintenance of registers and records-

(1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.

From a perusal of the aforementioned section it becomes clear that the onus to maintain the wage roll was on the employer, i.e. Respondent No. 2. Since in the instant case, the employer has failed in his duty to maintain the proper records of wages of the deceased, the Appellants cannot be made to suffer for it."

10. The learned counsel appearing for the Insurance Company pointed out that when the upper limit is Rs.4,000/- in awarding compensation under Section 4(1) of the Act, the award of the Labour Commissioner may be modify upto Rs.4,000/- p.m. but not more than that and it is not correct.

11. After heard both sides and from the readings of the above cited judgments relied by counsel for appellants, I hold that, failure on the part of the employer/1st respondent herein, it will not affect the rights of parties/applicants. However, in the absence of any evidence, the Labour Commissioner ought to

have resorted to the Minimum Wages fixed by act. By considering evidence and arguments and both sides this Court is inclined to fix the income at Rs.4,000/- p.m. and fixing of Rs.100/- is payable as daily batta, thus, the monthly income can be fixed at Rs. 7,000/ and the monthly income of the deceased is taken as Rs. 4,000 + Rs. 3,000/= [Rs. 7,000 X 50/100 x 159.80 = Rs.5,59,300/- is awarded as compensation to the claimants.

12.In so far as the funeral expenses is concerned, the Tribunal awarded a sum of Rs.2,500/-, by considering judgment supra and other aspects this court is enhanced to a sum of Rs.25,000/-. Hence, the award of the Commissioner is enhanced to Rs.5,84,300/- from Rs.3,22,100/- which is payable to the appellants/applicants by the Insurance Company. Thus, the first question is answered in favour of the appellants/claimants.

13.In so far as payment of interest is concerned, the Deputy Commissioner of Labour, Salem, erred in awarding interest at the rate of 12% only if the Insurance Company failed to pay the award amount within 30 days from the date of receiving the order copy.

14.However the learned counsel for appellants rightly pointed out that as per the recent decision of the Hon'ble Apex court reported in CDJ 2018 SC 112 (North East Karnataka Road Transport Corporation -VS- Sujatha), it is held that the appellants are entitled for interest at the rate of 12% from the date of accident.

15.From the judgment of apex court the legal position is now clear and this court also inclined to held that appellants are entitled for interest at the rate of 12% from the date of accident (i.e) from 13.07.2007, similarly the second question is answered in favour of the appellants.

16.With the above modification the appeal is partly allowed. No costs.

17.The 2nd respondent/Insurance Company is directed to deposit the entire enhanced compensation award amount of Rs.5,84,300/- now awarded together with interest at 12% p.a. thereon from the date of accident less the amount already

deposited if any, within a period of eight weeks from the date of receipt of copy of this order. On such deposit being made, the applicants are entitled to withdraw the same, less amounts already withdrawn, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner for Workmen's Compensation,
(Deputy Commissioner of Labour),
Salem.

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

+1cc to Mr.T.Ravichandran, Advocate Sr.23753

+1cc to Mr.Ma.Pa.Thanagavel, Advocate Sr.24836 [10/09/2019]

C.M.A.No.1222 of 2015

gj[col]

srg 7/5/2019

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