

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.12.2018

Delivered on : 07.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1325 of 2015

1.S.Tamilselvi

2.Minor. Kumaresan

3.Minor Suganya

(Minors rep. by NF/Mother, Tamilselvi)

... Appellants

Vs

1.D.Selvaraj

2.The New India Assurance Company Limited,

Door No.29, Ram Complex,

Paramathi Road,

Namakkal Town & District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of W.C. Act, 1923, against the order dated 12.06.2012 made in W.C.No.231 of 2007 on the file of Deputy Commissioner of Labour, Salem.

For Appellants : Mr.MA.P.Thangavel

For Respondents: M/s.S.R.Sumathy (for R2)

R1 - Given up

JUDGMENT

The appellants are the applicants, who are the widow wife and Minor son and Minor daughter of the deceased employee namely Selvaraj seeking for enhancement of compensation.

2.The deceased Selvaraj was 39 years old and he was employed as a driver for a lorry bearing Registration No.TN-46/6451 belonging to the first opposite party/first respondent on a monthly salary of Rs. 8,000/-PM including batta. On 07.06.2006, at about 04.30 AM while he was driving lorry near NH-7 Road, Nagpur, on the road of Kanyakumari to Varanasi main Road, he sustained severe Chest pain and immediately he was admitted in one Avanthi Institute of Cardiology Hospital, at Nagpur and were doctor

examined and declared that he died due to Cardio Respiratory Failure. The applicants stated that the said accident took place during the course of employment and the applicants /claimants 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.3,76,300/- as compensation. Challenging inadequate compensation the applicants have preferred this appeal for enhancement.

4.I heard Mr.MA.P.Thangavel, learned counsel for the appellants and M/s.S.R.Sumathy, learned counsel for the 2nd respondent and perused the materials 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 they are not producing any contra evidence to disprove the same. It is pertinent to note that the respondent have not preferred any appeal, hence the findings of commissioner with regard to liability is accepted and they satisfied the award amount. Hence, the finding of the Commissioner that there was an accident on 07.06.2006 involving the vehicle belonging to the first respondent, existence of employer-employee relationship and existence of valid insurance policy at the time of accident and liability is confirmed.

6.Insofar as the compensation payable is concerned, the driving license of the deceased, which was marked as Ex.P.2 shows that the deceased was born on 20.04.1967, based on which, his age was assessed as 39 years. It is the specific case of the applicants that the deceased was earning about Rs.8,000/- per month including batta and other perks. Since no document have been produced 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. 4051/- and adopting 186.90 factor, based on the age, a sum of Rs. 3,76,300/- 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 arise 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 the accident happened in the year of 2006?

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 and submits that the deceased was working as driver earned Rs.8,000/-PM including batta and other perks, but the commissioner only taken Rs. 4,000/- as notional income and failed to consider batta and other perks. On perusal of the records, it shows that admittedly none of the parties (i.e.) applicants or employer/1st respondent not produce any document. 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/- p.m. as per act apart from that add Rs.100/- batta per day by considering nature of work and other factors.

9.The learned counsel for the 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 there is upper limit is only Rs.4,000/- in awarding compensation under Section 4(1) of the Act, the award of the Labour Commissioner may modify upto Rs.4,000/- p.m; but not more than that in the absence any evidence.

11. After heard both sides and from the readings of the above cited judgments relied by counsel for appellants, this court holds 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 specific 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/-PM and fixing of Rs.100/- is payable as daily batta, 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 186.90 = Rs.6,54,150/- is awarded as compensation to the applicants.

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 from Rs.3,76,300/- to Rs.6,56,650/- which is payable to the appellants/applicants by the Insurance Company. Thus, the first question is answered in favour of the appellants.

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

13. From the judgment of apex court the legal position is now clear and this court also inclined to hold that appellants are entitled interest at the rate of 12% from the date of accident (i.e) from 07.06.2006. Similarly the second question is answered in favour of the appellants.

14. With the above modification, the appeal is partly allowed. No costs.

15.The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount 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 six weeks from the date of receipt of copy of this order. On such deposit being made, the claimants are entitled to withdraw the same, less amount already withdrawn, if any.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

vs

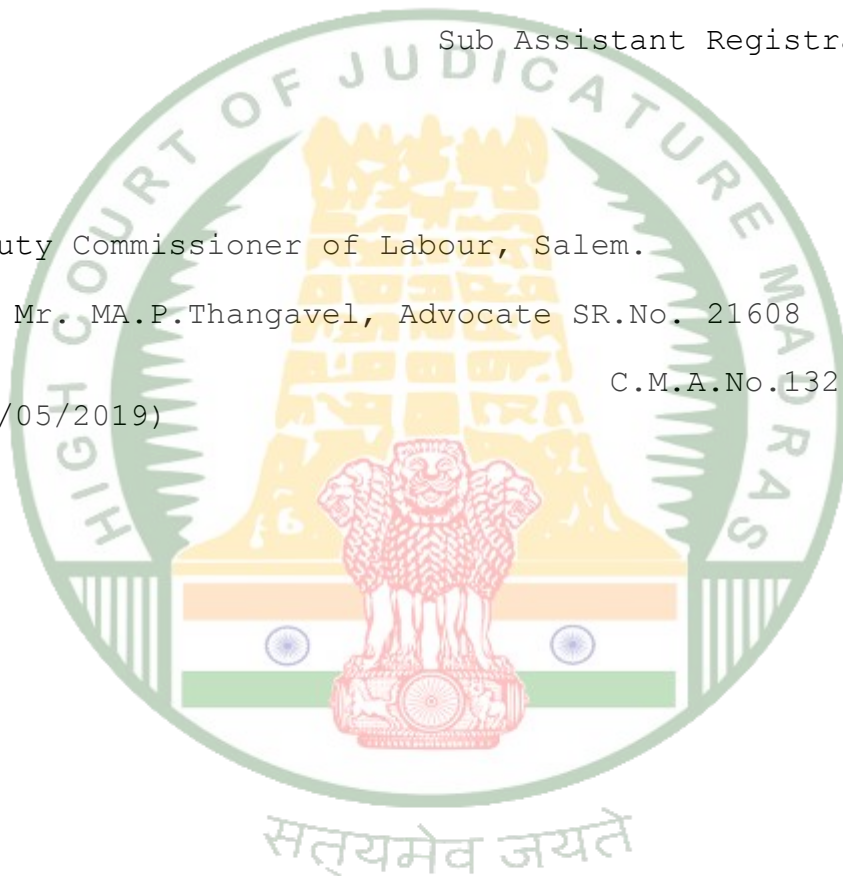
To

The Deputy Commissioner of Labour, Salem.

+1cc to Mr. MA.P.Thangavel, Advocate SR.No. 21608

C.M.A.No.1325 of 2015

A.SK(13/05/2019)



WEB COPY