

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.1580 of 2015

Mr.Balamurugan

... Appellant

-vs-

1. V. Ramesh

2. Royal Sundaram Alliance Insurance Co Ltd.,
L.B. Road, Adyar, Chennai - 20. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act against the Award dated 19.07.2013 made in W.C.No.147/2012 on the file of Deputy Commissioner of Labour-II, Teynampet, Chennai-6.

For Appellant : Mr.F. Terry Chella Raja

For R.1 : Ex-parte before Tribunal

For R.2 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is filed against the impugned Order in W.C.No.147 of 2012 dated 19.07.2013, in and by which, the learned Deputy Commissioner of Labour-II, on the basis of G.O (2D), Labour and Employment Department (J.1) dated 23.07.200, fixed the minimum wage of Rs.3,570/- as basic wage and Rs.1,980/- as Dearness Allowance and in total fixed a sum of Rs.5,550/- as minimum wage and fixed the quantum of compensation as Rs.2,44,662/- which is calculated as under:

- | | | |
|-------------------------------------|-------|---------|
| 1) விபத்தின் குபாது மனுதாரரின் வயது | | 29 |
| 2) வயதுக்கான காரணி | | 209.92 |
| 3) மாத ஊதியம் | | 5,550/- |

4) வருவாய் ஈட்டும் திறன் இழப்ப, 35%

இழப்பீட்டுத் தொகை $60/100 \times 209.92 \times 5550 \times 35/100$
 $= \text{ரூ.} 2,44,661.76$

வரையறுக்கப்பட்டது ரூ.2,44,662/-

2. The learned Deputy Commissioner of Labour II has committed apparent mistake while fixing the minimum wages for the injuries. When the Amendment was issued on 18.01.2010 enhancing the Minimum Wages at Rs.8,000/-, it was not properly followed by the Deputy Commissioner of Labour II, Chennai.

3. The learned counsel further submitted that an Amendment was made on 31.05.2010, enhancing the minimum wages from Rs.4,000/- to Rs.8,000/-, Hence, when the amendment was made much prior to the accident, which took place on 15.09.2011, the Deputy Commissioner of Labour should have fixed the minimum wage at Rs.8,000/- instead of Rs.4,000/-. When similar case came before this Court and dealing with the same in C.M.A.No.2558 of 2015 dated 28.06.2019, in the case of R. Prakasam vs M/S A to Z Cargo Carriers, this Court has held as follows:

" 11. Now, coming to the reduction of the monthly remuneration from Rs.9787/- to Rs.8000/- as argued by the learned Counsel for the appellant, it is relevant to extract both the old provision and also the amended provision here under:

'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.

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

In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to

different injuries specified in Schedule I.'

A proper conjoint reading of both the provisions, namely, old and amended provision would clearly go to show that the Act has amended such provision on 18.01.2010 removing the outer sealing limit of Rs.4,000/- and a Notification also has been issued by the Central Government on 31.5.2010 fixing Rs.8,000/- as a notified amount. Therefore, the reduction from Rs.9787/- to Rs.8000/- is uncalled for. Accordingly, it is restored back to Rs.9787/-.

4. Therefore, when the accident had occurred on 15.09.2011, which is about 21 months later from the date of issuance of Amendment i.e, on 18.01.2010, it goes without saying that the Deputy Commissioner of Labour-II should have followed the enhanced minimum wages of Rs.8,000/- as per the Amendment, which came into force on 18.01.2010.

5. Therefore, fixing the minimum wage as Rs.8,000/- the quantum of compensation is calculated as under:-

$$60/100 \times 209.92 \times 8000 \times 35/100 = \text{Rs.}3,52,665/-$$

6. In view of the above the Award is modified to Rs.3,52,665/- (Three lakhs fifty two thousand six hundred sixty five only).

7. It is submitted by the learned counsel for the appellant that the appellant has withdrawn the entire award amount of Rs.2,44,662/- deposited by the second respondent. Therefore, the second respondent is hereby directed to deposit the balance amount of Rs.1,08,003/- (Rupees One lakh eight thousand three only) along with interest at 12% from 16.10.2011 to till date for Rs.3,52,665/- since no interest was awarded by the Deputy Commissioner of Labour.

8. The second respondent is directed to deposit the balance amount of Rs.1,08,003/- (Rupees One lakh eight thousand three only) along with interest at 12% on Rs.3,52,665/- from 16.10.2011 till date within a period of four weeks from the date of receipt of a copy of this order.

9. On such deposit, the appellant is permitted to withdraw the amount, on filing appropriate application,

10. With the above modification, the civil miscellaneous appeal is disposed of. No costs.

Sd/-

Assistant Registrar(Ad-II)

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Sub Assistant Registrar

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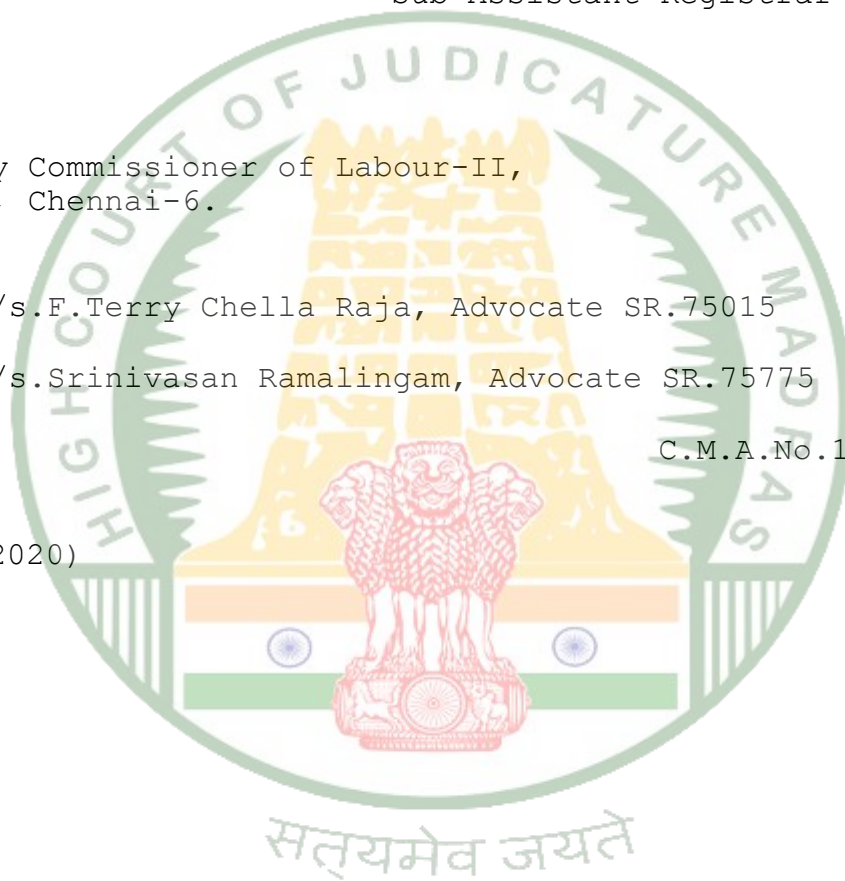
The Deputy Commissioner of Labour-II,
Teynampet, Chennai-6.

+1cc to M/s.F.Terry Chella Raja, Advocate SR.75015

+1cc to M/s.Srinivasan Ramalingam, Advocate SR.75775

C.M.A.No.1580 of 2015

VSN-II(CO)
CB(17/02/2020)



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