

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NO.1588 OF 2018

Kumar

...Appellant

Vs.

1.M.P.Selvaraj

2.The New India Assurance Company Limited
No.45, Moor Street, Parris,
Chennai - 600 001.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the award dated 10.03.2017 made in W.C.No.462 of 2014 on the file of the Deputy Commissioner of Labour - II, Chennai.

For Appellant : Ms.M.Malar & Mr.F.Terry Chella Raja
For Respondent-2: Mr.J.Michael Visuvasam
R1 : Ex-parte

J U D G M E N T

Challenging the Award passed by the Commissioner of Workmen's Compensation Court [Deputy Commissioner of Labour - II] Chennai dated 10.03.2017, the claimant/appellant has preferred the above Civil Miscellaneous Appeal.

2.According to the claimant/appellant, he was working as an Auto Driver under the first respondent / employer and was earning the wages, a sum of Rs.10,000/- per month. The vehicle was insured by the second respondent and the insurance was in force as it covered for the period between 08.11.2013 and 06.11.2014. On 27.10.2014, when he was driving his Auto-Rickshaw from Pozhichalur to Pammal, an unknown motorcyclist came in the opposite direction in a rash and negligent manner. In order to avoid collision, the appellant applied sudden break, in which the Auto-Rickshaw capsized. In the accident, the appellant suffered injuries viz., (i) Grade III B compound fracture in lateral malleolus right leg; (ii) lacerated wound medial aspect of right ankle; (iii) soft tissue defect over lateral aspect of

right ankle; and (iv) multiple injuries all over the body. He had taken first aid at Government Hospital, Chrompet and got admitted in Dr.Rajiv Gandhi Government General Hospital on 28.10.2014 and underwent surgery. On 01.11.2014, he was discharged and thereafter, he was treated as an out-patient.

3.The Authority under Workmen's Compensation Act has found the factum of accident and the employment status of the claimant under the first respondent on the date of accident viz., 27.10.2014 were proved. Since the vehicle was covered by insurance for a period between 08.11.2013 and 06.11.2014, by the second respondent, fixed the responsibility of payment of compensation on the insurance company.

4.The age of the claimant was fixed at 33 years as per the date of birth found in Ex.P4 - the driving license. The Doctor, who was examined as a witness, has deposed 45% disability. However, the Authority has fixed the physical disability at 35%. Even though the Authority has calculated the income of the claimant, as per Government Order in G.O. (2D) No.3, Labour and Employment Department, dated 27.01.2014, fixing the basic pay as Rs.7,479/- and Dearness Allowance of Rs.2,648/- totalling to Rs.10,127/- as monthly wages, but restricted the same as Rs.8,000/- per month, as per Section 4(1-B) of the Employees' Compensation Act, 1923 (shortly "the Act"). The award of compensation was computed at Rs.3,38,788/-. Further, in view of the amended section 4(1)(c)(2-a) of the Act, the actual medical expenditure was taken at Rs.37,806/- and arrived at the total compensation of Rs.3,76,594/- along with interest @ 12% per annum from the date of accident.

5.The grievance of the claimant / appellant is that he has suffered severe injuries in his right ankle and underwent surgery. Therefore, the assessment of physical disability at 45% as opined by the Doctor should have been taken and in view of the fracture in malleolus bone of right ankle, the Authority should have taken the loss of earning capacity at 100%.

6.The learned counsel for the appellant would contend that as per the judgment of this Court in SARASWATHI AND OTHERS VS. PACIFICA CHENNAI PROJECT INFRASTRUCTURE CO. PVT. LTD., [2018 (2) TN MAC 798] and the judgment of the Hon'ble Supreme Court JAYA BISWAL AND OTHERS VS. BRANCH MANAGER, IFFCO TOKIO GENERAL INSURANCE CO. LTD., [2016 (1) TN MAC 289 (SC)] the Authority should have fixed the actual earning of the appellant for calculating the compensation.

7.I have considered the submissions.

8. In so far as the status of the employee, accident, age and liability to pay compensation are concerned, there is no dispute. The dispute revolves around the quantum of compensation on two grounds viz., (i) percentage of physical disability; and (ii) monthly income. In so far as the contention of the claimant with regard to the physical disability is concerned, I have found that he was treated for lateral malleolus fracture on his right leg. As per the medical evidence, if it is a minor fracture of malleolus bone the victim can walk in a day or two. If it is a major fracture, it may take a maximum of 3 to 4 months time to cure. Otherwise, there is no disability, as such, permanent disability occurred on account of the above said injury. Apart from this, all the other injuries are minor injuries. Therefore, considering the nature and graveness of the injuries, the Authority under the Act, has rightly fixed the physical disability at 35%. I do not consider that it will affect the earning capacity of the claimant at 100% as claimed by him. Therefore, there is no reason to interfere with the percentage of disability fixed by the Authority.

9. In so far as the restriction of monthly wages at Rs.8,000/- is concerned, Section 4(1-B) of the Act, fixes the ceiling of the monthly wages. In this regard, the Notification issued by the Central Government vide Notification No. S.O.1258 (E) dated 31.05.2010, is extracted hereunder:

"Section 4(1-B) of the Employees' Compensation Act, 1923 - Employees' Compensation - Amount of Compensation - Amount of monthly wages specified for purposes of section 4(1)

NOTIFICATION NO.S.O.1258(E) DATED 31-5-2010

In exercise of the powers conferred by sub-section (1-B) of section 4 of the Employees' Compensation Act, 1923 (8 of 1923), the Central Government hereby specifies, for the purposes of sub-section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the Official Gazette, namely:-

"Eight thousand rupees". "

When there is a limit fixed by the statute in respect of monthly wages, the Authority cannot expand the scope and provide compensation at random as claimed.

10. The Hon'ble Supreme Court in Jaya Biswal's case (cited supra) had considered the facts and circumstances of that particular case and fixed the monthly wages of the injured at that particular rate. The judgment was not passed in rem and

there is no discussion on Section 4(1-B) of the Act and the Notification issued by the Central Government vide Notification No.S.O.1258(E) dated 31.05.2010. As long as there is no discussion on Section 4(1-B) of the Act, I do not think that the said judgment can be applied to the case on hand.

11.Likewise, in the judgment of Saraswathi's case (cited supra) the Hon'ble Mr.Justice N.Kirubakaran has expressed his concern over non-revision of minimum wages by the Central Government from the year 2010 and after considering the revision of minimum wages fixed by the State Government in G.O.No.27 dated 18.06.2014, fixed the monthly wages of the deceased employee at Rs.16,704/- as against Rs.8,000/-. But in the very same judgment, the learned Judge has also observed that the Authorities are bound to adhere to the provisions of the Act and in answer to the question in respect of the same, has observed that Employees' Compensation Commissioner is left with no other option except to follow the Notification issued by the Central Government and restricted the monthly wages of the deceased employee to Rs.8,000/-. Therefore, it can be construed that there is no discussion on Section 4(1-B) of the Act and no observation with regard to the non-applicability of the monthly wages fixed by the Central Government.

12.In fact, from a reading of Section 4(1-B) of the Act, it is seen that the Central Government, after considering the price index, had fixed the monthly wages and issue Notification periodically. This issue was discussed by this Court in its judgment in UNITED INDIA INSURANCE COMPANY VS. SEETHAMMAL AND OTHERS [2015 (2) TN MAC 89] wherein it is held as under:

"21. A perusal of the above, it is explicit that for the death of the employee, an amount equal to fifty per cent of his monthly wages multiplied by relevant factor or one lakh and twenty thousand whichever is more, has to be awarded towards compensation and for the purpose of computing such compensation, monthly wages at a sum of Rs.8,000/- has to be considered. It is pertinent to note that earlier before amendment, the said wages were fixed at a sum of Rs.4,000/- and Explanation II specifically restricted to Rs.4,000/- only even if it exceeds. However, by virtue of Act 45 of 2009, the said restriction came to be omitted and in its place, a sum of Rs.8,000/- has been substituted by way of Notification stated supra. It is to be noted that while amending the said clause, no restriction has been attached or specified that

if the monthly wages of the deceased employee exceeds Rs.8,000/- whether it should be considered at Rs.8,000/- only. Therefore, in this context, the learned counsel appearing for the claimants would vehemently contend that since no restriction is imposed in case the monthly wages of the deceased employee exceeds Rs.8,000/- since the Act itself is a beneficial legislation, liberal interpretation has to be made which would be beneficial to the claimants.

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24. From the above, it is clear only in order to enhance the compensation payable to worker for death or for permanent disability, the amendment came into force while empowering the Central Government to enhance the minimum rates of the said compensation from time to time as well as to specify the monthly wages in relation to an employee for the purpose of the aforesaid compensation. Therefore, fixing the minimum wages by way of amendment at Rs.8000/- is only for the present purpose and it is likely to be enhanced from time to time. Hence, the contention of the learned counsel that as there is no ceiling limit is fixed at Rs.8000/-, it should be construed liberally only as minimum and not maximum and thereby, the wages of the deceased employee if established that it is more than 8000/-, it can be considered, cannot be accepted. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute. In my considered view, when the intent of the legislature is clear while amending the Act to enhance the minimum rates of the compensation from time to time as well as to specify the monthly wages in relation to an employee for the purpose of the said compensation, liberal interpretation beyond the prescription made in the Act, is not at all required. Further it is pertinent to note that while amending the Act, the legislature has consciously in its wisdom, omitted the Explanation II of Section 4-A of the Act only in order to enhance the minimum rates of

compensation. In this regard, it is worthwhile to refer a decision of the Honble Supreme Court in State of Jharkhand v. Govind Singh, (2005) 10 SCC 437, at page 443 wherein, it has been held as under in para 15.

"15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so. (See Frankfurter: Some Reflections on the Reading of Statutes in Essays on Jurisprudence, Columbia Law Review, p. 51.)

25. In State v. Parmeshwaran Subramani, (2009) 9 SCC 729, at page 734 the Honble Apex Court has held as under in para 9:

"9. In a plethora of cases, it has been stated that where the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature,

correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony (Union of India v. Deoki Nandan Aggarwal)".

26. Therefore, where the language is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. Having regard to the above, I am unable to give accept the contention of the learned counsel for the claimants. Accordingly, I am of the view that the monthly wages specified by the statute by way of amendment at Rs.8000/- is appropriate for consideration for the purpose of computing the compensation and hence, the Deputy Commissioner has rightly calculated the compensation by considering the wages of the deceased workman at Rs.8000/-, which, in my opinion, requires no interference."

13. The learned counsel for the appellant would also rely on the recent judgment of the Hon'ble Supreme Court in K.SIVARAMAN VS. P.SATHISHKUMAR [CIVIL APPEAL NO.9046 OF 2019 DATED 13.02.2020]. The said judgment has also been discussed by the Hon'ble Mr. Justice S.Vaidyanathan in SUDHA AND OTHERS VS. M.ANTHONY RAJA AND ANOTHER [CMA NO.2020 OF 2018 DATED 13.02.2020]. The following paragraphs from the said judgment will be relevant:

"9. Even the Apex Court in a decision rendered in the case of Jaya Biswal vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd. (2016 (1) TNMAC 289 (SC)), has not considered the deletion of Explanation-II to Section 4(1) (b) of the Workmen's Compensation Act, 1923 and the introduction of Section 4(1-B) of the Act, with effect from 2010, which fixes the ceiling limit over and above the maximum prescribed under the Act. Relevant portion of the said

judgment, reads thus:

"25. The monthly wage of the deceased arrived at by the learned Commissioner was Rs.10,000/-. The date of birth of the deceased according to the Driver's License produced on record is 01.07.1984. The date of death of the deceased is 19.07.2011. Thus, according to Schedule IV of the E.C. Act, the 'completed years of age on the last birthday of the employee immediately preceding the date on which the compensation fell due', is 27 years, the factor for which is 213.57. Hence, the amount of compensation payable to the appellants is calculated as under: Rs.10,000/- x 50% x Rs.213.57 = Rs.10,67,850/-. Funeral expenses to the tune of Rs.25,000/- are also awarded. The total amount of compensation payable thus comes to Rs.10,92,850/-.

26. Further, an interest at the rate of 12% per annum from the date of accident, that is 19.07.2011, is also payable to the appellants over the above awarded amount. In light of the unnecessary litigation and the hardship of the appellants in spending litigation to get the compensation which was rightly due to them under the Act, we deem it fit to award the appellants costs as Rs.25,000/-."

10. Even in the recent judgment dated 13.02.2020 rendered in Civil Appeal No.9046 of 2019 in the case of K.Sivaraman vs. P.Sathishkumar, the Apex Court has not considered the deletion of Explanation-II to Section 4(1)(b) of the Act. In the said case, the accident took place on 31.01.2008 and that, there was a Notification increasing the minimum wages from Rs.4,000/- to Rs.8,000/-. Based on the amendment, the High Court enhanced the compensation. However, to do complete

justice under Article 142 of the Constitution, the Apex Court did not interfere with the award of compensation ordered by the High Court. This Court will have to see both the deletion of Explanation-II to Section 4(1)(b) and introduction of Section 4(1-B) with effect from 18.01.2010, as the introduction of the Legislature was to have maximum ceiling limit with regard to wages while claiming compensation.

11. Once the facts and background of the case are different, the reliance on a judgment may not be treated as a precedent. The Hon'ble Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533, has held that, if it is found that the facts of the case cited in a judgment of the higher Forum totally differs with the one on hand, then there is no compulsion for the subordinate Courts to blindly rely on the same to arrive at a conclusion. For better appreciation, relevant paragraph of the said judgment is extracted hereunder:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

Thus, it has been categorically held that, even a small fact would entitle the High Court to differ/distinguish and not follow the decision of the higher Forum.

12. As the amendments have not been properly brought to the attention of the Apex Court and that the decisions are distinguishable, the ratio laid down in Jaya Biswal's case (cited supra) and Sivaraman's case (cited supra), may not be applicable to the facts of this case.

13. While deleting Explanation-II to Section 4(1)(b) of the Act, Section 4(1-B) was introduced with effect from 18.01.2010. That being the case, the ceiling limit over and above is not permissible, as the Legislature thought there shall be compensation payable to the Insurer or the dependants, but, there cannot be any unjust enrichment.

14. Hence, not even a pie more than the wages, including batta received by the deceased at the time of his death can be taken into account for the purpose of granting compensation, when the ceiling limit is fixed at Rs.8,000/- per month, w.e.f. 31.05.2010. If a sum of Rs.8,000/- is taken as wages, as contended by the learned counsel for the Appellants, the purpose of the Act itself would be defeated. It would amount to the Court legislating the enactment than the one legislated by the Parliament."

14.I do agree with the view taken by this Court in the above judgment. It may be true that in certain cases, the persons earning higher income than Rs.8000/- may be put to loose in terms of quantum of compensation. But, most of the workers would be earning around Rs.8000/-. At the same time, it cannot be denied, there are cases where the beneficial legislation has been exploited unscrupulously. Therefore, the appellant/claimant cannot now examine the object of notification issued by the Central Government. When a statute prescribes a particular wage, as notified by the Central Government, the Authorities cannot expand the scope and fix the compensation at random, on the basis of documents submitted by the claimants. In that view of the matter, I am of the considered opinion that the Authority under the Workmen's Compensation Act, has rightly calculated the compensation. The award dated 10.03.2017 passed in W.C.No.462 of 2014 by the Deputy Commissioner of Labour - II, Chennai does not suffer any infirmity warranting interference. Accordingly, the same is confirmed.

15.In fine, the Civil Miscellaneous Appeal is

dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

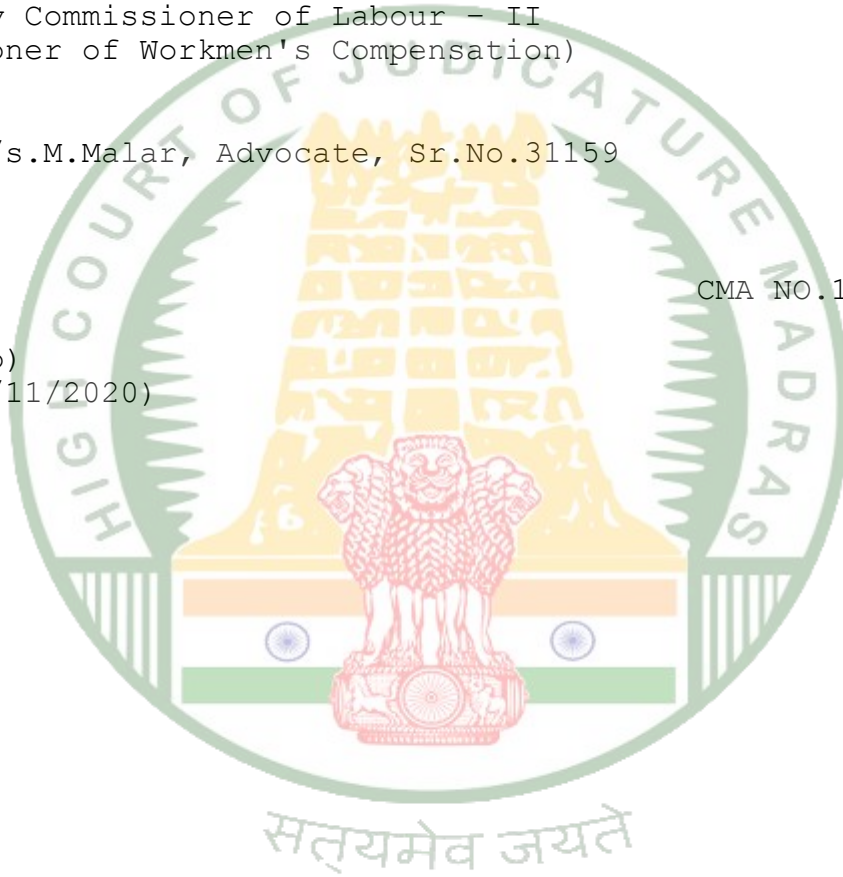
To

The Deputy Commissioner of Labour - II
(Commissioner of Workmen's Compensation)
Chennai-6.

+1cc to M/s.M.Malar, Advocate, Sr.No.31159

CMA NO.1588 OF 2018

vsn ii (co)
rr ii (09/11/2020)



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