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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.3436 of 2019

1. Shahitha Parvin
2. Angammal ... Appellants

vs.

1. M. Prabhakaran
2. M/s. Reliance General Insurance Co. Ltd.,
No.15-V, PLA Kanagu Towers,
11th Cross, Main Road,
Thillai Nagar,
Tiruchirapalli 620 018. ... Respondents

Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, 1923 against the orders dated 28.09.2016 and 06.03.2017 passed in W.C.No.470 of 2015 on the file of Commissioner for Workmen's Compensation & Deputy Commissioner of Labour, Coonoor.

For Appellants : Mr.C. Thangaraju

For 1st Respondent : No appearance, in spite of
name being printed in the cause list.

For 2nd Respondent : Mr.S.Arunkumar

JUDGMENT

The 1st Appellant is the wife of the deceased Sakthivel and the 2nd Appellant is the mother of the deceased. They have come up with the present Civil Miscellaneous Appeal challenging the orders dated 28.09.2016 and 06.03.2017 passed by the Commissioner of Workmen's Compensation viz. Deputy Commissioner of Labour in W.C.No.470 of 2015, seeking enhancement of compensation.

2. According to the Appellants, the deceased was aged 24 years at the time of accident and was earning a sum of Rs.10,000/- as monthly wages apart from a sum of Rs.100/- as daily batta.



3. It is not in dispute that, the deceased Sakthivel was working as a Cleaner in the vehicle belonging to the 1st Respondent herein. It is also not in dispute that, the deceased died out of and in the course of employment under the 1st Respondent herein.

4. Learned counsel for the Appellant contended that, the minimum wages of the deceased workman fixed by the Authority at Rs.7,283/- per month, is less than the amount prescribed in the Notification vide GO.(2D)J.No.91, dated 12.12.2013, under the Minimum Wages Act, and that, the Authority ought to have fixed at least Rs.8,000/- as per Section 4(1-B) of the Employee's Compensation Act, 1923.

5. The Workmen's Compensation Act, 1923, was changed as the Employee's Compensation Act, 1923. Under the new Act, Explanation-II to Section 4(1)(b) has been deleted and section 4(1-B) has been introduced with regard to fixation of monthly wages with effect from 18.01.2010.

6. For better appreciation, Section 4 of Workmen's Compensation Act, 1923 and Section 4 of the Employee's Compensation Act, 1923, are extracted below:

Section 4 of the Workmen's Compensation Act, 1923, reads as follows:

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 percent 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 percent) of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of (ninety thousand rupees), whichever is more;

Explanation I. For the purposes of clause (a) and clause (b), "relevant factor", in relation to a



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workman means the factor specified in the second column of Schedule IV against the entry in the first column of that schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II. 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,

.....

Section 4 of The Employee's Compensation Act, 1923 reads thus:

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

(a) Where death results from the injury	An amount equal to (fifty per cent.) of the monthly wages of the deceased (employee) multiplied by the relevant factor; or
(b) Where permanent total disablement results from the injury	An amount of (one lakh and twenty thousand rupees), whichever is more; an amount equal to (sixty per cent.) of the monthly wages of the injured (employee) multiplied by the relevant factor, or an amount of (one lakh and forty thousand rupees), whichever is more;

(provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).

Explanation 1. - For the purposes of clause (a) and clause (b), "relevant factor", in relation to a (employee) means the factor specified in the second column of Schedule IV against the entry in the first column of that schedule specifying the number of years which are the same as the completed years of the age of the (employee) on his last birthday immediately preceding the date on which the compensation fell due.



[****]

.....

[(1-B)] The Central Government may, by

notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.]

.....

7. In the Workmen's Compensation Act, 1923, in respect of Section 4(1)(b), after Explanation-I, Explanation-II reads as follows:

EXPLANATION II: 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

The above Explanation was omitted in the Act with effect from 18.01.2010, and Section 4 (1-B), which was introduced on the same day, reads as follows:

(1-B). THE CENTRAL GOVERNMENT MAY, BY NOTIFICATION IN THE OFFICIAL GAZETTE, SPECIFY, FOR THE PURPOSES OF SUB-SECTION(1), SUCH MONTHLY WAGES IN RELATION TO AN EMPLOYEE AS IT MAY CONSIDER NECESSARY.

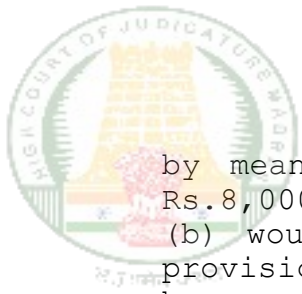
8. For revision of amount mentioned supra in Explanation-II that was deleted, there should be proper legislation. Whereas, for the purpose of increasing wages under Section 4(1-B), a Notification is suffice. Pursuant to the amendment, a Notification was issued on 31.05.2010, which reads as follows:

NOTIFICATION NO.S.O.1258(E), dated 31.5.2010

In exercise of the powers conferred by sub-section (1B) of section 4 of the Employee's 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".

9. A reading of the aforesaid Amendment would make it very clear that, the intention of the Legislature was to fix maximum salary and the monthly wage limit for awarding compensation is only Rs.8,000/- and in case of any Revision, it can be modified



by means of a Notification, enhancing the monthly wages from Rs.8,000/-. Mere deletion of Explanation-II from Section 4(1)(b) would not mean that, the Legislation has removed the said provision and that, the fixation of Rs.8,000/- as minimum wages by means of a Notification, pursuant to introduction of Section 4(1-B) itself, is bad.

10. The Workmen's Compensation Act, 1923, now known as Employee's Compensation Act, 1923, intended to grant benefits to the injured/dependent person, and it is not an unjust enrichment, though, it may be sad that the employee suffered injury or death out of and in the course of employment.

11. The contention of the learned counsel for the Appellants that, a person drawing less than Rs.8,000/- should also be treated as one drawing Rs.8,000/-, and compensation should be paid by fixing the monthly wages at Rs.8,000/- cannot be accepted, as, that is not the spirit of the Legislation. Once the monthly income exceeds Rs.8,000/-, the Authority will have to restrict it to Rs.8,000/- as per the Notification issued from time to time, in terms of Section 4(1-B) of Employees' Compensation Act, 1923, and not more than that. If the monthly income received by the injured or the deceased is not established by the employer or the dependents, the Authority will have to award compensation based on the Notification that prescribes minimum wages per month for the job. This Court is of the view that increasing wages beyond Rs.8,000/- per month beyond what is stipulated, cannot be termed as substitution or insertion, but would amount to tampering the legislation. Even if, minimum wages are above Rs.8,000/-, the Authority can calculate compensation taking Rs.8,000/- as monthly wages, based on the Notification issued under Section 4(1-B) of the Employee's Compensation Act, issued from time to time, and not over and above it.

12. 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.

13. Compensation has to be granted for the injuries suffered by an employee, while in the course of employment and out of employment, and not otherwise. For that purpose, rights of employees are protected by means of a Notification under the Minimum Wages Act, based on the nature of their employment, for which, minimum wages have been prescribed.



14. In the case on hand, the deceased workman was working as a Cleaner and that, based on the Notification issued under the Minimum Wages Act, the Authority has fixed the monthly wages of the deceased at Rs.7283/-. As could be seen from Ex.P4, an Insurance Policy existed on the date of accident and the Authority was perfectly justified in arriving at a sum of Rs.7,95,559/- as compensation, by fixing the monthly wages of the deceased at Rs.7,283/-, as per the minimum wages applicable to the deceased, in view of the Notification dated 12.12.2013. If the contention of the Appellants is accepted, it will amount to opening the pandora's box, and that is not the spirit of the Amendment.

15. In view of the foregoing, this Court is of the view that, the relief sought for by the Appellants cannot be granted. If the compensation ordered by the Authority is still lying in deposit, and if there is no interim order operating against the order of the Authority, it is open to the Appellants/Claimants to claim the same, and the Authority shall disburse the amount after conducting dependent enquiry required in terms of the provisions of the Act, within a period of eight weeks from the date of receipt of a copy of this order.

16. Learned counsel appearing for the 2nd Respondent/Insurance Company submitted that, if the award amount has not been deposited, the same will be deposited by the Insurance Company within a period of eight weeks from the date of receipt of a copy of this order.

17. As the 2nd Respondent/Insurance Company is not the employer of the deceased workman, as per the Workmen's Compensation Act, more particularly, in view of Section 30 and 30-A of the Act, there is no need for them to deposit the amount for filing an Appeal within 60 days from the date of receipt of the orders passed under Employees' Compensation Act. It is made clear that, if the Insurance Policy is silent about the payment of interest, then, the injured or the dependents of the deceased, can claim interest only from the employer.

18. In fine, the Civil Miscellaneous Appeal stands dismissed, with the above directions and observations. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



To :

The Commissioner for Workmen's Compensation /
Deputy Commissioner of Labour, Coonoor.

+1cc to M/s.S.Arunkumar, Advocate Sr.557

+2cc to Mr.A.Sathish Kumar, Advocate Sr.148

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srg 14/07/2020