

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.2020 of 2018

1. Sudha
2. Minor Sushmitha
3. Minor Sruthi
4. Kanthamani

...Appellants

Minors are represented by their mother Sudha as natural guardian and next friend

vs.

1. M.Anthony Raja
(R1 remained ex-parte before the Tribunal)
2. United India Insurance Company Limited,
No.134, Greams Road,
IV Floor, Annasalai,
Chennai - 600 006.

....Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the Award dated 28.06.2018 made in W.C.No.130 of 2016 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellants : Mr.F.Terry Chellaraja
For 2nd Respondent : Mr.J.Michael Visuvasam
R1-Exparte

J U D G M E N T

Seeking enhancement of compensation for the death of the deceased, appellants/claimants have come up with the present Appeal challenging the Award dated 28.06.2018 passed by the Deputy Commissioner of Labour-II, Chennai in W.C.No.130 of 2016, whereby, a sum of Rs.6,82,760/- was awarded as compensation.

2. Heard Mr.F.Terry Chellaraja, learned counsel for the Appellants and Mr.J.Michael Visuvasam, learned counsel appearing for the 2nd Respondent/Insurance Company.

3. It is seen that the deceased Kumaresan was working as a loadman under the 1st Respondent herein, in his Lorry bearing Registration No.TN-22-DL-6834. At the time of accident, the

deceased was earning a sum of Rs.15,000/- as monthly income plus Rs.200/- per day as daily batta. According to the Appellants, who are the wife, minor daughters and mother of the deceased, respectively, the deceased Kumaresan was the only bread winner of their family.

4. It is stated by the learned counsel for the Appellants that, an amendment was made to the Employees' Compensation Act, 1923, whereby, the minimum monthly wages was enhanced from Rs.4,000/- to Rs.8,000/- with effect from 18.01.2010 and sub-section 4(1-B) of the Act was introduced to that effect. While deleting Explanation-II to Section 4(1)(b) of the Employees' Compensation Act, 1923, it was substituted by Section 4(1-B) w.e.f. 18.01.2010.

5. In the case on hand, the accident occurred on 16.03.2016 and the deceased is covered by an Insurance Policy. The minimum monthly wages was enhanced from Rs.4,000/- to Rs.8,000/- with effect from 18.01.2010. However, it was gazetted only w.e.f. 31.05.2010, on which date, the amendment came into force. The Gazette Notification is extracted below:

The Employees' Compensation Act, 1923

- Notification under Sec. 4(1-B)

S.O.1258(E). - In exercise of the powers conferred by sub-section (1B) of Section 4 of the Employees' Compensation Act, 1923 (8 of 1923), the Central Government hereby specifies, for the purpose 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".

6. The contention of the learned counsel for the Appellants that, Section 4(1-B) was introduced w.e.f. 18.01.2010 may be correct. But, revision of wages was gazetted only w.e.f. 31.05.2010. The contention of the learned counsel for the Appellants that, in the light of the amendment, minimum wages should automatically be enhanced to Rs.8,000/- for computation of loss of wages of the deceased, cannot be accepted, as otherwise, the purpose of introduction of Section 4(1-B) of the Act and the Gazette Notification of the amendment, particularly deleting Explanation-II itself, would be defeated. When an employee draws wages less than Rs.4,000/- on the date of the accident, compensation will have to be taken into account based on the minimum wages applicable on the date of accident.

7. In this case, the Authority has rightly taken note of the minimum wages of the deceased, which is more than Rs.4,000/- prescribed under the Act, which was in existence on the date of accident on 25.01.2010. The purpose of the enactment is not unjust enrichment, and it is to pay compensation for the accident arising out of and in the course of employment. In the present case on hand, compensation granted as in the case of Motor Accident Claims, cannot be granted.

8. In such circumstances, learned counsel for the Appellants has relied on a decision rendered in the case of Periyannan vs. K.Udhayakumar reported in 2018 (1) TN MAC 115, to contend that, the learned Single Judge of this Court has taken note of the monthly wages of the deceased as Rs.9,500/-. The said decision cannot be accepted, as it runs counter to the provisions of the Act, which are extracted supra, and I cannot legislate, more particularly, in the light of the decisions rendered in C.M.A.No.3436 of 2019 vide judgment dated 02.01.2020; C.M.A.No.327 of 2020 vide judgment dated 12.02.2020 and C.M.A.No.35 of 2020 vide judgment dated 25.02.2020.

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.

15. In view of the foregoing, this Court holds that, the order passed by the Deputy Commissioner of Labour, Coonoor granting compensation based on the monthly wages drawn by the deceased at Rs.5,448.50, which is more than Rs.4,000/- prescribed as monthly wages under the Act, that was prevalent on the date of the accident is wholly unjustified. Since money value has gone down and that the accident has taken place on 16.03.2016, this Court is not inclined to interfere with the order passed by the Authority under the Workmen's Compensation Act, and confirms the compensation granted.

16. At this stage, it is further contended by the learned counsel for the Appellants that, though dependants' enquiry was conducted, the deposited amount has not been paid to the dependants of the deceased, i.e., the Appellants herein.

17. As the said aspect cannot be gone into the present Appeal, it is open to the Appellants to challenge the same in the manner known to law. Hence, leaving the issue open to the parties as to whether the said order can be challenged or not, liberty is granted to the Appellants to challenge the said issue, in accordance with law.

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

Sd/-

Assistant Registrar

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Sub Assistant Registrar

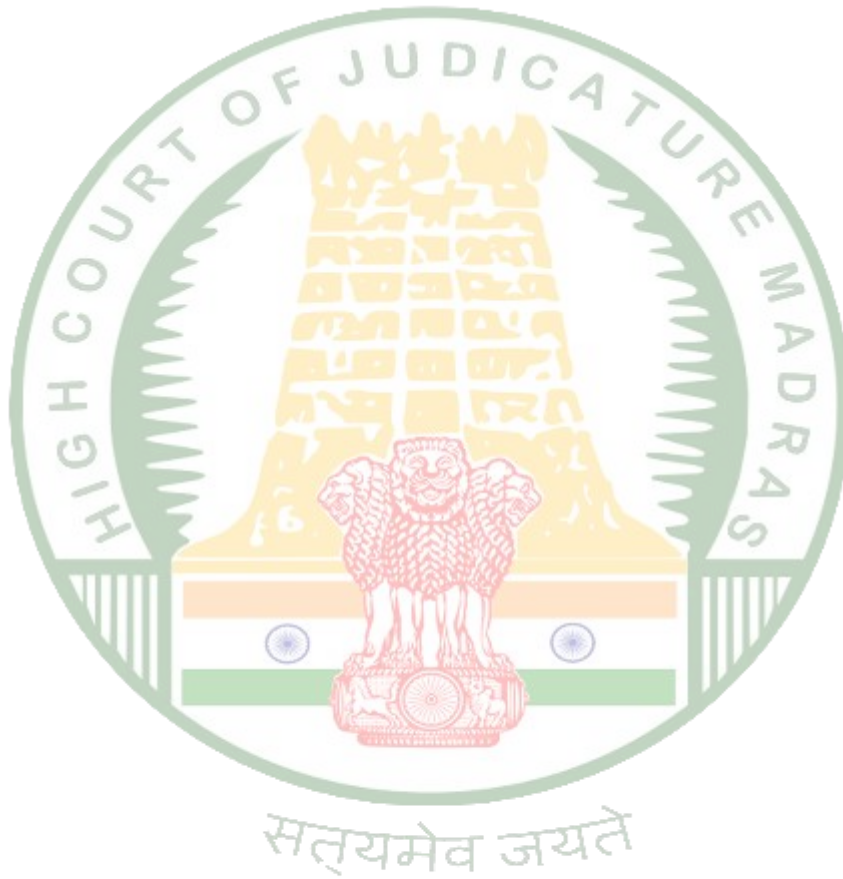
To:

The Deputy Commissioner of Labour-II,
Chennai.

+1cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.12180

C.M.A.No.2020 of 2018

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