

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.3438 of 2019

1.Saradha
2.Selvi Sangeetha
3.Minor Haripriya

... Appellants/Petitioners

Minor appellant is represented by her
mother guardian 1st appellant

-vs-

1.Secretary,
Bharathi Higher Secondary School,
Reddipatti Post,
Namakkal District.

2.M/s.United India Insurance Company Limited,
No.2, Dr.Sankaran Road,
Namakkal District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of
Workmen's Compensation Act 1923 against the order dated
28.12.2017 passed in W.C. No.248 of 2015 on the file of
Commissioner for Workmen's Compensation & Deputy Commissioner of
Labour, Coonoor.

For Appellants : Mr.C.Thangaraju

For Respondents: Mr.D.Bhaskaran for R2
R1-No appearance

JUDGMENT

This appeal has been filed by the appellant against the
order dated 28.12.2017 passed by the learned Deputy Commissioner
of Labour, Coonoor in W.C. No.248 of 2015.

2.The appeal rises the following substantial questions of
law:

- 'a)Whether the Commissioner is right in not taking the
income of the deceased at Rs.8,000/-
- b)Whether the Commissioner is right in not awarding

interest at 12% on the sum of Rs.5,000/- towards funeral expenses of the deceased Murugan?'

3.Learned counsel appearing for the appellant would submit that appellants are the wife and daughters of the deceased Murugan respectively and the deceased was working as a Conductor under the first respondent Opposite Party No.1 in the Ashok Leyland School Bus bearing Reg. No.TN-57-C-9459. While so, on 05.02.2010 at about 18.15 hrs. at Bharathi Higher Secondary School, Reddipatti, when the deceased was on duty in the process of cleaning the bus as a Conductor on the above said vehicle, died on the spot due to massive heart attack since there was a heavy workload offered to him. Learned counsel appearing for the appellant further submitted that when the Central Government has already issued an order in S.O.1258(E) dated 31.05.2010 fixing the minimum wages at Rs.8,000/- on par with the employees of the Central Government with effect from 18.01.2010, the learned Deputy Commissioner of Labour, Connoor has miserably failed to take into account the said order issued by the Central Government and fixed the monthly income of the deceased at Rs.4,000/-. Therefore, the quantum of compensation has been substantially reduced and as a result the appellants/wife and daughters have been put to grave prejudice. Hence, the said grave error should be rectified. Learned counsel appearing for the appellant further submitted that this Court by order dated 29.08.2019 passed by this Court in C.M.A. No.1580 of 2015, following the said Circular, accepting the minimum wages at Rs.8,000/-, has fixed the monthly income at Rs.8,000/- to be payable to the claimant. Learned counsel for the appellant further submitted that though the learned Deputy Commissioner was inclined to award a sum of Rs.5,000/- towards funeral expenses, the same has not been calculated while arriving at the compensation. Therefore, learned counsel for the appellant prays for allowing the appeal following the said order.

4.Mr.D.Bhaskaran, learned counsel appearing for the Insurance Company submitted that the claimants prayed for only the less compensation. Therefore, the Deputy Commissioner has fixed Rs.4,000/- as monthly income.

5.Coming to the fixation of monthly wages, at the outset, it is to be noted that an amendment was made to Employee's Compensation Act, 1923, with effect from 18.01.2010, in and by which, minimum monthly wages has been increased to Rs.8,000/- from Rs.4,000/- and this was also subsequently notified in Government Gazette on 31.05.2010. Therefore, it is not known on what basis the learned Deputy Commissioner has fixed Rs.4,000/- towards the monthly salary when the accident had occurred on 05.02.2010, which is admittedly much after the Gazette Notification dated 31.05.2010 issued by the Government of India fixing monthly wages at Rs.8,000/- from Rs.4,000/-. By following the said circular, this Court has already passed a similar order

in C.M.A. No.1580 of 2015 dated 29.08.2019 fixing a sum of Rs.8,000/- towards monthly wages. Thus, by following the said judgment, this Court hereby awards a sum of Rs.8000/- towards monthly wages. Therefore, monthly wages stands modified to Rs.8,000/-, instead of Rs.4,000/- fixed by the learned Deputy Commissioner.

6.At this stage, it is argued by the learned counsel for the Insurance Company that the claimants themselves claimed only a sum of Rs.5,00,000/- towards monthly wages and therefore, taking note the said claim of the claimant, the learned Deputy Commissioner has fixed a sum Rs.4,000/- towards monthly wages, hence, the same need not be interfered with.

7.The above said submission of the learned counsel for the Insurance Company cannot hold good, in view the of the judgment of the Hon'ble Apex Court in the case of Ramla & others v. National Insurance Company Limited and others reported in 2019 2 SCC 192 holding that even if the claimant fails to make suitable prayer for just compensation, it is the duty of the Court to consider the payment of just and reasonable compensation. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"Though the claimants had claimed a total compensation of Rs.25,00,000/- in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or Court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim an enhanced amount. The Courts are duty bound to award just compensation."

8.Learned counsel for the appellant further submitted that though the learned Deputy Commissioner was inclined to award a sum of Rs.5,000/- towards funeral expenses, the same has not been calculated while arriving at the compensation.

9.In view of the submission made by the learned counsel for the appellant, this Court is inclined to award Rs.5,000/- towards funeral expenses and therefore, Rs.5,000/- is hereby fixed.

10.In the light of the above said Circular issued by the Central Government as well as the above said judgment of the Apex Court, this Court hereby awards a sum of Rs.6,17,360/- (8000 x 50/100 x 153.09 + 5000) towards compensation, instead of

Rs.3,06,180/-.

11.In fine, the second respondent Insurance Company is directed to deposit the balance amount along with interest at the rate of 12% per annum after thirty days from the date of accident till the date of deposit to the credit of the W.C. No.248 of 2015 on the file of the Deputy Commissioner of Labour, Coonoor within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, it is open to the claimants to withdraw the entire amount with accrued interest by moving appropriate application. With the above direction, the appeal stands allowed answering the substantial questions of law in favour of the appellants. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Vga

To

The Commissioner for workmen Compensation and
The Deputy Commissioner of Labour,
Coonoor.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.C.Thangaraju, Advocate, S.R.No. 38818

C.M.A. No.3438 of 2019

AD(CO)
GN(29/12/2020)

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