

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.2889 of 2019

1. Amutha
 2. Lakshmanan
- ... Appellants

vs.

1. Thalappakatti Hotels Pvt. Ltd.,
No.5/10, 73E Seven Wells Street,
St. Thomas Mount,
Chennai 600 016.
 2. Reliance General Insurance Co. Ltd.,
Plot No.6, 6th Floor,
Haddows Road,
Nungambakkam,
Chennai 600 034.
- ... Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the Award dated 04.04.2019 made in E.C.No.76 of 2016 on the file of the Joint Commissioner of Labour-I, Chennai.

For Appellants : Ms.M.Malar
For 1st Respondent : Mr.Vijayan Subramanian
For 2nd Respondent : Mr.S.Arunkumar

J U D G M E N T

Seeking enhancement of compensation, Appellants herein, who are the parents of the deceased workman, have come up with the present Appeal, challenging the order dated 04.04.2019 passed by the Joint Commissioner of Labour-I, Chennai in E.C.No.76 of 2016.

2. According to the Appellants/Claimants, their son, the deceased Suryaprakash was working as a Delivery Boy in the 1st Respondent/Hotel and that, he died out of and in the course of employment. Before the Authority, the Appellants claimed that

the deceased was earning a sum of Rs.20,000/- as monthly salary, apart from Rs.250/- as daily batta.

3. The Authority, taking note of the age of the deceased as '19' at the time of accident on 01.07.2016 and fixing his monthly income at Rs.8,000/-, awarded a sum of Rs.9,00,880/- as compensation to be payable to the legal heirs of the deceased, together with interest at 12% per annum from the date of accident till the date of deposit, apart from Rs.5,000/- towards funeral expenses.

4. In the Grounds of Appeal, following Substantial Questions of Law have been raised by the learned counsel for the Appellants:

"(i) Whether the learned Joint Commissioner of Labour-I is right in fixing the monthly wages of the deceased as Rs.8,000/-, when Explanation II of Section 4 of Workmen's Compensation Act, 1923 was deleted as per Employee's Compensation Act, 1923?

(ii) Whether the Joint Commissioner of Labour-I, is right in not awarding penalty in addition to the amount of the arrears and interest thereon under Section 4-A 1(b)?"

5. In support of his case, learned counsel for the Appellants has relied on an Apex Court decision in the case of Jaya Biswal vs. Branch Manager, IFFCO Tokio General Insurance Co. Ltd. (2016 (1) TNMAC 289 (SC)), wherein, it is held as under:

"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/-."

6. This Court has already dealt with the first Substantial Question of Law raised in this Appeal, in a judgment dated 02.01.2020 rendered in C.M.A.No.3436 of 2019. Relevant portion of the said judgment is extracted hereunder:

"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".

"11. 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."

7. The following Notification, which is prospective in nature, was published in the Gazette of India, Extraordinary Part -II, Section 3-Sub-section (ii) on 03.01.2020.

MINISTRY OF LABOUR AND EMPLOYMENT
NOTIFICATION New Delhi, the 3rd January, 2020
S.O. 71(E).— In exercise of the powers conferred by sub-section (1B) of section 4 of the Employee's Compensation Act, 1923 (8 of 1923) and in supersession of the notification of the Ministry of Labour and Employment issued vide number S.O. 1258(E), dated 31st May, 2010; published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated 31st May, 2010, 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:-

"Fifteen thousand rupees"

8. Even the Apex Court in a decision rendered in Jaya Biswal's case (cited supra) 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.

9. 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, 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.

10. As regards the second Substantial Question of Law pertaining to penalty, it is seen that, though no legal plea has been taken, it is the duty cast upon the person, who makes an application before the authority to take an alternate plea that, in case, the Authority comes to the conclusion that the employee or the dependents is entitled to compensation, for the default in remitting the amount within a period of one month, by invoking Section 4-A(3), there shall be interest apart from the arrears which may be granted up to 50% of of such amount due, to the employee or the dependent.

11. In this case, the liability has been foisted on the Insurance Company. When the policy is a Workmen's Compensation policy and that the interest is not agreed to be paid by the Insurance Company, the liability cannot be foisted on the Insurance Company to pay the interest and it is on the employer.

12. The word used in the provisions of the Act is 'employer'. No one can substitute the word 'employer' as insurance company and seek for additional payment in terms of Section 4-A and that the insurance company is not liable to pay. If any liability is foisted on the insurance company by the authority, it is the duty of the insurance company to deposit the amount within the appeal time, failing which, they are liable to pay interest from the date of accident, even if the policy is silent. But, that in any event will not make the Commissioner, to foist the liability on the insurance company about the penalty and interest, if the order is complied with.

13. When there is no plea before the authority concerned, nothing prevented the claimants from taking a plea/alternate plea stating that in case any amount is fixed, the employer shall pay the penalty for the delay in remittance. In this regard, the appellant relied on a decision of the Apex Court in *Praveenbhai S.Khambhayata vs. United India Insurance Co. Ltd.*

and Ors. reported in 2015(1) TN MAC 331(SC) and referred to paragraph 15 of the order, wherein the liability to pay 50% penalty has been foisted apart from 12% interest per annum.

14. It is not sure as to whether an opportunity was given to the employer. The Apex Court, exercising the power under Article 142 of the Constitution of India and referring to another judgment in Deddappa and Ors. v. National Insurance Co. Ltd. reported in 2008 (2) SCC 595, has granted the relief. That apart, exercise of the powers under Section 4-A is left to the discretion of the Commissioner and the Commissioner has not exercised his discretion and in the present case on hand, the liability has been foisted on the Insurance Company. The second Substantial Question of Law is answered accordingly, against the Appellants.

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

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

(aeb)

To: The Joint Commissioner of Labour-I, Chennai.

+1cc to Mr.M.Malar, Advocate, S.R.No.16769

rd(CO)

jrs (27/05/2020)

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