IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.378 of 2021

Duraisamy … Appellant

Vs.

1.Rajavel
(Notice to the 1st respondent may be dispensed with for the time being for which separate petition filed)

2.Royal Sundaram General Insurance Company Limited,
Registered Office No.21, Patullos Road,
Chennai 600 002.
... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923, to set aside the order made in W.C.No.247 of 2018 on the file of the Employee's Compensation Commissioner, Salem dated 17.03.2020 and for enhancement of compensation.

For Appellant : Mr.C.Kulanthaivel

For Respondents: Ms.R.Sree Vidhya for R2
R1-NDW

J U D G M E N T

The order made in W.C.No.247 of 2018, on the file of the Employee's Compensation Commissioner, Salem dated 17.03.2020, is under challenge in the present civil miscellaneous appeal.

2. The substantial question of law raised by the appellant is that the minimum wages notified by the State Government in G.O.Ms.No.91, Labour and Employment Department, dated 12.12.2013 is Rs.11,619/-. However, the Deputy Commissioner of Labour restricted the monthly income of Rs.8,000/- based on the Central Government notification dated 31.05.2010. The State Government in the year 2013, enhanced the minimum wages and issued Government Order fixing the minimum wages as Rs.11,619/- and the

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said minimum wages notified by the State Government is to be adopted for calculation of compensation.

3. The appellant is the claimant and the claim petition was filed on the ground that on 25.10.2018, at about 8.00 p.m., the petitioner was on duty at Multi Axle Goods Vehicle in the Etmadpur, Agra, Utter Pradesh State to Coimbedu, Chennai, Tamil Nadu. While he was driving the lorry, met with an accident. The appellant sustained injuries and filed a claim petition seeking compensation.

4. The Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidences and fixed the monthly income as Rs.8,000/- based on the Central Government notification issued under Section 4(1-B) of the Employees Compensation Act.

5. The learned counsel for the appellant made a submission that the said notification was issued by the Central Government in the year 2010, but, in the year 2013, the State Government enhanced the minimum wages under the Minimum Wages Act. Accordingly, the minimum wages to be paid for the workmen is Rs.11,619/-. In the present case, the accident occurred on 25.10.2018 and therefore, the minimum wages which is beneficial issued by the State Government is to be followed.

6. This Court elaborately considered the issue regarding the fixation of monthly income with reference to the minimum wages either notified by the Central Government or notified by the State Government in C.M.A.No.1800 of 2018 dated 29.01.2021. The relevant paragraphs are extracted hereunder:

> "4. The learned counsel for the appellant states that the said minimum wages is to be fixed for the purpose of calculating the compensation. Contrarily, the Deputy Commissioner of Labour fixed a sum of Rs.8,000/- as per the Central Government Notification dated 31.05.2010. Regarding the fixation of income, this Court elaborately considered the issues in C.M.A.No.897 of 2018 dated 27.01.2021 and the relevant paragraphs are extracted hereunder:
>
> > "10. This Court is of the considered opinion that the statement of objects and reasons categorically enumerates that the general principles of workmen's compensation command almost universal acceptance and India is now nearly one amongst civilised countries in being without legislation embodying those principles. For a

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number of years, the more generous employers have been in a habit of giving compensation voluntarily, but this practice is by no means general. The growing complexity of industry in this Country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible from hardship arising from accidents. An additional advantage of legislation of this type is that by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects of such accidents as do occur. The benefits so conferred on the employee added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour.

11. With reference to the purpose and the object, this Court is of the opinion that a constructive interpretation of the provision is imminent and such interpretation alone would satisfy the purpose and object of the legislation. The judgment of the Hon'ble Supreme Court of India in the case of K.Sivaraman and Ors Vs. P.Sathishkumar and Anr in C.A.No.9046 of 2019, the Apex Court, in clear terms, has interpreted as follows:

"26. Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs.4000/- even where an employee was able to prove the payment of a monthly wage in excess of Rs.4000/-. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare

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legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of providing to all employees compensation for accidents which occur in the course of an arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment."

12. The Apex Court considered various provisions of the Employees Compensation Act. While interpreting those provisions, the Court came to the conclusion that the objective of the amendment is to remove the deeming cap on the monthly income of the employee and extend to them the compensation of monthly wages drawn by them. Therefore, the interpretation now to be followed as per the judgment of the Hon'ble Supreme Court, is to be adopted by the High Court while considering the case for grant of compensation, more specifically, while fixing the monthly income with reference to the Government notifications.

13. In a common parlance, if the straight interpretation is adopted in such cases, it would cause not only injustice and it will result in grant of unjust compensation. The Courts have repeatedly held that 'just compensation' is to be arrived for the purpose of mitigating the circumstances arising on account of unforeseen accidents. Therefore, the principles of 'just compensation' must be the basis for interpreting these welfare provisions and therefore, the straight formula cannot be adopted for the purpose of grant of compensation, more

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specifically, in fixing of monthly income. In such cases of grant of compensation, if straight jacket formula is adopted, the same would result in an inadequate grant of compensation and the principles of just compensation is not only diluted and the principles of justice is also compromised.

14. The concept of social justice adopted by we people of India under the Constitution includes the social protection. The concept of social protection, is an integral part of the concept of social justice. Thus, the social protection which being the purpose and object of the Act 1923, it should be read in consonance with the constitutional principles. When the social justice is enunciated under the Constitution of India, the welfare legislations are to be read in consonance with the principles of social justice and to provide adequate protection from any kind of discrimination or injustice. The economic imbalance is also to be eliminated to the extent possible and the same is also the constitutional perspective. Equality of status contemplates removal of inequalities and more specifically economic inequalities.

15. The directive principles of State policy provides that the citizens, men and women equally, have the right to an adequate means of livelihood, Article 39(a) says so. Article 39(c) states that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment, of course, equal pay for equal work is also the principle enunciated.

16. A cogent reading of all these provisions under the directive principles of State policy, the States are expected to strive hard to achieve these principles by not creating

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discrimination in the matter of fixation of pay or grant of compensation, which should be in accordance with the cost index prevailing during the relevant point of time. The living condition as well as the cost index of the relevant period of time are the criteria for the purpose of fixation of minimum wages and to grant compensation with reference to the Act, 1923. Therefore, all these aspects are to be considered for the purpose of interpreting the provisions of the Employees Compensation Act. It is not as if Section 4 to be read with reference to the monthly wages and such a prescription is to be restricted based on the notification issued by the Central Government under Section 4(1B). If such restriction is imposed, then, there is no scope to meet out the concept of social protection, which is an integral part of the social justice enunciated under the Constitution of India.

17. Thus, any interpretation of any statute must run in consonance with the constitutional principles. Otherwise, the purpose and object of the statute is not met with. More so, the constitutional principles are violated. Therefore, a constructive interpretation is to be adopted by taking pragmatic view. What would be the pragmatic approach in such circumstances? How to fix the monthly income of an employee, when there is no proof of income? How to determine the quantum of compensation to be paid? Of course, unless the monthly income is fixed, it may not be possible for the Courts to arrive at a definite conclusion regarding the fixation of compensation. Thus, the fixation of monthly income is an important factor in the cases where the compensation is to be awarded.

18. Adopting the conventional procedures, the minimum wages are fixed

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by the State and Union for the purpose of fixing the monthly income. Undoubtedly prior to 18.01.2010, the date on which the amendment was issued, the deeming cap was in force and as per the deeming cap, a sum of Rs.4000/- was fixed as a monthly income. However, in the amendment dated 18.01.2010, such a deeming cap was removed and the Supreme Court also interpreted in the case of K.Sivaraman and Ors Vs.Sathish Kumar and Anr, cited supra that such deeming cap on the monthly income of the employee was removed from the amendment. Therefore, the actual monthly wages of the employee is to be taken into account for grant of compensation. Therefore, the employee is at liberty to establish his monthly income by submitting documents and evidences. Once an employee is able to establish his monthly income with an acceptable evidence, then, such monthly income is to be taken into consideration for the purpose of quantifying the compensation. In the cases where there is no proof is available, then, the minimum wages notified by the Central Government under Section 4(1B) is to be taken into account.

19. Thus, the object of fixation of monthly wages by the Central Government, is to ensure that the employees are not discriminated or to avoid discrepancies in quantifying the compensation. The authorities may have their own notions and approaches in the matter of fixation of monthly income. Such fixation cannot be at the discretion of the competent authorities. In the event of granting discretion, there are possibilities of discrepancies and denial of justice to the workmen. That is the reason why the Central Government thought fit to issue a notification regarding the minimum wages to be fixed for grant of compensation. The fixation of minimum wages under Section 4(1B) has got a

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definite object. The very object would be to eradicate the discrimination and inconsistencies in the matter of fixation of monthly income. However such fixation would not deprive the workmen from getting higher compensation based on his actual income if he is able to establish the monthly income with acceptable evidence.

20. For example, the workmen working in Government Transport Corporation is having definite evidence regarding his salary. The workers working in Government factories are having proof for their monthly income. Those workmen cannot be denied compensation on par with their monthly income. Because the compensation must be in commensuration with the status of the workmen and the income of the workmen in order to protect the interest of the family and their livelihood. In every legislation, the common purpose would be to grant compensation in commensuration with the family status and to meet out the livelihood. Another example would be the grant of maintenance in matrimonial cases, the monthly maintenance is paid taking into account the various factors including the family status. Therefore, there cannot be a ceiling for the purpose of grant of maintenance in matrimonial cases or equally grant of compensation in workmen cases. All such welfare provisions are to be interpreted so as to ensure and protect the livelihood of the workmen. While protecting the livelihood of the workmen, the income is to be fixed with reference to the actual income established and if not, the minimum wages notified by the Central Government.

21. The question arises, whether the minimum wages fixed by the Government of Tamil Nadu can be adopted for the purpose of grant of compensation under the Workmen Compensation Act. There is no dispute

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that the Act is a welfare legislation. The principles to be followed is to grant 'just compensation'. There cannot be any other opinion that the compensation to be granted, must be not only adequate, but in commensuration with the cost index of the relevant point of time. Thus, if there is no revision of minimum wages by the Central Government under the provisions of the Workmen Compensation Act, and if such minimum wages are fixed by the particular State Government, considering the cost index of the relevant point of time under the provisions of the Minimum Wages Act, which is a general law, then for the purpose of calculating the compensation, the minimum wages fixed by the State can be adopted, so as to grant a 'just compensation', which is the basic principle to be adopted. In the interest of justice, and to compensate the victim in commensuration with the disability / suffering or otherwise, the Courts have to adopt a pragmatic approach and once the minimum wages are fixed by the State concerned under the provisions of the Minimum Wages Act, the said minimum wages shall be taken into account for calculating the compensation, provided such minimum wages are higher than that of the minimum wages fixed by the Central Government under Section 4(1) of the Workmen Compensation Act.

22. It is needless to state that the notification issued by the Central Government under Section 4(1B) is to be followed all over the Nation and that shall be the minimum wages. However, if any enhancement is made by any State by invoking the provisions of the Minimum Wages Act, then such minimum wages, which is more beneficial to the victims shall be followed for the purpose of fixing the monthly income. This happens because there is a long interval in fixing minimum wages under the provisions of the Employees

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Compensation Act by the Central Government. In between the State Governments are reviewing the minimum wages to be paid under the Minimum Wages Act. The Act being a welfare legislation, the beneficial income fixed under the provisions of the Minimum Wages Act shall be adopted, so as to fix the compensation. In the event of not granting the minimum wages with reference to the price index during the relevant point of time, then the victims are not only deprived, but the principles of 'just compensation' is diluted. Fixing of monthly income with reference to the minimum wages arises only in cases, where the monthly income is unable to be established by the claimants with an acceptable evidence. When a workman is not having adequate evidence to establish the monthly income, then the statute requires that the minimum wages as applicable is to be fixed for quantifying the compensation. The method of calculation is also contemplated under Section 5 of the Workmen Compensation Act. Thus, the principles of 'just compensation' is to be scrupulously followed by the Courts, while calculating the compensation with reference to the Statute.

23. As far as Sections 4 and 5 of the Workmen Compensation Act is concerned, the method of calculating the wages are contemplated. However, there is no reference with regard to the monthly wages to be notified by the Central Government. Thus, the cogent reading of the entire scheme of the Act as well as the statement of objects and reasons and taking note of the fact that the claimants are entitled for 'just compensation', the workman should not be deprived of the benefit of enhancement made either by the Central Government or by the State Government under the provisions of the Minimum Wages Act regarding the monthly income. The Courts are bound to ensure the

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beneficial monthly income fixed under the provisions of the Minimum Wages Act, which is a general Act. Irrespective of the fact, whether such fixation is done by the Central Government by issuing a notification or by the State Government by issuing appropriate orders.

24. The minimum wages of Rs.8,000/- was fixed by the Central Government with effect from 18.01.2010. If any accident occurred in the year 2013 or 2014, definitely the said amount cannot be adequate to meet out the family expenditures of the legal heirs in the event of death of an employee. In such circumstances, the Courts cannot do the exercise to assess the prevailing cost index during the relevant point of time. However, the Courts are bound to ensure and minimize the inequalities in the matter of grant of compensation.

25. Thus, this Court has no hesitation in holding that the minimum wages notified by the Central Government under Section 4(1B) of the Act, 1923 is applicable all over the Nation in general and in particular, if any State fixed the minimum wages under the provisions of the Minimum Wages Act, which is higher than that of the minimum wages fixed by the Central Government, then the minimum wages fixed by the State Government, which is more beneficial is to be adopted for the purpose of fixing the monthly income of the employee concerned. This is to be followed, because the employee concerned is working in the particular State and the State has enhanced the minimum wages to be paid to the workman. Therefore, in the event of not adopting the minimum wages notified by the State, which is higher than that of the Central Government Notification, then there will be an inequality of fixing minimum wages, in the matter of fixing monthly income and grant of compensation."

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5. In view of the principles decided in the case cited supra, the appellant is entitled for the fixation of monthly income of Rs.9,309/- for quantifying the compensation. Accordingly, this Court is inclined to enhance the monthly income of appellant from Rs.8,000/- to Rs.9,309/-. Therefore, the total compensation payable to the appellant is Rs.7,06,642/- and the total compensation along with medical expenses is Rs.11,21,931/-.

6. As far as the interest is concerned, the appellant is entitled for interest of entire Award amount including the medical expenses. The Deputy Commissioner of Labour has failed to grant interest for the medical expenses. The award amount and medical expenses is inseparable and the total award amount is to be calculated inclusive of the medical expenses sustained by the claimant and, therefore, the interest of 12% on expiry of 30 days from the date of accident is paid from the entire Award amount with reference to Section 4 (A) (3) (b) of the Employees Compensation Act, 1923.

7. In this view of the matter, the appeal is set aside for the modified compensation of Rs.11,21,931/- along with interest @ 12% per annum with effect from the date of expiry of 30 days from the date of accident. The second respondent / Insurance Company is directed to deposit the differential award amount along with the accrued interest within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit the appellant claimant is permitted to withdraw the amount by filing an appropriate application and all the payments are made through the RTGS.

8. Consequently, the Award dated 12.09.2016 passed in W.C.No.666 of 2015 stands modified and C.M.A.No.1800 of 2018 stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed."

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7. The Deputy Commissioner of Labour himself considered the Government Order issued in G.O.Ms.No.91 dated 12.12.2013. As per the Government Order, the minimum wages payable to the workmen during the relevant point of time was Rs.11,619/. Therefore, this Court is inclined to enhance the monthly income of the appellant workman from Rs.8,000/- to Rs.11,619/-. Accordingly, the total compensation payable to the appellant is calculated as Rs.3,59,498/- and medical expenses of Rs.2,31,206/-.

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8. Thus, the appellant is entitled for a compensation of Rs.5,90,704/-, including the medical expenses, along with interest at the rate of 12% per annum from the date of expiry of 30 days from the date of the accident.

9. The second respondent Insurance Company is directed to deposit the enhanced compensation amount along with the accrued interest, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS.

10. Accordingly, the award dated 17.03.2020, passed in W.C.No.247 of 2018, stands modified and C.M.A.No.378 of 2021, stands allowed in part. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

gsk

To

1. The Employee's Compensation Commissioner,
   Salem.

2. Royal Sundaram General Insurance
   Company Limited,
   Registered Office No.21, Patullos Road,
   Chennai 600 002.

Copy to

The Section Officer,
VR Section, High Court,
Madras.

+1cc to M/s.C.Kulanthaivel, Advocate Sr.18072
+1cc to M/s.R.Sreevidhya, Advocate Sr.18297

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