IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1861 of 2015

Abdul Rasheed

.. Appellant

Vs.

1.The Anjuman E Himayath E Islam,
No.16, B.N.Reddy Road,
T.Nagar,
Chennai - 600 017.

2.Universal Sampo General Insurance Company Limited,
Capital Tower, 5th Floor, 'B' Wing,
No.554/555, Annasalai,
Teynampet,
Chennai - 600 018. .. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, praying to set aside the award dated 27.07.2015 and made in W.C.No.139 of 2014, on the file of the Deputy Commissioner of Labour - II, Chennai.

For Appellants : M/s.M.Malar

For Respondents : Shobana
for M/s.Srividya
No Appearance for R2

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the petitioner, who filed W.C.No.139 of 2014, claiming compensation for the injury sustained by him, in the accident happened on 10.04.2016, while he was employed as a driver under the first respondent. On 10.04.2016, while the petitioner was driving the auto bearing registration No.TN-09BC-8529, a Car came in a rash and negligent manner and hit the auto, due to which the petitioner sustained multiple grievous injuries all over the body. Hence, he claimed compensation from his owner/first respondent and the vehicle was insured with the second respondent. After full trial, the Commissioner of Labour awarded the compensation. Without considering his salary, the award was also not passed as per the Workmen Compensation Act, so he preferred this appeal. The Insurance Company is contested the appeal.

2. Point for consideration:

"Whether the Commissioner of Labour was erred in fixing salary of Rs.8,000/-, without considering the salary certificate and also awarded the interest from the date of accident.

3. The facts reveal that the appellant as a driver, employed under the first respondent met with an accident on 10.04.2014, during the course of his employment while driving the auto belonging to the first respondent. The first respondent also admits that the auto belongs to him and the appellant was employed as a driver for a monthly salary of Rs.10,657/- along with batta Rs.50/- per day. The vehicle was also insured at the time of the accident under the second respondent and he prima facie proved his claim through the documents Exs.P1 to P9. The employer relationship between the parties is not in dispute and the accident was occurred during the course of his employment and the insurance of the vehicle are all admitted facts. The main objection of the appellant is that as per his salary certificate marked as Ex.P7, he was given monthly salary of Rs.10,657/- along with batta of Rs.50/- per day. But, the Commissioner of Labour erroneously fixed salary of Rs.8,000/- only and awarded the compensation.

4. The learned counsel for the respondent submits that the alleged salary certificate is a self serving document and it is not supported with any other material evidence like salary register. So, the Commissioner of Labour rightly fixed Rs.8,000/- as per the provisions of the Minimum Wages Act.

5. The learned counsel for the appellant relied upon the judgment of this Court in C.M.A.No.897 of 2018, wherein, it is held that as per the G.O.2D.No.91, Labour and Employment Department, dated 12.12.2013, the minimum wages to be fixed as Rs.9,808/-. Admittedly, in the case on hand, the accident was happened in the year 2014 after this G.O. So the prevailing minimum wages at the time is Rs.9,808/- but the Commissioner of Labour fixed only Rs.8,000/-. Therefore, the salary is enhanced to Rs.9,808/-.

6. But, as per Section 4-(A)(2) of the Workmen Compensation Act, the employer is bound to make provisional payment based on the extent of liability, and he accepts the same as per Section 4-(A)(1) of Act, compensation under Section 4 shall be paid as soon as it falls due. A combined reading of said provision makes it clear that an employer is bound to make even provisional payment also as soon as it falls due. The words as soon as means, immediately after the accident, in which

the workmen sustains injuries or dies. However in the ratio laid down in 2010(2) TN MAC 80 DB consonance with the ratio laid down by the Larger Bench of Hon'ble Supreme Court of India reported in Pratap Narain Singh Deo v.Srinivas Sabata and another, 1976 (1) SCC 289 and Kerala State Electricity Board v. Valsala,K., 2000 ACJ 5 (SC) held interest on compensation payable after 30 days from the date of accident. The compensation payable would be:

60/100x181.37xRs.9,808x45/100=Rs.4,80,297/-

7. As discussed above, it is very clear that the appellant is entitled to the interest on the amount of compensation with effect from the date of accident. Therefore, the appeal is partly allowed, the 2nd respondent is directed to pay the interest at the rate of 12 % per annum, after 30 days from the date of the accident till the date of realization as the award amount. The amount shall be deposited within a period of four weeks from the date of receipt of a copy of the judgment.

8. With regard to other findings, the order passed by the learned Deputy Commissioner of Labour-II, Chennai, is confirmed. Accordingly the appeal is allowed. No Costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To,
The Commissioner for Workmen's
Compensation cont/Deputy Commissioner of Labour - II, Chennai.

+1cc to M/s.M.Malar , Advocate SR.No. 11969

C.M.A.No.1861 of 2015

A.SK(31.03.2021)