IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-01-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMA No.1971 of 2016

R.M.Selvam ..Appellant

vs.

1.D.Murali
2.Shriram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Road,
T.Nagar,
Chennai-600 017. ..Respondents

PRAYER : Civil Miscellaneous Appeal is preferred under Section 30 of the Workmen Compensation Act, against the Award dated 21.09.2015 made in WC No.55 of 2014 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellant : Ms.A.Subadra for Ms.M.Malar.
For Respondent-1 : Ex-parte
For Respondent-2 : Mr.S.Dhakshnamoorthy

J U D G M E N T

The Award dated 21.09.2015 passed by the Deputy Commissioner of Labour-II, Chennai in WC No.55 of 2014, is under challenge in the present Civil Miscellaneous Appeal.

2. The substantial question of law raised by the appellant is that whether the Deputy Commissioner of Labour is correct in fixing the monthly income of the claimant lesser than that of the minimum wages fixed by the Central Government in its Notification dated 31.05.2010, stating that the minimum wages would be a sum of Rs.8,000/- per month. Further, it is contended that interest is to be granted from the date of accident.

3. The accident occurred on 10.11.2014. There is no dispute between the parties regarding the occurrence and the claimant sustained injuries.

4. The factum regarding the accident as well as the liability are established through documents and evidences. However, there is no sufficient evidence to establish the income of the claimant and in the absence of any acceptable evidence, the Deputy Commissioner of Labour fixed the monthly income of the claimant as Rs.7,699/-.

5. It is not in dispute that the Central Government by invoking the powers under Section 4(1)(b) of the Employees Compensation Act,

enhanced the minimum wages from Rs.4,000/- to Rs.8,000/- with effect from 18.01.2010. Thus, the minimum wages of Rs.8,000/- is to be fixed as monthly income for the purpose of calculating the compensation. Accordingly, this Court is inclined to enhance the monthly income of the claimant as Rs.8,000/-.

6. With reference to the interest, it is to be paid from the date of accident instead of the expiry of 30 days from the date of passing of the Award. In this regard, it is relevant to consider the scope of Section 4-A of the Employees Compensation Act, which enumerates that compensation is to be paid when due and penalty for default. The Section stipulates that the compensation under Section 4 shall be paid as soon as it falls due. Therefore, it is unambiguous that the compensation under Section 4 is to be paid from the date on which the claimant is entitled. For this purpose, the cause of action would be relevant and the date of cause would be the date of due. Therefore, the date of passing of the Award may not be considered as the date of ?due? and the date of cause must be the date of accident and therefore, the intention and the spirit of the provisions under Section 4-A of the Employees Compensation Act, is to grant compensation from the date of due and the due falls on the date of accident, as the cause arose on the date of occurrence. Thus, the compensation is to be paid from the date of due. Section 4-A sub-clause (3) enumerates that where any employer is in default in paying the compensation due under this Act, one month from the date it fell due, the Commissioner shall direct the employer to pay simple interest thereon at the rate of 12% per annum. Thus, it is clear that the compensation is to be paid as soon as it falls due and the interest is to be calculated if the compensation is not paid within the period of 30 days from its due. Thus, the interest is to be calculated from the date of expiry of 30 days from the date of accident. Therefore, it is not as if the interest is to be calculated after the expiry of 30 days from the date of passing of the Award by the Deputy Commissioner of Labour.

7. The Award may be passed by the Deputy Commissioner of Labour without reference to the maximum period of disposal. For example, one Deputy Commissioner of Labour may pass an award, within three months and another authority, within six months or one year, because of the delay in disposing of the claim petitions, the claimant should not made to suffer interest as contemplated under Section 4-A of the Employees Compensation Act. Thus, the constructive interpretation of the provisions are imminent, as there are contrary views and interest portion is paid in a different manner in different cases, which is certainly not permissible in view of the fact that the Statute is unambiguous in the matter of payment of interest on default.

8. To make it clear, it is to be held that under Section 4-A of the Employees Compensation Act, compensation under Section 4 shall be paid as soon as it falls due and the due is from the date of accident i.e., the cause of action. Thus, the compensation is to be calculated from the date of accident. However, if the employer is in default in

paying the compensation due under Section 4 of the Employees Compensation Act, within one month from the date it fell due, then the employer is liable to pay simple interest at the rate of 12% per annum. Thus, in all cases, compensation is to be granted from the date of accident and the interest is to be awarded on expiry of 30 days from the date of accident.

9. Thus, in all cases, irrespective of the fact whether the Award is passed in six months or one year or the appeals are decided thereafter, the interest is to be calculated from the expiry of 30 days from the date of accident, which would rectify the ambiguities in the matter of grant of interest with reference to Section 4-A(3)(a) of the Employees Compensation Act.

10. Taking into consideration various factors and the ambiguities created by the Competent Authorities in the matter of grant of interest under Section 4-A of the Employees Compensation Act, it necessitated to clarify the same in the interest of the claimants as well as to avoid any unlawful enrichment over and above the entitlement contemplated under the Statute.

11. Thus, the principles to be adopted by all the Competent Authorities are that, while granting compensation under Section 4 of the Employees Compensation Act, the interest under Section 4-A(3)(a) is to be awarded on expiry of 30 days from the date of accident and not from the expiry of 30 days from the date of passing of the Award.

12. The claimants are entitled for interest on the expiry of 30 days from the date of accident in all such cases and therefore, the copy of this judgment is to be circulated to the Commissioner of Labour, DMS Complex, Teynampet, Chennai-600 018, for issuing appropriate circulars.

13. In view of the fact that the monthly income of the claimant in the present Civil Miscellaneous Appeal has been enhanced to Rs.8,000/-, the total compensation payable to the appellant is a sum of Rs.8,57,495/- along with interest at the rate of 12% per annum from the date of expiry of 30 days from the date of accident. The date of accident was on 10.01.2014 and the interest is to be calculated from 11.02.2014 onwards.

14. Thus, the liability is now fixed on the second respondent-Insurance Company. The second respondent-Insurance Company is directed to deposit the modified Award amount with accrued interest, within a period of twelve weeks from the date of receipt of a copy of this judgment and on such deposit, being made, the appellant-claimant is permitted to withdraw the same by filing an appropriate application and payments are to be made through RTGS.

15. In this view of the matter, the Award dated 21.09.2015 passed in W.C. No.55 of 2014 by the Deputy Commissioner of Labour-II, Chennai, stands modified and consequently, Civil Miscellaneous Appeal

No.1971 of 2016 stands allowed in part. However, there shall be no order as to costs.

16. The Registry is directed to communicate the copy of this order to the Commissioner of Labour, Teynampet, Chennai ? 600 018, for the purpose of issuing circular to all the Competent Authorities to follow the Statute uniformly in the matter of grant of interest for the Award of compensation granted under Section 4 of the Employees Compensation Act.

Sd/-
Assistant Registrar (CS.III)

/True Copy/

Sub Assistant Registrar

To

1.The Registrar-General,
High Court,
Madras.

2.The Deputy Commissioner of Labour-II,
Chennai.

3.The Commissioner of Labour,
Teynampet, Chennai - 600 018.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+1cc to Mr.M.Malar, Advocate Sr.No.4721
+1cc to Mr.S.Dhakshinamoorthy, Advocate Sr.No.4619

AKM/16.03.21 /4P-7C/

C.M.A.No.1971 of 2016
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