

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1705 of 2018
and
C.M.P.No.13250 of 2018

M/s.Vivek and Co.,
No.167, North Usman Road,
T.Nagar,
Chennai-600 017.

..Appellant

Vs.

1.N.Ravi

2.Ram Subbu

..Respondents

Prayer : Civil Miscellaneous Appeals filed under Section 30 of the Workmen's Compensation Act, 1923, against the order in W.C.No.85 of 2014 dated 28.09.2017 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour-I, Chennai.

For Appellant : Mr.K.P.C.Mogan

For Respondents : Mr.B.Sivakumar for R1
No-appearance for R2

J U D G M E N T

The award dated 28.09.2017 passed in W.C.No.85 of 2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The question of law raised by the appellant reads as under:

(a) whether the finding of the Commissioner that the Appellant was the employee of the 2nd opposite party when the applicant had come to the 2nd opposite party show room for installation and removal of the serial sets provided by the 1st opposite party is not perverse?

(b) whether the finding of the Commissioner that the Applicant is the employee of the 2nd opposite party/appellant in the absence of evidence that the applicant's service was temporarily lent or let on hire by the 1st opposite party to the appellant/2nd opposite party is correct?

(c) whether the finding of the Commissioner that

the applicant is the employee of the 2nd Opposite party in the total absence of evidence that the applicant was controlled by the appellant/2nd opposite party at the time of accident is sustainable in law or in fact?

(d) whether the finding of the Commissioner that the applicant is the employee of the 2nd opposite party in the absence of evidence that the applicant was directed to execute the work of installation and removal of serial sets at the time of accident is tenable in law?

e) whether the Commissioner that has not erred in law in interpretation of the order which was given by the 2nd opposite party to the 1st opposite party resulting in appellant being wrongly held liable?

3. Though the questions of law are relatable to the facts and circumstances, the learned counsel appearing on behalf of the appellant raised a question that the Doctor, who assessed the workman, has not given any certificate regarding the loss of earning capacity. As per Section 4 of the Employees Compensation Act, the Doctor has to assess the loss of earning capacity of the workman which is not done in this case. Therefore, the quantum of compensation fixed by the Deputy Commissioner of Labour is improper and not in consonance with the provisions of the Act. It is further contended that the Doctor himself assessed the nature of injury as partially permanent. Thus, the injuries sustained are not actually permanent and therefore, the quantum of compensation awarded by the Deputy Commissioner of Labour is excessive.

4. The first respondent/victim filed an application under Section 10 of the Workmen Compensation Act claiming compensation on the ground that he was working as an electrician under the second respondent and on 17.01.2011 at about 19.00 hours, at the instruction of his owner Mr. Ramasubbu, he was working in the premises of Vivek and Co., in order to attend electrical fault in the lighting arrangements. The first respondent was not provided with any safety instruments and equipments and he was directed to attend the fault in the Electrical decoration and as per his instruction, he was attending the fault by sitting in the parapert wall of the open terrace. At that time, the first respondent lost his balance and fell down and sustained grievous injuries. The first respondent/victim has stated that he had spent above Rs.4,00,000/- towards his medical expenses and the owner has also given a sum of Rs.2,00,000/- to meet out the immediate medical expenses. Even thereafter, he continued his treatment as he sustained grievous injuries.

5. The issues were adjudicated by the Deputy Commissioner of Labour with reference to the documents and evidence produced by the respective parties. The factum regarding the accident was established and the accident occurred during the course of employment. When the first respondent/victim was

attending electrical fault by sitting on the parapert wall of the open terrace, he fell down suddenly and sustained grievous injuries during the course of employment. The second respondent seems to be the Contractor and the appellant is the Principal employer. The works were carried out in the premises of the appellant namely Vivek and Co. In view of the fact that the accident was established and the injuries sustained during the course of employment, the Deputy Commissioner of Labour awarded compensation and the quantum of compensation was arrived based on the Doctor's report. Dr.Mr.Saravana Bhavanatham in his sworn affidavit categorically stated as under:

" I examined Mr.N.Ravi, 36/M, on 04.04.2016 at above clinic for disability as per AIIMS and Central Government Guidelines, Full description of the nature and extent of the injuries, FALL FROM HEIGHT ON 17.01.2012, injuries, Fracture L2 Vertebra with fracture right transverse process of L1 to L5 vertebra, Fracture right side pubic rami, Fracture right side sacrum, Fracture inter trochantric left hip, fracture right radius, Both caclanfum fracture, Fracture shaft or femur right, Fracture olecranon right elbow, left frontal gliosis, fracture acetabulum (number of bones fractured-13), Surgical procedures done, 1.PEDICAL SCREW Fixation L1 to L3 Vertebra done on 20.01.12, ORIF WITH PEN LEFT FEMUR DONE ON 20.01.12, ORIF WITH LCP RIGHT HUMERUS DONE ON 23.02.12, ORIF WITH LCP RIGHT RADIUS DONE ON 20.01.12, ORIF WITH LCP RIGHT HUMERUS DONE ON 23.01.12, TBW RIGHT OLCRANON DONE ON 23.01.12, Observation regarding the injuries, now on examination X-Rays-25.03.2016 Im-plants are seen in Lumbar Vertebrae, left femur, right humerus. Rt. Radius, Muscle weakness, Mobility of joints are given in work sheet, I assessed partial and permanent disability = 100% vd;W bjhptpj;Js;shh;/

6. Based on the said assessment of the Doctor regarding the partial and permanent disability sustained by the first respondent/victim, the Deputy Commissioner of Labour fixed 90% towards loss of earning capacity and the monthly income of the first respondent/victim was fixed as Rs.3,377/-.

7. Even as per the amendment effected on 18.01.2010, the minimum wages to be adopted for grant of compensation was notified by the Central Government Gazette on 31.05.2010. As per the said notification issued under Section 4(1B) of the Employees Compensation Act, the minimum wages is to be fixed as Rs.8,000/-. If any workman is unable to establish his correct salary with an acceptable evidence, then the Competent Authorities are bound to adopt the minimum wages as notified by the Central Government under Section 4(1B) of the Act. The Workmen Compensation Act being a welfare legislation, the compensation is to be calculated by adopting the minimum wages

as notified by the Central Government by invoking the powers under the Act. When the labourers/coolies are engaged by the Contractors or individuals without maintaining any records, such workman, in an accident, sustained grievous injuries, they are totally helpless and it would be very difficult for the Courts to assess the actual income and fix the compensation. Under these circumstances, the act contemplates that the minimum wages is to be notified by the Central Government and as on 31.05.2010, Central Government issued a notification stating that the minimum wages to be fixed is Rs.8,000/-. However, in the present case, the Deputy Commissioner of Labour fixed a sum of Rs.3,377/- as monthly income. The claimant could not able to establish his monthly income with any acceptable evidence. Therefore, in the absence of any evidence to establish the monthly income of the workman, the Courts are bound to fix the minimum wages for the purpose of quantifying the compensation. This being the principles to be followed, the Deputy Commissioner of Labour wrongly fixed the monthly income of the victim as Rs.3,377/-. In fact, the award reveals that the first respondent/applicant has stated his monthly income as Rs.12,000/- per month. Even in his deposition, he has stated that he is receiving a monthly income of Rs.12,000/-. However, the workman could not able to establish his monthly income. Therefore, the Deputy Commissioner of Labour adopted the minimum wages fixed by the Government of Tamil Nadu in G.O.(2D).No.5, (J1) dated 22.02.2005 and fixed the monthly income of the victim as Rs.3,377/-.

8. When the Central Government issued a notification by invoking the powers under Section 4(1B) of the Act and the minimum wages is fixed as Rs.8,000/- with effect from 18.01.2010, it is improper on the part of the Deputy Commissioner of Labour to adopt the monthly wages issued by the Government of Tamil Nadu, more specifically, in the year 2005. The Central Government issued notification on 31.05.2010 and the accident occurred on 17.01.2011. Therefore, the Deputy Commissioner of Labour has committed an error in applying the Tamil Nadu Government Order for fixing the monthly income instead of following the Central Government notification which was issued by invoking the powers under Section 4(1B) of the Act. The State Government orders also may be followed. However, the beneficial fixation is to be granted while quantifying the compensation. Therefore, the act being a welfare legislation, the beneficial fixation under the Minimum Wages Act is to be adopted for fixing the monthly income and calculating the compensation, while passing the award. In the present case, the Deputy Commissioner of Labour adopted the State Government Order issued in G.O.(2D).No.5, (J1) dated 22.02.2005 and the Central Government subsequently issued a notification under Section 4(1B) of the Act fixing the minimum wages as Rs.8,000/- and thereafter, further reviewed the same in the year 2015. At present, the minimum wage is Rs.15,000/-.

9. The learned counsel for the appellant further contended that the Doctors, who assessed the first respondent/victim, have not fixed the loss of earning capacity. In this regard, he relied on Section 4(1)(c)(ii) of the Employees Compensation Act which enumerates that "in the case of an injury not specified in Schedule I, such percentage of compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury".

10. By relying on the said provision, the learned counsel for the appellant is of the opinion that the Doctors alone are competent to fix the loss of earning capacity of a workman within the meaning of the Act and in the present case, the Doctor has not assessed the loss of earning capacity and suo motu fixation by the Deputy Commissioner of Labour regarding the loss of earning capacity is irregular and cannot be sustained.

11. In this regard, he cited the judgment of the Calcutta High Court in the case of NEW INDIA ASSURANCE COMPANY vs. BHARAT YADAV ALIAS B.P.YADAV reported in 2003 ACJ 44 .He relied the paragraph No.12 of the judgment, which reads as follows:

12. At the very outset, it is to be noted from the materials on record that the employment of the claimant and consequent sustaining of injuries have been proved and the findings of the learned Commissioner on the facts namely the sustaining of injuries by the claimant in course of his employment, his age and the monthly income are not open for discussion in this appeal as all those findings are on the issues of fact. But it is to be noted from the impugned judgment that the learned Commissioner did not find out the percentage of loss of earning capacity of the claimant as is required under Section 4(1) of the Act. By the amendment Act 22 of 1984 which came into force on 1st July 1984, a specific provision has been introduced for assessment of loss of earning capacity of the workman by a qualified medical practitioner. The Division Bench of this Court in New India Assurance Co.Ltd v.Bishuianath Das and Anr. (supra) analysing this point came to a conclusion that in view of the amended provision of the Act, the loss of earning capacity of the appellant workman should be assessed by a qualified medical practitioner. After a careful scrutiny of the evidence adduced by the doctor in this case, we come to a conclusion that the medical practitioner failed to assess the loss of earning

capacity in this case as required by the Act as it stands after the amendment act.

12. The learned counsel for the appellant cited the judgment of the Hon'ble Supreme Court of India in the case of Pratap Narain Singh Deo v. Srinivas Sabata, reported in (1976) 1 SCC 289. The Hon'ble Supreme Court of India dealt with the penalty imposed on the appellant under Section 4A(3) of the Act. The Court made an observation that "there is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contradiction."

13. The above judgment is of no avail to the appellant in the present case as the facts and circumstances are not comparable at all.

14. In the case of New India Assurance Co., Ltd., Vs. Sri Gopal Shill & another, the Gauhati High Court held as follows:

"8. In view of the said ratio as laid down by this Court, this Court is of the opinion that as regards the first substantial question of law, the Commissioner under the said Act does not have the power to make its own assessment of the loss of earning capacity of its own without there being any medical evidence in that regard and, as such, the first substantial question of law is answered in the negative and in favour of the appellant in terms of the ratio laid down in the case of Sanjit Kumar (supra)"

15. Perusal of the entire paragraph cited above reveals that it is not open to the learned Commissioner to assess the loss of earning capacity in the absence of any valid certificate to that effect. Further, it speaks about medical evidence. Therefore, the very purpose is to hold that in the absence of a valid medical certificate from a qualified medical practitioner, the Commissioner of Labour cannot assess the loss of earning capacity. In other words, the loss of earning capacity is to be assessed with reference to the medical certificate issued by the medical practitioner. Thus, the medical practitioner is competent to issue a certificate regarding the disability and to fix the percentage of disability and based on the percentage of disability with reference to the monthly income fixed, the learned Commissioner of Labour has to calculate the total compensation to be paid. Therefore, the suggestion of the learned counsel for the appellant that the medical practitioner should assess the loss of earning capacity is improper and the medical practitioners are not competent authorities to assess such

loss of earning capacity. They are competent to issue a disability certificate with reference to the injuries suffered by the victim.

16. In the case of Executive Engineer, Orissa State Electricity Board, Salipur Electrical Division and others Vs. Kedar Charan Lenka, reported in 1997 ACJ 869, the Orissa High Court held in Paragraph 7 of the judgment is as follows:

"7. So far as quantum is concerned, I find that the Commissioner has erroneously equated the percentage of physical disability with the loss of earning capacity. The two are conceptually different. While the former may throw some light on the process of assessment of the latter, that is not the determinative factor. It is no doubt true that money cannot renew a physical frame that has been battered and shattered, but the Judges and courts can award sums which must be regarded as giving reasonable compensation as observed by Lord Morris in H. West & Son Ltd. v. Shephard, 1958-65 ACJ 504 (HL, England). The greatest element of damage in many cases is the pain, suffering and loss of ordinary pleasures and convenience associated with healthy and mobile limbs. All that the court can do is to award such sum as will enable the claimant to acquire some material possessions or to develop a life style which will offset to some extent his terrible disability. [See Thomas v. British Railways Board, 1977 ACJ 222 (CA, England, per Scarman, LJ)]."

17. The said finding also reveals that the concept of percentage of physical disability with the loss of earning capacity is different. Undoubtedly, the physical disability is to be assessed by the qualified medical practitioner and loss of earning capacity is to be assessed by the Commissioner of Labour with reference to the physical disability as well as the monthly income fixed. Thus, the two factors as stated by the High Court are different and therefore, it cannot be held that the medical practitioners alone are competent to assess the loss of earning capacity.

18. In the case of C. David Vs. Gobind Chandra Mishra, reported in 1998(1) ACJ 22, the High Court of Orissa held as follows:

"8. In the premises stated above, we state that while assessing compensation, the Court has to see whether the earning capacity of the injured has been reduced in every employment and not merely in particular employment in which he was engaged at the time of the accident. That is the reason why S. 4(1)(c)(ii), Explanation JJ of the Act mandates that in case of non-schedule injury the qualified medical practitioner while assessing the loss of

earning capacity shall have due regard to the percentage of loss of earning capacity in relation to different injuries specified in Schedule I.

9. In view of what has been stated above, the claim of the appellant that he suffered total disablement and compensation should be determined on the footing that it was a case of 100 per cent loss of earning capacity is not tenable."

19. All the judgments cited by the learned counsel for the appellant are of no avail as the competency of the Commissioner of Labour and the medical practitioners are different and independent. Thus, the medical practitioners are empowered to issue disability certificate and the percentage of disability is to be mentioned in the certificate. Based on the percentage of disability assessed by the medical practitioner, the Commissioner of Labour has to take into consideration all other factual aspects including the monthly income of the workmen concerned and thereafter, calculate the total compensation to be paid and this would be the procedures as contemplated under the Workmen Compensation Act and therefore, the contention of the learned counsel for the appellant in this regard deserves no merit consideration.

20. This Court is of the considered opinion that the provision itself is unambiguous. The provision cited supra reveals that "percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury". Therefore, the disability percentage assessed by the Doctor must be taken into consideration for fixing the loss of earning capacity. That is the spirit of Section and that must be the purpose and object of the provision enabling the authorities to fix the compensation in commensuration with the disability assessed by the Doctor. In other words, the disability assessed by the Doctors and the loss of earning capacity to be fixed by the competent authority must be nearer and in commensuration with the disability percentage in order to avoid grant of excess compensation or lesser compensation. The provision contemplates that the Doctors must assess the disability. The medical practitioners are certainly not competent to assess the loss of earning capacity which is not relatable to the medical profession. The very intention of the provision is to ensure that the 'just compensation' is awarded. That being the purpose and object of the provisions, the Courts are bound to interpret that the objects sought to be achieved are achieved. Once the qualified Doctor assessed the disability, such a disability percentage is to be taken into consideration for the purpose of assessing the loss of earning capacity of the workman. This being the possible interpretation which is constructive to reach the object of the Act, this Court is of the opinion that the very interpretation offered by the learned counsel for the appellant deserves to be rejected.

21. For example, in the case of a driver, if the medical practitioner assessed the disability as 70% considering the nature of injury sustained, then the Courts are empowered to enhance the loss of earning capacity taking into consideration the nature of the job and further to consider whether such a workman is capable of performing his duties and responsibilities attached to the post or not. 70% disability for a driver is certainly a permanent disability to perform his duties and responsibilities as a driver. Therefore, in such circumstances, the Courts are empowered to fix the loss of earning capacity by taking into consideration the facts and circumstances of each case. Therefore, the assessment of the Doctor is not a conclusive factor. Judicial mind is to be applied in each and every case based on the facts and circumstances and taking note of the fact that the Workmen Compensation Act is a welfare legislation. In no circumstances, the compensation should be lesser than that of one, for which, the workman is entitled and in all circumstances, the Courts are expected to fix "just compensation" to meet out the principles laid down in this regard. Therefore, the facts and circumstances plays a pivotal role, while fixing the loss of earning capacity by the Courts. In certain cases, Courts are empowered to fix the loss of future income and in certain cases, it can be over and above the disability percentage based on the nature of the job. Such a view is taken consistently by the Courts mainly on the ground that the qualified medical practitioner assessed the disability by examining the victim and such an examination is in no way connected with the loss of income to be fixed by the Courts based on various other factors. Under these circumstances, as stated above, a driver, who sustained 70% disability may be entitled to get more percentage of loss of earning capacity, in view of the fact that he is totally disabled from performing his duties as a driver. In another case, if a shop owner lost his leg and still he is capable of earning income by sitting in a shop, then Court may assess the compensation suitably. At the outset, the facts and circumstances and the nature of the injuries as well as the nature of the job are the deciding factors for the purpose of fixing the compensation. Therefore, a straight jacket formula can never be adopted by the Courts, while fixing the 'just compensation'.

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

23. 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 unguided 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 notification regarding the minimum wages to be fixed for grant of compensation. The fixation of minimum wages under Section 4(1B) has got a 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.

24. 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.

25. 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 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 the general law, then for the purpose of calculating 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(1B) of the Act.

26. 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 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 or the monthly income shown is lesser than that of the minimum wages fixed under the Act, 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.

27. 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 beneficial monthly income is fixed under the provisions of the Minimum Wages 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.

28. 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, by adopting uniformity.

29. 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.

30. In the present case, the learned counsel for the appellant contended that the loss of earning capacity of 90% fixed by the Deputy Commissioner of Labour is excessive as the Doctor has not fixed the loss of earning capacity. This Court has already disagreed with the proposition mooted by the learned counsel appearing for the appellant that the Doctor has to assess the loss of earning capacity. Further, discharge summary reveals the nature of the injuries as well as the

procedures undergone by the first respondent which reads as under:

Diganosis:

- 1.Fracture L2 Vertebra with fracture right transverse process of L1 to L5 Vertebra
- 2.Fracture right side public rami
- 3.Fracture right side sacrum
- 4.Fracture Inter trochantric left hip
- 5.Fracture right radius
- 6.Both caclaneum fracture
- 7.Fracture shaft of femur right
- 8.Fracture olecranon right elbow.
- 9.Left frontal gliosis
- 10.Fracture acetabulum

PROCEDURE:

- 1.PEDICAL SCREW FIXATION L1 TO L3 VERTEBRA DONE ON 20.01.12.
- 2.CRIF WITH PEN LEFT FEMUR DONE ON 20.01.12.
- 3.ORIF WITH LCP RIGHT HUMERUS DONE ON 23.01.12.
- 4.ORIF WITH LCP RIGHT RADIUS DONE ON 20.01.12.
- 5.ORIF WITH LCP RIGHT HUMERUS DONE ON 23.01.12.
- 6.TBW RIGHT LOECRANON DONE ON 23.01.12.

31. The first respondent/workman was an electrician. For performing electrical works, in buildings are also hard labour. Under these circumstances, such injuries would certainly cause disability and he would not be in a position to perform his duties freely, continuously and efficiently due to pain. Considering the nature of the work of an electrician, this Court is of the opinion that the loss of earning capacity fixed by the Deputy Commissioner of Labour can be construed as little excessive. However, the monthly income of the first respondent has been fixed erroneously and in violation of the Central Government notification issued on 31.05.2010 with reference to the minimum wages to be followed.

32. At this stage, this Court asked a question, what would be the appropriate percentage, then the learned counsel appearing for the appellant readily made a suggestion that 60% would be appropriate, which would be fair. Graciously accepting the suggestions, this Court is of the opinion that 60% partial and permanent disability is to be fixed. Thus, if the monthly income of the victim is Rs.8,000/- and loss of earning capacity is reduced from 90% to 60%, the amount of compensation to be paid is calculated as detailed hereunder:

$$60/100 \times 8000 \times 203.85 \times 60/100 = \text{Rs.}5,87,088/-.$$

33. This Court is inclined to enhance the compensation, in view of the fact that the monthly income fixed by the

Deputy Commissioner of Labour is in violation of the minimum wages notified by the Central Government under the statute, which is a sum of Rs.8,000/- with effect from 18.01.2010. Accordingly, the first respondent is entitled for the modified compensation of Rs.5,87,088/- along with interest at the rate of 12% per annum from the expiry of 30 days from the date of accident as contemplated under the Act. The appellant is directed to deposit the enhanced compensation 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 first respondent is permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS.

34. Accordingly, the award dated 28.09.2017 passed in W.C.No.85 of 2014 stands modified and the Civil Miscellaneous Appeal in C.M.A.No.1705 of 2018 is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb/kak

To

The Deputy Commissioner of Labour-I,
Chennai.

C.M.A.No.1705 of 2018

RSV(CO)
CB(09/03/2021)

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