IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1982 of 2018

1.Selvi
2.Arul Priya
3.Arul Murugan(Minor)
Minor rep his mother Selvi
4.Peruma ..Appellants/Claimants

Vs.

1.Mrs.Gnanasundari
2.The Manager,
L & T General Insurance Co., Ltd.,
6th Floor, City Plot No.177,
C.S.T.Road,
Kalina Santacruz(East)
Mumbai - 400 098 ..1st Respondents/1st Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the Award passed by the Deputy Commissioner of Labour, Salem, 1st respondent herein under the Employees Compensation Act, made in E.C.O.P.No.157 of 2017 dated 29.01.2018.

For Appellants : Mr.P.Ebenezer Paul

For Respondents: No appearance for R1
R2 - Left

J U D G M E N T

The Award dated 29.01.2018 passed in E.C.O.P.No.157 of 2017 is under challenge in the present Civil Miscellaneous Appeal.

2. The Substantial question of law raised in the appeal reads as under:

> "(1) Whether the 1st respondent is justified in fixing the monthly salary of Rs.8,000/- to the deceased Workman as against the payment of Rs.20,000/- per month by the 2nd respondent which is not even contradicted by the 2nd respondent, by filing counter affidavit or by adducing any evidence is justified?
>
> (2) Whether the 1st respondent is justified in

not considering the future prospects / Increase of salary to the deceased Driver who was just 40 years of age at the time of death and not awarding compensation for the loss of consortium to the wife, children and mother of the deceased?

(3) Whether the first respondent is justified in awarding a meager amount of Rs.5,000/- towards funeral expenses which has been increased enormously in all accident cases?"

3. Though the Substantial question of law are relatable to the facts and circumstances, the learned counsel for the appellant contended that the monthly income taken into consideration for the purpose of calculating the compensation is in violation of the minimum wages fixed by the State Government in G.O.2D.J1.No.91 dated 12.12.2013. Undoubtedly, a sum of Rs.8,000/- as monthly income was fixed by the Joint Commissioner of Labour pursuant to the Central Government Notification issued on 31.05.2010 under Section 4(1B) of the Employees Compensation Act. But the State Government during the year 2013, enhanced the minimum wages to the workmen as Rs.9787/- under the provisions of the Minimum Wages Act. Thus, the beneficial minimum wages under the general law is to be applied for the purpose of grant of compensation.

4. This Court also elaborately considered the enhancement made by the State Government regarding minimum wages to be paid under the Minimum Wages Act in judgment dated 27.01.2021 in C.M.A.No.897 of 2018 and the relevant paragraphs are extracted hereunder:

"18. 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.

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 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 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 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 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."

5. As far as the appeal on hand is concerned, the factum regarding the accident was established. The said accident occurred during the course of employment and the employer-employee relationship was also established beyond any pale of doubt. The findings of the award reveals that the claimants are entitled for compensation with reference to the documents and evidences. However, the Joint Commissioner of Labour fixed a sum of Rs.8,000/-as monthly income, which is to be enhanced as Rs.9787/- as per G.O.2D.J1.No.91 dated 12.12.2013.

6. Thus, This Court is inclined to enhance the monthly income of the deceased from a sum of Rs.8,000/- to a sum of Rs.9787/- and accordingly, the appellants are entitled for the enhanced compensation of Rs.9,01,236/- [9787X50/100X184.17] (Rupees Nine Lakhs One Thousand Two Hundred and Thirty Six only) along with the interest at the rate of 12% per annum from the date of expiry of 30 days from the date of accident. Accordingly, the 2nd respondent / Insurance company is directed to deposit the entire award amount along with the accrued interest within a period of 12 weeks from the date of receipt of a copy of this judgment and on such deposit, the appellants/claimants are permitted to withdraw their respective portion of the award as apportioned by the Joint Commissioner of Labour by filing an appropriate application and the payments are to be made through RTGS.

7. Thus, Award dated 29.01.2018 passed in E.C.O.P.No.157 of 2017 stands modified and the Civil Miscellaneous Appeal in C.M.A.No.1982 of 2018 is allowed in part. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Commissioner of Labour,
Salem.

2.The Deputy Commissioner of Labour,
Salem.

+1cc to M/s.P.Ebenezer Powl, Advocate SR.16573

C.M.A.No.1982 of 2018

AAB(CO)
CB(31/03/2021)