IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM

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

C.M.A.No.897 of 2018

P.Ramesh ..Appellant/ Petitioner

Vs.

1.Ravi

2.National Insurance Company Limited,
Third Party Cell HUB,
No.46, Regina Mansion,
Moore Street, Parrys,
Chennai 600 001. ..Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the Award dated 30.11.2017 made in W.C.No.68 of 2016 on the file of the Deputy Commissioner of Workmen's Compensation -I, Chennai -6 and the award copy was received on 26.02.2018.

For Appellant : Ms.A.Subadra for Ms.M.Malar

For Respondents : Mr.S.Vadivel for R2
R1 - Exparte

J U D G M E N T

The award dated 30.11.2017 passed in W.C.No.68 of 2016 is under challenge in the present civil miscellaneous appeal.

2. The question of law mainly raised in the present appeal is whether the fixation of deeming cap with respect of monthly income under the provisions of the Employees Compensation Act, is correct or not.

3. The fact in nutshell to be considered are that on 17.01.2016 at about 3.30 a.m. while the claimant was travelling as a cleaner in a lorry belongs to the first respondent bearing Registration No. TN-21-AL-5728 proceeding at NH-4 Road near Kyadigere Gate, Chitra Durga, Karnataka, the accident occurred and the claimant sustained both bone fracture and toes are amputated and he sustained multiple

grievous injuries all over the body. An application was filed seeking compensation under the Workmen Compensation Act.

4. The Deputy Commissioner of Labour considered the documents and evidence produced by the respective parties and arrived at the conclusion that the accident occurred during the course of the employment and accordingly, fixed the liability on the second respondent Insurance Company. The compensation of Rs.4,39,188/- was granted along with an interest at the rate of 12% per annum.

5. The learned counsel for the appellant is of the view that the monthly salary fixed by the Deputy Commissioner of Labour as Rs.8000/- as per the Central Government notification, is erroneous. The first contention is that a sum of Rs.8000/- fixed under the Act by the notification is the minimum wages which is to be adopted for calculating the compensation and not the ceiling. The deeming cap which in prevalence prior to 18.01.2010, was taken away by way of an amendment on 18.01.2010 and notification in this regard was published in the Government of India Gazette on 31.05.2010. Therefore, fixing a deeming cap of Rs.8000/- as per the Central Government notification is perverse and not in consonance with the principles laid down by the Hon'ble Apex Court of India.

6. It is contended that the Government of Tamil Nadu under the provisions of the Minimum Wages Act, issued a Government Order in G.O. 2D No.91, Labour and Employment Department, dated 12.12.2013, stating that Rs.9808/- would be the minimum wages for the purpose of considering the cases for grant of compensation and for payment of wages. Once the Government of Tamil Nadu issued a revised minimum wages under the provisions of the Minimum Wages Act, such amount is to be atleast granted for the purpose of compensation and therefore, the fixation of Rs.8000/- is not in accordance with law.

7. The learned counsel for the second respondent opposed to the said contentions by stating that Section 4 of the Employees Compensation Act stipulates the amount of compensation. In the said provision, there is a consistent mention regarding the monthly wages to be fixed for grant of compensation. When there is a consistent mentioning about the monthly wages, it is to be taken into account for the purpose of granting compensation. Thus, it is implied that the monthly wages fixed by the Central Government under Section 4(1B) is to be adopted. In other words, the intention of the Act is to fix monthly wages in consonance with the Central Government notification issued under Section 4(1B). Therefore, the Deputy Commissioner of Labour has no option, but to fix a sum of Rs.8000/- which is the deeming cap under Section 4 (1B) of the Act.

8. Though it is contended that the word deeming cap has been removed in the amendment dated 18.01.2010, the learned counsel is of the opinion that Section 4 repeatedly contemplates "monthly wages" and therefore, the monthly wages stipulated in the provision is in consonance with the Central Government notification issued. Therefore, for all purposes, the ceiling fixed by the Central Government is taken into account for calculation of compensation and the higher amount cannot be fixed.

9. It is further contended that when the Employees Compensation Act which is the Central Act, contemplates monthly wages to be fixed, then, the minimum wages Act by the Government of Tamil Nadu, cannot be taken into consideration for the purpose of calculation of compensation and therefore, the appeal is liable to be dismissed.

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 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 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 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 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 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.

26. Thus, in the present case, the Deputy Commissioner of Labour fixed the monthly income of Rs.8000/- for the purpose of calculating the compensation. The Government of Tamil Nadu issued G.O. 2D No.91, Labour and Employment Department, dated 12.12.2013, fixing the minimum wages as Rs.9808/-. Thus the benefit of the State notification is to be granted for the purpose of calculating the compensation. Accordingly, this

Court is inclined to enhance the monthly income of the workmen from Rs.8000/- to Rs.9808/- and the total compensation payable to the claimants is Rs.5,38,445/- along with interest at the rate of 12% per annum from the date of expiry of 30 days from the date of accident.

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

28. Thus, the award dated 30.11.2017 in W.C.No.68 of 2016 stands modified and C.M.A.No.897 of 2018 stands allowed in part. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsk/kak

To

1. The Deputy Commissioner of Workmen's
Compensation -I, Chennai -6.

+1cc to Mr.S. VADIVEL, Advocate, S.R.No.4712

+1cc to Mr.M. MALAR, Advocate, S.R.No.4720

PA(CO)
SM/01/03/2021