IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

CORAM :

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.NO.1727 OF 2017

1.Saraswathi
W/o.Rajarathinam
2.Rajarathinam
S/o.Vellaichamy
3.Janaki
D/o.Rajarathinam

...Appellants

Vs

1. Pacifica Chennai Project
Infrastructure Company Private Limited
No.311, Iscon Mall
Ahmadabad
Gujarat-380 015.

2. ICICI Lombard General Insurance Co. Ltd.,
Arihant Plaza, No.84, 85
1st Floor, Waltax Road
Chennai - 600 003.

3. The Ministry of Labour and Employment
Rep. by its Secretary
Union of India, New Delhi.

4. The State of Tamil Nadu
Rep. by its Secretary
Labour and Employment Department
St. George Fort, Chennai.

[R3 & R4 suo motu impleaded vide order
dated 02.11.2018 made in CMA No.1727/2017]

...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the award dated 26.07.2016 and made in W.C.No.343/2015 on the file of the Deputy Commissioner of Labour-I, Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : R1-Exparte

Mrs.R.Sree Vidhya [For R2]

Mr.Karthikeyan [For R3]
Additional Solicitor General

Mr.T.M.Pappiah [For R4]
Special Government Pleader

J U D G M E N T

The matter has been heard through "Video Conference".

2.This Appeal has been filed by the Claimants challenging the award dated 26.07.2016 passed in W.C.No.343 of 2015.

3.This Court, by appreciating the evidence on record, determined the compensation at Rs.18,60,073/- payable to the Appellants/ Claimants along with 12% interest on 02.11.2018.

4.While deciding the matter, this Court, noticed the fixing of monthly wages at Rs.8,000/- with effect from 18.01.2010 under Section 4(1B) of the Employee's Compensation Act and this Court questioned the Central Government as to why no revision has been made in the said monthly wages as there is increase in cost of living, inflation rate etc., Paragraph No.27 of the said order is usefully extracted as follows:

> "27.For the reasons stated in paragraphs 17 to 21, incidentally in the interest of vast working force, the following queries are raised by this Court to be answered by the Central Government by 03.12.2018.
>
> (1)Why 50% deduction is being made irrespective of the number of dependants of the deceased employee, as per Section 4(1)(a) of the Employee's Compensation Act, especially when deduction for personal expenses from the wages/income is made according to the number of dependants ranging from $1/3^{rd}$ to $1/5^{th}$ of the wages/salary under the Motor Vehicles Act?
>
> (2)Why 40% of the wages is deducted from the wages/income for an employee with permanent total disability under Section 4(1)(B) of the Employee's Compensation Act, which deduction towards personal expenses is made under Motor Vehicles Act only in the case of death, especially when the injured is alive?
>
> (3)Why not the Central Government amend Section 4(1)(A) as well as 4(1)(B) of Employee's Compensation Act in parity with Section 163-A of the Motor Vehicles Act?
>
> (4)Why not the Central Government revise/enhance the amount of compensation of Rs.1.25 lakh for death cases and Rs.1.40 lakh for the injured employees, as mentioned in clause (a) and (b) of Section 4 of the Act, as fixed by Act 45 of 2009 with effect from 18.01.2010, as the said amounts are very meager and negligible as cost of living, inflation, earning power increase every year?
>
> (5)Why the Central Government has not made any revision in "monthly wages" as per Section 4(1B) of

the Employee's Compensation Act, 1923 after 18.01.2010 by which time, the wages had been fixed as Rs.8,000/- in view of the change in cost of living index?

(6)When the Central Government will revise the quantum of "monthly wages" of the workmen from Rs.8000/- as fixed by the notification dated 18.01.2010 under Section 4(1B) of the Employee's Compensation Act?

(7)Why not the Central Government remove the notified ceiling on “monthly wages” being fixed as per Section 4(1B) of the Act?

(8)Why not introduce a provision in the Act to revise the “wages” mandatorily every year, as the monthly wages, as per the Act, is not raised/revised for years together affecting crores of employees?

(9)Why not the Central Government revise the monthly wages every year, taking into consideration the increase in prices?

(10)If not, why not the Employee's Compensation Commissioner's be permitted to follow the minimum wages fixed by the respective State Governments, in case the minimum wage amount fixed by the Central Government is lower than the one fixed by the respective State Government?

(11)Why the suggestion made by this Court in Oriental Insurance Company Limited Vs. J.Sathyamoorthi (a) Moorthi and another reported in 2010 (2) TN MAC 337 to revamp/amend the Employee's Compensation Act with regard to the awarding of compensation on par with Motor Vehicles Act for addition or revision of awarding amount towards pain and sufferings, loss of damages to the clothes and property and loss of estate was not implemented so far, though it was made as early as 08.02.2010?

(12)If no steps are taken, when the suggestions given by this court in Sathyamoorthi's case would be considered and accordingly, the amendment would be made in the Employee's Compensation Act?”

Thereafter, the matter was directed to be posted for passing further orders.

5.When the matter is called today, Mr.Rajesh Vivekanandan, Learned Assistant Solicitor General appearing for the Third Respondent filed a memo dated 14.08.2021 stating that pursuant to the orders of this Court, the monthly wages has been increased from Rs.8,000/- to Rs.15,000/- under Section 4 (1B) of Employee's Compensation Act by notification dated 03.01.2020. Further, it has been stated that the Code on Social Security, 2020 has been passed by the Parliament and in the Code, the definition of wages has been revised and in consequence thereof the compensation is likely to be considerably increased. The said memo is usefully extracted as follows:

> “It is humbly submitted as follows:
>
> Ministry of Labour and Employment has enhanced the monthly wages to Rs.15000/- under Section 4 (1B) of the Employee's Compensation Act 1923, vide notification number S.O.71 (E), dated 03rd January 2020, published in the Gazette of India.
>
> Further, the Code on Social Security, 2020 has been passed by the Parliament, which has subsumed many social security Acts administered by the Ministry of Labour and Employment, Government of India including the Employee's Compensation Act, 1923. In the Code, the definition of wages has been revised and consequently thereof the compensation is likely to be considerably increased. At present, the subordinate legislations under the code are at the making stage and the intention and spirit of the order dated 02.11.2018 of the Hon'ble Court shall be considered to the possible extent. Due regard and honor shall be given to the Order. Hence the order of the Hon'ble Court dated 02.11.2018 has been complied as above.”

6.This Court appreciates the Central Government for responding to the queries raised by this Court and for enhancing monthly wages from Rs.8,000/- to Rs.15,000/- without waiting for further orders. With regard to other queries, no action has been taken by the Respondents 3 and 4. Therefore, the Respondents 3 and 4 shall consider the queries raised by this Court and take appropriate action within a period of six months from the date of receipt of a copy of this Judgment.

7.With the above observations and directions, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To

1. The Ministry of Labour and Employment
   Rep. by its Secretary
   Union of India, New Delhi.

2. The State of Tamil Nadu
   Rep. by its Secretary
   Labour and Employment Department
   St. George Fort, Chennai.

+1cc to Mr.R.Rajesh Vivekananthan, Advocate, S.R.No.41710

C.M.A.No.1727 of 2017

NK(CO)
RLP(17/09/2021)