

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

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

C.M.A.No.1750 of 2017

1.C.Sudha

2.C.Yogeswaran (Minor)

3.C.Umamaheshwari (Minor)
Minors Petitioner 2 & 3 Rep. By her Mother
& Near friend C.Sudha.

4.G.Rajammal ..Appellants/Claimants
Vs.

The Managing Director,
Metropolitan Transport Corpn. Ltd.,
Pallavan Salai, Chennai 600 002.

..Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the award dated 24.02.2016 made in W.C.No.166 of 2012, passed by the Commissioner for Workmen Compensation and Deputy Commissioner of Labour-2, Chennai.

For Appellants : Mr.F.Terry Chellaraja
for Mr.A.A.Venkatesan

For Respondent : Mr.M.Chidambaram

J U D G M E N T

This civil miscellaneous appeal has been filed against the award dated 24.02.2016 made in W.C.No.166 of 2012, passed by the Commissioner for Workmen Compensation and Deputy Commissioner of Labour, Chennai.

2. The substantial question of law raised in the present civil miscellaneous appeal is that whether the Deputy Commissioner of Labour was correct in fixing the salary as the deceased was a labour working as a bus driver in the Transport Corporation and was earning a sum of Rs.11,873/- per month. However, the Deputy Commissioner of Labour fixed the minimum amount fixed by the Central Government i.e., Rs.8000/- per month.

3. The claim petition under Section 10(2) of the Workmen Compensation Act was filed by the legal heirs of the deceased driver of Metropolitan Transport Corporation Limited. The accident occurred on 21.12.2011 at about 5.40 a.m., when the deceased driver was driving a MTC bus bearing Registration No.TN 01 N 7427 in route No.159A from Choolai to Tondiarpet. The bus met with an accident and the driver fell down and sustained fatal injury and died later on in the Rajiv Gandhi Government Hospital, Chennai, on 22.12.2011. The legal heirs of the deceased driver filed an application seeking compensation.

4. The Deputy Commissioner of Labour adjudicated the issue with reference to the documents and evidences produced by the respective parties to the application. The only dispute arose in the present appeal is that whether the monthly salary of Rs.8000/- fixed by the Deputy Commissioner of Labour is correct or not. The findings of the award reveals that the deceased was working as a Driver in MTC Corporation Limited and the salary certificate issued by the Management of the MTC was marked as a document Ex.A7. As per the salary certificate Ex.A7, at the time of the accident, the deceased driver was drawing a monthly salary of Rs.11,873/-.

5. This being the factum, the Deputy Commissioner of Labour has fixed the monthly salary of the deceased driver as Rs.8000/-, which is the minimum salary fixed by the Central Government under Section 4(A) of the Employees Compensation Act, 1923. Whenever the salary is unable to be fixed for want of document or evidence, then the authority competent is empowered to fix the minimum salary notified by the Central Government which was Rs.8000/- during the relevant point of time and at present, it is Rs.15,000/-. However, if the salary of the deceased is established by way of an authorized salary certificate issued by the employer, then, there cannot be any dispute as the said salary certificate was not disputed. Such salary certificate is to be taken into consideration for the purpose of computation of compensation. In the present case, the Deputy Commissioner of Labour committed an error in not accepting the salary certificate marked as Ex.A7. Thus, the question of law raised in this regard regarding the fixation of salary is answered in favour of the appellants.

6. Thus, the award dated 24.02.2016 passed in W.C.No.166 of 2012, is set aside and the appellants are entitled for the modified compensation of Rs.11,25,323/- along with the statutory interest at the rate of 12% per annum as per the Act, from the date of the accident. The respondent is directed to deposit the modified award amount with accrued interest within a period of 12 weeks from the date of receipt of a copy of this order and on such deposit, the major appellants alone are permitted to withdraw their respective portion of the award by filing an appropriate application and payments are to be made through RTGS. As far as the minor appellants are

concerned, the said amount shall be deposited in an interest bearing scheme in any one of the Nationalised Bank till they attain majority.

7. Accordingly, the award dated 24.02.2016 in W.C.No.166 of 2012, is set aside and C.M.A.No.1750 of 2017 stands allowed. No costs.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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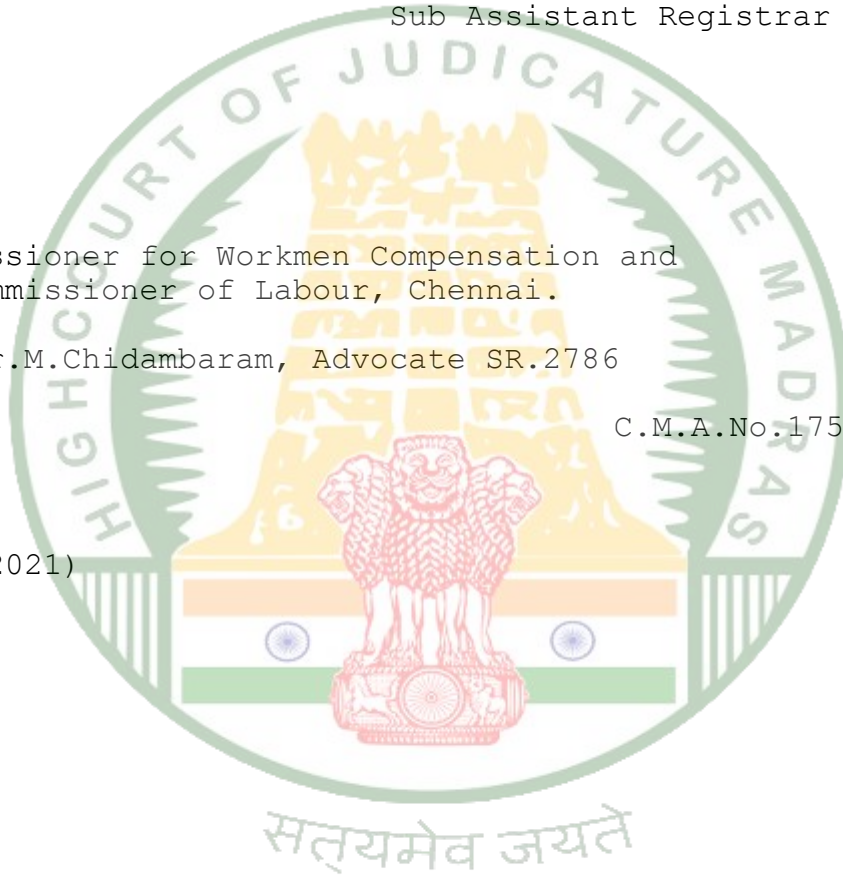
To

The Commissioner for Workmen Compensation and
Deputy Commissioner of Labour, Chennai.

+1cc to Mr.M.Chidambaram, Advocate SR.2786

C.M.A.No.1750 of 2017

SV (CO)
CB (04/03/2021)



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