IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.487 of 2017

Tmt.Jeyalakshmi ..Appellant/ Appellant

Vs.

1.Mr.P.Baskaran
2.M/s.New India Assurance Co Ltd.,
No.45, Moore Street,
Chennai - 600 001 ..Respondents/ Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the Award dated 19.01.2015 and made in W.C.No.223/2011 on the file of the Deputy Commissioner of Labour-II, Chennai.

For Appellant : Mr.F.Terry Chellaraja
For Respondents : R1 - No such addresse
R2 - Mr.M.Krishnamoorthy

J U D G M E N T

The Substantial Question of law raised in the appeal on hand is as follows:

> "a) Whether the Deputy Commissioner of Labour-II is right in not awarding interest at the rate of 12% p.a from the date of accident excluding 30 days from the date of accident under Section 4(A) of the W.C.Act, while the award was passed in merits?
>
> b) Whether the Learned Deputy Commissioner of Labour-II is right in fixing the income of the deceased?"

2. The appellant is the claimant, filed the application under Section 10 of the Workmen Compensation Act on the ground that on 24.03.2011 at about 09.00 hours, the deceased was a driver in the Car bearing Registration No.TN-01-Y-8995, proceeding in the E.C.R. Road from Pondicherry to Chennai at that time near Vadapattinam Village, the accident occurred and the vehicle capsized and the driver died on the spot. The legal heirs filed an application and the Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidences. The factum regarding the accident was established. The Criminal case was registered and the F.I.R was relied on by the Deputy Commissioner of Labour and he arrived a conclusion that the employer-employee relationship was also established. While calculating the compensation, the Deputy Commissioner of Labour fixed the monthly income of the deceased as Rs.5,966/-, which is below the deeming cap fixed

by the Central Government Notification dated 31.05.2010 under Section 4(1B) of the Employee's Compensation Act.

3. With reference to the Central Government Notification and fixation of monthly income as per the Government of India Notification, this Court, elaborately passed an order in C.M.A.No.897 of 2018 dated 27.01.2021 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."

4. In view of the principles settled in the above cases cited supra, the appellant in the present case on hand is entitled for the fixation of monthly income as Rs.8,000/- as per the Central Government Notification dated 31.05.2010 as the accident occurred on 24.03.2011. Thus, the monthly income fixed by the Deputy Commissioner of Labour is enhanced to Rs.8,000/-(Rupees Eight Thousand only). Accordingly, the appellant is entitled for the modified compensation of

Rs.8,47,160/-(Rupees Eight Lakhs Forty Seven Thousand One Hundred and Sixty 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. The 2nd respondent/Insurance Company is directed to deposit the enhanced amount along with the interest at the rate of 12% per annum on the expiry of 30 days from the date of accident till the date of deposit of award by the Insurance company as per the award passed in W.C.No.233/2011 within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the appellant / claimant is permitted to withdraw the entire amount along with accrued interest by filing an appropriate application and the payments are to be made through RTGS.

5. Accordingly, the award dated 19.01.2015 made in W.C.No.223/2011 is modified and the Civil Miscellaneous Appeal in C.M.A.No.487 of 2017 stands allowed in part. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kak

To

The Deputy Commissioner of Labour-II, Chennai.

+1cc to Mr.M.Krishnamoorthy , Advocate SR.No. 8103
+1cc to M/s.M.Malar, Advocate SR.No. 7910

C.M.A.No.487 of 2017

A.SK(22.03.2021)