

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.2319 OF 2018

P.Marimuthu

..Appellant

Vs.

1. Hot Chips Restaurants (P) Ltd.,
No.1, First Floor, Sri Jeess Flats,
No.177, Avvai Shanmugam Salai,
Royapettah, Chennai - 600 014.
(Since First Respondent remained ex-parte
before the Tribunal his presence may be
dispensed with)

2. New India Assurance Company Limited,
No.45, 5th Floor, Moore Street,
2nd Line Beach, Chennai - 600 001

..Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 30 of the Workmens' Compensation Act, against the Award dated 02.08.2017 and made in W.C.No.29/2014 on the file of the Deputy Commissioner for Workmen's Compensation-II, Chennai -6 and the award copy was received on 28.06.2018.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : R1 - Exparte
R2 - Mr.S.Dhakshnamoorthy

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J U D G M E N T

The Award dated 02.08.2017 passed in W.C.No.29/2014 is under challenge in the present Civil Miscellaneous Appeal.

2. The claimant is the appellant and the Claim Petition is filed under Section 10 of the Workmen Compensation Act on the ground that on 14.04.2013 at about 06.15 hrs, when the claimant

was employed as a Driver in Auto bearing Registration No.TN-07-S-5605 belonged to the 1st respondent, he met with an accident in Purasawakkam High Road junction of millers road and sustained grievous injuries. He sustained crush injuries in both legs, multiple grievous burning injuries all over the body. The claimant took treatment and filed an application, seeking compensation.

3. The Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidences produced by the respective parties to the petition.

4. The learned counsel appearing on behalf of the appellant mainly contended that the monthly income of Rs.8,000/- fixed is not in accordance with the notification issued by the State Government under the provisions of the Minimum Wages Act. As per the State Government, the Government Order issued in G.O.Ms.2D.No.3 dated 27.01.2014, the Minimum Wages fixed is a sum of Rs.10,127/-. It is contended that Minimum Wages fixed by the State Government is to be adopted as the Central Government has not revised the Minimum Wages for a longer period. Therefore, the compensation awarded cannot be construed as 'just compensation'. The principles to be adopted is to grant 'just compensation' to the victims. How to assess the compensation as just, the Courts are held that the compensation awarded must be in commensuration with the price index and prevailing situation in the society. Impracticable calculation is impermissible. Therefore, the nature of the Act being verified by the workman with reference to the salary prevailing in the society are to be considered for the purpose of fixing the compensation.

5. In the present case, the Courts are bound by the provisions of the Act. Under the Act, the Central Government notified a sum of Rs.8,000/- as monthly income in the year 2010. However, the State Government revised the minimum wages of a workman under the provisions of the Minimum Wages Act and enhanced the sum as Rs.10,127/-. Thus, the beneficial enhancement is to be granted to the workman as the statute is a welfare legislation.

6. It is for the Courts to ascertain, which one is beneficial to the workman and it would suit the prevailing situation in the society. When these facts are taken into consideration, this Court is of the opinion that the Minimum Wages fixed by the State Government in the year 2014 is to be adopted as the minimum wages notified by the Central Government was in the year 2010 and thereafter, it was not enhanced. Practicable and pragmatic approach is required in adopting the minimum wages for the benefit of the workman under the provisions of the Employees Compensation Act, which is a welfare

legislation. Thus, this Court is inclined to adopt the State Government fixation of Minimum Wages in G.O.Ms.2D.No.3, which stipulates a sum of Rs.10,127/- and the accident in the present case falls within the ambit of the Government order issued by the State Government.

7. This Court adjudicated the same issue raised in the present appeal in yet another case decided on 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."

8. Adding to the said judgment, this Court is inclined to cite the judgment of the Hon'ble Supreme Court of India in the case of Directorate of Enforcement v. Deepak Mahajan, reported in 1994 (3) SCC 440, wherein the Apex Court made an observation, which reads as under:

"24...Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.

25. In Maxwell on Interpretation of Statutes, Tenth Edn. at page 229, the following passage is found:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used." (emphasis supplied)

9. This principle of statutory interpretation has been affirmed more recently in the decision in Shailesh Dhairyawan v. Mohan Balkrishna Lulla, reported in (2016) 3 SCC 619 and the Apex Court made an observation that "Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced."

10. The said principle was followed by the Apex Court of India in a subsequent decision in the case of Anurag Mittal v. Shaily Mishra Mittal, reported in (2018) 9 SCC 691.

11. In the present case, the learned counsel for the respondent / Insurance company reiterated that as per Section 4

(1B), the ceiling is fixed as a sum of Rs.8,000/- and therefore, the Courts have to adopt the said ceiling.

12. This Court is of the considered opinion that the Act was enacted in the year 1923 and it is a pre-independence legislation and after independence, the country has seen many developments in the field of Labour Law and therefore, this Court is of an opinion that progressive interpretation is required. Thus, the contention in this regard deserves no merit consideration.

13. Accordingly, this Court is inclined to enhance the monthly income of the appellant/claimant from a sum of Rs.8,000/- (Rupees Eight Thousand) to a sum of Rs.10,127/- (Rupees Ten Thousand One Hundred and Twenty Seven only). Thus, the appellant/claimant is entitled for a total compensation of a sum of Rs.4,03,527/- (Rupees Four Lakh Three Thousand Five Hundred and Twenty Seven 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 difference amount with accrued interest within a period of 12 weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is directed to withdraw the amount by filing an appropriate application and the payments are to be made through RTGS. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner for Workmen's Compensation-II,
Chennai -6.

+1cc to M/s.M.Malar, Advocate, S.R.No.11967

+1cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No.11513

C.M.A.No.2319 of 2018

PM(CO)
CS/18/03/2021