

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2312 of 2018

Dhanasekaran

..Appellant

Vs.

1.Duraisamy

(Notice to R1 may be dispensed with
for the Set ex-parte before the Tribunal)

2.Iffco-Tokio General Insurance Co., Ltd.,
JH Towers, 2nd Floor,
L.I.C.Colony Road,
Salem.

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act 1925, against the order dated 31.07.2017 made in W.C.O.No.874 of 2014, N.No.694 of 2015 on the file of the Deputy Commissioner of Labour/Commissioner of Workmen Compensation Court, Coonoor.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : R1 - Exparte
R2 - Mr.J.Michael Visuvasam

J U D G M E N T

The Substantial Question of law raised in the present appeal is that "Whether the learned Commissioner has committed an error by taking the income of the injured as Rs.8,000/- as per the Act, when it was alleged on the side of petitioner that the injured was earning Rs.10,000/- per month and the same was also not disputed by the respondent."

2. The said question raised is purely a question of fact. Whether the income of the injured is 10,000/- or not, must be established by filing an acceptable evidence. When there is no evidence to establish the income of the victim, then the Deputy Commissioner of Labour has to fix the income as notified by the Central Government under Section 4(1B) of the Workmen Compensation Act.

3. During the relevant point of time, when the accident occurred, the ceiling fixed by the Central Government in its

Notification dated 31.05.2010 was Rs.8,000/- and accordingly, the monthly income of the victim of fixed as Rs.8,000/- by the Deputy Commissioner of Labour. If at all, the injured claims that his salary was Rs.10,000/-, then the burden of proof of his side to establish the salary by producing an acceptable evidence. In the present case, no such evidence was produced by the claimant.

4. This being the factum, the appeal deserves no merit consideration. This apart, the substantial question of law raised is also relatable to the facts and therefore, the Award dated 31.07.2017 made in W.C.No.874 of 2014 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.2312 of 2018 is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Labour/Commissioner
of Workmen Compensation Court, Coonoor.

+1cc to M/s.J.Michael Visuvasam, Advocate SR.10123

C.M.A.No.2312 of 2018

JP II(CO)
CB(10/03/2021)

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