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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.2714 of 2017

Raghunathan

..Appellant/Petitioner

Vs.

1.K.Kalyanana Sundaram

2.Oriental Insurance Company Ltd.,
No.115/16, 2nd Floor,
Oriental House, Prakasam Salai,
Chennai - 600108.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the Award dated 02.09.2016 and made in W.C.No.493 of 2013 on the file of the Deputy Commissioner of Labour - II Chennai and the cover in which award copy was received on 06.07.2017.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.R.Sivakumar for F2

R1-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the applicant in WC.No.493 of 2013, which came up for consideration before the Commissioner, Workmen's Compensation / Deputy Commissioner of Labour - II, Chennai, who by an award dated 02.09.2016, on consideration of the facts and circumstances and the claim made, had granted a compensation of Rs.5,15,158/- for the injuries suffered by the Appellant. Questioning that particular award, this present Civil Miscellaneous Appeal has been filed.



2.A brief examination of the facts would show that the appellant had suffered injuries and fracture in tibia and fibula. The bones were exposed and there were also multiple grievous injuries all over the body. The appellant herein was under the employment of the 1st respondent, who remained ex-parte even before the Deputy Commissioner of Labour and also before the Appellate Court. The burden was shifted to the 2nd respondent / Oriental Insurance Company to examine the claim of the applicant and redress the grievance.

3.Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant and Mr.R.Sivakumar, learned counsel appearing for the 2nd respondent.

4.I deeply appreciate the arguments advanced by both the learned counsels.

5.The learned counsel appearing for the appellant stated that he would restrict the appeal to only one issue. The said fact is also to be much appreciated and as a matter of fact, even Mr.R.Sivakumar, learned counsel appearing for the 2nd respondent stated that since the issue had been watered down to one aspect, he would also reply to that particular issue.

6.A perusal of the award under question, which is dated 02.09.2016 shows that the Deputy Commissioner of Labour had determined the monthly wages at Rs.7,283/-. The said determination contains two components namely, basic wages at Rs.3,570/- and dearness allowance at Rs.3,713/-. The same had been determined on the basis of the order of the Government of Tamilnadu in G.O.(Ms).No.640-2D, Labour and Employment, dated 23.07.2009. Under normal circumstances that particular determination of the monthly wages based on a Government Order issued by the State of Tamilnadu would not be questioned.

7. Mr.Terry Chellaraja however, widened the arguments and pointed out Section 4 of the erstwhile Workmen's Compensation Act, 1923 which related the amount of compensation, which can be granted. The learned counsel made specific reference to Explanation II of Section 4, which reads as follows:-

"Explanation II: Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only."

The said explanation actually places an embargo or a limit on the monthly wages, which can be taken into consideration, namely at Rs.4,000/-.

8.The learned counsel then pointed out the Employee's Compensation Act(1923), which is now in force and which has



amended the erstwhile Workmen's Compensation Act, 1920.

9. Section 4 of Employee's Compensation Act, (1923) also deals with the amount of compensation. But the aforementioned Explanation II, which was there in the Workmen's Compensation Act, 1920 had been deleted. On the other hand, the Parliament had introduced Section 1-B, which reads as follows:-

"(1B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary."

The said proviso places an obligation on the Central Government to issue a notification in the Official Gazette, specifying the monthly wages in relation to an employee.

10. Thereafter, a notification was issued and has been produced. It was issued on 31.05.2010 in the Government of India Gazette, wherein, the following has been issued by the Ministry of Labour and Employment:-

S.G.1258(E):- In exercise of the powers conferred by sub-section (1B) of Section 4 of the Employee's Compensation Act, 1923 (8 of 1923), the Central Government hereby specifies, for the purposes of sub-section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the Official Gazette, namely:- "Eight Thousand Rupees".

11. A perusal of the same shows that the Central Government had in exercise of the power conferred under Section 4 of Sub-section (1B) referred supra of Section 4 of the Employee's Compensation Act, 1923 (8 of 1923), has specified for the purposes of Sub-section 1 of Section 4, Rs.8,000/- as the amount of compensation to be fixed as monthly wages. By pointing out the same, Mr.F.Terry Chellaraja would state that the determination of the monthly wages of Rs.7,283/- should be revisited by this Court and an amount of Rs.8,000/- should be determined.

12. Mr.R.Sivakumar, learned counsel for the respondent is naturally aggrieved by the said contention and stated that Rs.7,283/- had been determined on the basis of the Government Order issued by the State of Tamilnadu and therefore, that should be taken into consideration and not the notification issued by the Central Government. In my opinion, Article 254 of the Constitution would then come to play and if there is a dispute between State Legislation and Central Legislation then the Central legislation would prevail. In this particular case,



the Workmen's Compensation Act and the Employee's Compensation Act, are both the statutes passed by the Parliament and therefore, would go with notification issued by the Government of India and determine the monthly wages at Rs.8,000/-

13. The said view taken by me is strengthened by an earlier order of a learned Single Judge of this Court made in CMA.No.2394 of 2015, Sheikmastan Sherif Vs. Rasool and National Insurance Company Limited. By order dated 19.01.2021, the learned Single Judge had also examined the effect of the notification aforesaid mentioned and had determined the monthly wages at Rs.8,000/-.

14. In view of this fact, I would also have to necessarily redetermine and refix the monthly wages at Rs.8,000/- instead of Rs.7,283/-. The other determinations in the judgment under appeal are not interfered with. Accordingly, the award is modified as follows:-

1) Appellant's Age at the time of the accident	41
2) Relevant Factor	181.37
3) Monthly Wages	Rs.8,000/-
4) Loss of earning capacity	65%
5) Loss of income $60/100 \times 181.37 \times 8000 \times 65\%$	Rs,5,65,874/-
6) Medical Expenses (Based on Bills)	Rs.50,441/-
Total	Rs.6,16,315/-

***15. In fine, this Civil Miscellaneous Appeal is allowed, and the award is enhanced to Rs.6,16,315/-. The Insurance Company shall deposit the enhanced compensation with interest at 12% p.a. from the 30th date of the accident till date of deposit, within a period of eight weeks from today. On such deposit, the Appellant is permitted to withdraw the same. No costs.**

Sd/-
Assistant Registrar(CO)

//True copy//

***Para 15 of the order dated 11/02/2022
corrected as per order of this Court dated 04/03/2022**

Sub Assistant Registrar

kkn/smv



To:-

The Deputy Commissioner of Labour - II,
Chennai.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.R.Sivakumar, Advocate SR.No.9086

+2ccs to Ms.M.Malar, Advocate SR.No.14748, 8872

CMA.No.2714 of 2017

AK II(CO)
NRL(CO)
GMY(11/03/2022)