IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2023

PRONOUNCED ON : .07.2023

CORAM:

**THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

C.M.A.No.2229 of 2016

1.Tmt.Shanthi Bai
2.Minor Shalini Bai
[Minor represented by her Mother/Natural Guardian, 1st appellant herein]
3.Mrs.Pitcha Bai
4.Mr.Samooji ... Appellants/Petitioners

vs.

1.Mrs.Soundarya Decorators Private Limited,
Plot No.26, Survey No.2 & 3 Porur Village,
Kolathur Post, Keezhkottaiyur,
Kelambakkam Road, Chennai.

2.M/s.New India Assurance Company Limited,
No.2, B.R., Complex, Woods Road,
Anna Salai, Chennai 600 002. .. Respondents/Respondents

The Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, against the order passed by the Deputy Commissioner of Labour -II, Chennai 600 006 made in W.C.No.571 of 2010, dated 01.04.2016.

For Appellants : Mr.T.G.Balachandran

For R1 : Mr.S.Jeevanantham

For R2 : Mr.J.Michael Visuvasam

JUDGMENT

The Civil Miscellaneous Appeal has been filed challenging the award passed by the Deputy Commissioner of Labour-II, Chennai in W.C.No.571 of 2010, dated 01.04.2016, for the death of one Mohan @ Mohanji, who died in the course of employment, claiming compensation by the dependents of the deceased.

2. The parties are referred to hereunder according to status and ranking before the Deputy Commissioner of Labour-II, Chennai.

3. The case of the claimants is as follows:

The deceased Mohan @ Mohanji was involved in the removal of building debris on 28.07.2010 at ELCOT HCL Company, Sholinganallur, 5th Floor and due to excess load, the debris fell down, caused injuries to the workmen including the deceased Mohan @ Mohanji. He was engaged by the first respondent as a daily wager to do the above work and the second respondent is the Insurance Company in which, the employees were covered with insurance for the employment injuries.

4. The first respondent filed Counter and stated that they have been engaged by the HCL Technologies, Sholinganallur, to do some work and they have been taken policy to cover the risk of direct and indirect employees working under them. Since, Mohan @ Mohanji was died during the employment, he is covered by the Insurance Policy, the accident was also reported to the Insurance Company. Hence, the Insurance Company is liable to pay the compensation for the death of the deceased. The Insurance Company has filed counter and contended that the deceased Mohan @ Mohanji was not having employee-employer relationship with HCL. The direct employees of M/s.Soundarya Decorators/1$^{st}$ respondent herein alone are covered by the Insurance Policy and sub contractors are not covered under this policy. They are not liable to pay compensation to the deceased since he is not covered under the policy. They have also disputed the claim of compensation under various heads.

5. Before the Deputy Labour Commissioner -II, the dependents of the deceased/claimants have examined the fourth petitioner as P.W.1 and marked Exs.P1 to P9. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R1 to R7 were marked. The Court Witness ESI Manager, Tambaram was examined and Ex.C1 was also marked.

6. After considering the records placed, The Deputy Labour Commissioner -II, has held in issue Nos.1 and 2 that factually there is no coverage for the injured/deceased hence, the Insurance Company is not liable to pay compensation. In point No.3, the Deputy Labour Commissioner -II has fixed the notional income based on the Central Government Notification and fixed notional income as Rs.8,000/-. In issue Nos.4 and 5 the Deputy Labour Commissioner -II has awarded a sum of Rs.8,73,880/- as a compensation and directed the first respondent to pay the compensation.

7. Aggrieved over the award passed by the Deputy Labour Commissioner -II, the claimants have filed this appeal by invoking Section 30 of the Employees Compensation Act.

8. Learned counsel for the appellants/claimants has mainly raised two points relating to the substantial question of law. According to him, the grant of interest is a statutory right and the same has not been granted by the Deputy Labour Commissioner -II and raised a question, whether the Deputy Labour Commissioner -II is entitled to refuse awarding interest in contravention of Section 4(A) (3) of the Employees Compensation Act, 1923. He would further submit that whether the Deputy Labour Commissioner -II is entitled to fix notional income based on minimum wages prescribed by the Central Government, even after proving the monthly income of the employee. The claimants have not disputed the fact that there was no coverage of insurance for the contract employees i.e., deceased employee herein.

9. Learned counsel for the respondents submitted that the award passed by the Deputy Labour Commissioner -II is within the parameters of the provisions of the Act, relating to interest as well as fixing of notional income based on the Central Government Notification and the claim of the claimants has been properly appreciated and the award is passed and hence, there is no need for enhancement or modification of the said award.

10. It is an admitted fact that the deceased Mohan @ Mohanji has sustained injuries and succumbed to the same, during the course of employment. He was employed under the first respondent. He was not directly employed with HCL Technologies. The respondents were able to prove that the deceased herein is a contract and indirect employee. This was considered by the Deputy Labour Commissioner -II, by examining both the Insurance Company as well as ESI official and has held that there is no ESI coverage for the deceased employees. Similarly, in the policy, there is no coverage for sub-contractors since the claimant has worked under sub-contract is not eligible for any insurance coverage. This factual aspect has not been challenged, since the same is relating to the question of fact, hence this Court is not inclined to go in to the same. With regard to non awarding of interest of the claimants are concerned, the Hon'ble Supreme Court in ***The Oriental Insurance Company Ltd., vs. Siby George and Others reported in MANU/SC 0608/2012*** has considered the scope of Section 4 (A) (3) of the Employees Compensation Act and also after considering the previous Judgments of the Hon'ble Supreme Court in ***Kerala State Electricity Board and another vs. Valsala.K and Another*** reported in ***AIR 1999 SC 3502*** and

***Pradap Narayan Singh Dio vs. Srinivas Sahatha*** reported in ***AIR 1976 SC 222*** has held in Paragraph Nos.7, 8 and 9 reads as follows:

> ***"7.*** *Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment". It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the ability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.*

> ***8.** It was the duty of the appellant, under Section 4-A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty.*
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> ***9.** The appeal fails and is dismissed.”*

11. As observed by the Hon'ble Apex Court, interest for the compensation is liable to pay from the date of right to pay compensation, which is accrued from the date of accident. Accordingly, this Court is of the view, that non granting of interest by the Deputy Labour Commissioner -II, for the compensation awarded by him is not justifiable and accordingly, the

first respondent is liable to pay compensation along with interest at the rate of 12% per annum.

12. The next point arises for consideration is relating to awarding compensation based on the minimum wages notified by the Central Government under Section 4 (1) (B) of the Employees Compensation Act is justifiable, when there is an evidence to show that the deceased herein has received more than the minimum wages fixed by the Central Government, this Court in ***M/s.Vivek & Co vs. N.Ravi and Another in C.M.A.No.1705 of 2018, order dated 12.02.2021*** has considered the question whether the minimum wages to be taken-into-account, when there is a proof available for the income of the workmen for arriving the compensation. In paragraph Nos.23 and 24, this Court has observed as follows:

> *"23. 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 unguided 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 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.*

*24. 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."*

13. In this case, the Deputy Labour Commissioner -II, has fixed

the actual income of the deceased as Rs.350/- based on the salary slip Ex.R.W.7. Accordingly, the monthly salary of the deceased was calculated as Rs.10,500/- (350 X 30days). After holding that the monthly salary of the deceased is Rs.10,500/- per month, the Deputy Labour Commissioner -II, has only adopted minimum wages fixed, by notifying the Central Government i.e., Rs.8,000/-. I am of the view that as stated by this Court, fixation of minimum wages is only for the purpose of guiding the Labour Commissioners to award fair compensation, in case, if the claimants were not able to prove their income.

14. In this case, the claimants have proved the income of the deceased and that was also accepted by the Deputy Labour Commissioner -II, and after accepting the monthly salary of the deceased as Rs.10,500/- and not granting the compensation in terms of his actual salary is not proper and accordingly, the actual salary is to be taken up for calculating the compensation. The age of the deceased is 24 at the time of accident and the multiplier is 218.47. The total loss of income arrived at Rs.11,46,967.5/- [10500 X 218.47 X 50%] and Funeral Expenses at Rs.5,000/-. Thus, total

amount of compensation is arrived at Rs.11,51,967.5/- rounded off Rs.11,51,968/-.

15. In the result, the Civil Miscellaneous Appeal is allowed allowed awarding 12% interest per annum from the date of accident till the date of deposit. The first respondent/M/s.Soundarya Decorators Private Ltd., is directed to deposit the compensation amount of Rs.11,51,968/- [Rupees Eleven Lakhs Fifty One Thousand Nine Hundred and Sixty Eight only] along with interest and costs to the credit of W.C.No.571 of 2010, on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour-II), Chennai, within a period of eight weeks from the date of receipt of copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed, if any.

.07.2023

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To

1.The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour-II),
Chennai.

2.The Section Officer,
V.R.Section,
High Court,
Madras.

**K.RAJASEKAR,J.,**

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Pre-delivery Judgment made in
C.M.A.No.2229 of 2016

.07.2023