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C.M.A.No.897 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.897 of 2021

Karthik

... Appellant

Vs.

1. P.Marappan
2. Divisional Officer,
New India Assurance Company Limited,
No.29, Ram Complex,
Paramathi Road,
Namakkal Town – 637 001.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, 1923 against the order dated 26.05.2020 and passed E.C.No.221 of 2018 on the file of Commissioner of Labour, Conoor.

For Appellant : Mr.C.Thangaraju

For Respondents : Mr.M.Krishnamoorthy for R2

No Appearance for R1

JUDGEMENT

The Civil Miscellaneous Appeal has been filed against the order dated 26.05.2020 and passed E.C.No.221 of 2018 on the file of Commissioner



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of Labour, Conoor.

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2. It is the case of the claimant that claimant is the driver of the lorry bearing Reg.No.TN 28 AU 0004 owned by the first respondent. On 10.04.2018, at about 4:00 am when the claimant was driving the said lorry, at that time the offending vehicle which came in the opposite direction came in a rash and negligent manner and dashed agaisnt the claimant. Due to the said accident, the claimant sustained grievous injuries all over his body and was admitted in a hospital. Claiming compensation for a sum of Rs.20,00,000/-, the claimant has filed the claim petition.

3. Before the Tribunal, the claimant examined two witnesses viz.P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.14. No witnesses were examined nor any documents were marked on the side of the respondents. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.8,81,416/- as compensation to the claimant. Not satisfied with the same, the appellant/claimant is before this Court.



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4. Learned counsel appearing for the Appellant/claimant submitted that the compensation awarded by the authority is grossly inadequate. At the time of accident, the claimant was earning a sum of Rs.20,000/- and his income was affected during the period in which he was under treatment which was purely on account of the said accident. However, without considering the same, the authority had erroneously fixed the notional income as Rs.8,000/- per month which is on the lower side. Hence, the compensation awarded by the Tribunal requires to be reconsidered and prays for enhancement of compensation.

5. Per contra, learned counsel appearing for the second respondent/Insurance Company submitted that though it is the claim of the Appellant that he was earning a sum of Rs.20,000/- per month, no proof of income has been placed by him in order to substantiate the said claim. In the absence of any proof of income, the monthly income of the appellant has been rightly fixed by the authority at Rs.8,000/- which does not require any interference.

6. This Court, heard the learned counsel appearing for the petitioner as well as the 2nd respondent-Insurance Company and perused the materials



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available on record.

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7. The main issue that arises for consideration in the present appeal is with regard to the fixation of monthly wages by the authority at Rs.8,000/- as notified by the Central Government u/s 4(1-B) of the Workmen's Compensation Act.

8. It is the case of the claimant that he was earning a sum of Rs. 20,000/- per month which is more than the wages fixed by the authority and therefore, entitled for higher compensation in terms of Section 4(1)(a) of the Act. Though such a claim is made, however, the claimant has not placed any material either before the authority or before this Court in order to substantiate his stand with regard to receipt of monthly income to the tune of Rs.20,000//-. In the absence of any proof of income, the authority by invoking Section 4(1-B) of the Act, had fixed the monthly wages at Rs.8,000/- as per the notification of the Central Government dated 18.01.2010.

9. Once the employee has not established the salary received by him through documentary evidence, necessarily, the authority has to resort to



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Section 4 (1-B) and the provision u/s 4 (1)(a) of the Act would not be available to the claimant to claim compensation. Rightly appreciating the aforesaid provision, the authority has granted the compensation to the claimant which, by no stretch, could be termed to be unreasonable or perverse and, therefore, the same does not warrant any interference.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed and the impugned award dated 26.05.2020 made in E.C.No.221 of 2018 is confirmed. There shall be no order as to costs.

20.12.2023

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. The Commissioner of Labour, Conoor.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J

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