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C.M.A.No.1159 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1159 of 2021

Selvam

.. Appellant

Vs.

1.Thangavelu

2.Divisional Manager,
National Insurance Company Limited,
No.74-A, Paramathi Salai,
Namakkal – 637 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Employee's Compensation Act, 1923, against the award dated 16.03.2020 made in E.C.No.200 of 2017 on the file of the Commission for Commissioner of Workmen's Compensation, Coonoor.

For Appellant : Mr.Sankar
for Mr.C.Thangaraju

For R1 : No appearance

For R2 : Mr.D.Bhaskaran



J U D G M E N T

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This Civil Miscellaneous Appeal has been filed against the award dated 16.03.2020 made in E.C.No.200 of 2017, on the file of the Commission for Commissioner of Workmen's Compensation, Coonoor, by the applicant.

2.The appellant herein is the applicant in E.C.No.200 of 2017 on the file of the Commission for Commissioner of Workmen's Compensation, Coonoor. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him during the course of employment on 07.01.2017.

3.The Commissioner of Workmen's Compensation, Coonoor, considering the pleadings, oral and documentary evidence, held that the appellant herein sustained injuries only during the course of his employment and directed the 2nd respondent – Insurance Company to pay a sum of Rs.2,20,450/- as compensation to the appellant.

4.Seeking enhancement of compensation in the award dated 16.03.2020 made in E.C.No.200 of 2017, the appellant has filed this appeal.



5.The learned counsel for the appellant would contend that during the course of employment of the appellant as Driver under the 1st respondent, he earned a sum of Rs.20,000/- per month as salary and Rs.250/- per day as batta, but the learned Commissioner of Workmen's Compensation, Coonoor, fixed only a sum of Rs.8,000/- as monthly income of the appellant and the same is very meagre. The learned Commissioner of Workmen's Compensation, Coonoor, ought to have fixed a sum of Rs.27,500/- as monthly income of the appellant and awarded compensation. He further contended that as per G.O.(2D).No.91, Labour and Employment (J1) Department, dated 12.12.2013, a sum of Rs.11,337/- has to be fixed as minimum monthly wage of the appellant. It is his further contention that the learned Commissioner of Workmen's Compensation, Coonoor, having awarded a sum of Rs.38,987/- for medical expenses, failed to award interest for the said amount. The learned Commissioner of Workmen's Compensation, Coonoor, ought to have awarded interest for medical expenses also and prayed for enhancement of compensation.

6.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him.



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7.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company would vehemently oppose the arguments advanced by the learned counsel appearing for the appellant and he would contend that the appellant failed to prove his income by producing documentary evidence. In the absence of any evidence to prove the income, the Tribunal following the Notification issued by the Central Government on 31.05.2010 based on Section 4(1)(B) of the Employees Compensation Act, 1923, has rightly fixed a sum of Rs.8,000/- as monthly income of the appellant and awarded compensation, which is reasonable. The total compensation granted by the learned Commissioner of Workmen's Compensation, Coonoor, is reasonable and prayed for dismissal of the appeal.

8.Heard Mr.Sankar, learned counsel for the appellant and Mr.D.Bhaskaran, learned counsel for 2nd respondent and perused the materials on record.

9.From the above materials, it is seen that it is the case of the appellant that during the course of employment as Driver under the 1st respondent, he got injured and at that time he was earning a sum of Rs.20,000/- per month as



salary and Rs.250/- per day as batta. Hence, the learned Commissioner of Workmen's Compensation, Coonoor ought to have fixed a sum of Rs.27,500/- per month as salary and awarded compensation.

10.This issue was considered by this Court in the following judgments:

10(i).In the judgment dated **02.01.2020** passed in **C.M.A.No.3436 of 2019, [Shahitha Parvin and another Vs. M.Prabhakaran and another]**, wherein it has been held that the contention of the learned counsel for the Appellants that, a person drawing less than Rs.8,000/- should also be treated as one drawing Rs.8,000/- and compensation should be paid by fixing the monthly wages at Rs.8,000/- cannot be accepted, as, that is not the spirit of the Legislation. Section 4(1-B) of Employees' Compensation Act, 1923, is extracted hereunder:

“Section 4 (1-B) of The Employee's Compensation Act, 1923: *The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (I), such monthly wages in relation to an employee as it may consider necessary.”*



10(i)(a).The connected Notification No.S.O.1258(E), Dated 31.05.2010

issued by the Central Government, pursuant to Section 4(1-B) is also extracted as follows:

“In exercise of the powers conferred by Sub-Section (1B) of Section 4 of the Employees' 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“

10(i)(b).Once the monthly income exceeds Rs.8,000/-, the Authority will have to restrict it to Rs.8,000/- as per the Notification issued from time to time, in terms of Section 4(1-B) of Employees' Compensation Act, 1923, and not more than that. If the monthly income received by the injured or the deceased is not established by the employer or the dependents, the Authority will have to award compensation based on the Notification that prescribes minimum wages per month for the job. This Court is of the view that



increasing wages beyond Rs.8,000/- per month beyond what is stipulated, cannot be termed as substitution or insertion. Even if, minimum wages are above Rs.8,000/-, the Authority has to calculate compensation taking Rs.8,000/- as monthly wages, based on the Notification issued under Section 4(1-B) of the Employee's Compensation Act, issued from time to time, and not over and above it.

10(ii).In the judgment dated **01.07.2022** made in **C.M.A.No.3388 of 2017, [S.Nambi Vs. A.G.Francis and another]**, wherein it has been held that the Central Government had by notification dated 31.05.2010, provided that monthly wages for the purpose of sub-Section(1) is a sum of Rs.8,000/-.

10(ii)(a).Therefore, the Central Government has fixed a ceiling to the monthly wages at Rs.8,000/-. This notification has been issued after the Amendment of the Act had come into effect and in very clear words the notification states that the “monthly wages“ would be Rs.8,000/-.

11.Further, a perusal of the records would show that the appellant has not filed any document to prove his income. In the absence of any



documentary proof for the income, the Tribunal fixed a sum of Rs.8,000/- as monthly income of the appellant following the Notification issued by the Central Government on 31.05.2010, based on Section 4(1)(B) of the Employees Compensation Act, 1923. It is the further contention of the learned counsel for the appellant that as per G.O.(2D).No.91, Labour and Employment (J1) Department, dated 12.12.2013, a sum of Rs.11,337/- has to be fixed as minimum monthly wage of the appellant. The learned counsel for the appellant has neither given the details of the G.O., nor the copy of the G.O. was circulated before this Court. In the absence of any documentary evidence, the said contention raised by the learned counsel for appellant is not acceptable.

12.It is the further case of the appellant that the learned Commissioner of Workmen's Compensation, Coonoor, has awarded a sum of Rs.38,987/- for medical expenses incurred by the appellant, but failed to incorporate the said amount in the conclusive portion of the award and also not awarded any interest for the said amount. The learned Commissioner of Workmen's Compensation, Coonoor, after considering Ex.P9 / medical bills has awarded the said amount and the appellant is entitled to the said amount together with



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interest. Thus, the appellant herein is entitled to total compensation of Rs.2,59,437/- [Rs.2,20,450/- + Rs.38,987/-].

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant is entitled to sum of Rs.2,59,437/- together with interest at the rate of 12% per annum. The 2nd respondent – Insurance Company is directed to deposit the award amount together with interest and costs, less the amount if any already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of E.C.No.200 of 2017 on the file of the Commission for Commissioner of Workmen's Compensation, Coonoor. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs now determined by this Court, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. No costs.

22.06.2023

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Index : Yes / No
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R.KALAIMATHI, J.

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To

1.The Commissioner of Workmen's Compensation,
Commission for Commissioner of Workmen's Compensation,
Coonoor.

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

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22.06.2023