IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2368 of 2014

1. Sellammal
2. Selvi
3. Minor Subhalakshmi
4.Minor Vignesh Kumar
[Minor appellants represented by their mother
Selvi, the second appellant herein] ... Appellants/Petitioners

vs.

1. Arumugam

2. Cholamandalam General Insurance Company Ltd.,
Karaikal
Rep. by its Branch Manger,
Having its Branch Office at
M.A.K. Associates, No.70, Perumal Koil Street,
Karaikal Town and District.
... Respondents/Respondents

The Civil Miscellaneous Appeal filed under Section 30 (1) of the Employees Compensation Act, 1923 against the order passed by the Additional Commissioner under the Employees Compensation Act, Karaikal, made in W.C.No.1 of 2012, dated 04.07.2014.

For Appellants	:	Mr. R. Saravanan For M/s. Sai Bharath and Ilan
For R1	:	No appearance
For R2	:	M/s. Sree Vidhya

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimants challenging the award passed by the Additional Commissioner under the Employees Compensation Act, Karaikal in W.C.No.1 of 2012, dated 04.07.2014, for the death of one Gopal, who died in the course of employment, claiming compensation by the dependents of the deceased.

2. The parties are referred to hereunder according to their litigative status and ranking before the Additional Commissioner under the Employees Compensation Act, Karaikal. The first claimant is the mother of the deceased Gopal and the second petitioner is the wife and the third and fourth petitioners are the children of the deceased Gopal.

3. The case of the claimants is as follows:

The deceased was a driver by profession under the first respondent and that on 22.02.2011 while the deceased Gopal was driving a lorry bearing Registration No.PY 02/C-7899, for getting load of Gravel on the Ambagarathur to Peralam Main Road while he reached near Thangam Gas Godown at Kottur Village and the lorry was proceeding very slowly because some defects found in the lorry and unfortunately, the lorry dashed on the Tree which was standing on the right side of the road resulting which, the driver of the lorry i.e., the deseased sustained fatal injuries and died on the spot.

4. The first respondent filed Counter and contended that the FIR in Crime No.70 of 2011 was registered by the Peralam Police against the driver of the lorry since the lorry driver is a tortfeasor the Insurance Company is not liable to pay the compensation. They also disputed the age, income and avocation of the deceased and dependency is also disputed. They have also disputed the claim of compensation under various heads.

5. Before the Additional Commissioner under the Employees Compensation Act, the dependents of the deceased/claimants have examined

the second petitioner as P.W.1 and one Saravanan was examined as P.W.2 and marked Exs.P1 to P12. On the side of the respondents,no witness and no documents marked.

6. After considering the records placed on record, the Additional Commissioner under the Employees Compensation Act, Karaikal, has held in issue No.1 that the deceased was an employee as a driver under the first respondent under Section 2 of the Employees' Compensation Act and in issue No.2 held that the deceased died during the course of employment as driver with the first respondent and in issue No.3 and 4 the Additional Commissioner under the Employees Compensation Act, Karaikal has fixed the notional income based on the Central Government Notification and fixed notional income as Rs.8,000/- and awarded a sum of Rs.7,89,240/- as a compensation and directed the second respondent to pay the compensation.

7. Aggrieved over the award passed by the Additional Commissioner under the Employees Compensation Act, Karaikal, the claimants have filed this appeal by invoking Section 30 (1) 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 Additional Commissioner under the Employees Compensation Act, Karaikal and raised a question, whether the Additional Commissioner under the Employees Compensation Act, Karaikal 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 Additional Commissioner is entitled to fix the notional income based on maximum 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 Additional Commissioner under the Employees Compensation Act, Karaikal 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. I have heard the rival submission made on both sides and also perused the records available.

11. It is an admitted fact that the deceased Gopal has sustained injuries and succumbed to the same, during the course of employment. He was employed under the first respondent. The respondents were able to prove that the deceased herein is a contract employee. Eventhough, income of the deceased was fixed as Rs.12,000/- the Judgment of this Court in ***Tmt.Shanthi Bai and 3 others vs. M/s.Soundarya Decorators Private Limited and Other [C.M.A.No. 2229 of 2016]***, while dealing with the point whether actual salary received by the claimant is to be taken up for awarding compensation or the maximum wages fixed by the Central Government by Notification is to be taken up for consideration. This Court has held that by following the Judgment of 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 held that the actual wages fixed by the labour commissioner shall be the compensation to be payable to the workmen. Actually in this case, also the claimants are entitled to get compensation on the basis of monthly wages fixed by the Additional Commissioner under the Employees Compensation Act, Karaikal i.e., Rs.12,000/- per month and the Tribunal has taking ceiling limit of Rs.8,000/- is not proper.

12. Further, the Tribunal has held that interest payable as a default clause i.e., the quantum of compensation has been deposited within a period of one month then the respondents are liable to pay interest at the rate of 12% per annum from the date of accident till the date of deposit. This Court is of the view that the same is not proper. 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 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.*

13. 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 Additional Commissioner under the Employees Compensation Act, Karaikal, 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.

14. 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 wages notified by the Central Government 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."*

15. The Judgment of the Apex Court in ***K.Sivaraman and Ors. vs. P.Sathishkumar and Ors [2020 (4) SCC 594]*** has reiterated as follows:

> *"26. Prior to Act 45 of 2009, by virtue of the deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs.4000 even where an employee was able to prove the payment of a monthly wage in excess of Rs.4,000/-. The legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether. The amendment is in furtherance of the salient purpose which underlies the 1923 Act of proving to all employees compensation for accidents which occur in the course of and arising out of employment. The objective of the amendment is to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of the actual monthly wages drawn by them. However, there is nothing to indicate that the Legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment."*

16. In this case, the Additional Commissioner under the Employees Compensation Act, Karaikal, has fixed the actual income of the deceased as Rs.400/- based on the age and avocation of the deceased. Accordingly, the monthly salary of the deceased was calculated as Rs.12,000/- (400 X 30days).

After holding that the monthly salary of the deceased is Rs.12,000/- per month, the Additional Commissioner under the Employees Compensation Act, Karaikal, 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 maximum 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.

17. In this case, the claimants proved the income of the deceased and the Additional Commissioner under the Employees Compensation Act, Karaikal has fixed the income of the deceased based on his age and avocation as a driver a sum of Rs.8,000/- was taken up for computation and this Court is inclined to modify the same by Rs.12,000/-. The age of the deceased is 35 years at the time of accident and the multiplier is 197.06. The total loss of income arrived at Rs.11,82,360/- [6000 x 197.06] and funeral expenses at Rs.1,000/-. Thus, the total amount of compensation is arrived at Rs.11,83,360/- @ Rs.11,83,500/-.

18. In the result, the Civil Miscellaneous Appeal is allowed awarding 12% interest per annum from the date of accident till the date of deposit. The first respondent is directed to deposit the compensation amount of Rs.11,83,500/- [Rupees Eleven Lakhs Eighty Three Thousand and Five Hundred only] along with interest and costs to the credit of W.C.No.1 of 2012 on the file of the Additional Commissioner under the Employees Compensation Act, Karaikal, within a period of eight weeks from the date of receipt of a copy of this Judgment. In other aspects the award of the Additional Commissioner under the Employees Compensation Act, Karaikal is confirmed. No costs. Consequently, connected miscellaneous petition is closed, if any.

22.12.2023

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

K.RAJASEKAR,J.,
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To

1.The Additional Commissioner,

under the Employees Compensation Act,
Karaikal.

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

C.M.A.No.2368 of 2014

22.12.2023