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CMA.No.485 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2023

PRONOUNCED ON : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.485 of 2017

1. Mallika Bee
2. Akbar
3. Asiz Basha
4. Abubakkar

Appellants

Vs

1. S.Mannarsamy
2. United India Insurance Company Limited
Ambathur, Chennai-53

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the award, dated 15.03.2013, made in WC.No.76 of 2012, by the Deputy Commissioner of Labour II, Chennai.

For Appellants : Ms.A.Subadra for Ms.M.Malar

For Respondents : Mr.D.Baskaran-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the award, dated 15.03.2013, made in WC.No.76 of 2012, by the Deputy Commissioner of Labour II, Chennai.
2. The Appellants, who is the wife and sons of the deceased, namely, Mohamed Akbar, has filed the claim petition before the Deputy Commissioner for



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Workmen Compensation Labour-II at Chennai, seeking a compensation of Rs.10,00,000/-, for the death of the deceased, who died in a motor road accident on 19.06.2011, during the course of his employment with the 1st Respondent. The claim petition was resisted, on various grounds, by the 2nd Respondent Insurance Company, by filing an objection. On the side of the claimants, Ex.A1 to Ex.A10 were marked and PW.1 was examined. After framing necessary issues, the Labour Commissioner, finding that the deceased died in the alleged motor accident, while he was driving the Auto belonging to the 1st Respondent and during the course of his employment with the 1st Respondent, the Tribunal has awarded a total compensation of Rs.4,66,643/- (Loss of income = Rs.4,61,643/- + Funeral expenses = Rs.5,000/-) to be payable by the 2nd Respondent Insurance Company within thirty days from the date of receipt of a copy of the order, failing which, it shall carry interest 12% p.a. from thirty days from the date of the incident, i.e. 19.06.2011. Aggrieved by the same, this appeal has been filed by the claimants.

3. This Court heard the learned counsel for the Appellant and also perused the entire materials placed on record.
4. This Civil Miscellaneous Appeal was admitted on the following substantial questions of law?

- 1) Whether the Deputy Commissioner of Labour-II is right in not awarding interest at the rate of 12% p.a. from the date of the accident, excluding 30 days from the date of the accident under



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Section 4A of the Workmen Compensation Act?

- 2) Whether the Deputy Commissioner of Labour-II is right in fixing the quantum with regard to the monthly income?
5. The case of the claimants is that the deceased worked as a Auto Driver under the 1st Respondent in an Auto, bearing Reg.No.TN 04 R 5294 and drawing a monthly salary of Rs.6,000/- along with a daily allowance of Rs.250/-. When on 19.06.2011, at about 9.15 p.m at Ennore Beach Road, near Bharathiyar Nagar Mosque, while the deceased was driving the Auto, he dashed against the Lorry bearing Reg.No.TN 31 H 6667 and he died on the way to hospital due to grievous injuries and at that time he was aged 52 years and the accident occurred during the course of his employment with the 1st Respondent. Hence, the Applicants are entitled to get compensation from the Employer and the 2nd Respondent Insurance Company, with which the Auto is insured. Since the 1st Respondent remained exparte, the case of claimants was held to be true by the Tribunal, which cannot be interfered with by this Court.
6. As seen from the substantial questions of law, the dispute is with regard to grant of interest from 30 days from the date of the accident and also with regard to the monthly income arrived by the Labour Commissioner.
7. It is claimed by the claimants that the deceased was earning a sum of Rs.6,000/- p.m. and a daily allowance of Rs.250/-. However, in the absence of evidence to prove the monthly income of the deceased, the Labour



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Commissioner, in the light of GO.MS.No.54(2D) (Labour and Employment Department), dated 16.10.2008, has rightly fixed the basic pay at Rs.3,600/- and Dearness Allowance at Rs.2431/- and arrived at the total monthly income of the deceased at Rs.6031/- and arrived at the age of the deceased at 50 based Ex.P8 driving licence, which does not warrant any interference by this Court. Consequently, the total loss of monthly income arrived at by the Labour Commissioner at Rs.4,61,643/- ($\text{Rs.6031} \times 152.09 \times 50/100$) also does warrant any interference by this Court.

8. In so far as interest is concerned, as per Section 4A of the Workmen Compensation Act, where there is any default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum.
9. Following the decision of the Honourable Supreme Court reported in **2000 ACJ 5 (SC) (Kerala State Electricity Board Vs. Valsala)** and the decision of Division Bench of this Court reported in **2010 2 TNMAC 80 (DB) (N. Ganesan vs. Thilagavathi and others)**, this Court holds in the case on hand that the interest for compensation would accrue 30 days after the date of accident, which interest is fixed at 12% per annum. Accordingly, the substantial questions of law are answered.
10. The Insurance Company is directed to pay the interest for the amount.
11. In fine, this Civil Miscellaneous Appeal is partly allowed. The impugned



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judgement of the Labour Commissioner is modified.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To

1. The General Manager, Southern Railway, Chennai-3
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

Srcm

Pre-Delivery Judgement in
CMA.No.485 of 2017

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