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C.M.A.No.1691 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1691 of 2020

1.Kowasaliya

2.Minor. Kowsik

(Minor 2nd appellant represented
by his mother)

3.Ramachandran

.. Appellants

Vs.

1.P.Suresh

(R1 remained exparte before Tribunal.
Hence, notice to R1 dispensed with)

2.Reliance General Insurance Company Limited,
Plot No.6, 6th Floor, Laid down Road,
Nungambakkam, Chennai – 600 034.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Employee's Compensation Act, 1923, against the award dated 20.06.2019 made in E.C.No.84 of 2018 on the file of the Joint Commissioner of Labour – II, Commissioner for Employee's



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Compensation Court, Teynampet, Chennai – 600 006.

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For Appellants : Mr.F.Terry Chella Raja

For R2 : Mr.P.Suresh Srinivasan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 20.06.2019 made in E.C.No.84 of 2018 on the file of the Joint Commissioner of Labour – II, Commissioner for Employee's Compensation Court, Teynampet, Chennai – 600 006, by the appellants herein.

2.The appellants herein are the applicants in E.C.No.84 of 2018 on the file of the Joint Commissioner of Labour – II, Commissioner for Employee's Compensation Court, Teynampet, Chennai – 600 006, claiming compensation for the death of one Sundar, who is the husband of 1st appellant, father of the 2nd appellant and son of the 3rd appellant, who died during the course of employment on 26.02.2018.

3.The Joint Commissioner of Labour – II, Commissioner for Employee's Compensation Court, Teynampet, Chennai – 600 006,



considering the pleadings, oral and documentary evidence, held that the said Sundar died only during the course of his employment and directed the 2nd respondent – Insurance Company to pay a sum of Rs.8,11,640/- as compensation to the appellants.

4. Seeking enhancement of compensation in the award dated 20.06.2019 made in E.C.No.84 of 2018, the appellants have filed this appeal.

5. Though the appellants have raised various grounds in this appeal, while advancing arguments in the appeal, the learned counsel appearing for the appellants would mainly contend that the deceased earned about Rs.20,000/- per month as salary and Rs.300/- per day as batta, when he was working as Cleaner under the 1st respondent and the monthly income fixed by the learned Joint Commissioner of Labour-II at Rs.8,000/- per month is very meagre. 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 deceased and prayed for enhancement of compensation.

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6. 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 appellants and he would contend that the appellants have not produced any evidence to prove the income of the deceased. In the absence of any documentary evidence to prove the income of the deceased, 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 deceased and awarded compensation, which is reasonable and prayed for dismissal of the appeal.

7. Heard Mr.F.Terry Chella Raja, learned counsel for the appellants and Mr.P.Suresh Srinivasan, learned counsel for 2nd respondent and perused the materials available on record.

8. From the case records, it is seen that it is the case of the



appellants that while the deceased was working as Cleaner under the 1st respondent, he earned a sum of Rs.20,000/- per month as salary and Rs.300/- per day as batta. During the course of employment, the said Sundar died. Hence, the learned Joint Commissioner of Labour-II ought to have fixed a sum of Rs.20,000/- per month as salary and awarded compensation.

9. The Authority is empowered to fix the compensation as per Section 4(1-B) of Employees' Compensation Act, 1923. 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. As per the said provision, notification has been issued by the Central Government in S.O.1258(E), Dated 31.05.2010. The notification details is extracted hereunder:



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“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“

11. By reading of the said Section along with notification, the Authority has to restrict the monthly income to Rs.8,000/-. The Authority is not empowered to fix the income above Rs.8,000/-.

12. At trial, admittedly the appellants have not marked any documents to prove the income of the deceased. Therefore, based on the above said legal provision and notification, the Tribunal has fixed the monthly income of the deceased at Rs.8,000/-.

13. Though the learned counsel for the appellant would submit that based on another notification in the year 2013, a sum of Rs.11,337/- was fixed as minimum monthly income of the deceased, no copy of the same was filed. It is made clear that based on the above said legal



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provisions and the notification issued thereon, the Authority has fixed the monthly income of the deceased at Rs.8,000/-. Therefore, it should not lie on the appellants that the deceased was earning Rs.20,000/- per month and the Tribunal has erred in fixing the income at Rs.8,000/-.

14. With the above said observations, this Civil Miscellaneous Appeal stands dismissed and the award passed by the learned Joint Commissioner of Labour – II, Commissioner for Employee's Compensation Court, Teynampet, Chennai – 600 006 in E.C.No.84 of 2018 shall stand confirmed. There is no order as costs.

12.06.2023

krk/ssn

Index : Yes

Internet : Yes

Neutral Citation : Yes

To



C.M.A.No.1691 of 2020

1.The Joint Commissioner of Labour – II,
Commissioner for Employee's Compensation Court,
Teynampet,
Chennai – 600 006

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

R.KALAIMATHI, J.,

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