



C.M.A.(MD).No.1453 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 31.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1453 of 2007

1. Arumugam

2. Sankarayee

..... Appellants/ Applicants

-VS-

1. The Divisional Electrical Engineer,
Tamil Nadu Electricity Board,
Kattuparamakudi,
Paramakudi Taluk,
Ramanathapuram District.

2. The Assistant Electrical Engineer,
Tamil Nadu Electricity Board,
Parthibanoor, Paramakudi Taluk,
Theni District.

.... Respondents/ Respondents 1 and 2

PRAYER: Civil Miscellaneous Appeal filed under Order Section 30 of the Workmen's Compensation Act, 1923, to call for the records relating to the order passed by the Hon'ble Court of Commissioner for Workmen's Compensation, Madurai (Deputy Commissioner of Labour) made in W.C.No. 336 of 2004, dated 28.06.2007, allow the above Civil Miscellaneous Appeal by setting aside the said order, enhance the award amount from Rs.2,52,076/- to 4,01,041/- as prayed by the appellants/applicants holding the respondents liable.



WEB COPY



C.M.A.(MD).No.1453 of 2017

For Appellants : Mr.K.Kumaravel

For Respondents : Mr.B.Ramanathan
Standing Counsel
for (TANGEDCO)

J U D G M E N T

The present appeal has been filed seeking enhancement of compensation of the award passed by the Workmen's Compensation Commissioner, in W.C.No.336 of 2004 on the file of the Commissioner, Workmen's Compensation, Madurai.

2. The claimants had contended that the deceased was working as a casual labour for the purpose of painting the transformers by the respondents Electricity Board. On 06.07.2004, while he was attending painting work, he was electrocuted and he fell down from the Transformer and he had passed away. According to the claimants, he was drawing a monthly salary of Rs.3,000/- (Rupees Three Thousand only) at the rate of Rs.100/- per day. The claimants made a claim for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.



C.M.A.(MD).No.1453 of 2017

WEB COPY

3. The respondents Electricity Board has filed a counter contending that they are not responsible for the said accident and they are not liable to pay any compensation.

4. The Workmen's Compensation Commissioner, after considering the oral and documentary evidence, arrived at a finding that the deceased Karuppasamy was the workman of the respondent and he had passed away and the accident had taken place in the course of employment. Further, the Commissioner had considered the age of the deceased as 30 and fixed the wages at a sum of Rs.2,400/- (Rupees Two Thousand and Four Hundred only) on the ground that no documentary evidence has been placed before the Commissioner and thereafter, proceeded to pass an award for a sum of Rs.2,52,076/- (Rupees Two Lakhs Fifty Two Thousand and Seventy Six only). This award is under challenge in the present appeal by the claimant seeking enhancement.

5. According to the learned counsel for the appellants, the deceased Karuppasamy was working as a helper and attending the painting work of the



C.M.A.(MD).No.1453 of 2017

respondent and therefore, he was earning a sum of Rs.100/- per day and monthly income of Rs.3,000/- (Rupees Three Thousand only). The learned counsel has further pointed out that the co-worker had also died in the same accident who had filed W.C.No.359 of 2004 before the same Deputy Commissioner of Labour, in which, the compensation amount of Rs.4,01,041/- Rupees Four Lakhs One Thousand and Forty One only) was granted. Challenging the said award, the legal heir had filed C.M.A.No.1532 of 2007. In the said appeal, the High Court was pleased to fix the monthly wages at Rs.5,542.50/- and restricted a sum of Rs.4,000/-(Rupees Four Thousand only) and thereafter, enhanced the compensation to a sum of Rs.4,18,460/- (Rupees Four Lakhs Eighteen Thousand Four Hundred and Sixty only). Relying upon the said judgment, the learned counsel appearing for the appellants had contended that the deceased in the present case has also died in the same accident and the monthly wages should have been taken at the rate of Rs.5,542.50/- and compensation amount should have been fixed on the said rate.

6. Per contra, the learned counsel for the respondents had contended that in paragraph No. 4 of the claim petition, the claimants themselves have



C.M.A.(MD).No.1453 of 2017

specifically contended that he was drawing a monthly income of only Rs.3,000/- (Rupees Three Thousand only) and therefore, the question of seeking enhancement would not arise. He further contended that it is not known what was the monthly income of the deceased in the other appeal, based upon which, enhancement was awarded by the High Court. Therefore, the order of the High Court in C.M.A.No.1532 of 2007 cannot be cited as a precedent in this case. He further contended that the deceased was only a helper and therefore, the wages have been rightly fixed by the Commissioner at Rs.2,400/- (Rupees Two Thousand and Four Hundred only) as monthly income. Hence, he prayed for sustaining the award passed by the Commissioner.

7. I have carefully considered the submissions made by the learned counsel on either side.

8. There is no dispute that the deceased had died in the course of employment while he was attending the painting work for the respondents in the claim petition. The only issue that arises for consideration in the present appeal is whether the Commissioner under the Workmen's Compensation Act



C.M.A.(MD).No.1453 of 2017

was right in fixing the monthly income of the deceased at a sum of Rs.2,400/- (Rupees Two Thousand and Four Hundred only) or it should be fixed at an enhanced pay.

9. The claimants themselves in their application in paragraph No.4 have pointed out that he was drawing a sum of Rs.3,000/- (Rupees Three Thousand only) per month and they have prayed for compensation of Rs.5,00,000/- (Rupees Five Lakhs only). The Commissioner, in his award, has refused to accept the said monthly income and has taken a sum of Rs.2,400/- (Rupees Two Thousand and Four Hundred only) as a monthly income for the deceased on the ground that no records have been placed before the Commissioner.

10. Considering the fact that he was a helper or painter, certainly he would be drawing daily wages of Rs.100/- and around a sum of Rs.3,000/- (Rupees Three Thousand only) per month and therefore, the Commissioner was not right in reducing the amount to Rs.2,400/- (Rupees Two Thousand and Four Hundred only). That apart, when no evidence was placed by the claimants for the monthly income, the Commissioner ought to have relied upon the minimum wages and fixed the quantum of compensation. Without



C.M.A.(MD).No.1453 of 2017

relying upon the minimum wages, the Commissioner has presumptively reduced the monthly income from Rs.3,000/- (Rupees Three Thousand only) to Rs.2,400/- (Rupees Two Thousand and Four Hundred only), which is not legally sustainable.

11. In view of the above said deliberations, the wages shall be taken at Rs.3,000/- (Rupees Three Thousand only) per month and the compensation will be Rs.3,11,970/- (3000x 50/100 x 207.98). Therefore, if the wages are taken at Rs.3,000/- (Rupees Three Thousand only), the compensation payable is as follows: Rs.3,11,970/- (3000x 50/100 x 207.98). Apart from that, for funeral expenses, Rs.2,500/- (Rupees Two Thousand and Five Hundred only) shall be paid by the respondents. The enhanced amount shall carry interest at the rate of 12% from first April 2023. This Civil Miscellaneous Appeal is partly allowed to the extent as stated above. There shall be no order as to costs.

31.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi



C.M.A.(MD).No.1453 of 2017

WEB COPY

To

1. The Commissioner for Workmen's Compensation,
Madurai.
2. The Divisional Electrical Engineer,
Tamil Nadu Electricity Board,
Kattuparamakudi,
Paramakudi Taluk,
Ramanathapuram District.
3. The Assistant Electrical Engineer,
Tamil Nadu Electricity Board,
Parthibanoor, Paramakudi Taluk,
Theni District.
4. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.1453 of 2017

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.1453 of 2007

31.03.2023