



C.M.A. Nos.753/2020, etc.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.12.2023 12.12.2023 18.12.2023	19.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NOS.753 & 1583 OF 2020

C.M.A. NOS. 3087, 662, 666, 675 & 721 OF 2021

C.M.A. NO. 753 OF 2020

1. Managing Director
S.V.Chem Intermediates Pvt. Ltd.
No.52, SIDCO Industrial Estate
Alathur, Thiruporur Taluk 603 110
Kancheepuram District.

2. Manager
S.V.Chem Intermediates Pvt. Ltd.
No.52, SIDCO Industrial Estate
Alathur, Thiruporur Taluk 603 110
Kancheepuram District.

..Appellants

- Vs -

1. Mrs. M.Subamalar
2. Minor Jeyanth
3. Minor Kishore
4. Mr. Sadagopan



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5. Mrs. Thilakavathi

.. Respondents

C.M.A. No.735 of 2020 filed under Section 30 (1) of the Employee's Compensation Act, to set aside the order of Commissioner for Employee's Compensation (Joint Commissioner of Labour – 2, Chennai) dated 04.12.2019 in E.C. No.297 of 2017 and all the appeal.

For Appellants : Mr.S.Ravindran, SC, for
Mr. P.Nehru in CMA 753/2020
Mr. K.K.Ram Siddhartha for
M/s.Row& Reddy for RR-1 to 5
in CMA 3087/2021
Mr. C.Kulanthaivel in CMA 662,
675, 666 & 721/2021
Ms. A.Subadhra in CMA
1583/2020

For Respondents : Mr. K.K.Ram Siddhartha for
M/s.Row& Reddy for RR-1 to 5
in CMA 753/2020
Mr.S.Ravindran, SC, for
Mr. P.Nehru for RR-1 & 2 in
CMA 3087/20201
Mr. K.Vinod for R-2 in CMA 721
& 666/2021
Mr. S.Vadivel for R-2 in CMA
675 & 662/2021
No Appearance for R-1 in CMA
721, 666, 662 & 675/2021
Mr. M.Vijay Anand for R-1 in
CMA 1583/2020



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Mr. D.Venkatachalam for R-2 in
CMA 1583/2020

COMMON JUDGMENT

The appeals, which were listed on different dates, were heard, separately, but as the issue involved in all the appeals being common, relating to the fixation of wages for the purpose of computation of compensation payable to the workmen under the Employee's Compensation Act, they are being dealt with by this common judgment.

2. While CMA No.3087/2021 has been filed by the legal heirs of the deceased/employee by filing petition before the competent authority under the Employee's Compensation Act (for short 'the Act') claiming compensation, wherein the authority had fixed the monthly wages of the workmen on the basis of the notification issued by the Central Government in exercise of powers conferred by Section 4 (1-B) of the Act and fixed the monthly wages at Rs.8,000/- and assailing such fixation as bad by contending that the monthly wages of the employee was higher than the one fixed, and had sought for enhancement, CMA



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No.735/2020 has been filed by the appellant/employer assailing the order of the authority that inspite of payment of a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) by the employer, the authority had quantified a sum of Rs.6,82,760/- as the compensation payable by erroneously interpreting Section 8 of the Act, while CMA No.3087/2021 is filed by the legal heirs of the deceased/employee claiming higher compensation by contending that the monthly wages fixed at Rs.8,000/- by the authority by following Section 4 (1-B) of the Act is erroneous as in the case of establishment of monthly wages through evidence, the notification of the Central Government fixing the wages at Rs.8,000/- cannot be adopted.

3. CMA Nos.662, 666, 675 and 721 of 2021 have been filed by the injured employee assailing the fixation of monthly wages at Rs.8,000/- by the authority u/s 4 (1-B) of the Act, inspite of the workmen drawing higher monthly wages and, therefore, seeks appropriate enhancement of monthly wages and consequential increase in compensation.

4. CMA No.1583 of 2020 has been filed by the legal heirs of the deceased employee claiming higher compensation, assailing that the fixation of monthly



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wages at Rs.8,000/- by the authority u/s 4 (1-B) of the Act, inspite of higher wages drawn, is erroneous and seeks appropriate enhancement of monthly wages and also payment of penalty u/s 4-A (3) of the Act for delayed payment of the compensation.

5. As all the appeals revolve around the fixation of monthly wages by the authority at Rs.8,000/-, as notified by the Central Government in view of Section 4 (1-B) of the Act, inspite of the fact that the respective workmen were alleged to have been drawing higher wages than what has been notified and, therefore, entitled for higher compensation in terms of Section 4 (1)(a) of the Act, the present appeals have been filed.

6. The main ground canvassed to sustain the fixation of Rs.8,000/- towards monthly wages is premised on Section 4 (1-B) of the Act, which prescribes that the Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1) such monthly wages in relation to an employee as it may consider necessary. It is therefore the submission that once the notification has been issued by the Central



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Government fixing monthly wages, irrespective of the wages drawn by the workmen, who claims compensation, the authority is only bound to fix Rs.8,000/- as the monthly wages and the actual wages, which is alleged to have been received by the workmen would not be the basis to determine the compensation. Therefore, the order passed by the authority fixing the monthly wages at Rs.8,000/- is very much in order and does not require any interference.

7. Contrarily, on the side of the workmen, the main contention advanced is that the fixation of monthly wages by the Central Government as provided under Section 4 (1-B) should be adopted only where the workman is not able to prove the receipt of monthly wages through documentary evidence, as the necessity for the notification will be only in relation to persons, who could not establish their income, in which case, the fixation of minimum monthly wages falls for determination.

8. In addition to the aforesaid contention, it is the stand of the employer/appellant in CMA No.753/2020 that the appellant had paid an amount of Rs.8 Lakhs, which is over and above the amount ordered by the authority and,



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therefore, the direction of the authority to pay the said amount notwithstanding the fact that an amount in excess has been paid is wholly erroneous. Learned senior counsel appearing for the appellant submits that Section 8 of the Act should be read in such a manner that the compensation that is to be paid to the family of the employee in harness or the employee who is injured is a benevolent legislation, but at the same time, it should not be construed so as to work hardship to the employer, who had already extended the benevolent gesture without even the family approaching the authority.

9. In support of the aforesaid contentions, learned counsel appearing for the respective parties placed reliance on the following decisions :-

- i) *Samuben&Ors. – Vs – Patel Industries &Anr. (1994 (II) LLJ 981);*
- ii) *Naseera Nazir &Ors. – Vs – Executive Engineer (1999 (III) LLJ Supp. 1122);*
- iii) *Oriental Insurance Co. Ltd. – Vs – Dyamavva&Ors. (2013 (9) SCC 406);*
- iv) *K.Sivaraman&Ors. – Vs – P.Sathishkumar&Anr. (C.A. No.9046/2019 – 13.02.2020);*
- v) *P.Ramesh – Vs – Ravi &Anr. (CMA 897/2018 – 27.01.2021);*



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- vi) *Sudha &Ors. – Vs –M.Anthony Raja &Anr. (CMA No.2020/2018 – Dated 13.02.2020);*
- vii) *Kumar – Vs – M.P.Selvaraj&Anr. (CMA No.1588/2018 – Dated 23.09.2020); and*
- viii) *S. Nambi – Vs – A.G.Francis&Anr. (CMA No.3388/2017 – Dated 20.06.2022)*

10. Before advertng to the decisions relied on by the parties in support of their contentions, it would be apposite to refer to Section 4 (1)(a) and 4 (1-B) of the Act and Explanation II, as it stood prior to its omission from the statute.

11. The relevant clauses in Section 4 of the Act, which are relevant for the purpose of the present issue are as under :-

“4. Amount of compensation.-

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :-

- a Where death results from the) injury An amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor;*

Or

An amount of one lakh and twenty thousand rupees,



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b) *Where permanent total disablement results from the injury*

whichever is more;

An amount equal to sixty per cent of the monthly wages of the injured employee multiplied by the relevant factor,

Or

An amount of one lakh and forty thousand rupees, whichever is more;

(1-B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.

12. Explanation II, which was in the statute and which stood omitted by Act 45 of 2009 w.e.f. 18.1.2010 reads as under :-

Explanation II. – *Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only.*

13. Explanation II above, as it stood prior to 18.1.2010, before being amended by Amending Act 45 of 2009, provided for a cap on the monthly wages at Rupees Four Thousand irrespective of the monthly wages which was drawn by the workman anterior in point of time to the incident.



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14. The aforesaid, the said Explanation II was omitted by Amending Act 45 of 2009 w.e.f. 18.1.2010. Consequent upon the said omission, sub-section (1-B) to Section 4 of the Act was inserted vide Act 45 of 2009 on even date, viz., 18.1.2010, which provision, as extracted above, provided the Central Government with the power to notify such monthly wages in relation to an employee as it may consider necessary.

15. The whole genesis of the contention revolves around the fact that by omission, while the cap on monthly wages at Rupees Four Thousand stood omitted, however, the Central Government through Notification as provided for u/s 4 (1) (1-B) had quantified the wages at Rs.8,000/-, which would be the cap and no wages beyond the same should be taken for the purpose of calculation. The aforesaid contention is advanced on behalf of the employer and insurance companies, as the case may be, while a contrary submission is placed on behalf of the injured workmen and the family of the deceased workman submitting that Section 4 (1)(a) and (b), which provided for computation of compensation on the basis of the monthly wages to be computed in terms of the said provision and



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the said provision, still being maintained under the Act, only where the workman has not proved the monthly wages, sub-section (1-B) could be made applicable and not otherwise.

16. While judgments of this Court, passed by learned single Judges have been placed for consideration by the employer and insurance companies in support of their submission, the decision of the Apex Court in *Sivaraman case* (*supra*) has been relied on, on behalf of the workmen to support their contention.

17. Before proceeding to analyse the ratio laid down in the said decisions, which have been pressed into service on behalf of the respective parties, it is necessary to discuss the provision of law, which has already been extracted *supra* to find out the actual intent of the Legislature in deleting Explanation II vide Amending Act 45 of 2009 and introducing sub-section (1-B) to Section 4.

18. The definition of “wages” is provided for u/s 2 (m), which spells out as under :-



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“(m) “wages” includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of the travelling concession or a contribution paid by the employer of a employee towards any pension or provident fund or a sum paid to a employee to cover any special expenses entailed on him by the nature of his employment.”

19. From the definition of “wages”, it is clear that barring the travelling allowance and contribution towards any pension or provident fund or a sum paid to the employee to cover any special expenses, all other amounts will fall under the term wages.

20. Quantification of amount of compensation is provided for under Section 4 (1)(a) which provides that where the death of an employee results from injury, which was sustained in the course of employment, the compensation would be an amount equal to fifty percent of the monthly wages of the deceased employee multiplied by the relevant factor or Rupees One Lakhs and Twenty Thousand, whichever is more. Further, sub-clause (b) provides that in the case where permanent total disablement results from the injury, an



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amount equal to sixty percent of the monthly wages of the injured employee multiplied by the relevant factor or Rupees One Lakh and Forty Thousand, whichever is more.

21. A proviso is appended to Section 4 (1)(a) and (b), which provides that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b). Therefore, the lumpsum compensation, which is mentioned in clauses (a) and (b) of Section 4 (1) could be enhanced by the Central Government by appropriate notification is relatable to the compensation which is given where the compensation quantified by taking the wages and multiplying with the relevant factor comes to less than the compensation so notified by the Central Government.

22. Prior to 18.1.2010, Explanation II was available in the Act, which imposed a cap of Rupees Four Thousand in case the monthly wages of the workman exceeded four thousand rupees and in such a scenario, the monthly wages prescribed in clause (a) and (b) of Section 4 (1), even if it exceeds Rupees



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Four Thousand, the monthly wages for the purpose of computing the compensation was capped at Rupees Four Thousand.

23. However, on and from 18.1.2010, vide the Amending Act, while Explanation II stood deleted, sub-section (1-B) was added to Section 4, which provided the Central Government with power to notify such monthly wages for the purposes of sub-section (1) in relation to an employee as it may consider necessary. In exercise of the said power, the Central Government, vide Notification dated 31.05.2010, notified a sum of Rupees Eight Thousand as monthly wages for the purposes of sub-section (1) of Section 4, which has given rise to the present ambiguous situation.

24. In this regard, three decisions of this Court, passed by learned single Judges, have been placed for consideration, while the decision of the Apex Court in *Sivaraman case (supra)* has also been placed. Incidentally, the decision in *Sivaraman case* has been adverted to by the learned single Judges to form an opinion. But none of the learned single Judges have referred to the other decision of the other learned Judges of this Court in arriving at their conclusion,



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but had only given their finding based on the decisions of the Apex Court and the interpretation that they have given to the decision of the Apex Court. Therefore, it becomes necessary for this Court to refer to the decision in *Sivaraman case* to find out exactly what has been spelt out in the said decision.

25. In *Sivaraman case*, the Apex Court had occasion to consider the deeming provision in Explanation II which capped the monthly wages at Rs.4,000/- and consequent upon its removal through Amendment Act 45 of 2009, whether the benefit of the Amendment Act would operate prospectively or retrospectively. The main issue in that case was with regard to the prospectivity or retrospectivity of the said amendment. However, while discussing the various facets of the provisions of the Act, the Apex Court, had observed as under :-

“25. The 1923 Act is a social beneficial legislation and its provisions and amendments thereto must be interpreted in a manner so as to not deprive the employees of the benefit of the legislation. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits.



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The amendments to the 1923 Act have been enacted to further this salient purpose by either streamlining the compensation process or enhancing the amount of compensation payable to the employee.

*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 providing 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."*

(Emphasis Supplied)

26. From the above decision, it implicitly transpires that the Supreme Court had gone into the nature of the deeming provision, which stood prior to the Amendment Act, which capped the monthly wages at Rs.4,000/- irrespective



of the fact that the amount of monthly wages drawn by an employee. The Apex Court, in categorical terms, even went on to observe that the Legislature, in its wisdom, keeping in mind the benevolent nature of the provision under the Act, 1923, had ***not enhanced the quantum in the deeming provision but deleted the deeming provision***, for the reason that the salient purpose for which the compensation provided to the employee for accidents should be realised. ***The Apex Court further held that the objective of the amendment is only to remove the cap in the monthly wages, which stood prior to the amendment and to award compensation to an employee based on the actual monthly wages drawn by them.*** Thus, in unequivocal terms, the Supreme Court had held that the amendment was specifically made to remove the deeming cap on the monthly income of an employee and to extend the compensation payable to them on the basis of the monthly wages drawn.

27. However, while relying on the very same judgment and, more particularly the very same paragraph, in *Nambi case (supra)*, learned single Judge of this Court had gone on to give a finding that what was under consideration of the Apex Court was not with regard to monthly wages under



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Section 4 (1-B) but was only the operation of Section 4 (1-B), whether it would be prospective or retrospective and, therefore, the said decision can merely be treated as an *obiter*. Similar has been the other decisions rendered by the other two learned single Judges. However, the learned single Judges have also not gone into the question whether the amount provided under Section 4 (1-B) would cap the amount of monthly wages at Rs.8000/-, as per the notification of the Central Government dated 31.05.2010. Therefore, it becomes necessary for this Court to go through the aforesaid provisions to come to a conclusion as to whether Section 4 (1-B) caps the monthly wages at Rs.8,000/-, as notified by the Central Government and in such a case, what would be the effect of Section 4 (1)(a) and (b) in relation to its retention in the statute.

28. As aforesaid, Explanation II had imposed a cap on the monthly wages at Rs.4,000/- irrespective of the monthly wages drawn by an employee, prior to 18.1.2010. It is to be noted that Section 4 (1)(a) had laid down that the compensation would be calculated by taking into account fifty percent of the monthly wages, if the employee is deceased or sixty percent of the monthly wages, if the employee was injured multiplied by the relevant factor for arriving



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at the compensation. It also provides that where the compensation is below the lumpsum compensation notified by the Central Government, the lump sum compensation would become payable. Thereby, under the above provision there was no cap on the monthly wages. However, Explanation II, as it stood prior to 18.1.2010, before its deletion, provided for a cap in the monthly wages. From the above, it is evident that the above provision blows both hot and cold. On the one end, the compensation was to be determined at fifty percent of the monthly wages and on the other end, the monthly wages was capped at Rs.4000/-, thereby, the benevolency in the legislation stood axed by Explanation II, which manifested in its deletion.

29. The definition of “wages” as provided for u/s 2 (m) has already been extracted above. The term wages included everything, except the travelling concession and the provident fund or pension part given by the employer. Therefore, all the amounts, barring the aforesaid amounts would fall within the term wages. Therefore, wages earned by an employee would be the amount, excluding the above deductions.



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30. In this background, if Section 4 (1)(a) is looked at, excluding the deductions, which have been provided for u/s 2 (m), the employee would be entitled to calculate the wages and claim compensation based on the same. In case, the compensation is less than Rupees One Lakh Twenty Thousand in respect of death and less than Rupees One Lakh Forty Thousand in respect of injury, then the said lump sum amount would be payable.

31. In the case of Section 4 (1-B), the Central Government has been provided with power to issue notification fixing the wages of an employee. But the crucial phrase in the said provision is ***“such monthly wages in relation to an employee as it may consider necessary”***. The Legislature had not used the phrase that *“such monthly wages as it may consider necessary”*. The crucial term is *“in relation to an employee”*. This term signifies the intention of the Legislature, read with the objects of the Amendment Act that the cap provided under Explanation II had robbed the employees, who are entitled to receive compensation under the aforesaid provision, their rightful compensation, and, therefore, Explanation II, which provided for a cap was deleted and Section 4 (1-B) was added.



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32. If really the intention of the Legislature was to cap the monthly wages, nothing prevented the Legislature from amending Explanation II by replacing the amount of Rupees Four Thousand with the amount as it thought fit and necessary. However, Explanation II, which provided the cap was deleted without it being amended and a fresh addition under Section 4 (1-B) was made, where, it was left to the discretion of the Central Government to notify such monthly wages in relation to an employee as it may consider necessary.

33. In the aforesaid backdrop, the power conferred on the Central Government to notify the monthly wages in relation to an employee could only be taken to mean that the amount that is to be notified would only be in respect of an employee, who is unable to prove his monthly wages through oral and documentary evidence. To put it in a different sphere, it could be stated that the fixation of the monthly wages by the aforesaid notification in relation to an employee would be only in relation to an employee who could not prove his income as aforesaid and, therefore, it could only be taken to mean a notional income, partaking the character of monthly wages, as is generally devised fixed



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by the Courts in motor vehicle cases, so that a just and reasonable compensation is paid to the employee. Therefore, such of the employees, who are not able to prove their monthly wages through oral and documentary evidence, the notification issued by the Central Government by virtue of the powers conferred u/s 4 (1-B) would come into play. In other words, if an employee is able to prove through oral and documentary evidence the monthly wages received from the employer, the provision under Section 4 (1)(a) and (b), as the case may be, will come into play and in case the employee is not able to prove his monthly wages through oral and documentary evidence, necessarily, the monthly wages would be as notified by the Central Government in the notification issued u/s 4 (1-B).

34. Only if such an interpretation is given to Section 4 (1)(a) and (b) vis a vis Section 4 (1-B), it would be in harmony with the Act and the object of the Act would be achieved. Giving a restricted interpretation by laying emphasis on the monthly wages fixed by the Central Government by virtue of the powers conferred under Section 4 (1-B), would be nothing but a constricted interpretation, which would defeat the object of the Act and the benevolence, which stood extended through the Act to the employees through the legislation



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would lose its sheen. Further, at the risk of repetition, it is to be pointed out that if really the Legislature had wanted to cap the monthly wages, there was no necessity for deleting Explanation II and then inserting Section 4 (1-B), as a simple amendment to the Explanation II by increasing the cap in the monthly wages would have achieved the desired result. However, the deletion and subsequent insertion of the provisions clearly establish that the intention of the Legislature was to make the provision beneficial to the employee, as what is given to the employee through this legislation is protection from hardship arising from the accidents in the workplace.

35. The view of this Court is further strengthened by the objects and reasons with regard to the Amendment Act 45 of 2009, which reveal that power was conferred upon the Central Government to specify the monthly wages in relation to an employee for the purpose of computing the aforesaid compensation. Even in the objects and reasons it is clear that the power that was conferred upon the Central Government was not to cap the monthly wages, but it is in relation to an employee, wherever it considers necessary. Further, capping the wages at Rupees Eight Thousand, as notified by the Central



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Government would make the definition of “wages” under Section 2 (m) wholly ineffective and the notification would be against the provision in the statute. Therefore, the only analogy that could be drawn from the aforesaid provision is that where the employee could not prove the monthly wages, the monthly wages as notified by the Central Government vide notification dated 31.5.2010 will come into play and not otherwise. Giving a different interpretation to Section 4 (1-B) by holding that the monthly wages is capped by the aforesaid notification, would rob the benevolency in the legislation and would be against the interest of the employees, which would neither be the intention of the Legislature nor the intent and purpose of the aforesaid provision.

36. The above view of this Court is strengthened by the fact that the application of the Act is to certain railway servants and persons employed in hazardous employments such as factories, mines, plantations, mechanically propelled vehicles, construction work, etc., as specified in Schedule II of the Act. The above types of employment clearly denote that in certain employments the employees could prove the monthly wages drawn, while in other employments, the burden on the part of the employees to prove the monthly wages drawn



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could not be fulfilled and, therefore, to lessen their hardship, Section 4 (1-B) had been inserted after deleting Explanation II in and by which the Central Government may fix the monthly wages by means of notification as and when it considers it necessary. The deletion and subsequent insertion of the provisions aforesaid itself clearly portray the intent of the Legislature in respect of determining the monthly wages of an employee, who knocks the doors of the authority claiming compensation. The above deletion of Explanation II and subsequent insertion of Section 4 (1-B) clearly safeguards both classes of employees, who are able to prove their monthly wages and those who could not prove their monthly wages from getting just and reasonable compensation from the employers and in turn safeguards the employers as well from paying excess compensation.

37. Therefore, not only the decision of the Apex Court in *Sivaraman case* (*supra*) but also the discussion of this Court above, with regard to the relevant provisions, viz., the deleted Explanation II and the inserted Section 4 (1-B) would reveal and establish the intention of the Legislature, which is in the interest of the employee and the rights of the employees from getting just and reasonable



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compensation cannot be curbed by giving a constricted interpretation to Section 4 (1-B), thereby, dislodging the benefit, which has been conferred on the employee by the Act. Therefore, for the reasons aforesaid, this Court, with due respect, is unable to subscribe the view taken by the learned single Judges of this Court with regard to capping the monthly wages and is inclined to follow the decision of the Apex Court in *Sivaraman case*.

38. In view of the discussion made above, this Court holds that the power of the Central Government to issue notification fixing the monthly wages as provided u/s 4 (1-B) would be relatable and applicable to employees or the legal heirs of the employees who are not able to prove their monthly wages through oral and documentary evidence and in such cases, the monthly wages fixed by the Central Government vide the notification issued in exercise of powers conferred u/s 4 (1-B) would come into play and in case an employee or his legal heirs is able to prove the monthly wages through oral and documentary evidence before the authority, the authority is bound to take the said monthly wages, so proved, for the purpose of computing the compensation payable u/s 4 (1)(a) and (b) of the Act.



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39. Coming to the facts of the individual case in relation to the ratio laid down above with regard to the monthly wages to be adopted for the purpose of computation of compensation, the following facts emerge from the typed set available on record as also the impugned order passed by the authority while quantifying the compensation payable.

40. The main contention of the learned senior counsel in CMA No.753/2020 is as to the manner in which Section 8 of the Act should be looked in the light of payments being made to the employee, even before any claim is filed for the purpose of claiming compensation, to appreciate the aforesaid contention, it is necessary for this Court to look at Section 8 (1) of the Act, which is quoted hereunder :-

*“8. **Distribution of compensation.**— [(1) No payment of compensation in respect of a [employee] whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation*



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[Provided that, in the case of a deceased [employee], an employer may make to any dependant advances on account of compensation [of an amount equal to three months' wages of such [employee] and so much of such amount] as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.]

* * * * *

41. It is the stand of the learned senior counsel that a sum of Rs.8 Lakhs has already been paid to the family of the deceased employee and the compensation having been quantified by the authority only at Rs.6.93 Lakhs and odd, no amount need to be paid by the appellant. However, the order of the authority directing payment of the above amount inspite of the fact that an amount over and above the amount ordered had been paid, is wholly unsustainable. In this regard, learned senior counsel appearing for the appellant in CMA No.753/2020 submits that Section 8 of the Act has to be read down by adopting the doctrine of “Reading Down” the provision and ought not have directed the employer to make further compensation to the legal heirs of the deceased.



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42. However, contra to the above submission, it is the contention of the learned counsel for the legal heirs of the deceased that the fixation of Rs.8000/- cap for determining the compensation payable is erroneous, more so, when the legal heirs of the deceased have proved the monthly wages drawn by the deceased through documentary evidence and, therefore, necessarily the compensation requires to be enhanced on the basis of the monthly wages drawn by the deceased, which has been proved by the legal heirs.

43. Section 8 (1) of the Act, as extracted above, relating to distribution of compensation, provides that no payment of compensation in respect of a employee whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner and no such payment made directly by an employer shall be deemed to be a payment of compensation.

44. The above provision clearly provides that any payment made otherwise than by deposit with the Commissioner directly by the employer to



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the family of an employee shall not be treated as payment of compensation as quantified under the Act.

45. In the case on hand, the stand of the appellant in CMA No.753/2020 is not that it had paid any advance to the family of the deceased employee on account of compensation, as provided for under the proviso to Section 8 of the Act. Only if the amount is paid as advance to the family of the deceased employee on account of compensation, such amount could be deducted by the Commissioner from such compensation determined for payment. However, in the case on hand, it is not the case of the appellant in CMA No.753/2020 that it had paid the amount by way of advance to the family of the deceased employee on account of compensation, which would become payable in the claim petition, as such payment could be only to the extent of three months wages. In the case on hand, the payment is to the tune of Rs.8 Lakhs and, therefore, the proviso to sub-section (1) of Section 8 would not stand attracted.

46. Turning back to sub-section (1) of Section 8, it mandates that the compensation, if any, that is payable to the family of the deceased could be only



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by way of deposit by the employer with the Commissioner and any payment made directly by an employer shall not be deemed to be payment towards compensation. The provision is unambiguous and does not give room for any different interpretation from the one given above.

46-A. In the case on hand, the employer, of its own volition, had paid a sum of Rs.8 Lakhs to the family of the deceased directly and no deposit has been made with the Commissioner towards compensation. Such being the case, the amount would not partake the character of payment of compensation and the said payment cannot be brought within the ambit of compensation. Therefore, rightly, the authority had declined to accept the payment made by the appellant to the family of the deceased employee as payment towards compensation and such a course adopted by the authority is well within the prescription made in the statute and cannot be said to be erroneous and the contention to the contra deserves to be rejected. **Therefore, the appeal in CMA No.753/2020 is devoid of merits and deserves to be rejected.**



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47. Insofar as the appeal in CMA No.3087/2021 filed by the legal heirs of the deceased is concerned, the deceased had died in the year 2016 and, therefore, Amendment Act 45 of 2009 would come into play. In this regard, a perusal of the impugned order reveals that the authority had fixed the monthly wages at Rs.8,000/- on the basis of the notification issued by the Central Government and had quantified the compensation. However, in view of the fact that this Court had held that the compensation should be determined on the basis of the monthly wages drawn by the employee, as evidence by the documentary evidence, if any, adduced by the legal heirs and only in the absence of such evidence, the authority shall resort to fixing the monthly wages at Rs.8,000/-. In the case on hand, it is evident from the impugned order that the salary certificate is marked as Ex.P-7 and the Pan Card is marked as Ex.P-8. The said exhibits have not been disputed by the employer, viz., the appellant in CMA No.753/2020. Such being the case, it is clear that the employer had admitted Ex.P-7, the salary slip of the deceased and such being the case, the legal heirs of the deceased are entitled to have the compensation computed on the basis of Section 4 (1)(a) of the Act.



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48. To that extent, CMA No.3087/2021 is allowed and E.C. No.297/2017 is remanded to the Commissioner of Employees Compensation, Chennai, who is directed to compute the compensation payable on the basis of the aforesaid order.

49. Insofar as CMA Nos.662, 666, 675 and 721 of 2021 are concerned, the said appeals have been filed by the claimants, aggrieved by the inadequacy in the compensation awarded, more particularly, the fixation of the monthly wages at Rs.8,000/- as per the notification of the Central Government in terms with Section 4 (1-B) of the Act. A careful perusal of the order as also the other documents, which have formed the basis of the orders therein reveal that the claimants have not placed any documentary evidence to substantiate the monthly wages drawn by them.

50. However, it is evident from the orders impugned in the said appeals that though the authority had fixed the minimum wages based on the notification issued by the State Government, issued under the Minimum Wages Act, however, inspite of the said fact, the monthly wages has been fixed at



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RS.8,000/- based on the notification of the Central Government in terms of Section 4 (1-B) of the Act. In this regard, the decision of a learned single Judge of this Court in the case of ***R.Sakthivel – Vs – R.Sudhakar & Anr. (CMA No.377/2021 – Dated 19.03.2021)*** is of relevance. In the said decision, learned single Judge, placing reliance on the decision in CMA No.1800/2018 dated 29.01.2021, wherein minimum wages fixed by the Central Government or the State Government as the case may be, had been taken into consideration with reference to the date of fixation of monthly wages by the Central Government vide the aforesaid notification dated 31.5.2010 and had held that proportionate increase ought to be considered, in line with the minimum wages fixed by the State Government or the Central Government as the case may be and, accordingly, had directed fixing of proper minimum wages as per the notification.

51. In the case on hand, the authority having rendered a finding with regard to the minimum wages of the appellant on the basis of the notification issued by the State Government, ought to have fixed the minimum wages as the monthly wages for the purpose of quantifying the compensation. The



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notification of the Central Government had been done in the year 2010 and the accident had taken place in the year 2017 and orders for payment of compensation have been passed in the year 2021. Necessarily the time between the notification and the occurrence have to be given weightage for the purpose of fixing the monthly wages and in the absence of any documentary evidence to substantiate the monthly wages drawn by the appellant, necessarily, the authority ought to have fixed the minimum wages as prescribed by the State Government as that alone would be the course which would not defeat the object of the legislation. The mere fact that based on the current scenario, the monthly wages has not been fixed by issuing notification in terms with Section 4 (1-B) by the Central Government at regular intervals cannot be a ground to defeat the rights of the employee from getting just and reasonable compensation. Therefore, necessarily, the orders impugned herein have to be set aside and the matter remanded to the authority to determine the compensation on the basis of the minimum wages fixed by the State Government which shall be construed as monthly wages for the purpose of determining the compensation.



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52. Accordingly, C.M.A. Nos.662, 666, 675 and 721 of 2021 are allowed and the orders impugned herein in the respective appeals is set aside and the matter is remanded to the authority to to determine the compensation on the basis of the minimum wages fixed by the State Government which shall be construed as monthly wages for the purpose of determining the compensation.

53. Insofar CMA No.1583/2020 is concerned, the impugned order reveals that the wife of the deceased, who examined herself as P.W.1 had deposed that the deceased was earning a sum of Rs.7,000/- as monthly wages in addition to a sum of Rs.100/- towards daily allowance. However, to substantiate the same, no documentary evidence has been filed. The employer of the deceased has also not been examined to prove the monthly wages of the deceased. Taking into consideration the fact that the accident had happened in the year 2012 in which the deceased had breathed his last, though the monthly wages has been stated to be Rs.7,000/- in addition to Rs.100/- towards daily allowance, as deposed by P.W.1, the authority, giving the benefit of the notification issued by the Central Government in exercise of the powers conferred u/s 4 (1-B) of the Act, had taken



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the monthly wages at Rs.8,000/- and quantified the compensation, which cannot be said to be erroneous, as the same is in line with the reasoning and the decision of this Court above.

54. Insofar as the claim made by the appellant with regard to payment of penalty in terms of Section 4-A (3) of the Act, it is to be noted that the authority had ordered simple interest at 12% p.a. from the date of accident till the date of payment, which is in due compliance of Section 4-A (3) of the Act and, therefore, no payment of penalty is to be ordered in favour of the appellant herein. Therefore, the impugned order in CMA No.1583/2020 does not require any interference and the appeal deserves to be dismissed.

55. Accordingly, CMA No.1583/2020 is dismissed confirming the compensation awarded by the authority in the order impugned herein.

56. In the result, the following order is passed in the above appeals :-

- i) *The power of the Central Government to issue notification fixing the monthly wages as provided*



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u/s 4 (1-B) would be relatable and applicable to employees or the legal heirs of the employees who are not able to prove their monthly wages through necessary oral and documentary evidence and in such cases, the monthly wages fixed by the Central Government vide the notification issued in exercise of powers conferred u/s 4 (1-B) would come into play and in case an employee or his legal heir is able to prove the monthly wages through necessary evidence before the authority, the authority is bound to take the said monthly wages, so proved, for the purpose of computing the compensation payable u/s 4 (1)(a) and (b) of the Act.

ii) C.M.A. No.753/2020 filed by the appellant/employer stands dismissed holding that the amount paid to the family of the deceased employee by the appellant cannot partake the



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character of compensation as prescribed under Section 4 of the Act;

- iii) *C.M.A. No. 3087/2021 filed by the legal heirs of the deceased is allowed and E.C. No.297/2017 is remanded to the Commissioner of Employees Compensation, Chennai, who is directed to compute the compensation payable by taking the monthly wages as per Ex.P-7, salary certificate on the basis of the aforesaid order;*
- iv) *C.M.A. Nos.662, 666, 675 and 721 of 2021 filed by the injured claimants are allowed and the orders impugned herein in the respective appeals is set aside and the matter is remanded to the authority to determine the compensation on the basis of the minimum wages fixed by the State Government which shall be construed as monthly wages for the purpose of determining the compensation.*



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- v) *CMA No.1583/2020 filed by the legal heir of the deceased employee is dismissed confirming the compensation awarded by the authority in the order impugned herein.*
- vi) *Consequently, CMP No.4631/2020 is closed.*

19.01.2024

Index : Yes / No

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To

The Joint Commissioner of Labour – II
O/O of the Commissioner of Employees Compensation
Chennai.



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M.DHANDAPANI, J.

GLN

JUDGMENT

COMMON PRE-DELIVERY

C.M.A. NOS. 753 & 1583 OF 2020

**C.M.A. NOS. 662, 666, 675, 721 &
3087 OF 2021**



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**Pronounced on
19.01.2024**