



C.M.A.No.1203 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1203 of 2021

1.Thangam

2.Minor Vinoth

3.Minor Vimal

4.R.Sellammal

*(Minors 2 and 3 appellants are represented
by their mother Thangam/1st appellant)*

...Appellants

Vs.

1.Palanisamy

2.National Insurance Company Limited,

No.74-A, Paramathy Road,

Namakkal Taluk,

Namakkal District.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen
Compensation Act, 1923, against the order dated 11.11.2019 and passed



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in E.C.No.195 of 2016 on the file of Commissioner for Workmen's Compensation, Commissioner of Labour, Coonoor.

For Appellants : Mr.C.Thangaraju

For Respondents : R1 – No appearance
Mrs.N.B.Surekha for R2

J U D G M E N T

This appeal is filed by the appellants challenging the order passed by the Commissioner for Workmen's Compensation, Commissioner of Labour, Coonoor in E.C.No.195 of 2016 dated 11.11.2019.

2.It is the case of the claimants that on 28.04.2015 at about 10.00 a.m. on Jabalpur to Nagpur Road at Develapur, the deceased was on duty as a driver, drove the lorry and suddenly, he affected a massive heart attack due to heavy workload offered to him and caused this incident. Immediately, after the incident, the deceased was taken to Mayo Hospital, Nashik Road, there he had given proper treatment but even though unfortunately, he died on the same day. Thereby, the claimants have filed a claim petition before the Commissioner for Workmen's



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Compensation Commissioner of Labour, Coonoor claiming compensation.

3.Before the Commissioner, during trial, in order to prove the case, on the side of the claimants, 2 witnesses were examined as PW1 and PW2 and marked 11 documents viz., Exs.P1 to P11. On the side of the Insurance company, no witness was examined and no documentary evidence was marked. The Commissioner, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.6,65,160/- Aggrieved by the said award, the appellants/claimants have filed this appeal before this Court for enhancement of compensation.

4.Learned counsel appearing for the appellant submitted that that the Commissioner has fixed income of the deceased at Rs.8,000/- per month which is too low. The deceased was earning a sum of Rs.9,500/- per month as salary and Rs.100/- per day as batta. Without considering the said fact, the Commissioner has fixed a sum of Rs.8,000/- to the



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deceased which is very meagre. Hence, this Court may interfere with the award passed by the Labour Court.

5.Per contra, learned counsel appearing for the second respondent/ Insurance Company submitted that the claimants have not produced any proof regarding the salary. In the absence of any proof, the Commissioner has fixed Rs.8,000/- as monthly income. After elaborate trial, the Commissioner has passed the award which is perfectly in order and it does not need any interference. Hence, this Court may dismiss the appeal.

6.This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7.The factum of the accident is not disputed by the parties. Admittedly, the appellants are the claimants and they filed a claim petition before the Labour Commissioner for the death of Rajendran.



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The accident had occurred during the course of his employment. The first respondent is the employer. The Labour Court fastened the liability as against the second respondent. For enhancement of compensation, the present appeal has been filed.

8.The issue of fixation of monthly wages in the absence of any documentary proof to establish wages was considered by this Court in C.M.A.No.753 of 2020 dated 19.01.2024 wherein this Court, considering the notification issued by the Central Government fixing Rs.8,000/- per month as wages, has held as under:

"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 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)



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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 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



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shall be construed as monthly wages for the purpose of determining the compensation.

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."

9.In the instant case, though the appellants seek for enhancement of wages over and above as fixed by the Central Government under Notification issued with regard to the wages at Rs.8,000/- per month, no material, evidencing the wages earned by the deceased, has been placed before the Commissioner, except for an avernment claiming that the deceased was earning a sum of Rs.9,500/- per month as salary and Rs.100/- per day as batta. Mere assertion without any documents, cannot partake proof to establish the income earned by the deceased.

10.Such being the case, the Commissioner applying Notification issued by the Central Government under Section 4(1-B) of the



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Workmen's Compensation Act has rightly fixed the monthly income of the deceased and quantified the amount payable to the appellants, who are claimants, for the death of the deceased, which is based on proper appreciation of the provision of law as well as materials available on record. Therefore, no interference is warranted for the compensation awarded by the Labour Court.

11. With the above observation, the appeal is dismissed. No costs. The award passed by the Commissioner for Workmen's Compensation, Commissioner of Labour, Coonoor dated 11.11.2019 is confirmed.

04.12.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Commissioner for Workmen's Compensation,
Commissioner of Labour, Coonoor.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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M.DHANDAPANI, J.

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