



C.M.A.No.1507 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1507 of 2021

Sakthivel

...Appellant

Vs.

1.K.Thalamuthu

2.Divisional Manager,

The New India Assurance Company Limited,

No.29, Ram Complex,

Paramathi Road,

Namakkal – 637 001.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, 1923, against the order dated 23.12.2019 and passed in E.C.No.69 of 2019 on the file of the Commissioner for Commissioner of Labour, Coonoor.

For Appellant : Mr.C.Thangaraju

For Respondents : Mr.J.Michael Visuvasam for R2

J U D G M E N T



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This appeal is filed by the appellant challenging the order passed by the Commissioner of Labour, Coonoor in E.C.No.69 of 2019 dated 23.12.2019.

2.In view of the judgment being passed, notice to the first respondent is dispensed with.

3.The case of the appellant/claimant is that, the appellant is an employer of the first respondent. On 12.10.2018 at about 8.00 hours, when the appellant was driving a tanker lorry belonging to the first respondent bearing Registration No.KA 01 AG 3057, proceeding from Pune to Bangalore NH-4 on Pune Kolkapur Road, Itkare Village near Sesaran Hotel, the said vehicle lost its control and dashed on the tree. Due to the said accident, the appellant sustained injuries as well as fractures on his right leg, grievous injuries on stomach and injuries all over the body. Thereby, the appellant filed a claim petition claiming a compensation of Rs.10,00,000/-. After contest, the Commissioner vide impugned judgment awarded a compensation of Rs.4,48,619/-.



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Aggrieved with the said order, the present appeal has been filed by the claimant seeking enhancement of the compensation fixed.

4.Learned counsel appearing for the appellant/claimant submitted that the Commissioner has adopted multiplier method by fixing 40% for permanent disability sustained by the claimant. However, the appellant was earning a sum of Rs.20,000/- per month as well as Rs.250/- per day and without considering the plea raised by the appellant, the Commissioner has mechanically fixed the notional income of the deceased at Rs.8,000/- which is very meagre and the same requires interference of this Court. Accordingly, he prayed for appropriate orders.

5.Per contra, the learned counsel appearing on behalf of the second respondent/Insurance Company submitted that, no document has been filed before the Workmen Compensation Court in order to prove the income of the claimant and as per the Government Order issued by the Central Government pursuant to the amendment of Section 4(1-B) of the Workmen Compensation Act, 1923, the monthly wages was fixed at



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Rs.8,000/-, based on which, the Workmen Compensation Court fixed the monthly wages of the workman at Rs.8,000/- and awarded compensation, which is wholly sustainable and the same does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6.Heard the learned counsel appearing for the appellant as well as the second respondent and perused the materials available on record.

7.The facts in the present case are not disputed with regard to the employment of the appellant under the first respondent and the said accident during the course of employment is also not in dispute.

8.It is the claim of the appellant that he is employed as driver under the first respondent earning a sum of Rs.20,000/- per month and Rs.250/- per day. However, the Commissioner without considering the oral and documentary evidence has fixed the monthly income of the appellant at Rs.8,000/- which is very meagre. However, the second respondent claims that no document has been marked before the



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Workmen Compensation Court in order to prove the income of the appellant.

9.The issue which arises before this Court is whether the appellant/ claimant is entitled to enhancement of compensation on the basis of monthly income or not? In order to appreciate the arguments, it is necessary to extract the Explanation II of Section 4(1) which would read as follows:-

“?Explanation II.- Where the monthly wages of a workman exceed [four thousand rupees]', his monthly wages for the purpose of clause (a) and clause (b) shall be deemed to be [four thousand rupees] only?”

10.This explanation has been deleted by amending Act 45 of 2009 which came into effect on 18.01.2010. In its place Section 4 (1-B) of the Act has been introduced would read as follows:-

Section 4 (1-B) in the Employee's Compensation Act 1923: *The Central Government may, by notification in the Official*



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Gazette, specify, for the purposes of sub-section(1), such monthly wages in relation to an employee as it may consider necessary.

11.The deleted Explanation has expressly stipulated that the monthly wages for the purpose of calculating compensation as per Section 4(1) (a) and (b), the monthly wages cannot exceed Rs.4000/-, even if the monthly wages of the workman was more than Rs.4,000/-. This provision has been deleted and substituted as Section 4(1-B) of the Workmen Compensation Act, 1923, wherein it stipulates that it is the Central Government which can fix the monthly wages and notify it in the Official Gazette and the monthly wages so fixed is now Rs.8,000/-. Therefore, there is no reason to interfere with the Judgment of the Commissioner and consequently, the Civil Miscellaneous appeal is dismissed.

12.Accordingly, the award passed by the Commissioner in E.C.No.69 of 2019 dated 23.12.2019 and the second respondent is directed to deposit the compensation of Rs.4,48,619/- awarded by the



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Commissioner to the credit of E.C.No.69 of 2019 along with interest as per the statute per annum from the date of claim petition till the date of deposit and costs, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Commissioner is directed to transfer the said amount to the appellant directly to his bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal.

05.12.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The 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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