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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 07 / 2024

JUDGMENT PRONOUNCED ON : 19 / 09 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.1104 OF 2022
AND CMP NO.8098 OF 2022

ICICI Lombard General Insurance Company Limited,
TP Cell,
No.84 & 85, Walltax Road,
2nd Floor, Chennai – 600 006.

... Appellant /
2nd Respondent

Versus

1.Mrs.Jayanthi W/o. G.K.Ramesh
2.Mrs.Govindammal W/o. Kanniyappan
3.Mr.Kanniyappan
4.Minor Lochana Shree D/o.G.K.Ramesh
5.Minor Mokshan Manikandan

... Respondents 1 - 5 /
Applicants 1 - 5

(4th and 5th minor respondents /
applicants are represented by their
mother - Jayanthi as Natural Guardian &
Next Friend)

6.M.A.Srinivasan

... 6th Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30(1) of the



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Employees Compensation Act, 1923, praying to set aside the Order dated January 5, 2022 made in E.C.No.125 of 2016 on the file of the Commissioner of Labour – II / Joint Commissioner of Labour – II, Chennai.

For Appellant : Mr.B.Siva Kollappan
For Respondents 1 to 5 : Mr.F.Terry Chella Raja
(R4 and R5 – Minors for M/s.V.Velu
rep. by R1)
For Respondent – 6 : Ms.S.P.Arthi
Served – No appearance

J U D G M E N T

Challenging the Order dated January 5, 2022, passed by ‘the Commissioner of Labour – II / Joint Commissioner of Labour – II, Chennai’ [henceforth ‘Commissioner’ for brevity] in E.C.No.125 of 2016, the second respondent therein, namely ICICI Lombard General Insurance Company Limited, has preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties will hereinafter be referred to as per their array before the Commissioner.

Petitioners' case

3.First petitioner is the wife of the deceased - G.K.Ramesh; second and third petitioners are his parents; and fourth and fifth minor petitioners are his children.

3.1.The case of the petitioners is that the deceased – G.K.Ramesh, aged 46 years, was working as a Driver with the 1st respondent,



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the owner of a Car bearing Registration No.TN-01-AT-2992, for a monthly salary of Rs.20,000/- and a daily batta of Rs.200/-. On May 17, 2016, at about 16.45 hours, on GST Road, near Maduranthakam BDO Office, while the deceased was driving the Car belonging to the 1st respondent, he met with an accident and sustained grievous injuries and succumbed to them on the way to the Hospital. The Special Sub-Inspector of Police, Maduranthakam Police Station, Kancheepuram District, registered a case in Crime No.293 of 2016 under Sections 279 and 304A of the Indian Penal Code, 1860. First respondent is the owner of the Car and second respondent is the insurer of the first respondent Car. According to the petitioners, the deceased died in the course of his employment under the first respondent. Since the first respondent's Car was insured with the second respondent, both the respondents are liable to pay compensation to the petitioners.

3.2.The petitioners filed a petition before the Commissioner under Section 10 of the Employees' Compensation Act, 1923 in E.C.No.125 of 2016, praying for a compensation of Rs.30,00,000/- (Rupees Thirty Lakhs Only) from both the respondents.



1st Respondent's case

4.The first respondent, owner of the Car bearing Registration No.TN-01-AT-2992, remained absent before the Commissioner and accordingly, set *ex-parte*.

2nd Respondent's case

5.The second respondent – Insurance Company filed counter statement stating that the deceased was not employed as a Driver under the 1st respondent and that the accident did not occur in the course of employment. Further, it denied the age, manner of accident and the cause of death of the deceased. Further stated that there was no nexus between the alleged accident and the vehicle bearing Registration No.TN-01-AT-2992. Thus, they prayed to dismiss the petition.

Trial and Findings of the Commissioner:

6.At trial, on the side of the petitioners, first petitioner – Mrs.Jayanthi was examined as P.W.1 and Ex-P.1 to Ex-P.6 were marked. On the side of the second respondent, one Thiru. Shanmugam, Legal Manager of 2nd respondent company was examined as R.W.1 and Ex-R.1 and Ex-R.2 were marked.

7.The Commissioner framed the following points for



determination:

“(i)Whether the deceased Ramesh died due to the injuries sustained by him in course of employment and arising out of employment?

(ii)Whether the petitioners are entitled to claim compensation? If so, then what is the quantum of compensation?

(iii)Who is liable to pay compensation to the petitioners?”

8.The Commissioner after analyzing the oral and documentary evidence, held that the death of the deceased was an 'employment injury death' and thus, answered the first point in favour of the petitioners.

8.1.The Commissioner relying upon the Judgment of this Court in *P.Ramesh Vs. V.Ravi and Another [CMA No.897 of 2018 decided on January 21, 2021]* arrived at a sum of Rs.11,060/- per month as the deceased's monthly salary and thus, answered the second point in favour of the petitioners.

8.2.The Commissioner further held that since the first respondent's vehicle was insured with the second respondent and the insurance policy was in force at the time of accident, the second respondent was liable to pay compensation to the petitioners and thus, answered the third



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point against the second respondent – Insurance Company.

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8.3. Consequently, the Commissioner allowed the petition directing the second respondent to deposit a sum of Rs.9,06,777/- (Rupees Nine Lakh Six Thousand Seven Hundred and Seventy Seven Only) with interest at the rate of 12 % per annum, by way of demand draft in favour of the Joint Commissioner of Labour – II, Chennai – 6, within 30 days from the date of receipt of a copy of the said order.

9. Assailing the said Order passed by the Commissioner, the second respondent – Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments:

10. Heard the learned Counsel appearing for the appellant / second respondent – Commissioner and the learned Counsel appearing for the Respondent Nos.1 to 5.

11. The learned Counsel for the appellant / second respondent – Insurance Company would argue that the Commissioner failed to properly consider the First Information Report (FIR) which was registered based on the information given by the brother of the deceased; that the deceased was



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driving his own vehicle when the accident occurred; that it is mentioned in the FIR that the vehicle belonged to the deceased, which clearly shows that there was no employer – employee relationship between the deceased and the first respondent; that the first respondent had sold the Car to the deceased prior to the accident; that though on the date of the accident, a sum of Rs.8,000/- is the monthly income fixed under the Workmen's Compensation Act, 1923, the Commissioner erred in applying Minimum Wages Act, 1948 to arrive at a sum of Rs.11,060/- as monthly income of the deceased; that the compensation awarded by the Commissioner is on the higher side. Accordingly, the learned Counsel prayed to allow the Civil Miscellaneous Appeal and set aside the Award passed by the Commissioner.

12.Per contra, learned Counsel for the respondents 1 to 5 / petitioners 1 to 5 would contend that the FIR is not an Encyclopedia; that on the date of accident, first respondent (sixth respondent herein) was the owner of the Car; that the accident happened while the deceased was driving the Car as a Driver under the first respondent; that as per Section 2(30) of the Motor Vehicles Act, 1988, the first respondent (sixth respondent herein) is the owner of the Car; that the employer-employee relationship can be inferred from the



facts and circumstances of the case; that the Commissioner after considering the materials and evidence, passed the Award correctly; that there is no reason to interfere with the same. Accordingly, the learned counsel prayed to dismiss the Civil Miscellaneous Appeal.

Points for Consideration:

13.This Court has considered the submissions made on either side and perused the materials available on record.

14.The points that arise for consideration in this appeal are as follows:

- (i) Whether the Commissioner is right in concluding that there was employer – employee relationship subsisting between the deceased and the first respondent at the time of accident?
- (ii) Whether the Commissioner erred in law by determining the deceased's monthly income based on the Minimum Wages Act, 1948 rather than the Workmen's Compensation Act, 1923?

Discussion and Decision:

Point No.(I):



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15.The case of the petitioners is that on May 17, 2016, at about 16.45 hours, the deceased was riding the Car bearing Registration No.TN-01-AT-2992, on GST Road. While nearing Maduranthakam BDO Office, the Car driven by the deceased met with an accident. Due to the accident, the deceased sustained grievous injuries and succumbed to death. In this regard, an FIR was registered under Sections 279 and 304A of the Indian Penal Code, 1860. In the FIR, it has been stated that complaint was given by the brother of the deceased wherein it has been stated as if the Car was owned by the deceased. On the other hand, Ex-P.5 – Registration Certificate of the Car stands in the name of the first respondent.

16.It is apposite to mention here that Section 2(30) of the Motor Vehicles Act, 1988, defines 'owner' as hereunder:

“2. ...

(30) “owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor; and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;”

16.1.Hence, there is no difficulty in arriving at a conclusion that



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the first respondent is the owner of the Car. There is no contra evidence available on record to show that the first respondent had sold the Car to the deceased prior to the accident. In the absence of any positive evidence to show that the first respondent had sold the Car bearing Registration No.TN-01-AT-2992 in favour of the deceased, considering the object of the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988, this Court is of the considered view that the deceased was a Driver working under the first respondent. Hence, the employer – employee relationship subsisted at the time of accident. The Commissioner after considering the materials available on record, came to the conclusion that there was employer – employee relationship at the time of accident. There is no reason to deviate from the said decision. **Point No.(I) is answered accordingly in favour of the respondents 1 to 5 / petitioners 1 to 5 and against the appellant / second respondent.**

Point No.(II):

17.It is true that as per Workmen's Compensation Act, 1923, Section 4(1-B) and the Notification made in pursuance to the same, the monthly income has been fixed at Rs.8,000/- for a Driver. The Commissioner



fixed a sum of Rs.11,060/- per month with the aid of Minimum Wages Act, 1948. It is apposite to mention here that the Hon'ble Supreme Court in ***K.Sivaraman and Others Vs. P.Sathishkumar and Others [(2020) 4 SCC 594]*** has held as hereunder:

“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. 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.”

18.This Court in ***Mani Vs. Rathakrishnan and Another [CMA No.1800 of 2018 decided on 29.01.2021]*** held as under:

“4. . . . Regarding the fixation of income, this Court elaborately considered the issues in C.M.A.No.897 of 2018 dated 27.01.2021 and the relevant paragraphs are extracted hereunder:

“24.The minimum wages of Rs.8,000/- was fixed by the Central Government with effect from 18.01.2010. If any accident occurred in the year 2013 or 2014, definitely the said amount cannot be adequate to meet out the family expenditures of the legal heirs in the event of death of an employee. In such circumstances, the Courts cannot do the exercise to assess the prevailing cost index during the relevant point of time. However, the Courts are bound to ensure and minimize the inequalities in the matter of grant of compensation.

25.Thus, this Court has no hesitation in



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holding that the minimum wages notified by the Central Government under Section 4(1B) of the Act, 1923 is applicable all over the Nation in general and in particular, if any State fixed the minimum wages under the provisions of the Minimum Wages Act, which is higher than that of the minimum wages fixed by the Central Government, then the minimum wages fixed by the State Government, which is more beneficial is to be adopted for the purpose of fixing the monthly income of the employee concerned. This is to be followed, because the employee concerned is working in the particular State and the State has enhanced the minimum wages to be paid to the workman. Therefore, in the event of not adopting the minimum wages notified by the State, which is higher than that of the Central Government Notification, then there will be an inequality of fixing minimum wages, in the matter of fixing monthly income and grant of compensation.”

19.Considering the object of the Workmen's Compensation Act, 1923 and in view of dictum laid down by the Hon'ble Supreme Court in ***K.Sivaraman's case*** (cited *supra*) as well as on the strength of ***Mani's case*** (cited *supra*), this Court is of the considered view that the Commissioner has rightly taken a sum of Rs.11,060/- per month as income of the deceased with the aid of Minimum Wages Act, 1948. This Court does not find any illegality or irregularity in the said decision. **Point No.(II) is answered accordingly in**



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favour of the respondents 1 to 5 / petitioners 1 to 5 and against the appellant / second respondent.

Conclusion:

20. In view of the foregoing discussion and decisions, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
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R.SAKTHIVEL, J.

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To

The Commissioner of Labour – II /
Joint Commissioner of Labour – II
Chennai – 600 006.

PRE-DELIVERY JUDGMENT MADE IN
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