



C.M.A.No.1890 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2024

PRONOUNCED ON : 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1890 of 2021

1.Mahalakshmi

2.Minor Akash

3.Karuppayi

.. Appellants/Applicants

*(Minor appellant is represented by
his mother as natural guardian
and next friend Mahalakshmi)*

Vs.

1.Krishnaraj

2.National Insurance Company Limited,
Third Party Cell HUB,
No.46, Regina Mansion,
Moore Street,
Parrys,
Chennai – 600 001.

.. Respondents/Opposite Parties

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, praying to modify the award dated 23.08.2018 made in E.C.No.187 of 2017 on the file of the Deputy



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Commissioner of Labour-II, Chennai.

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For Appellants : Mr.F.Terry Chella Raja

For R-1 : D/W

For R-2 : Mr.Michael Visuvasam

JUDGMENT

The Civil Miscellaneous Appeal has been filed challenging the award passed by the Deputy Commissioner of Labour-II, Chennai, in E.C.No.187 of 2017, dated 23.08.2018.

2. The appellants are the dependants of one Boominathan, who died in an accident on 24.04.2017, during the course of employment with the first respondent. The first appellant is the wife, the second appellant is the son and the third appellant is the mother of the deceased Boominathan. He was a lorry driver. On 24.04.2017, midnight at 00.20 hours, during the course of his employment near Chennai Koyambedu market, he sustained grievous injury and subsequently, he was admitted in KMC Government Hospital and succumbed to the injuries on 25.04.2017. The second respondent is the insurer of the lorry. The first respondent, who has



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employed the deceased, paid Rs.30,000/- per month as monthly salary and also Rs.300/- as daily allowance. Since the deceased has sustained employment injury and died, the claimants have come forward with the claim petition seeking compensation under the Employee's Compensation Act.

3. The first respondent/employer has not contested the claim. The second respondent/insurer disputed the manner in which the deceased sustained employment injury. The income, age of the deceased and the dependency of the claimants were also disputed.

4. Based on the evidence placed on record, the Labour Commissioner-II, Teynampet, Chennai has conducted an enquiry and accepted the case of the claimants and awarded a sum of Rs.7,30,480/- as compensation along with 12% interest from the date of accident till realisation, payable by the respondents to the claimants. The claimants are not satisfied with the compensation quantified and awarded by the Labour Commissioner and they have approached this Court seeking enhancement of



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compensation. According to them, the method adopted for fixing the monthly income of the deceased is not proper. In spite of proof of income, the Labour Commissioner has restricted the income limit to Rs.8000/- per month and awarded compensation.

5. The learned counsel for the appellants/claimants would submit that the accident was taken place on 24.04.2017 and the employer has not come forward to produce the employment records, more particularly, the payments made to the deceased. The deceased was earning Rs.30,000/- per month along with Rs.300/- as daily allowance. But, this fact was not taken note of by the Labour Commissioner and he has wrongly followed the prescribed income under Section 4(1-B) of the Employee's Compensation Act. The learned counsel further submitted that the Commissioner has also failed to impose the penalty on the respondents for not paying the compensation to the dependants and accordingly, the respondents shall be directed to pay the penalty under Section 4-A(3)(b) of the Employee's Compensation Act.

6. The learned counsel for the second respondent/Insurance Company



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would oppose the contention of the appellants on the ground that Section 4(1-B) of the Employee's Compensation Act empowers the Central Government to notify the monthly wages for the purpose of calculating the compensation payable under Section 4(1) of the Employee's Compensation Act and the Labour Commissioner has rightly quantified the compensation, since there was no evidence placed on record to prove the income of the deceased.

7. I have considered the submissions made on both sides and perused the records.

8. At the time of admission of the appeal, this Court based on the issues has admitted the appeal and framed the following substantial questions of law:

(i) Whether the Deputy Commissioner of Labour-II is right in fixing the monthly income of the deceased as Rs.8000/-?

(ii) Whether the Deputy Commissioner of Labour-II is right in not imposing penalty as defined in Section 4-A(3)(b) of the Act?



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9. Admittedly, in this case, the deceased has sustained employment injury and died. Before the Labour Commissioner, his employment that he was working as a lorry driver with the first respondent was also proved and the vehicle, which the deceased was driving, was also insured by the second respondent and the employee was also covered under the policy to get compensation.

10. The claimants claim that the deceased was earning Rs.30,000/- per month along with Rs.300/- as daily allowance. To substantiate this claim, except marking the driving licence, legal heirs certificate and death report, they were not able to produce any evidence to show the income. They have also not examined any person from the employer. The records also show that no oral or documentary evidence was adduced to prove the income of the deceased.

11. Section 4(1-B) of the Act empowers the Central Government to notify the monthly wages for the purpose of deciding the amount of



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compensation under Section 4(1) of the Act. Based on this provision, the Central Government has already notified Rs.8000/- as monthly wages for the purpose of deciding the compensation. Admittedly, Section 4(1)(a) of the Act empowers the Labour Commissioner to quantify the compensation based on the mechanism provided under Section 4 of the Act. In this case, the Labour Commissioner taking note of the notification issued under Section 4(1-B) of the Employee's Compensation Act, by following the relevant factors prescribed under Schedule IV, quantified the compensation and awarded a sum of Rs.7,30,480/-.

12. One of the contentions raised by the learned counsel for the appellants/claimants herein is that if the claimants were not able to prove the income of the deceased, then the minimum wages prescribed under the State Government shall be taken into account for the purpose of deciding the monthly wages. This Court is unable to appreciate this contention, since the Employee's Compensation Act is a self-contained Code, which provides procedures and guidance for awarding compensation.



13. For the purpose of deciding the various questions raised in this case, the relevant provisions of the Employee's Compensation Act is extracted hereunder:

“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], whichever is more;

(b) where permanent total disablement results from the injury 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:

[Provided 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);]

Explanation I.--For the purposes of clause (a) and clause (b), "relevant factor", in relation to a [employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the [employee] on his last birthday immediately preceding the date on which the compensation fell due.”

(c) where permanent partial disablement results from the injury.



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(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

Explanation I.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.—In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

(d) where temporary disablement, whether total or partial results from the injury a half-monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the [employee], to be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a [employee] in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such [employee] in



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accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the [employee] in accordance with the law of that country.

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

(2) *The half-monthly payment referred to in clause (d) of sub-section(1) shall be payable on the sixteenth day—*

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that—

(a) *there shall deducted from any lump sum or half-monthly payments to which the [employee] is entitled the amount of any payment or allowance which the [employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and*

(b) *no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the [employee] before the accident exceeds half the amount of such wages which he is earning after the accident.*



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Explanation.—Any payment or allowance which the [employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.

(4) If the injury of the [employee] results his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of [two thousand and five hundred rupees] for payment of the same to the eldest surviving dependant of the [employee] towards the expenditure of the funeral of such [employee] or where the [employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]

4A. Compensation to be paid when due and penalty for default.—(1)
Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the [employee], as the case may be, without prejudice to the right of the [employee] to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent. per annum or at such higher, rate not



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exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent. of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Explanation.—For the purposes of this sub-section, “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

(3A) The interest and the penalty payable under sub-section (3) shall be paid to the [employee] or his dependant, as the case may be.”

14. Section 3 of the Act 1923 mandates the employer's to pay compensation to the injured employees, if the injury is caused by accident arising out of and and his course of employment. The compensation is paid in accordance with the provisions of the Chapter - II. Section 4-1(A) and 4-1(B) prescribes amount of compensation to be paid to the deceased or the employees, who sustained permanent disablement from the injuries. The proviso to this section also empowers the Central Government by



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notification to enhance the amount of compensation.

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15. Section 4-1(B) prescribes the Central Government to issue notification to issue notification for the purpose of specifies the monthly wages in relation to the employees. Section 4(2-A) prescribes that the employee shall be reimbursed with the actual medical expenses incurred by him. Section 4(4) provides payment of funeral expenses. Section 4 not only provides payment of monthly wages as compensation, it mandates reimbursement of actual medical expenses and also payment of funeral expenses in case of death. The injured or deceased are entitled for compensation under the head loss of wages, reimbursement of medical expenses, funeral expenses in case of death.

16. Sub-section 1 of Section 4(A) reads that the compensation shall be paid under section 4 “as soon as it falls due”. Sub-section (3) of 4(A) directs the employer to pay interest @ 12% per annum or at such higher rate not exceeding the maximum lending rates of schedule Banks specified by the Central Government.



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17. The term “as soon as falls due” was interpreted by the Apex Court in ***Pratap Narain Singh Deo vs. Srinivas Sabata [(1976) 1 SCC 289]*** and ***Kerala State Electricity Board vs. Valsala K [(1999) 8 SCC 254]*** and held that the date relevant for determination of compensation payable under Section 1923 Act, is the date of accident. The Hon'ble Apex Court in ***K.Sivaraman and others Vs. P.Sathishkumar and others*** reported in ***(2020) 4 SCC 594***, while considering the scope of notification under Section 4(1-B) of the Act, has observed as follows:

"14. By Act 45 of 2009, which came into force on 18-1-2010, Explanation II came to be deleted. Sub-section (1-B) was introduced in Section 4 to read as follows:

“4. (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.”

15. The question before this Court is whether the benefit of Act 45 of 2009 deleting the deeming provision in Explanation II which capped the monthly wages of an employee at Rs 4000 would also apply to accidents which took place prior to the



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coming into force of its provisions i.e. 18-1-2010 and where final adjudication is pending. In assessing whether Act 45 of 2009 applies retrospectively, it is necessary to analyse the relevant precedents of this Court. In Pratap Narain Singh [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] , the first respondent was in the employment of the appellant and suffered injuries which arose out of and in the course of employment. It was contended that the Commissioner committed an error of law in imposing a penalty on the appellant under Section 4-A(3) of the 1923 Act as the compensation payable had not fallen due until it was “settled” by the Commissioner under Section 19 of the 1923 Act. Section 4-A reads:

“4-A. Compensation to be paid when due and penalty for default.—(1) Compensation under Section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, as the case may be, without prejudice to the right of the employee to make any further claim.



(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall—

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty.”

16. In terms of Section 4-A(1), compensation under Section 4 is payable “as soon as it falls due”. Section 4-A(2) contemplates a situation wherein the employer, though accepting the liability to pay compensation to the injured employee, disputes the quantum of compensation payable. In such cases, sub-section (2) enjoins the employer to make a provisional payment based on the extent of accepted liability by depositing it with the Commissioner or by paying it directly to the employee.



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Section 4-A(3) stipulates that where an employer defaults in paying compensation within one month from the date on which it falls due, the Commissioner is empowered to direct the payment of interest as well as an additional amount as arrears for an unjustifiable delay in making the payment. Section 19 of the Act reads:

“19. Reference to Commissioners.—(1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not an employee) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.”

.....

17. Section 19 stipulates that any question arising in any proceeding under the Act shall, in the default of an agreement, be settled by the Commissioner. A four-Judge Bench of this Court rejected the contention urged by the appellant and held that compensation “falls due” on the date of the accident. Consequently, the Commissioner was empowered to impose interest or penalty for the duration prior to the settling of the claim or where there was unjustified delay in making good the



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payment of compensation. The Court held : (Pratap Narain Singh case [Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289 : 1976 SCC (L&S) 52] , SCC pp. 291-92, paras 7-8)

“7. ... The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated 6-5-1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall, in default of an agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by Section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.



8. *It was the duty of the appellant, under Section 4-A(1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."*

The Hon'ble Apex Court further considered the applicability of removal of deeming provision in explanation II to Section 4 as per Act 45 of 2009 and



held as follows:

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“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. As stated by the Apex Court in ***K. Sivaraman and others vs. P. Sathishumar and others*** cited supra, the employee is entitled to get compensation on the basis of actual monthly wages drawn by them and the compensation shall not be restricted to the extent of monthly wages notified



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by the Central Government. The scheme of the provisions of the Employee's Compensation Act, 1923 contains various provisions and directions for awarding compensation to the deceased or the injured employee. The Sections 4 and 4(A) of the Employees Compensation Act contains various provisions providing methodology to be followed by the purpose of fixing the monthly wages notified by the Central Government. It also provides the rate of interest and the damages payable to workmen. The Act further provides provisions for recovery of the compensation payable to the claimants therein. The major issue raised herein is that whether adopting the minimum wages prescribed by the State Government is to be taken up for computing the monthly wages, instead the monthly wages notified by the Central Government under Section 4-1(B) of the Act, 1923.

19. While granting compensation under Motor Vehicles Act, the Tribunal has to award compensation in terms of Section 168, if the claim petition is filed under Section 166 of the Motor Vehicles Act, Section 168 of the Motor Vehicles Act, which reads as follows:

“Section 168: Award of the Claims Tribunal



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(1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of [section 163] may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

20. For granting Just compensation prescribed under Section 168 of the Motor Vehicles Act, no mechanism or provisions for fixing the monthly wages, interest rate or damages etc., prescribed by legislature. If the petition is filed under Section 163-A of the Act, Schedule-II of the Motor Vehicles Act provides the procedure to be followed. The Hon'ble Apex Court in ***Syed Sadiq Vs. United India Insurance Company [2014 (1) TNMAC 459]***, approved adoption of the Minimum Wages Act, while



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awarding compensation under Section 166 of the Motor Vehicles Act. This Court is of the view that, minimum wages fixed by State Government could not be adopted under Workmen Compensation Act, since, the entire scheme of the Act 1923 shows that there cannot be any deviation than the various limits or quantum notified or fixed in the Act. More particularly, Section 4-1(B) permits the Central Government to notify the monthly wages payable to the injured, if the employee was not able to prove his actual monthly wages.

21. Recently, the Hon'ble Apex Court in ***Rani and others vs. Branch Manager, Shriram General Insurance Co. Ltd., [2023 SCC Online SC 720]*** has approved adoption of monthly wages notified by the Central Government Under Section 4-1(B), for determining compensation less than the notified amount has held as follows:

“5 . The only basis for the High Court to reduce the compensation is because of the averments in the written statement. In this context, we may benefit by advertng to the ratio in K. Sivaraman and Others vs. P. Sathishkumar and Another , where advertng to the very same notification of the Central Government, the following observation was made by this Court:-

"8. In the meantime, a Notification was issued by the Central Government on 31-5-2010 in the following terms:



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"S.O.1258(E) - In exercise of the powers conferred by sub-section (1B) of Section 4 of the Employee's Compensation Act, 1923, (8 of 1923), the Central Government hereby specified, for the purpose of Sub-Section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the Official Gazette, namely – eight thousand rupees."

9. The High Court was of the view that having due regard to the fact that the legislation in question is a social welfare legislation, the enhanced income of Rs.8000 per month should form the basis of the computation. Thus, applying the multiplicand in terms of Schedule IV, the High Court enhanced the compensation to Rs 8,86,120."

6. Seeing the above, we are of the considered opinion that the High Court was in error by taking the lesser sum as the monthly wages of the deceased which is well below the figure that was notified in the Gazette Notification dated 31.05.2010, issued by the Ministry of Labour and Employment. The Court's 1 (2020) 4 SCC 594 order under the Workmen's compensation Act dated 01.04.2016 is accordingly restored."

22. As clarified by the Apex Court in ***K. Sivaraman and others vs. P. Sathishumar and others*** cited supra, if the claimants able to prove their actual monthly salary, which is more than the monthly wages notified by the Central Government, they are entitled to get the actual monthly wages. In the absence of proof of actual monthly wages, the Labour Commissioner has no other alternative, other than adopting the monthly wages notified by



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the Central Government as per the Section 4-1(B) of the Act. Hence the question of law is answered that the adoption of minimum wages prescribed by the State Government could not be taken into account for awarding compensation under the Act 1923 and the monthly wages notified by the Central Government as per Section 4-1(B) shall be adopted for awarding compensation. Accordingly, the first question of law raised in this appeal is answered.

23. The next question of law related to imposition of penalty. Section 4A(3)(a) of the Act empowers the Commissioner to impose interest on the compensation payable. Section 4A(3)(b) empowers the Commissioner to impose penalty, if in his opinion, that there is no justification for the delay in paying the compensation. Provided that the order for payment of penalty shall not be passed without giving reasonable opportunity to the employer to show cause why it should not be passed. Reading down of the Section 4A(3)(b) shows that the opinion must be arrived by the Commissioner after issuing show cause notice to the employer. In this case, the Labour Commissioner while passing an award has conducted an enquiry regarding the payment of compensation on the basis of the objections raised by the



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insurer of the employer. The Insurance Company has resisted the claim on the ground that the monthly wages claimed by the claimants is high. This has been adjudicated and finally, compensation has been arrived by the Commissioner. By invoking Section 4A(3)(a), he has directed the respondents, both the employer and the Insurance Company, to pay the compensation quantified with interest at the rate of 12% from the date of accident till the date of payment. This award shows that the Labour Commissioner has not recorded that he is of the opinion that there is no justification for delay in payment of compensation. After due enquiry, the Labour Commissioner has invoked Section 4A(3)(a) of the Act, directing the respondents to pay the interest. To impose penalty, there must be a show cause notice prior to arriving his opinion that there is no justification for the delay in paying the compensation. Since the delay must be voluntary and not justifiable for the opinion to be arrived by the Commissioner, the imposition of penalty is impermissible. Since the Commissioner has not given any finding in this regard, this Court is not inclined to impose penalty based on the available records. Accordingly, the second question of law raised in this appeal is answered.



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24. Accordingly, this Court finds no merits in the contentions raised by the appellants and the substantial questions of law are answered against the appellants and the appeal is liable to be dismissed.

25. In the result, this Civil Miscellaneous Appeal is dismissed. The award passed in E.C.No.187 of 2017 dated 23.08.2018 on the file of the Deputy Commissioner of Labour-II, Chennai, stands confirmed. There shall be no order as to costs.

30.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Lm

To
1.The Deputy Commissioner of Labour-II,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Chennai.



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K.RAJASEKAR,J.

Lm

Judgment made in
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