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CMA No.2567 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.2567 of 2021

Judgment reserved on 11.01.2024	Judgment pronounced on 16.02.2024
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M.Kumaresan

...

Appellant

Vs.

1.A.Ashok Kumar

2.M/s.The New India Assurance Co. Ltd.,
2nd Floor, No.29 Ram Complex,
Paramathy Road,
Namakkal Town & District.

...

Respondents

(1st respondent remained exparte before the
Commissioner, hence notice to R-1 is
dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988 to enhance the award amount in E.C.No.86 of
2017 dated 17.10.2018 on the file of Deputy Commissioner of Labour at
Connor.

For Appellant : Mr.Ma.P.Thangavel

For R2 : Mr.C.Ramesh



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disability as 15%. However, considering the nature of injuries sustained, the Deputy Commissioner of Labour has fixed the disability and loss of earning capacity of the appellant/claim petitioner as 5% for the whole body.

4. On the above admitted facts, the only point that was raised by the learned counsel appearing for the appellant/claim petitioner is that as per Tamil Nadu Notification, the minimum wages for the lorry cleaner is Rs.9808/- per month, however, the Deputy Commissioner of Labour has treated the deeming cap of Rs.8000/- per month which is meagre. In support of his contention, the learned counsel relied upon the judgment of this Court reported in **CDJ 2021 MHC 437 [P.Ramesh v. Ravi & another]** wherein it is held as follows -

2. The question of law mainly raised in the present appeal is whether the fixation of deeming cap with respect of monthly income under the provisions of the Employees Compensation Act, is correct or not.

21. The question arises, whether the minimum wages fixed by the Government of Tamil Nadu can be adopted for the purpose of grant of compensation under the Workmen Compensation Act. There is no dispute that the Act is a welfare legislation. The principles to be followed is to grant 'just compensation'. There cannot be any other opinion that the compensation to be granted, must be not only adequate, but in commensuration with the cost index of the relevant point of time. Thus, if there is no revision of minimum wages by the Central Government under the provisions of the Workmen Compensation Act, and if such minimum wages are



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fixed by the particular State Government, considering the cost index of the relevant point of time under the provisions of the Minimum Wages Act, which is a general law, then for the purpose of calculating the compensation, the minimum wages fixed by the State can be adopted, so as to grant a 'just compensation', which is the basic principle to be adopted. In the interest of justice, and to compensate the victim in commensuration with the disability / suffering or otherwise, the Courts have to adopt a pragmatic approach and once the minimum wages are fixed by the State concerned under the provisions of the Minimum Wages Act, the said minimum wages shall be taken into account for calculating the compensation, provided such minimum wages are higher than that of the minimum wages fixed by the Central Government under Section 4(1) of the Workmen Compensation Act.

25. Thus, this Court has no hesitation in 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.

26. Thus, in the present case, the Deputy Commissioner of Labour fixed the monthly income of Rs.8000/- for the purpose of calculating the compensation. The Government of Tamil Nadu issued G.O. 2D No.91, Labour and Employment Department, dated 12.12.2013, fixing the minimum wages as Rs.9808/-. Thus the benefit of the State notification is to be granted for the purpose of calculating the compensation. Accordingly, this Court is inclined to enhance the monthly income of the workmen from Rs.8000/- to Rs.9808/- and the total compensation payable to the claimants is Rs.5,38,445/- along with interest at the rate of 12% per annum from the date



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of expiry of 30 days from the date of accident.

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5. On the other hand, the learned counsel appearing for the second respondent/insurance company contended that it is a non-scheduled injury and prayed for dismissing the appeal.

6. As per the disability certificate, the appellant / claim petitioner has suffered from (1) breathlessness on and off due to left chest 3rd rib fracture, (2) complains of pain over left chest on doing heavy work, (3) cannot drive vehicle due to pain over left chest due to pain, (4) pain on left chest while lying in left side.

7. After perusing the medical records, Exs.P3, P4, P5 & P6, I am inclined to fix the disability of the appellant/claim petitioner as 10%. In view of the reasonings stated therein, I am inclined to follow the above said decision of this Court. Accordingly, the compensation awarded to the claim petitioner is re-assessed as follows -

$$\text{Rs.9808/-} \times 60\% \times 184.17 \times 10/100 = \text{Rs.1,08,380/-}$$

8. The compensation awarded towards medical expenses at Rs.11,486/- is confirmed. Thus, the compensation awarded by the Deputy



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Commissioner of Labour, Conoor is enhanced from **Rs.55687/-** to **Rs.1,19,866/-**, (108380 + 11486).

9. In total, the appellant / claim petitioner is entitled to a sum of Rs.1,19,866/- (Rupees One Lakh Nineteen Thousand Eight Hundred and Sixty Six only).

10. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.55687/-** to **Rs.1,19,866/-** to the extent indicated above.

(ii) the 2nd Respondent/New India Assurance Company Limited is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim petitioner/appellant is permitted to withdraw the entire enhanced award amount, less the award



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amount, if any, already withdrawn, by filing necessary application before
the Tribunal.

(iv) the claim petitioner/appellant is directed to pay the court fee,
if any, for the enhanced compensation amount and the Registry is directed
to draft the decree only after the receipt of Court fee.

16.02.2024

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Index : Yes/No

Speaking/Non-speaking order

To

1.The Deputy Commissioner of
Labour at Connor.

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



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RMT.TEEKAA RAMAN, J.

rgr

Judgment in
C.M.A.No.2567 of 2021

16.02.2024