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C.M.A.No.3238 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3238 of 2021

E.Kubendhiran

...Appellant

Vs.

1. R.Baskar

(since first respondent remained ex-parte before the Tribunal his presence may be dispensed with)

2. TATA AIG General Insurance Co.Ltd.,
No.1, Ethiraj Salai,
Egmore,
Chennai – 8.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.05.2018 made in W.C.No.274 of 2015 on the file of the Deputy Commissioner for Workmen's Compensation-II, Chennai.

For Appellant : M/s.A.Subadra for M/s.V.Velu

For Respondents : Mr.J.Michael Visuvasam for R2
Notice Dispensed with [R1]



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JUDGEMENT

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Challenging the judgment and decree dated 02.05.2018 made in W.C.No.274 of 2015 on the file of the Deputy Commissioner for Workmen's Compensation-II, Chennai, the claimant is before this Court.

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 24.02.2015 at about 10.30 hours, when the appellant was driving a TATA ACE belonging to the first respondent bearing Regn.No.TN-31-AM-3278, at that time, the appellant met with an accident and was admitted in a Hospital. Due to the said accident, the appellant sustained grievous injuries and his right leg was amputated. Thereby, the appellant filed a claim petition claiming a compensation of Rs.30,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.11,07,393/-. 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 though the Tribunal has rightly adopted multiplier method by fixing 100% for



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permanent disability sustained by the claimant, however, the appellant is not earning less than a sum of Rs.15,000/- per month and without considering the plea raised by the appellant, the Tribunal 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 (in short 'the Act'), the monthly wages was fixed at 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.



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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.15,000/- per month, however, the Tribunal without considering the oral and documentary evidence has fixed the monthly income of the appellant at Rs.8,000/- which is very meagre. Per contra, the second respondent claims that no document has been marked before the Workmen Compensation Court in order to prove the income of the appellant.

9. The issue which engages 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



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Explanation II of Section 4(1) which would read as follows:-

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“Explanation II.- Where the monthly wages of a workman exceed [four thousand rupees'], his monthly wages for the purpose of clause (a) and cluase (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 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



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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 Tribunal and consequently, the Civil Miscellaneous appeal is dismissed.

12. Accordingly, the award passed by the tribunal in W.C.No.274 of 2015 dated 02.05.2018 and the second respondent is directed to deposit the compensation of **Rs.11,07,393/-** awarded by the tribunal to the credit of W.C.No.274 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, 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 Tribunal 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



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appeal.

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

To

1. Deputy Commissioner for Workmen's Compensation-II, Chennai.

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



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M.DHANDAPANI, J.

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