



C.M.A.No.635 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.635 of 2020

and

C.M.P No.3846 of 2020

M/s.Sakthi Hi-Tech Constructions Private Ltd.,
No.33, T.K.M Road,
Malavallam Village,
Karunguzhi-603 303
Madurandagam Taluk
Kanchipuram District.

... Appellant

..Vs..

1.C.Suresh
2.The United India Insurance Company
No.166, Thambu Chetty Street
Chennai-600 001.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 Employees Compensation Act, against the order dated 31.10.2018 made in E.C Case No.341 of 2014, on the file of the Employees Compensation Commissioner-2 (Joint Commissioner of Labour-2), Teynampet, Chennai-6.



C.M.A.No.635 of 2020

For Appellant : Mr.S.Haroon Rasheed
For Respondents : No Appearance for R1
Mr.S. Arun Kumar for R2

J U D G M E N T

This appeal has been filed challenging the order passed by the Employees Compensation Commissioner-2 (Joint Commissioner of Labour-2), Teynampet, Chennai-6 dated 31.10.2018 in E.C Case No.341 of 2014.

2. The appellant is the employer. The first respondent is the claimant who was working as an apprentice with the appellant, when the accident happened during the course of his employment. The second respondent/Insurance Company which has issued Workmen Compensation Policy in favour of the appellant giving coverage for the appellant's employees.

3. The Employees Compensation Commissioner under the impugned order, has directed the appellant to pay compensation of Rs.2,12,515/- to the



first respondent/claimant as compensation for the injuries sustained by the

first respondent/claimant during the course of his employment. The

Commissioner has assessed the notional monthly income of the first respondent/claimant at Rs.4000/-. The appellant in this appeal has challenged the fixation of notional monthly income of the first respondent/claimant at Rs.4000/-. According to them, the first respondent/claimant was earning Rs.1090/- at the time of the accident as an apprentice employed with the appellant. Hence the Commissioner has erroneously fixed the notional monthly income of the first respondent/claimant at Rs.4000/- based on a Government order. The appellant also claims that the insurance policy taken by them with the second respondent also discloses that the first respondent/claimant was earning Rs.1090/- per month as an apprentice. They also contended that the first respondent/claimant himself has admitted in his deposition that he was only earning Rs.1090/- per month at the time of the accident.

4. The appellant/employer has challenged the impugned order on the following grounds:



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C.M.A.No.635 of 2020

a) The assessment of notional monthly income of the first respondent/claimant by the Commissioner at Rs.4000/- is erroneous as it should have been fixed only at Rs.1090/- per month.

b) Being an apprentice, the first respondent/claimant is not entitled to approach the Commissioner under the Workmen's Compensation Act.

5. The respondents have been duly served in this appeal. The second respondent is represented by a learned counsel.

6. Insofar as the second ground is concerned, as regards the maintainability of the claim by an apprentice is concerned, the learned counsel for the appellant fairly concedes that it is now well settled that an apprentice is also an employee who is entitled for coverage under the Workmen's Compensation Act. In view of the same, the second ground raised by the appellant as stated supra, is rejected by this Court.



7. However, insofar as the fixation of the notional monthly income of the first respondent/claimant at Rs.4000/- by the Commissioner is concerned, the learned counsel for the appellant relied upon the following authorities in support of his contention that the Commissioner ought to have fixed the notional monthly income of the first respondent/claimant only as per the actual income received by him from the employer and ought not to have assessed the monthly income based on a Government order.

i) *Kamala Chaturvedi vs National Insurance Company and others* (2009) 1 SCC 487

ii) *Engineer, GEB vs Karshanbhai Ganeshbhai* (2010) SCC OnLine Guj 2952

iii) *Lourdumarie and 2 others vs Namakkal Transport Couriers Pvt. Ltd and another* CMA No.361 of 2020 dated 05.02.2020.

iv) *Amutha and another vs Thalappakatti Hotels and another* CMA No.2889 of 2019 dated 25.02.2020

8. In the case on hand, admittedly the first respondent/claimant, as seen from the impugned order as well as from the proof affidavit filed by him before the Commissioner, he himself has admitted that at the time of the accident, he was earning only Rs.1090/- per month as an apprentice



C.M.A.No.635 of 2020

employed by the appellant. The insurance premium was paid to the second respondent by the appellant under the Workmen Compensation Policy issued by the second respondent also gives coverage to the employees of the appellant (apprentices) only to a sum of Rs.1090/-. The decisions relied upon by the learned counsel in the case of i) *Engineer, GEB vs Karshanbhai Ganeshbhai* reported in (2010) SCC OnLine Guj 2952 and ii) *Amutha and another vs Thalappakatti Hotels and another CMA No.2889 of 2019 dated 25.02.2020* also makes it clear that the notional monthly income has to be assessed only based on the actual income received by the employee for the purpose of determining the compensation under the Workmen's Compensation Act. Section 4(1-B) of Employees Compensation Act also makes it clear that the compensation will have to be determined based on the monthly wages of the injured. Section 4(1-B) of the Employees Compensation Act 1923 is reproduced hereunder:

[(1-B) The Central Government may, by notification in the office Gazette, specify, for the purposes of subsection (1), such monthly wages in relation to an employee as it may consider necessary.]



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(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".

9. In view of the erroneous assessment of the notional monthly income of the first respondent/claimant at Rs.4000/- by the Commissioner under the impugned order, this Court has to redetermine the compensation by fixing the notional monthly income of the first respondent/claimant at Rs.1090/-. Accordingly, the compensation awarded by the Commissioner is reworked under the following manner:

$$\text{Rs.1090/-} \times 60\% \times 221.37 \times 40\% = \text{Rs.57,910.39}$$

10. For the foregoing reasons, the compensation awarded by the Employees Compensation Commissioner-2 (Joint Commissioner of Labour-2, Teynampet, Chennai-6) under the impugned order dated



C.M.A.No.635 of 2020

31.10.2018 in E.C Case No.341 of 2014 is hereby modified by reducing the compensation payable by the appellant to the first respondent at Rs.57,910.39 from Rs.2,12,515/- as determined by the Commissioner. The Appellant is permitted to withdraw the excess amount deposited by him before the Commissioner by filing an appropriate application.

11. Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

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To

1.The Employees Compensation Commissioner-2 (Joint Commissioner of Labour-II), Teynampet, Chennai-6.

2.The Section Officer

V.R.Section, High Court of Madras.



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C.M.A.No.635 of 2020

ABDUL QUDDHOSE, J.

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**C.M.A.No.635 of 2020
and
C.M.P No.3846 of 2020**



C.M.A.No.635 of 2020

17.04.2024

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(2) The half-monthly payment referred to in clause (d) of sub-section 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 the period of five years, whichever period is shorter:

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