IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2950 of 2021
and C.M.P. No.16852 of 2021

M/s. IFFCO-TOKIO General Insurance Co. Ltd.,
'IFFCO Bhavan', IV Floor,
No.128, North Usman Road,
T. Nagar,
Chennai - 600 017. ... Appellant/ II Opp. Party

Vs.

1. Tmt. Munira Begum
2. Minor. Syed Sohil
3. Tmt. Tharuma ... I-III Respondents / I-III Applicants

4. Thiru. K. Ashok Kumar ... IV Respondent / I Opp. Party

5. Tmt. R. Subashini ... V Respondent / III Opp. Party

Civil Miscellaneous Appeal filed under Section 30(1) of the Employees' Compensation Act, 1923 against the Final Award dated 03.05.2021 (Received on 28.07.2021), passed in E.C. No. 139 of 2015 by the Learned Commissioner for Employees Compensation, (Joint Commissioner of Labour - II), Chennai.

For Appellant	:	M/s. J. Michael Visuvasam
For RR 1 to 3	:	M/s. M. Malar
For R4 and R5	:	No Appearance

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JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company against the Final Award dated 03.05.2021 (Received on 28.07.2021), passed in E.C. No. 139 of 2015 by the Learned Commissioner for Employees Compensation, (Joint Commissioner of Labour - II), Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal / II Commissioner for Employee's Compensation Court, Chennai. The case of the claimants is as follows:

3. The deceased Sahul Hameed Usman was employed as 'Driver' by the first respondent in his Public Transport Vehicle (share auto) bearing Registration No.TN-04-K-0924 and was getting Rs.10,000/- per month as

salary. On 19.02.2015, at midnight around 12:30, the deceased was driving the Transport vehicle along with passenger on the Porur to Kundrathur road, while he reached near Periyapanicherry Bharat Petrol Bunk, a dog had suddenly entered into the road, thereby the deceased has applied sudden brake, which resulted in capsizing of the vehicle. Due to which, the deceased has sustained grievous head injuries and succumbed on the spot. A criminal case was registered in Cr.No.251/15 on the file of T12 Poonamallee Traffic Investigation Division police station. For the loss of deceased Sahul Hameed Usman, the claimants, who are the legal heirs of the deceased have filed claim petition seeking compensation from the first and second respondents by invoking Section 22(1) of the Employee's Compensation Act, 1923.

4. The first respondent, who is the employer cum owner of the vehicle has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the share auto has filed counter, disputing the age, income, avocation of the deceased and dependency of the claimants. The insurance company also disputed the insurance policy, Registration certificate, Fitness certificate of the share

auto and driving licence of the deceased and also disputed the employee – employer relationship between the first respondent and the deceased.

5. After considering the evidence placed on record, the Deputy Commissioner Labour -II, Chennai has held that the deceased was died due to the injuries sustained during his course of employment under the first respondent and fixed the liability on the part of the second respondent – insurance company to pay compensation to the claimants. The Deputy Commissioner Labour -II, Chennai has also quantified and awarded compensation for a sum of Rs.9,06,235/- along with interest @ 12% per annum to the claimants.

6. The learned counsel for the insurance company submitted that the learned Joint Commissioner of Labour -II without any evidence has fixed the liability on the part of the insurance company on the ground that there is an employer-employee relationship between the first respondent and the deceased. The learned Joint Commissioner of Labour -II, while deciding the monthly wages of the deceased has followed the Minimum Wages notified by the State Government instead of following the

notifications issued by the Central Government. He also further submitted that the notional income of Rs.8,000/- has to be fixed in terms of the notification issued by the Central government under Section 4(1)(B) of the Employee's Compensation Act, 1923, hence prays to modify the award.

7. The learned counsel appearing for the claimants submitted that the learned Joint Commissioner of Labour -II after appreciating the evidence placed on record has held that there is an employer-employee relationship between the first respondent and the deceased herein. He also further submitted that based on the Minimum Wages Act prescribed by the State Government, the learned Joint Commissioner of Labour -II has rightly awarded compensation, hence prays to confirm the award.

8. I have considered the submissions made on both sides and perused the materials available on record. The question of law arises for considering by this Court is as follows:

> *(i) Whether the finding of the Labour Commissioner that there exists employer – employee relationship is perverse finding?*

> (ii) *Whether adoptation of minimum wages prescribed by the State Government is permissible to fix the notional income of the deceased, by replacing the income limit notified by the Central Government U/s.4(1)(B) of the Employee's Compensation Act.*

9. Before The Commissioner for Employee's Compensation Court, Chennai, P.W.1 – wife of the deceased has deposed that her husband was working as 'Driver' under the first respondent for four years and was earning Rs.10,000/- per month as salary. She also stated that her husband was died during his course of employment under the first respondent. Ex.P.1- FIR also corroborates the evidence of P.W.1 and the manner in which the accident has taken place, as stated in the claim petition. Ex.P.5- Insurance policy also shows that the insurance policy was in force at the time of accident and the premium was also paid for the workman. To disprove the evidence of P.W.1, no documentary or oral evidence adduced by the respondent. The second respondent insurance company has raised its contention stating that the deceased has no valid badge to drive the share auto at the time of accident, the Labour Court has relied on the judgment of this Court in ***United India Insurance Co. Ltd., vs. Pushpathal [LAWS***

(MAD)-2014-4-272], wherein it is held that when premium has been paid so as to meet the requirements of Workmen's Compensation Act, it is not open to the insurance company to raise the defence which are available to it under Motor Vehicles Act, pleading exoneration of its liability on the ground of breach of conditions of policy. Considering all the above facts, the Commissioner has held that the deceased Sahul Hameed Usman was died during his course of employment under the first respondent and therefore, fixed the liability on the part of the second respondent – insurance company, this Court finds no perversity in the finding and inclined to confirm the same.

10. The next contention raised by the insurance company with regard to the notional income fixed based on the Minimum Wages Act prescribed by the State Government instead of following the Notification issued by the Central Government under Section 4(1)(B) of the Employee's Compensation Act, 1923. P.W.1 – first claimant stated that the deceased was earning Rs.10,000/- per month by working as 'Driver' under the first respondent, however in order to prove the same, the claimants have not come forward to adduce any oral or documentary evidence, therefore, the

learned Joint Commissioner of Labour -II has followed the Minimum Wages Act prescribed by the State Government and fixed Rs.9,787/- as monthly notional income of the deceased.

11. Admittedly, in this case, at the time of accident, the applicable monthly wages notified by the Central Government under Section 4(1)B of the Employees Compensation Act is Rs.8,000/- per month, however, the Commissioner by following the minimum wages prescribed by the State Government in G.O.(2D) No.91, Labour and Employment (J1) Department dated 12.12.2013 has fixed the monthly income of the deceased as Rs.9,787/-, which is more than the monthly income notified by the Central Government. 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.*

(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 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.*

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 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."*

12. 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 empowers the Central Government by notification to enhance the amount of compensation.

13. Section 4-1(B) prescribes the Central Government to issue notification to issue notification for the purpose of specifying 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.

14. 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.

15. 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 in ***K.Sivaraman and others vs. P. Sathishumar and others [2020 ACJ 1361]***, has considered the impact of removal of explanation II of Section 4(1) as per Act 45 of 2009 held in paragraph 26 as follows:

> “*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."*

16. 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 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 are providing methodology to be adopted for the purpose of fixing the monthly wages. 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.

17. 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***

(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."

18. For granting Just compensation prescribed under Section 168 of the 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 Motor Vehicles Act, Schedule-II of the Motor Vehicles Act is applicable and the schedule provides the fixed compensation depending upon the age of the victim. 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 awarding compensation under Section 166 of the Motor Vehicles Act.

19. In the Employees Compensation Act, there is no provision prescribed for adoption of minimum wages notified under the Minimum Wages Act. The entire scheme of the Act 1923 prescribes that there cannot be any deviation from 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 could not able to prove his actual monthly wages. It also empowers Central Government to modify the same. Since the scheme of the act is complete code contains the quantum, including maximum amount payable as compensation and factors to be considered for calculating compensation, eligible components of compensation, rate of interest on the compensation, imposing damages on the employer in case of wilful delay in payment, recovery procedures etc., The act provides notification of monthly wages by the Central Government; leads to conclude that adoption of Minimum Wages notified shall not be bye passed and only way of calculation of monthly wages shall be based on Central Government notification, if the income of the deceased/ injured is not proved by the claimants.

20. 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 monthly wages and 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 adverting to the ratio in K. Sivaraman and Others vs. P. Sathishkumar and Another , where adverting 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: "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."*

21. As held by the ***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 applying monthly wages notified by 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) is applicable for awarding compensation. Accordingly, the second question of law raised in this appeal is answered.

22. Admittedly, in this case, the income of the deceased is not proved, considering the age, date of accident and the manner in which the accident has taken place, this Court is of the view that, while invoking Workmen's Compensation Act for awarding the compensation, the Commissioner ought to have followed only the Notification issued by the Central Government under Section 4(1)(B) of the Employee's Compensation Act instead of adopting Minimum Wages Act prescribed by the State Government. Accordingly, this Court is inclined to fix Rs.8,000/- as notional monthly income of the deceased and Ex.P.6 – Driving licence

shows that the deceased is aged about 40 years, at the time of accident, hence the total compensation is assessed as follows:

Age of the deceased at the time of accident	=	40 years
Age factor as per Schedule-IV of Workmen's Compensation Act for the age 40	=	184.17
Monthly notional income of the deceased	=	Rs.8,000/-
Compensation as per Schedule - IV of Workmen's Compensation Act (Rs. 8,000 x 50/100 x 184.17)	=	Rs.7,36,680/-
Funeral expenses	=	Rs.5,000/-
Total Compensation (7,36,680/- + 5,000/-)	=	**Rs.7,41,680/-**

23. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Learned Commissioner for Employee's Compensation, Joint Commissioner of Labour -II, Chennai of Rs.9,06,235/- is hereby reduced to **Rs.7,41,680/-** along with interest @ **12%** per annum, excluding the default period, if any. The appellant - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of E.C. No.139 of 2015 on the file of the Joint Commissioner of Labour -II, Learned

Commissioner for Employees Compensation, Chennai. The insurance company also given liberty to withdraw the excess amount deposited, if any. On such deposit, the first respondent herein, who is the wife of the deceased is entitled to **Rs.4,00,000/- (Rupees Four Lakhs only)**, the second claimant, who is the minor son of the deceased is entitled to **Rs.2,41,680/- (Rupees Two Lakhs Forty One Thousand Six Hundred and Eighty only)** and the third respondent herein, who is the mother of the deceased is entitled to **Rs.1,00,000/- (Rupees One Lakh only)** of the award amount now determined by this Court along with interest and costs. The Labour Court shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Accounts of the first and third claimants and the award amount of the second respondent, who is minor shall be deposited in any of the Nationalized Bank as fixed deposit under the guardianship of his mother, till the minor attain the age of majority. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in the present appeal.

19.01.2024

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

To:

1. The Joint Commissioner of Labour -II,
   Learned Commissioner for Employees Compensation,
   Chennai.

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

K. RAJASEKAR, J.

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C.M.A. No. 2950 of 2021

19.01.2024