IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2568 of 2021

1. Padmini
2. Ganesan ... Appellants / Petitioners

Vs.

The Managing Director,
Tamil Nadu Transport Corporation,
No.67, Mettupalayam Road,
Kovai – 641 012. ... Respondent / Respondent

Civil Miscellaneous Appeal filed under Section 30 of W.C. Act 1923 against the Order dated 01.03.2019 passed in E.C. No. 151 of 2017 on the file of the Deputy Commissioner of Labour, Coonor.

For Appellants : M/s. Ma. P. Thangavel

For Respondent : Mr. M. Arun
(for A. Sundaravadhanam)

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JUDGMENT

This Civil Miscellaneous appeal filed by the claimants seeking enhancement of compensation awarded in E.C. No. 151 of 2017, dated 01.03.2019 on the file of the Deputy Commissioner of Labour, Coonor.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the appellants is that they are the parents of the deceased Karunamoorthy, who was employed under the respondent - Trasnport Corporation herein as driver. On 06.09.2016, during his course of regular employment, he sustained grievous injuries and subsequently succumbed to the same. A criminal case was also registered in Crime No.598/2016 on the file of TIW-East Police station, Coimbatore. Since the occurrence has taken place during his course of employment under the respondent and there exist a employee - employer relationship, the claimants have come forward with claim petition seeking compensation for a sum of Rs.20,00,000/- along with interest @ 12% from the respondent.

4. The respondent - Transport Corporation has also admitted that the deceased was died during the course of his employment, however disputed the monthly income of the deceased as claimed by the claimants. The respondent further submitted that the deceased had worked only for one month as a daily labourer and paid Rs.305/- per day and he was not a permanent employee, therefore disputed the claim petition filed by the claimants.

5. The learned Deputy Commissioner of Labour after considering the evidence placed on record, more particularly while quantifying the compensation under loss of income has held that the deceased Karunamoorthy's last drawn salary is Rs.11,060/- as per the minimum wages prescribed by the State Government in G.O.(2D) No.91, Labour and Employment (J1) Department dated 12.12.2013, however fixed Rs.8,000/- as monthly income interms of Section-4(1) Explanation-II of the Employee's Compensation Act, 1923 and awarded compensation.

6. Aggrieved over the award, the claimants have come forward

with this appeal challenging the method adopted in fixing the monthly income of the deceased by the learned Deputy Commissioner of Labour.

7. The learned counsel appearing for the claimants submitted that the claimants are entitled to get compensation based on the actual salary of the deceased and further submitted that the Labour Court has not properly considered the evidence placed on record and fixed only Rs.8,000/- as monthly income of the deceased by following Section-4(1) Explanation-II of the Employee's Compensation Act, hence prays to enhance the compensation by taking into consideration of the actual income of the deceased.

8. The learned counel appearing for the respondent submitted that the Labour Court by properly appreciating the evidence placed on record and rightly fixed the monthly income of the deceased by following the Central Government notification as per Section-4(1) Explanation-II of the Employee's Compensation Act, hence prays to confirm the award.

9. I have considered the submissions made on both sides and

perused the materials available on record.

10. The award of the learned Deputy Commissioner of Labour shows that, even though he had held that the last drawn salary of the deceased is Rs.11,060/- as per the minimum wages prescribed by the State Government in G.O.(2D) No.91, Labour and Employment (J1) Department dated 12.12.2013, however adopted the Central Government notification as per Section-4(1) Explanation-II of the Employee's Compensation Act and fixed Rs.8,000/- as monthly income of the deceased and quantified the compensation. This restricting of monthly salary of the deceased to the extent of monthly wages as prescribed by the Central Government notification was enabled prior to the amendment of Act 45 of 2009, such a deeming cap was removed and the Hon'ble Apex Court 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 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."

11. This explanation restricting the monthly income at the time of quantifying the compensation was omitted and the omitted section reads as follows:

"Explanation II .- Omitted by Act 45 of 2009.

(c) where permanent partial disablement result 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 purpose 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] is 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 be 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 course of employment.]*

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.
*(4) If the injury of the *[employee] results in his death, the employer shall, in addition to the compensation under sub-*

*section (1), deposit with the Commissioner a sum of *[not less than five thousand 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.]*

**[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.]"*

12. Now, after the amendment dated 18.01.2010 came into the effect, though Section 4(1B) empowers the Central Government to notify such monthly wages for quantifying the amount of compensation, however such a deeming cap was removed and has held by the Hon'ble Apex Court in ***K. Sivaraman and others vs. P. Sathishumar and others*** cited supra, once an employee is able to establish his monthly income with an acceptable evidence, then, such monthly income is to be taken into consideration for the purpose of quantifying the compensation. The learned Deputy Commissioner of Labour by relying on the deleted Section 4(1) Explanation II has restricted the wages to the extent of Rs.8,000/- even though he has held that the deceased was actually receiving Rs.11,060/- as per minimum wages prescribed by the State Government in G.O.(2D) No.91, Labour and Employment (J1) Department dated 12.12.2013.

13. In view of the above, this Court is of the view that the approach of the learned Deputy Commissioner of Labour by invoking deleted Section 4(1) Explanation II of the Act for restricting the monthly wages of the deceased is not proper. Since on the date of passing the award, or on the date of Employment injury sustained, there is no restriction or provision which directs the learned Commissioner to adopt only the monthly wages notified by the Central Government under Section 4(1B) or dehors in fixing the acutal salary of the deceased, hence the claimants are entitled to get compensation based on the actual salary obtained by the employee.

14. In this case, the actual salary received by the deceased was Rs.305/- per day and he was a temporary employee under the respondent. Accordingly, the compensation fixed based on the actual salary, considering the age of the deceased and by following the guidelines of the Employee's Compensation Act, 1923, the loss of income is arrived as follows:

Monthly salary (Rs.305/- X 30 days)	=	Rs.9,150/-
Age	=	31
Factor	=	205.95

Compensation towards
Loss of income = 9,150 x 50/100 x 205.95
= **Rs.9,42,221/-**

15. The learned Deputy Comissioner of Labour has awarded Rs.5,000/- towards funeral expenses and this Court is inclined to confirm the same. Accordingly, the award passed by the learned Deputy Commissioner of Labour is hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Compensation towards loss of income	8,23,800/-	9,42,221/-	Enhanced
2.	Funeral expenses	5,000/-	5,000/-	Confirmed
	Total Compensation	8,28,800/-	**9,47,221/-**	**Enhanced**

16. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,28,800/- is hereby enhanced to **Rs.9,47,221/- [Rupees Nine Lakh Forty Seven Thousand Two Hundred and Twenty One only]** together along with interest at the rate of **12% per annum** from the date of filing of Claim Petition till the date of realization, excluding the default period, if any. The Respondent - Transport Corporation 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.151 of 2017 on the file of the Deputy Commissioner of Labour, Coonor. On such deposit, the claimants/ appellants herein are permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Labour Court shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimants. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

15.03.2024

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

To:

1. The Deputy Commissioner of Labour,
   Coonor.

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

K. RAJASEKAR, J.

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C.M.A. No. 2568 of 2021

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