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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A.No.3678 of 2021

1. Karpagam
2. Vijayakumar
3. Anandraj
4. Kamalraj

.... Appellants

-VS-

1. A.Valli
2. S.Balaji
3. The Oriental Insurance Company Ltd.,
No.115/216, Prakasam Salai,
Chennai-108.

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, to set aside the final award dated 26.10.2021 in E.C.No.105 of 2017 by the Commissioner for Workmen's Compensation-I (Joint Commissioner of Labour-I) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.K.Vinod R3
R1 – No appearance
R2 – NRN (Vacated)

J U D G M E N T

This appeal has been filed by the appellant to set aside the final award dated 26.10.2021 in E.C.No.105 of 2017 by the Commissioner for Workmen's Compensation-I (Joint Commissioner of Labour-I) Chennai.



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2. It is the case of the claimant that on 16.05.2017 at about 19.30 hours when the deceased was discharging his duty under the first respondent as driver of the auto rickshaw bearing Reg. No.TN 05 F 6384 proceeding from North to South opposite to Indian Oil Petrol Bunk, Kallamman Koil Street, Koyambedu, Chennai along with a passenger, at that time, he suddenly put a break, for which, the auto was capsized due to which the deceased was sustained head injury and multiple injuries all over the body. Immediately, he was taken to Rajiv Gandhi Government General Hospital, Chennai and he was admitted as inpatient from 16.05.2017 and died on 15.06.2017. Thereby, the claimants has filed a claim Petition before the Commissioner for Workmen's Compensation Court, Chennai claiming compensation.

3. Before the Commissioner, during trial, in order to prove the case, on the side of the claimants, one witness was examined and and marked 12 documents viz., Exs.P1 to P12, On the side of the Insurance company, no witness was examined and no documentary evidence was marked. The Commissioner, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.5,32,800/- Aggrieved by the said award, the appellants/claimants have filed this appeal before this Court for enhancement of compensation.



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4. The learned counsel for the appellants submitted that the Commissioner has fixed income of the deceased at Rs.8000/- per month based on the notification issued by the Central Government, which is too low. The deceased was earning a sum of Rs.700/- per day. Without considering the said fact, the Commissioner has fixed a sum of Rs.8000/- to the deceased which is very meagre. Hence, this Court may interfere with the award passed by the Labour Court.

5. Per contra, learned counsel appearing for the respondent/insurance company submitted that the Claimants have not produced any proof regarding the salary. In the absence of any proof, the Commissioner has fixed Rs.8000/- as monthly income, which is based on the notification. After elaborate trial, the Commissioner has passed the award which is perfectly in order and it does not need any interference. Hence, this Court may dismiss the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.



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7. The factum of the accident is not disputed by the parties. Admittedly the appellants are claimants and they filed claim petition before the Labour Commissioner for the death of one Muniyappan. The accident had occurred during the course of employment. The first respondent is the employer. The Labour Court fastened the liability as against the third respondent. For enhancement of compensation, the present appeal has been filed.

8. The issue of fixation of monthly wages in the absence of any documentary proof to establish wages was considered by this Court in CMA.No.753 of 2020 dated 19.01.2024 wherein this Court, considering the notification issued by the Central Government fixing Rs.8,000/- per month as wages, has held as under:

"56. In the result, the following order is passed in the above appeals :-

i) The power of the Central Government to issue notification fixing the monthly wages as provided u/s 4 (1-B) would be relatable and applicable to employees or the legal heirs of the employees who are not able to prove their monthly wages through necessary oral and documentary evidence and in such cases, the monthly wages fixed by the Central Government vide the notification issued in exercise of powers conferred u/s 4 (1-B) would come into play and in case an employee or his legal heir is able to prove the monthly wages through necessary evidence before the



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authority, the authority is bound to take the said monthly wages, so proved, for the purpose of computing the compensation payable u/s 4 (1)(a) and (b) of the Act.

ii) C.M.A. No.753/2020 filed by the appellant/employer stands dismissed holding that the amount paid to the family of the deceased employee by the appellant cannot partake the character of compensation as prescribed under Section 4 of the Act;

iii) C.M.A. No. 3087/2021 filed by the legal heirs of the deceased is allowed and E.C. No.297/2017 is remanded to the Commissioner of Employees Compensation, Chennai, who is directed to compute the compensation payable by taking the monthly wages as per Ex.P-7, salary certificate on the basis of the aforesaid order;

iv) C.M.A. Nos.662, 666, 675 and 721 of 2021 filed by the injured claimants are allowed and the orders impugned herein in the respective appeals is set aside and the matter is remanded to the authority to determine the compensation on the basis of the minimum wages fixed by the State Government which shall be construed as monthly wages for the purpose of determining the compensation.

v) CMA No.1583/2020 filed by the legal heir of the deceased employee is dismissed confirming the compensation awarded by the authority in the order impugned herein.

vi) Consequently, CMP No.4631/2020 is closed."

9. In the instant case, though the appellants seek for enhancement of

wages over and above as fixed by the Central Government under Notification



issued with regard to the wages at Rs.8,000/- per month, no material, evidencing the wages earned by the deceased, has been placed before the Commissioner, except for an avernment claiming that the deceased was earning a sum of Rs.700/- per day. Mere assertion without any documents, cannot partake proof to establish the income earned by the deceased.

10. Such being the case, the Commissioner applying Notification issued by the Central Government under Section 4(1-B) of the Workmen's Compensation Act has rightly fixed the monthly income of the deceased and quantified the amount payable to the appellants, who are claimants, for the death of the deceased, which is based on proper appreciation of the provision of law as well as materials available on record. Therefore, no interference is warranted for the compensation awarded by the Labour Court.

11. With the above observation, the appeal is dismissed. No costs. The award passed by the Tribunal is confirmed.

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Index: Yes/No

NCS : Yes/No



The Commissioner for Workmen's Compensation-I
(Joint Commissioner of Labour-I) Chennai.

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M.DHANDAPANI,J.

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