IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 3652 of 2021

Devendran ... Appellant / Petitioner

Vs.

1. Selvi

2. National Insurance Co. Ltd.,
No.74-A, Paramathi road,
Namakkal district. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, 1923 against the Judgment and decree dated 19.02.2021 passed in E.C. No. 438 of 2017 on the file of the Commissioner of Labour, Commissioner for Workmen's compensation, Coonoor.

For Appellant	:	M/s. C. Thangaraju
For R1	:	No Appearance
For R2	:	M/s. D. Bhaskaran

JUDGMENT

This Civil Miscellaneous appeal has been filed by the workmen/ claimant seeking enhancement of compensation for the injury sustained by him on 24.08.2017 against the Judgment and decree passed in E.C. No. 438 of 2017, dated 19.02.2021 on the file of the Commissioner of Labour, Commissioner for Workmen's compensation, Coonoor.

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

3. According to the applicant/ claimant, on 24.08.2017, while he was engaged as a cleaner in the first respondent's Taurus lorry bearing Registration No.TN-28-AY-5569, and he travelled along with the driver of the Taurus lorry from Pollachi to Mumbai transporting tender coconuts. After unloading the tender coconuts at Mumbai, they have loaded parcels at Andheri and while they were returning back to Chennai, both have taken bath at Krishnagiri dam. At that time, while the applicant tried to cross the road, he was hit by an unknown two wheeler, which came from Krishnagiri to Kaveripattinam and thereby sustained grievous injuries. Since the

claimant has sustained injuries during his course of employment as cleaner in the first respondent's Taurus lorry, he has filed claim petition before the Labour Commissioner, Coonoor claiming compensation for a sum of Rs.10,00,000/- along with interest @ 12%.

4. The second respondent - insurance company has filed a counter and disputed the manner in which the accident has taken place and contended that the claimant himself invited the accident, while crossing the road negligently. The insurance company also disputed the age, income, occupation, injuries and disability sustained by the claimant and also his employment as cleaner in the first respondent's Taurus lorry and futher contended that the compensation claimed is excessive.

5. Before the Labour Court, on the side of the claimant, P.W.1 to P.W.3 were examined and Exs.P.1 to P.10 were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.

6. The Labour Commissioner after hearing the submissions made on both sides and conducting enquiry has held that the claimant is

entitled to get compensation based on the Minimum Wages notified by the Central Government under section 4(1) of the Employment Compensation Act and awarded a total compensation for a sum of Rs.5,33,736/- along with the interest @ 12% per annum from the date of accident till the date of deposit.

7. Aggrieved over the award, the claimant has filed this appeal on the ground that the compensation awarded is on the lower side.

8. The learned counsel for the claimant submitted that, the State Government has fixed a Minimum Wages, which has not been considered by the Labour Commissioner, while fixing the notional income of the injured whereas the notional income of the claimant is fixed based on the Minimum Wages notification issued by the Central Government, hence prays to modify the award.

9. Per contra, the learned counsel for the insurance company submitted that based on the evidences placed on record and after due enquiry, the Labour Commissioner has awarded compensation by following

the notification issued by the Central Government prescribing the Maximum Wages payable for the purpose of paying compensation under the Workmen Compensation Act, hence prays to confirm the award.

10. I have considered the submissions made on both sides and perused the materials available on record. The substantial question of law raised by the Appellant/ claimant as follows:

> *(i). Whether the Order of Labour Commissioner not adopting the Minimum Wages Act and adopting the Central Government Notification, for fixing the income of the injured is lawful or not?*

11. In this case, the claimant has examined himself as P.W.1 and has stated that he was engaged as cleaner by the owner of the Taurus Lorry and he has admitted that he travelled from Pollachi to Mumbai for the purpose of transporting goods in the lorry and thereafter while returning from Mumbai to Chennai, he has washed his clothes and taken bath in the Krishnagiri dam and while crossing the road, he was hit by an unknown two wheeler and sustained injuries. The claimant also examined two Medical Officers as P.W.2 and P.W.3 to prove his disability. The Tribunal after enquiry has accepted the case of the claimant that he sustained injury during

his course of employment in the first respondent's Taurus lorry and awarded compensation of Rs.4,25,030/- as per the norms prescribed in the notification issued by the Central Government prescribing the Maximum monthly Wages under section 4 (1B) of the Employee Compensation Act, 1923 and separately awarded compensation for a sum of Rs.1,08,706/- under the head medical expenses as per section 4 (2A) of the Employee's Compensation Act, 1923 to the claimant. The only grievance raised by the claimant is that the notional income fixed by the Labour Commissioner is not proper.

12. Admittedly, in this case, at the time of accident, the applicable maximum wages notified by the Central Government is Rs.8,000/- per month. Even though, it is contended by the claimant that the minimum wages by the State Government is more than the monthly income notified by the Central Government, no proof for the same has been produced before this Court. For the purpose of deciding the various issues 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*
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> ***(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."*

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

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

15. 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.

16. 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."*

17. 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 contains various provisions providing methodology to be taken up for the purpose of fixing the monthly wages notified by the Central Government. 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.

18. 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***
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> *(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.*
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> *(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."*

19. 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, II Schedule of the Motor Vehicles Act to take care of and this one is based on the schedule i.e., the fixed compensation. 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. This Court is of the view that, minimum wages fixed by State Government could not be adopted under Workmen Compensation Act. Since, the entire scheme of the Act 1923 shows that there cannot be any deviation than 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.

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 amount 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:-*
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> > *"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 the 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) shall be adopted for awarding

compensation. Accordingly, the substantial question of law raised in this appeal is answered.

22. The Labour Commissioner also accepted the evidences of P.W.2 and P.W.3 - Medical Officers and accepted the disability of 40% towards the loss of earning capacity of the claimant and thereafter adopted the multiplication factor prescribed in the Act and awarded compensation. The Labour Commissioner also awarded Rs.1,08,706/- towards the medical expenses incurred by the claimant based on the Ex.P.5. The Tribunal has awarded interest @ 12% as per the section 4A(3)(a) of the Act as discussed above, hence this Court finds no infirmity in the award passed by the Labour Commissioner and the same is hereby confirmed.

23. In the result, this Civil Miscellaneous Appeal is dismissed. No cost.

22.01.2024

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

To:

1. The Commissioner of Labour,
   Commissioner for Workmen's Compensation Act,
   Coonoor.

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

K. RAJASEKAR, J.

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C.M.A. No. 3652 of 2021

22.01.2024