



C.M.A.No.2360 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.2360 of 2022

and

Civil Miscellaneous Petition No.18419 of 2022

M/s.Royal Sundaram General Insurance Company Limited,
Subramanian Building,
2nd Floor, Club House Road,
Chennai – 600 002.

... Appellant / Opp. Party

Vs.

1.Tmt. Meenatchi
2.Thiru. Sakthivel
3.Tmt.K.Chitra

... Respondents / Petitioners

... Respondent / Opp. Party

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923 against the Order dated 16.05.2022 in E.C.No.166 of 2019 on the file of the Commissioner for Employees Compensation, Deputy Commissioner of Labour-II, Chennai.

For Appellants : Ms.C.Harini
For M/s.M.B.Gopalan Associates

For Respondents : Mr. A. G. F. Terry Chella Raja
For Ms.M.Malar

JUDGMENT



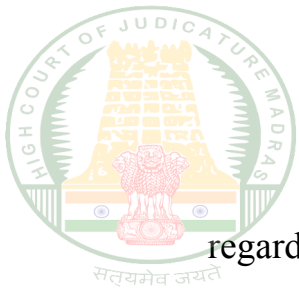
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WEB COPY This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Award, dated 16.05.2022 passed by the learned Deputy Commissioner of Labour – II, Chennai in E.C.No.166 of 2019 on the file of the Commissioner for Employees' Compensation / Deputy Commissioner of Labour-II, Chennai, wherein the Insurance Company is directed to pay compensation to the claimant.

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

3. The facts leading to filing of this appeal is as follows:

The respondents 1 and 2 herein who are the claimants have filed Claim Petition, seeking compensation for the death of their son, namely Srinivasan @ Seenivasan during the course of employment. He was employed under the first respondent as a driver. On 23.06.2018 at about 2.30 a.m., while he was transporting salt load from Tuticorin to Hyderabad, met with an accident on the Sayalkudi – Sivagangai Main Road, near Thirukostiyur NH-226 Bye-pass Road Junction. In the accident, the claimant's son sustained grievous injuries and died on the spot. In this



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regard, a criminal case was also registered in F.I.R.No.47/2018 under Sections 279, 337 and 304(A) of IPC and the claimants have claimed compensation by invoking Section 22(1) of the Employees Compensation Act, 1926.

4. The first respondent is the owner of the vehicle was remained ex-parte before the Deputy Commissioner of Labour-II, Chennai. However, the second respondent – Insurance Company disputed the relationship between the employee - employer as well as the quantum of compensation claimed.

5. The Deputy Commissioner of Labour-II, after conducted detailed enquiry has accepted the case of the claimants that their son was employed under the first respondent and was died during the course of employment and accordingly quantified the compensation and awarded a sum of Rs.10,24,799/- with interest at the rate of 12% per annum from the date of filing of claim petition till the date of realization.

6. Aggrieved over the quantum of compensation awarded, this appeal has been filed by the second respondent/Insurance Company.

7. This appeal was admitted on the following Substantial Questions of Law:



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“1.Whether the award of the Deputy Commissioner of Labour-II, by adopting income of Rs.11,619/- for the accident taken place on 23.06.2018 without considering the Central Government Notification ie.e, fixing the income at Rs.8,000/- is valid?”

8. This appeal was listed before me today (10.01.2025) and I have heard the arguments of both sides and also perused the records available.

9. The major grievance raised by the counsel for the Insurance Company is that the Deputy Commissioner of Labour-II, after accepting the case of the claimants that the deceased was a driver by profession and though there is no documents produced to prove the income of the deceased, based on the minimum wages notified by the State Government G.O.Ms.No.2D, No.91, Department of Labour and Employment Development dated 12.12.2013, fixed the notional income and awarded compensation, which is against the principles of Section 4(1) of the Employees Compensation Act more particularly Section (4) of the Employees' Compensation Act, 1923. He further submitted that the compensation awarded by the Deputy Commissioner of Labour-II is



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excessive and prays to modify the same.

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10. The learned counsel for the claimants fairly accepted that before the Tribunal, they are not able to prove the income of the deceased however the minimum wages notified by the State Government was taken into consideration and compensation was awarded by the Deputy Commissioner of Labour-II. He further submitted that in ***C.M.A.No.2581 of 2021 dated 13.02.2024 (Chandrasekaran vs. P.Marappan and Another)*** this Court has already held and fixed the notional income based on the State Government Notification issued in the Minimum Wages Act is not applicable while awarding compensation under the Employees Compensation Act, 1923.

11. I have considered the submissions made on both sides and also perused the records available.

12. The substantial question of law framed herein is no longer *res integra* and the Judgment of this Court in ***Chandrasekaran vs. P.Marappan and Another*** case cited supra already held that, minimum wages fixed under Minimum Wages Act, shall not be applied for fixing notional income for



awarding compensation under the Employees Compensation Act, 1923. The

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relevant paragraph Nos.14 to 18 are extracted hereunder:

*"14. As stated by the Apex Court in **K. Sivaraman and others vs. P. Sathishumar and others [2020 ACJ 1361]** 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.***

*15. 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*



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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.?

*16. 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*



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wages payable to the injured, if the employee could not able to prove his actual monthly wages.

17. 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 advertng to the ratio in **K. Sivaraman and Others vs. P. Sathishkumar and Another** , where advertng 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



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the Workmen-s compensation Act dated 01.04.2016 is accordingly restored.?

*18. 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 first question of law raised in this appeal is answered.*

13. As discussed by this Court in the above Judgment admittedly, the claimants were not able to prove the actual income of the deceased. The Deputy Commissioner of Labour-II, by relying on the Judgment of this Court in **C.M.A.No.897 of 2018 dated 27.01.2021 (P.Ramesh vs. Ravi and Another)** has fixed the notional income based on the minimum wages notified by the State Government, I am of the view that Judgment of this Court in **Chandrasekaran vs. P.Marappan and Another** cited supra is applicable to the present case and also based on the fair submissions made by the counsel for the claimants, I am inclined to follow the same and



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accordingly award is liable to be modified in terms of wages notified under

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Section 4 (1) (B) of the Employees Compensation Act, 1923.

14. As far as the compensation awarded under other heads are concerned, this Court is of the view the same requires no modification and the order of the Deputy Commissioner of Labour-II, Chennai is hereby confirmed. Accordingly, this Court is inclined to fix the monthly income of the deceased at Rs.8,000/-. The age of the deceased 43 at the time of accident and the multiplier is 175.54. The total loss of income arrived at Rs.7,02,160/- [8000 X 175.54 X 50%] and Funeral Expenses at Rs.5,000/-. Thus, total amount of compensation is arrived at Rs.7,07,160/-. Accordingly the award is modified.

15. In the result, the Civil Miscellaneous Appeal is allowed allowed awarding 12% interest per annum from the date of accident till the date of deposit. The appellant/M/s.Royal Sundaram General Insurance Company Limited, is directed to deposit the compensation amount of Rs.7,07,160/- [Rupees Seven Lakhs Seven Thousand One Hundred and Sixty only] along with interest and costs to the credit of E.C.No.166 of 2019, on the file of the



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Commissioner for Employees Compensation, Deputy Commissioner of Labour-II, Chennai, within a period of eight weeks from the date of receipt of copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

10.01.2025

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Deputy Commissioner of Labour-II,
Commissioner for Employees Compensation,
Chennai.
2. The Section Officer,
V.R.Section, High Court, Chennai.

K. RAJASEKAR., J.

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