(2011) 11 MAD CK 0292

In the Madras High Court

Case No : C.M.A. No. 2003 of 2009

P. Rajan — APPELLANT

Vs

Chennai Petroleum Corporation and Others — RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 4A, 4A(3)

Citation : (2012) 1 CTC 567 : (2012) 2 LLJ 735

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : Anna Mathew, for the Appellant; G. Krishnamurthy for Mr. A. Thirumaran for R3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice B. Rajendran

1. The claimant in W.C. No. 273 of 2005 before the Deputy Commissioner-II under the Workmen''s Compensation Act is the appellant in this appeal. At the time of admission of this appeal on 30.07.2009, the following substantial questions were framed for consideration in this appeal namely

(i) Whether the 5th respondent is justified in reducing the wages of the appellant by applying the minimum wages prescribed by the Government for the year 2000 when the accident occurred in 2002?

(ii) Whether the 5th respondent is justified in ordering interest only in the event of the respondents not depositing the amount awarded, when Section 4A(3) of the Workmen''s Compensation Act, 1923 specifically states that interest would accrue within one month from the date it fell due?

2. The claim petition was filed by the applicant contending that on 20.05.2002, he joined the services with the first opposite party/first respondent herein through its contractors, the respondents 2 and 3 herein. According to the

applicant, he was engaged as a fitter by the opposite parties/respondents 2 and 3 herein. While so, the next day of his engagement i.e., on 21.05.2002 at about 6.30 pm, he sustained injuries in an accident during the course of his employment. The injuries are in the nature of a crush injury on his left leg and a posterior fractured dislocated right hip. Immediately, the applicant was taken to the hospital run by the first respondent herein at Manali, where, after initial treatment, he was taken to Stanley Medical College and Hospital, Chennai. Thereafter, the applicant was taken to Apollo Hospital, Chennai where he was admitted for four days and during the course of his treatment, the applicant''s left foot was amputated. Thereafter, the applicant was discharged from Apollo Hospital and again admitted in Indian Hospital, Arumbakkam, Chennai. Once again, the applicant underwent a surgery and his left leg was amputated from the ankle region in that hospital. The applicant''s hip was also dislocated due to the accident and was operated upon at the Indian Hospital. The applicant was treated at Indian Hospital from 25.05.2002 till 05.08.2002, when he was discharged. The claimant''s disability was assessed at 70% by the Doctor. According to the applicant, he sustained injuries during the course of his employment under the third respondent and the third respondent also insured the employees working under him with the fourth respondent, including the applicant. Therefore, the claimant filed the claim petition claiming Rs. 4,47,400/- as compensation for the injuries sustained by him in the accident.

3. The first opposite party as well as the third opposite party filed their counter statement before the Deputy Commissioner of Labour and opposed the claim petition on various grounds. On behalf of the insurance company/fourth respondent herein, it was specifically contended that they are liable for payment of compensation to the extent to which policy coverage is available to the workmen as per the premium amount paid by the third respondent and they are not liable for payment of compensation amount anything more than the coverage available under the policy.

4. The Deputy Commissioner for Workmen''s Compensation-II, by the impugned award dated 13.09.2007, determined the compensation amount payable to the applicant/appellant at 2,32,817/-out of which the third respondent herein was directed to pay Rs. 1,63,814/-and the fourth respondent was directed to pay Rs. 69,003/-. As against the same, the present appeal is filed by the applicant/ appellant.

5. The learned counsel appearing for the applicant/appellant would contend that the applicant sustained injuries in his left leg foot and he was admitted in the hospital for a period of about four months. During the course of treatment, the applicant''s left foot was amputated and thereafter, the applicant underwent a surgery and his left leg was amputated from the ankle region. After treatment, there was a reduction of the right leg by 4 inches and because of the injuries caused to him, the applicant could not work as before. The Doctor who was examined before the Deputy Commissioner of Labour assessed the disability at

70% for the left leg and 10% for the restriction of right leg movement. However, the Deputy Commissioner of Labour had taken only 70% of the disability and awarded the compensation amount.

6. The grievance of the appellant is two fold namely (i) while fixing the compensation, the Deputy Commissioner of Labour, for the purpose of calculation, taken only the minimum wages prevailing during the year 2000 that too when the accident took place in the year 2002. According to the counsel for the appellant, there is no question of applying the minimum wages in view of the fact that the applicant/appellant had let in clear cut evidence before the Deputy Commissioner of Labour stating that he was paid wages at the rate of Rs. 150/- per day and there is no specific denial on the part of the respondents. In the absence of any denial on the part of the respondents, the Deputy Commissioner of Labour ought not to have taken the minimum wages for determining the compensation amount (ii) The Deputy Commissioner of Labour awarded interest payable by the respondents only in the event of their failure to deposit the compensation amount within one month from the date of award at the rate of 12% per annum, whereas, under Law, the applicant/appellant is entitled for interest atleast from one month from the date of accident as per the judgment of the Division Bench of this Court in (N. Ganesan vs. Tmt. Thilagavathi and others 2010 (3) Law Weekly 89. Hence, on both these grounds, the appellant has preferred this appeal.

7. The learned counsel appearing for the third respondent would contend that the Deputy Commissioner of Labour has rightly taken note of the minimum wage prevailing during the year 2000 for determining the compensation amount in the absence of any evidence produced by the applicant to show the actual wages received by him. Therefore, he would support the award passed by the Deputy Commissioner of Labour.

8. I heard the counsel for both sides and perused the materials available on record. The opposite parties/respondents 1 to 4 herein admits the date, time and manner in which the accident occurred. The insurance company/fourth respondent also admits their liability to pay the compensation amount to the extent of payment of premium paid by the employer seeking insurance coverage to their employees. Neither the employer/respondents 1 to 3 nor the insurance company/fourth respondent have filed any appeal as against the impugned award passed by the Deputy Commissioner of Labour and this appeal is at the instance of the applicant/appellant seeking enhancement of the compensation amount.

9. The applicant/appellant has come forward with this appeal on two grounds namely the Deputy Commissioner of Labour has taken the minimum wages prevailing in the year 2000 when the accident had taken place in the year 2002. Further, the applicant/appellant specifically pleaded in the claim petition regarding his monthly earnings and in the absence of any specific denial by the respondents, the Deputy Commissioner of Labour is not right in taking the

minimum wages prevailing in the year 2000. The next ground of attack is with regard to payment of interest. The Deputy Commissioner of Labour has passed the impugned award and directed payment of compensation amount with interest, only in the event of failure on the part of the respondents to pay the compensation amount within one month from the date of award.

10. At the outset, I will deal with the second question of law involved in this appeal inasmuch as the said question of law is no more res integra having been answered by the Division Bench of this Court in the decision reported in (N. Ganesan vs. Tmt. Thilagavathi and others) 2010 (3) Law Weekly 89. In this decision, the word "falls due" occurring u/s 4-A of the Workmen''s Compensation Act was considered by the Division Bench of this Court and held that the words "falls due" means interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/ orders passed by the Commissioner for Workmen''s Compensation. In Para No. 27, the Division Bench held as follows:-

27. In the result, the reference is answered as follows:

i. The word "falls due" occurring u/s 4-A of the Workmen''s Compensation Act, 1923 in the light of the ratio laid down in the larger Bench decision of the Honourable Supreme Court of India reported in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, r and Kerala State Electricity Board and Another Vs. Valsala K and Another, , K means that interest for compensation amount would accrue 30 days after the date of the accident and not from the date of quantification/orders passed by the Commissioner for Workmen''s Compensation

ii. The decisions rendered by the Single Bench of this Court in the decisions reported in (2007) 5 MLJ 1059 : 2007 (2) TN MAC 98 - Marimuthammal @ Marimuthu and Another vs. R.P.P. Construction (P) Ltd., Chennai and others, 2008 (1) TN MAC 38 - A. Chairmen vs. A. Thirumeni and another, had laid down the correct proposition in consonance with the ratio laid down by the Larger Bench of the Hon''ble Supreme Court of India in the above cited decisions.

Iii. The Registry is directed to list these appeals for final disposal before the concerned Portfolio Judge.

11. The Division Bench of this Court rendered the above decision pursuant to a reference made to it to decide the question whether the interest is payable from the date of award or one month from the date of accident. Since the Division Bench, after elaborate consideration of all the decisions in this aspect had categorically held that interest will automatically accrue within one from the date of accident in so far as the claim made under the provisions of Workmen''s Compensation Act is concerned, the second question of law framed for consideration in this appeal is answered in favour of the applicant/appellant and against the respondents. Consequently, the applicant/appellant is entitled to payment of interest on expiry of 30 days from the date of accident namely 21.06.2002 till the date of deposit.

12. The learned counsel for the third respondent, by relying upon the decision reported in Oriental Insurance Co. Ltd. Vs. Mohd. Nasir and Another, would contend that the word "falls due" would mean that interest is payable only from the date of default and not within 30 days from the date of accident. Such a contention of the counsel for the third respondent cannot be countenanced. Even in that case, the Honourable Supreme Court categorically held that interest is payable at the rate of 7% per annum from the date of filing of the application till the date of award and thereafter the rate of interest is payable in terms of the order to be passed by the Commissioner of Labour. In any view of the matter, the Division Bench of this Court had considered all the relevant decisions, including the decision rendered by the Larger Bench of the Honourable Court and held that interest is payable after one month from the date of accident and therefore also the contention of the counsel for the third respondent is rejected.

13. The next question of law framed for consideration in this appeal namely the first question of law is whether the Deputy Commissioner of Labour is justified in taking the minimum wages prevailing in the year 2002, when the accident itself took place in the year 2000 and when the applicant/appellant had pleaded that he was receiving a sum of Rs. 150/-per day as wages. The main contention raised by the applicant/appellant is that the Deputy Commissioner of Labour fixed the minimum wages at the rate of Rs. 3,542.70 which was prevailing in the year 2000, whereas, the accident took place in the year 2002 and in the absence of any documentary evidence available to show what was the minimum wages prevailing in the year 2002. The argument of the counsel for the appellant is plausible. There is no dispute as regards the income said to have been received by the applicant/appellant because the respondents have not specifically disputed it in their counter. In the counter filed by the third respondent/owner before the Deputy Commissioner of Labour, there is no whisper about the wages at all. Therefore, there is a clear admission by the respondents in so far as to the wages received or payable to the applicant/appellant. As regards the counter filed by the insurance company, only a vague denial was made, both regarding the age of the applicant/appellant and the wages payable to him. In the counter of the third respondent, it was only stated that the applicant/appellant is put to strict proof of the age as well as wages by producing documentary evidence. Therefore, it is clear that there is no specific denial made by the respondents 1 to 4 with regard to the income of the applicant/appellant. Even in the cross-examination of the applicant/appellant, there was no specific question put to him regarding the wages. Therefore, the argument of the counsel for the applicant/appellant that admitted facts need not proved is well founded.

14. The Deputy Commissioner of Labour, in the impugned award, has only stated that since there is no documentary proof for the actual wages received by the claimant, it is necessary to take the prevailing minimum wages of the year 2000 for the purpose of determining the compensation amount. There is no reason assigned by the Deputy Commissioner of Labour as to why even the minimum wages prevailing during 2000 was taken when the accident itself taken place only

during 2002. The applicant/appellant, in the claim petition admitted that the actual salary received by him was Rs. 4,000/-and the sum of Rs. 4,000/-ought to have been taken by the Deputy Commissioner of Labour for determination of the compensation. Accordingly, the first question of law is also answered in favour of the applicant/appellant and against the respondents.

15. Out of the sum of Rs. 4,000/-taken as income of the applicant/appellant, the liability of the insurance company/fourth respondent is restricted and fixed at Rs. 1,050/-to the extent to which premium was paid and the employer''s liability is fixed to the extent of the balance amount of Rs. 2,940/-. On this basis, the compensation is arrived at as follows:

(i)

Employer''s/third respondent liability

: Rs. 4000-1050 = Rs. 2,950/-

Rs. 2,950 X 60 / 100 X 156.46 X 70/100

: Rs. 1,93,854/-

(ii)

Liability of fourth respondent

: Rs. 1,050/-

Rs. 1050 X 60/100X156.47X70/100

: Rs. 69,003/-

16. In the result, the appeal filed by the applicant/appellant is allowed and the questions of law are answered in favour of the applicant/appellants and against the respondents. The liability of the third and fourth respondent are determined as mentioned above and the respective compensation amount as determined in this appeal is directed to be deposited by them together with interest at the rate of 12% per annum from 21.06.2002 till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.