

(2010) 07 MAD CK 0110
In the Madras High Court
Case No : C.M.A. No. 1599 of 2002

Sarasu and Senthil Raja

APPELLANT

Vs

R. Sugumar and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 4(1), 4A

Citation : (2010) 07 MAD CK 0110

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : P. Anand, for V. Balaji, for the Appellant; D. Bhaskaran, for R2, for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the claimants against award dated 14.12.2000, made in W.C. No. 62 of 2000, on

the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem by raising the following substantial

questions of law:

1. Whether deduction made by the learned Commissioner out of total award amount is right in law, when the employer of the deceased paid extra

premium amount towards personal accident claim coverage?

2. The order of learned Commissioner in respect of issue No. 2 is right in law?

3. Whether the learned Commissioner right in fixing the monthly wages of the deceased as Rs. 2,000/-, when the learned Commissioner himself

finds that the deceased is entitled to receive Rs. 2,153/- per month as salary as per Minimum Wages Act?

4. Whether the order of learned Commissioner in respect of disallowing interest on the award amount from the date of claim petition is right in law?

2. Background facts in a nutshell are as follows:

The deceased Bhoopathy was working as a cleaner under the first respondent herein, in his Tempo Van bearing registration No. TN28 C5533.

On 08.01.2000, at about 03.15 a.m. the said deceased Bhoopathy was traveling as a Cleaner in the said van Vellakoil to Gangeyam road. While

the van was nearing Chandran Brothers Grill Works Industries at Vellakoil, the driver driven the same in a rash and negligent manner and hit the

stationed lorry bearing registration No. TN28 A9091. Due to the said accident, the deceased sustained grievous injuries and immediately he was

taken to Government Hospital, Erode where he died. The appellants are the mother and the brother of the deceased. They filed a claim petition u/s

10 of the Workmen's Compensation Act and claimed a sum of Rs. 3,00,000/- as compensation. The said Van was insured with the second

respondent Insurance Company, who resisted the claim by filing Counter. On pleadings the Deputy Commissioner of Labour, Salem framed the

following issues:

1.The quantum of compensation to which the petitioners are entitled to?

2. Whether the P.A. claim of Rs. 1,00,000/- received by the applicants have to be deducted from the compensation awarded?

After considering the oral and documentary evidence, the Deputy Commissioner of Labour, Salem, held that the accident had occurred only during

the course of employment and awarded a sum of Rs. 2,24,000/- with interest at 12% per annum from the date of petition. Further, the Deputy

Commissioner of Labour, Salem deducted a sum of Rs. 1,00,000/- from the compensation amount awarded on the ground that the same was

covered under personal Accident policy coverage. Aggrieved by that award, the appellants have filed the present appeal.

3. The learned Counsel appearing for the appellants submitted that the Deputy Commissioner of Labour, Salem is wrong in deducting a sum of Rs.

1,00,000/- from the compensation amount on the ground that the employer of the deceased paid extra premium amount towards personal accident

scheme and further submitted that the Deputy Commissioner of Labour, Salem is wrong in fixing the monthly income at Rs. 2,000/-. As per the

Minimum Wages Act, the minimum wage is Rs. 2,153/- per month at the time of accident and further the learned Counsel contended that the

appellants are also entitled to the interest from the date of accident. Therefore, the award passed by the Deputy Commissioner of Labour, Salem is

not in accordance with law and the same has to be set aside.

4. The Learned Counsel appearing for the second respondent/Insurance Company submitted that the Deputy Commissioner of Labour, Salem,

had considered all the relevant materials and evidence on record and rightly deducted the personal accident claim amount from the compensation

amount awarded by the Tribunal and also relied on the Supreme Court Judgment in the case of Mrs. Helen C. Rebello and Ors. v. Maharashtra

State Road Transport Corporation and Anr. reported in 1999 1 L.W. 208. Further, the learned Counsel submitted that the Deputy Commissioner

of Labour, Salem has rightly fixed the monthly income at Rs. 2,000/- as per the Minimum Wages Act and also the claimants are not entitled to

interest from the date of accident. Therefore, the order passed by the Deputy Commissioner of Labour, Salem is in accordance with law and the

same has to be confirmed.

5. Heard the counsel. On the side of the applicants, the mother of the deceased Sarasu was examined as P.W.1 and documents Exs.A1 to A4

were marked. On the side of the respondent Insurance Company one Ragavan, AAO, was examined as R.W.1 and documents Exs.R1 and R2

were marked to substantiate their claim. Ex.A1 is First Information Report. Ex.A2 is the RC. Ex.A3 is the Policy and Ex.P4 is the Postmortem

Certificate. Ex.R1 is the letter dated 24.02.2000 of R.Sukumar and Ex.R2 is the Disbursement (claims) voucher. After considering the oral and

documentary evidence, the Deputy Commissioner of Labour, Salem, held that the accident had occurred only during the course of employment

and fixed the age of the deceased at 20 years old at the time of the accident. Ex.A4-Postmortem Certificate and the evidence of the P.W.1, who is

the mother of the deceased, corroborated the same. Therefore, the Deputy Commissioner of Labour, Salem has correctly fixed the deceased's

age at 20 years at the time of accident. P.W.1 also stated that her husband was earning a sum of Rs. 3,000/- per month. But to prove the same no

document was filed. As per the Workmen Compensation Act, in respect of the

cleaner, the minimum wage is Rs. 2,153/- per month. But, the Deputy Commissioner of Labour, Salem restricted the same to Rs. 2,000/- per month by relying Section 4(1)(b) Explanation II of WC (A) Act, 1995. Considering the said Act, the Deputy Commissioner of Labour, Salem, is correct in restricting the claim at Rs. 2,000/-. After considering the age and monthly wage, the Deputy Commissioner of Labour, Salem has correctly determined the compensation at Rs. 2,24,000/-. I don't find any error in fixing the compensation amount. After fixing the compensation amount, the Deputy Commissioner of Labour found that the claimants claimed compensation of Rs. 1,00,000/- under personal accident policy. Therefore, the claimants are entitled to receive a sum of Rs. 1,24,000/- only. Taking into consideration of the same, the Deputy Commissioner of Labour, Salem has correctly deducted a sum of Rs. 1,00,000/- received by the claimants from the compensation amount by following the Judgment relied on by the respondent in the case of Mrs. Helen C. Rebello and Ors. v. Maharashtra State Road Transport Corporation and Anr. reported in 1999 1 L.W. 208. Therefore, the question Nos. 1 and 2 are answered in favour of the second respondent-Insurance Company and against the appellants-claimants.

6. In respect of other questions are concerned, the Tribunal has correctly fixed the minimum wage at Rs. 2,000/- per month by relying on Section 4(1)(b) Explanation II of WC(A) Act, 1995. I don't find any error or illegality in fixing the monthly salary at Rs. 2,000/- and so, correctly fixed the minimum wage and accordingly question No. 3 is also answered in favour of the Insurance Company and against the appellant.

7. In respect of question No. 4, both the counsel fairly stated that the issue is covered by the decision of the Division Bench of this Court in the case of N. Ganesan v. Thilagavathi and Anr. reported in 2010 (2) TNLJ 449 in favour of the appellants and held in paragraphs 26 and 27 as follows:

26. The learned Judge of this Court in the decision reported in (2007) 5 MLJ 1059 (cited supra) and 2008 (1) TN MAC 38 (cited supra) after taking into consideration the above cited Larger Bench decision of the Hon'ble Supreme Court of India, has correctly held that "the interest on compensation is payable 30 days after the date of the accident in which workman

sustained injuries resulting in death.

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

i. The word ""falls due"" occurring u/s 4A of the Workmen's Compensation Act, 1923 in the light of the ratio laid down in the Larger Bench decision

of the Hon''ble Supreme Court of India reported in Pratap Narain Singh Deo Vs. Srinivas Sabata and Another, and Kerala State Electricity Board

and Another Vs. Valsala K and Another, , 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 Anr. v. R.P.P. Construction (P) Ltd. Chennai and Ors.; 2008 (1) TN MAC 38 A. Chairmen v. A. Thirumeni

and Anr. 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.

8. Following the above Judgment the fourth question is answered in favour of the appellants-claimants and against the second respondent-

Insurance Company. To that extent, the order of the Deputy Commissioner of Labour, Salem is set aside and the interest for the compensation

amount would accrue thirty days after the date of the accident and not from the date of qualification/orders passed by the Commissioner for

Workmen's Compensation. Accordingly, the Civil Miscellaneous Appeal is allowed. No costs.