

CMA No. 107 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 14.09.2023

PRONOUNCED ON : 21.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 107 of 2022

1. Usharani
2. Minor Senju Bhavani
3. Minor Senju Bhargavan
4. Dasari Sujathamma

Minor appellants 2 and 3 represented
by their mother Usharani as natural
guardian and next friend.

... Appellants

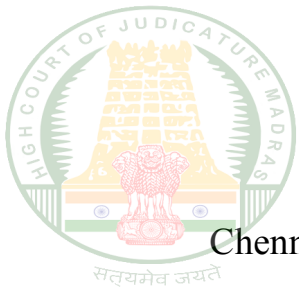
Versus

1. Vemuri Amarnath
2. The Shriram General Insurance Company Limited,
No.4, Lady Desika Road,
Mylapore (Near Alwarpet Signal),
Chennai – 600 004.

... Respondents

[R1 remained *ex parte* before the tribunal and hence, notice to R1 was dispensed with]

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, to set aside the Award dated 16.02.2021 made in E.C.No.358 of 2015, on the file of the Commissioner for Employee's Compensation Court / Joint Commissioner of Labour-II,



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For Appellants : Mr. A.G.F.Terry Chella Raja
for Mr.K.M.Ramesh
For Respondents : Mrs.V.Pushpa (for R2)
R1-Dispensed with

J U D G M E N T

The instant appeal has been filed seeking enhancement of compensation awarded by the Joint Commissioner of Labour-II, Chennai in E.C.No.358 of 2015.

2. The appellants filed the claim petition before the Joint Commissioner stating that the deceased was working as a Driver under the 1st respondent herein; that on 05.05.2015 at about 10.00 am, when he was driving the car belonging to the 1st respondent, the car capsized while attempting to avoid the lorry coming on the opposite side, as a result of which, the deceased sustained fatal injuries; and that the 1st respondent as employer and the 2nd respondent being the insurer are liable to pay compensation.

3. The 1st respondent remained *ex parte* before the tribunal. The 2nd respondent submitted that the appellants have to prove that the



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deceased was employed under the 1st respondent; that he was earning Rs.25,000/- per month; that the accident had taken place in the manner alleged by the appellants; and that in any case, the compensation claimed was excessive.

4. The appellants examined the 1st appellant as PW1 and marked Ex.P1 to Ex.P8. The 2nd respondent neither examined any witnesses nor marked any document.

5. The tribunal after taking into consideration the oral and documentary evidence held that the 2nd respondent herein, being the insurer of the 1st respondent, is liable to pay compensation, as the appellants had established that the deceased was working under the 1st respondent. The tribunal further fixed the monthly income of the deceased as Rs.8,000/- as per the notification of the Central Government and awarded a total compensation of Rs.8,20,400/-.

6. The learned counsel for the appellants submitted that the tribunal ought to have fixed the income of the deceased as claimed by the appellants. The Central Government notification does not state that



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Rs.8,000/- is the maximum monthly income that can be taken into account for computing compensation. The learned counsel pointed out to the amendment made in the Employee's Compensation Act, in the year 2009, wherein Explanation-II to Section 4 was deleted; that the wages fixed by the Central Government in the year 2009 was Rs.4,000/-; that the said explanation which stipulated that even if the monthly wages exceeds Rs.4,000/-, only Rs.4,000/- has to be taken for computing the compensation was omitted; that in view of the omission of the said provision, the legislature had removed the deeming cap on the monthly income and intended that compensation should be computed on the basis of the actual wages earned by the employee. The learned counsel for the appellants relied upon the following judgments of the Hon'ble Supreme Court and this Court, in support of his submission that in view of the amendment, the cap on the monthly income is removed and therefore, the Commissioner can award compensation on the basis of actual wages.

- i. K.Sivaraman and others vs. P.Sathiskumar and others
[2020(1) TN MAC 273 SC]
- ii. Jaya Biswal and others vs. Branch Manager, Iffco Tokio
General Ins. Co. Ltd. [2016 (1) TN MAC 289 (SC)]
- iii. Rani and others vs. Branch Manager, Shri Ram General
Ins. Co. Ltd. [2023 SCC Online SC 720]



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- iv. R.Sakthivel Vs. Sudhakar and another [CMA No.377 of 2021]
- v. Royal Sundaram General Ins. Co. Ltd., vs. R.Sakthivel and another [Special Leave Appeal No.2357 of 2022] SC
- vi. R. Prakasam vs. M/s.A to 2 Cargo Carriers and another [CMA No.2558 of 2015]

7. Since the 1st respondent remained *ex parte* before the tribunal, the learned counsel for the appellants has filed a petition to dispense with notice to the 1st respondent. Hence, notice to 1st respondent was dispensed with.

8. The learned counsel for the 2nd respondent *per contra* submitted that though the Hon'ble Supreme Court in *Sivaraman's case* [cited supra] had observed that by virtue of the amendment, the deeming cap is removed, this Court in a number of decisions had held that the observations of the Hon'ble Supreme Court is not binding, as the Hon'ble Supreme Court did not deal with the question as to whether the wages fixed by the Central Government was a deeming cap for computing compensation. The learned counsel relied upon the following decisions in support of her submission:

- i.CMA No.3388 of 2017 dated 01.07.2022
[S.Nambi vs. A.G.Francis and another]



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ii.CMA No.632 of 2021 dated 28.07.2022

[M/s.Futura Generali India Ins.Co. Ltd., vs. K.M.Nagaraj and Another]

iii.CMA No.1786 of 2018 dated 10.04.2023

[M.Shanthi and 3 others vs. N.Varatharajan and another]

iv.CMA No.1588 of 2018 dated 23.09.2020

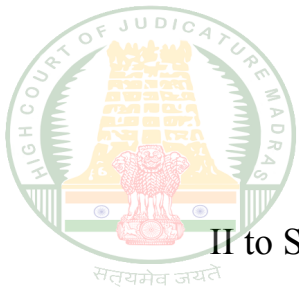
[Kumar vs. M.P.Selvaraj and Another]

v.Rani and ors. vs. The Branch Manager, Shriram General Insurance Co. Ltd (MANU/SCOR/27038/2023)

vi.United India Insurance Co. Ltd. vs. Seethammal (MANU/TN/3202/2014)

9. The only question involved in the instant appeal is whether the monthly wages fixed by the Central Government by virtue of the powers conferred under the Employee's Compensation Act, have to be only taken for computing compensation or if compensation can be computed on the basis of the actual wages?

10. In order to answer the above question, it is necessary to understand the provisions of the Employee's Compensation Act. The compensation is awarded in terms of Section 4 of the Employee's Compensation Act (hereinafter referred to as 'the Act'). The Explanation-



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II to Section 4 (1) prior to its deletion read as follows:

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"Explanation II. - Where the monthly wages of a workman exceed [four thousand rupees], his monthly wages for the purpose of clause (a) and clause (b) shall be deemed to be [four thousand rupees]only"

Section 4(1-B) was introduced in its place, which reads as follows:

“Section 4(1-B) in The Employee's Compensation Act, 1923: The Central Government may, by notification in the Official Gazette, specify, for the purposes of subsection (I), such monthly wages in relation to an employee as it may consider necessary.”

By virtue of the above provision, it is seen that the Central Government may, by notification for the purpose of sub section (I) of Section 4, specify the monthly wages in relation to an employment.

11. The issue is whether the monthly wages fixed by the Central Government should be reckoned as minimum wages or whether the wages fixed by the Central Government can only be considered for awarding compensation irrespective of whether the employee earned more wages.

12 (a) The Hon'ble Supreme Court in *Sivaraman's case* [cited supra] had held as follows



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“25. The 1923 Act is a social beneficial legislation and its provisions and amendments thereto must be interpreted in a manner so as to not deprive the employees of the benefit of the legislation. The object of enacting the Act was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits. The amendments to the 1923 Act have been enacted to further this salient purpose by either streamlining the compensation process or enhancing the amount of compensation payable to the employee.

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....”

(b) Similarly, in **Jaya Biswal's case** [cited supra], the Hon'ble Supreme Court has considered the wages as Rs.10,000/- and awarded compensation. The relevant paragraph is extracted below for better understanding.



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“25. The monthly wage of the deceased arrived at by the learned Commissioner was Rs.10,000/-. The date of birth of the deceased according to the Driver’s License produced on record is 01.07.1984. The date of death of the deceased is 19.07.2011. Thus, according to Schedule IV of the E.C. Act, the ‘completed years of age on the last birthday of the employee immediately preceding the date on which the compensation fell due’, is 27 years, the factor for which is 213.57. Hence, the amount of compensation payable to the appellants is calculated as under:

$$\text{Rs.10,000/-} \times 50\% \times \text{Rs.213.57} = \text{Rs.10,67,850/-}.$$

Funeral expenses to the tune of Rs.25,000/- are also awarded.

The total amount of compensation payable thus comes to Rs.10,92,850/-.”

(c) Further in *Rani's case* [cited supra], the Hon'ble Supreme Court had set aside the award of the Commissioner, wherein wages less than Rs.8,000/- was taken for the purpose of computing compensation and observed as follows:

“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 order under the Workmen’s compensation Act dated 01.04.2016 is accordingly restored.”

(d) This Court in CMA No.377 of 2021 [*R. Sakthivel's case*



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referred to above], has held that the wages fixed by the Central

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Government has to be construed as minimum wages and if the employee is able to establish that he earned more wages, then compensation has to be awarded based on the said wages. That apart, the learned Single Judge in the said case had also observed that the minimum wages fixed by the State Government also can be taken into consideration for the purpose of awarding compensation.

“7. The Deputy Commissioner of Labour himself considered the Government Order issued in G.O.Ms.No.91 dated 12.12.2013. As per the Government Order, the minimum wages payable to the workmen during the relevant point of time was Rs.11,619/-. Therefore, this Court is inclined to enhance the monthly income of the appellant workman from Rs.8,000/- to Rs.11,619/-. Accordingly, the total compensation payable to the appellant is calculated as Rs.3,27,065/- and medical expenses of Rs.58,554/-”

It is also seen that the Insurance company therein has challenged the above order passed by this Court before the Hon'ble Supreme Court in SLP No.2357 of 2022 and the same was dismissed on 13.05.2022.

(e) Further, this Court in CMA No.2558 of 2015 had held that by virtue of the deletion of Explanation-II to Section 4, the ceiling fixed for the wages for computing compensation has been removed.



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WEB COPY 13(a) However, it is seen that another learned Single Judge of this Court in CMA No.2020 of 2018 [*Sudha and others Vs. M.Anthony Raja and Another*] vide order dated 13.02.2020 had observed that the decision of the Hon'ble Supreme Court in *Sivaraman's case* [cited supra] may not be applicable to the facts and held as follows:

“12. As the amendments have not been properly brought to the attention of the Apex Court and that the decisions are distinguishable, the ratio laid down in Jaya Biswal's case (cited supra) and Sivaraman's case (cited supra), may not be applicable to the facts of this case.

13. While deleting Explanation-II to Section 4(1)(b) of the Act, Section 4(1-B) was introduced with effect from 18.01.2010. That being the case, the ceiling limit over and above is not permissible, as the Legislature thought there shall be compensation payable to the Insurer or the dependants, but, there cannot be any unjust enrichment.

14. Hence, not even a pie more than the wages, including batta received by the deceased at the time of his death can be taken into account for the purpose of granting compensation, when the ceiling limit is fixed at Rs.8,000/- per month, w.e.f. 31.05.2010. If a sum of Rs.8,000/- is taken as wages, as contended by the learned counsel for the Appellants, the purpose of the Act itself would be defeated. It would amount to the Court legislating the enactment than the one legislated by the Parliament.”

(b) A similar view was taken by another learned Single Judge (Sister Justice P.T. Asha) in CMA No.3388 of 2017. The learned Judge



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while holding that the compensation can be awarded only by taking into

consideration a sum of Rs.8,000/- as wages has observed as follows:

“13. The "monthly wages" vis-a-vis Section 4(1-B) was not under consideration in the above case. The Court had not dealt with the implication of Section 4(1-B) or the notification of the Central Government dated 31.05.2010. Therefore, the observation in paragraph 26 can be treated merely as an obiter.”

The learned Judge in the aforesaid extracted portion has observed that the observations of the Hon'ble Supreme Court in paragraph No.26 in *Sivaraman's case* (cited supra) can only be treated as an *obiter*.

(c) Two other learned Single Judges have awarded compensation holding that the maximum permissible income that can be taken into consideration for awarding compensation is Rs.8,000/- as per the Central Government Notification. In CMA No.1786 of 2018, the learned Single Judge [Brother Justice P.B.Balaji] had held as follows

“13. This Court therefore feels that even though there is no documentary evidence to establish the income of the deceased, the notional income can be taken as Rs.8,000/- per month, which is the maximum permissible under the provisions of the Workmen Compensation Act.”

Similarly, Justice M. Govindaraj [as His Lordship then was] has held that the compensation can be determined only by taking Rs.8,000/- as the



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monthly wages.

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14. Thus, it is seen from the above extracts that conflicting views have been taken by the learned Judges of this Court.

15. It is seen that Explanation-II to Section 4(1) which prescribed a deeming cap has been deleted. The object of the legislature is clear from the removal of the said explanation. It is further seen that whenever the monthly wages was fixed by the Central Government there were amendments made in Explanation-II as well. For instance when the monthly wages fixed by the Central Government was Rs.2,000/-, the Explanation to Section 4(1) stated that the monthly wages shall not exceed Rs.2,000/-. Likewise, when the monthly wages was increased to Rs.4,000/- Explanation-II was amended. However, when the monthly wages was enhanced to Rs.8,000/-, Explanation-II was removed. This exactly was considered by the Hon'ble Supreme Court in *Sivaraman's case* [cited supra] and held that by virtue of the deletion of Explanation-II, the object of the legislature intended to remove the deeming cap on the monthly income of an employee and extend to them compensation on the basis of actual monthly wages drawn by them. Though this was not



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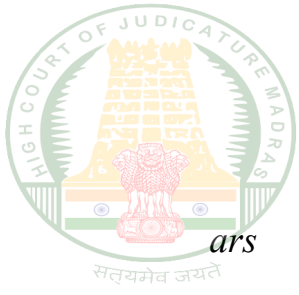
the issue directly before the Hon'ble Supreme Court, this Court is of the view that the said observations cannot be ignored as *obiter*. The deletion of the explanation is with a purpose and therefore, one cannot hold that in spite of deletion, the legislature intended to have the deeming cap on the monthly income.

16. However, in view of the conflicting views expressed by the different learned Single Judges, this Court is of the view that it would be appropriate that the matter be decided by a larger Bench so that there is clarity.

17. Therefore, this Court is of the view that the matter may be placed before My Lord The Hon'ble The Chief Justice for constituting a larger Bench to answer the following question.

“Whether the purpose of deletion of Explanation-II to Section 4 (1) of the Employees' Compensation Act was to remove the deeming cap on the monthly income of an employee and award compensation to the employee on the basis of actual monthly wages earned by him?”

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

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**Pre-delivery Judgment in
C.M.A. No. 107 of 2022**

Dated: 21.09.2023