

The Managing Director Vs. Smt Nirupama J

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Court : Karnataka

Decided On : Nov-10-2020

Judge : B.V.Nagarathna and N S Sanjay Gowda

Appeal No. : MFA 6905/2018

Appellant : The Managing Director

Respondent : Smt Nirupama J

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 10TH DAY OF NOVEMBER, 2020 PRESENT THE HONBLE MRS. JUSTICE B.V.NAGARATHNA AND THE HONBLE MR. JUSTICE N.S.SANJAY GOWDA M.F.A.No.6905 OF 2018(WC) BETWEEN: The Managing Director, Benagaluru Urban & Rural District, Co-operative Milk Producers Societies Union Ltd., Dr.M.H.Marigowda Road, D.R.College, Bengaluru - 560 029. Appellant (By Sri. Sanjeev B.C., Advocate) AND:

1. Smt. Nirupama J., D/o Jayakumar.S., W/o Late Shivakumar.M. Aged about 35 years, 2. Himanth, S/o Nirupama, and Late Shivakumar.M, Aged 4 years, 2 3. Smt. Ningamma, W/o Late Marisiddaiah, Aged about 62 years, Respondent No.2 is minor, Represented by his mother Respondent No.1, All are Residing at No.2 Honnaiah Layout, I Cross, Sakkarenagara, Kasaba Hobli, Mandya Town and District. Respondents (By Smt. Suguna R. Reddy & D.S. Ramachandra Reddy

Advocate for R-1 to R-3, R-2 is Minor Represented by R-1) This appeal is filed under Section 30(1) of the Workmens Compensation Act, 1923, against the judgment and award dated:20.06.2018, passed in ECA No.1/2016 on the file of the Senior Civil Judge & JMFC, Additional Mact, Channapattana, Ramanagar District, awarding compensation of Rs.22,01,811/- with interest @ 12% p.a. from the date of accident till realization. This appeal coming on for Admission this day, SANJAY GOWDA, J., delivered the following:

3.

JUDGMENT

The facts leading to filing of this appeal are as follows: M.Shivakumar, who was appointed as a Boiler Attendant in the year 2008 by the appellant/employer suffered an accident during the course of his employment on 16.08.2015 at about 11.00 a.m. which resulted in grievous injuries to which he ultimately succumbed.

2. As the death of Shivakumar was as a result of an accident arising out and in the course of his employment, his wife, minor son and his mother made a claim for compensation under the Employees Compensation Act, 1923 (for short, hereinafter referred to as the Act).

3. The Trial Court, on consideration of the evidence adduced before it, proceeded to record a finding that 4 Shivakumar was an employee of the appellant and he had met with an accident on 16.08.2015 and this was an accident arising out of and in the course of his employment and as a result of this accident, he died.

4. The Trial court also recorded a finding that he was drawing a net salary of `23,177/- per month which fact was not disputed by his employer.

5. The Trial Court thereafter proceeded to determine the compensation under Section 4 of the Act and came to the conclusion that the claimants were entitled to a sum of `21,96,811/-. The Trial Court arrived at the said sum by multiplying 50% of his monthly salary i.e., `11,589/- ($23,177 \times 50/100$) with the relevant factor of 189.56 (since the deceased was aged 38 years at the time of his death).

6. The Trial Court, in addition, awarded a sum of `5,000/- towards funeral expenses and thus the wife, minor son and the mother of the deceased Shivakumar 5 were entitled to a total compensation of `22,01,811/-, along with interest at 12% per annum on the said amount of compensation from the date of accident i.e., 16.08.2015 till its realization.

7. The employer, being aggrieved by the said award of compensation, is in appeal.

8. The principal contention advanced by Sri B.L.Sanjeev, learned counsel appearing for the appellant is that the Trial Court had committed a grave error in considering 50% of the monthly wages of the deceased as `11,589/- for the purpose of computing the compensation. He submitted that the Trial Court had failed to take into consideration, the notification issued under Section 4(1B) of the Act by which the Central Government had notified that a sum of `8,000/- would be the monthly wages that would have to be reckoned as the maximum wages for the purpose of determining compensation under the Act. He submitted that the Trial Court by applying 50% of the actual monthly wages drawn by the deceased employee i.e., `11,589/- had contravened the provisions of Section 4(1B) of the Act and consequently, the compensation awarded was improper and unsustainable.

9. In other words, it was the submission of the learned counsel for the appellant that when a claim for compensation was made under the Act in respect of a deceased employee whose monthly wages exceeded `8,000/-, then, notwithstanding the actual wages of the employee and even if it was in excess of `8,000/-, for the purpose of determining compensation under the Act, the Courts have to consider the monthly wages of the deceased as `8,000/- only. He submitted that since the Trial Court, under the impugned order, had taken into consideration the actual monthly wages of the deceased employee, which was in excess of 8,000/-, for the purpose of determining the compensation and this had resulted in an award, which was in excess of the maximum prescribed, it could not be sustained.

10. Learned counsel for the respondents Sri Ramachandra Reddy, on the other hand, contended that the award of the Trial Court was lawful and proper and there

was no illegality in the judgment passed by the Trial Court. He submitted that intent of the statute, which is a piece of a social welfare legislation, is clear and it is to ensure that a just compensation be paid to an employee. He submitted that the statute has now not stipulated an outer limit to the compensation payable and it had only prescribed a minimum compensation payable to the dependents of a deceased.

11. He submitted that the statutory scheme was that 50% of the actual monthly wages had to be taken as the criteria for determining compensation and this was because the law makers acknowledged the fact that an employee would spend about 50% of his wages on 8 himself and the remaining 50% of the wages would be earmarked for his dependents. He submitted that this 50% of the monthly wages, when multiplied by the relevant factor depending on the age of the deceased would result in a lumpsum amount which would satisfy the needs of the dependents in the absence of the bread winner of the family on account of his death during the course of and arising out of his employment.

12. He submitted that if it was the intention of the Parliament, to fix a ceiling on the monthly wages to be reckoned for the purpose of compensation, there would have been a clear indication in Section 4(1) of the Act. He contended that the intent of the Parliament that there should be no outer limit was clear from the fact that Explanation II to Section 4(1) of the Act which was found in the statute till 2009 and which had provided for holding that an employee was deemed to earn a sum of only `4,000/- even if his monthly wages exceeded `4,000/-, had been omitted in its entirety by the 9 Amending Act 45 of 2009 and this clearly indicated that the Parliament had decided to do away with the capping of monthly wages and thereby fixing a maximum sum receivable as compensation by the dependents of a deceased employee.

13. In other words, the learned counsel for the respondents contended, the fact that a deemed maximum income of `4,000/- which had been stipulated in Explanation II to Section 4(1) of the Act was omitted in its entirety by an Amending Act, by itself, manifested the intent of the Parliament, which was to allow an employee to receive compensation on the actual monthly wages that he was

drawing and not to restrict compensation payable on the basis of a statutorily prescribed deemed monthly wages. He submitted that the Trial Court had rightly considered the actual monthly wages for the purpose of determining the compensation and therefore, no fault could be found with the judgment of the Trial Court. 10

14. We have heard learned counsel elaborately and perused the record. Having regard to the contentions raised by the parties, in our view, the following question would arise for consideration in this appeal: Whether in determining the amount of compensation under Section 4 of the Employees Compensation Act, the monthly wages notified under Section 4(1B) of the Act would have to be taken into consideration or whether the actual monthly wages drawn by the employee would have to be taken into consideration?.

15. In order to appreciate the controversy on hand, a brief overview of the law governing compensation payable to an employee would be necessary.

16. The fact that an accident can and would occur during the course of employment caught the attention of the law makers nearly a century ago i.e., way back in 1923 resulting in a legislation being enacted titled The Workmens Compensation Act, 1923. 11

17. The Act covered persons employed in factories, mines, plantations etc., and sought to provide for compensation in case of an accident that occurred during the course of employment or as a result of contracting occupational diseases. The liability to pay compensation rested on the Employer under the Act and the Act was thus a piece of legislation to ensure a sense of social security for workmen.

18. The administration of the provisions of the Act was to be effected by Commissioners and detailed regulatory provisions and rules were made to ensure that the objectives of the Act were fulfilled.

19. By a series of amendments, the applicability of the Act has been enlarged to apply to establishments irrespective of the number of employees employed and also the class of employees and also in omission of some of the restrictive clauses

and inclusion of additional occupational diseases, which ultimately led the 12 Parliament to rename the Act by substituting the word Workmens with the word Employees in the year 2010. The relevant provisions of the Act read as under:

2. Definitions.- (1) In this Act, unless there is anything repugnant in the subject or context,- (c) "compensation" means compensation as provided for by this Act; (m) "wages", includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of an employee towards any pension or provident fund or a sum paid to an employee to cover any special expenses entailed on him by the nature of his employment; 3. Employer's liability for compensation.- (1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

13. Provided that the employer shall not be so liable - (a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days; (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to- (i) the employee having been at the time thereof under the influence of drink or drugs, or (ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or (iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee, (2) If an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if 2[an employee].., whilst in the service of an employer in 14 whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in

respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment: Provided that if it is proved,- (a) that an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and 15 (b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section: Provided further that if it is proved that an employee who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section. (2A) If an employee employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be 16 liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just. (3) [The Central Government or the State Government]., after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, 6[, in the case of a notification by the Central Government, within the

territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments. (4) Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury 17 by accident arising out of and in the course of his employment. (5) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by employee in any Court of law in respect of any injury- (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or (b) if an agreement has been come to between the employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

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 an amount equal to from the injury fifty per cent of the monthly wages of the deceased 18 employee multiplied by the relevant factor; or an amount of one lakh and twenty thousand rupees, whichever is more; (b) where permanent an amount equal total disablement to sixty per cent results from the of the monthly injury 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 19 of the age of the employee on his last birthday immediately preceding the date on which the compensation fell due. (c) where permanent (i) in the case of an partial disablement injury specified in result from the Part II of Schedule I, injury 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; 20 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 purpose 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 a half monthly disablement, whether total payment of the sum or partial, results from the equivalent to injury 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 an employee in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such 21 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 (1), 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 be deducted from any lump sum or half-

monthly payments to which the 22 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 course of employment.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due 23 there shall be payable in respect of that half- month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the employee results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of not less than five thousand 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. Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.

20. Section 3(1) of the Act makes the employer liable to pay compensation to an employee for any personal injury to an employee caused by an accident arising out and in the course of his employment. Section 3(2) of the Act states that contracting of any disease, which is 24 specified in Part A of Schedule II, would be construed as an occupational disease under the Act and would be deemed to be an injury by way of an accident within the meaning of Section 3 of the Act.

21. Section 4 of the Act stipulates the amount of compensation that an employee would be entitled to receive if death results from an injury or where permanent total disablement results from an injury caused by an accident arising out and in the course of his employment.

22. Section 4(1)(a) of the Act stipulates that when death results from an injury, the employee would be entitled to receive 50% of the monthly wages multiplied by the relevant factor or a minimum sum of `1,20,000/-, which ever was more.

23. Section 4(1)(b), (c) and (d) relate to amount of compensation payable where permanent total 25 disablement, permanent partial disablement and temporary disablement resulted from the injury.

24. For the purpose of this appeal, Section 4(1)(b), (c) and (d) would not be relevant and they are hence not considered in this appeal.

25. The proviso to Section 4(1)(a) and 4(1)(b) stipulates that the Central Government may by issuance of notification in the Official Gazette enhance the amount of compensation mentioned in clauses (a) and (b). Explanation-I appended to the proviso to Section 4(1) (a) and (b) explains the meaning of the relevant factor.

26. A plain reading of Section 4(1) would indicate that whenever death resulted from an injury, the employee would be entitled to receive a sum of compensation, which would be calculated by multiplying 50% of the monthly wages that the deceased employee was drawing with the relevant factor as prescribed in Schedule IV to the Act. 26

27. To put it simply, under Section 4 (1) (a) and (b), 50% of the monthly wages drawn by the employee would be the multiplicand and the relevant factor would be the multiplier, for the purposes of determining the compensation that the heirs of an employee or an employee would be entitled for death or injury arising out of an accident which occurred during the course of and arising out of the employment.

28. The term wages has been defined under Section 2(m) of the Act. It is an inclusive definition which states that the wages would include any privilege or

benefit capable of being estimated in money, other than the travelling allowance or the value of any travelling concession or a contribution paid by the employer towards any pension or provident fund or any sum paid to cover any special expenses. Thus, the definition of wages indicate that any privilege or benefit capable of 27 being estimated in money apart from those specifically excluded allowances will have to be construed as wages.

29. A significant factor to be noticed in Section 4(1)(a) and (b) of the Act is that, the law guarantees a minimum amount of compensation. If the employee was earning a monthly wage, which when multiplied by the relevant factor did not obtain a compensation at `1,20,000/-, by virtue of the guarantee provided under Section 4 (1) (a) and (b), he would nevertheless be entitled to a minimum sum of `1,20,000/-.

30. Before the Act was amended by Act 45 of 2009, Explanation II to Section 4 (1) (a) and (b) stated that if the monthly wages of a workman exceeded `4,000/-, for the purposes of Section 4 (1) (a) and (b), the monthly wages would be deemed to be `4,000/- only. Thus, prior to 2009, even if a workman was earning in excess of `4,000/- as monthly wages, for the purposes of 28 determining compensation, his monthly wages was deemed to be only `4,000/-.

31. However, by the Amending Act 45 of 2009, the Explanation II to Section 4 (1) (a) and (b), which provided for the deemed income of `4,000/- was omitted in its entirety. It is to be borne in mind that if at all if the Legislature wanted to cap the monthly wages of an employee, the Explanation II to Section 4 (1) (a) and (b) would be simply amended to say that the wages of the employee for the purposes of clause (a) and (b) would be the sum as may be notified by the Central Government by issuance of a notification. The fact that the Legislature consciously omitted the entire Explanation II i.e., the deemed monthly wages clause expressly implies that the Legislature intended to do away with capping of compensation to an outer limit.

32. The effect of this omission of Explanation II was that the Commissioners were now obliged to consider 29 50% of the actual wages that was being drawn by the employee for the purposes of determining the compensation instead of the earlier

maximum sum of `4,000/-. This, in turn, resulted in doing away with the capping of compensation and would thus entitle the heirs of an employee to a larger sum of compensation.

33. However, the learned counsel for the appellant in order to get over the language employed in Section 4(1)(a) of the Act relied upon Section 4(1B) of the Act, which states that the Central Government may, by a notification in the Official Gazette specify for the purpose of Sub-section (1), such monthly wages in relation to an employee as it may consider necessary. He submitted that the Central Government had issued a notification under Section 4(1B) of the Act stating that the monthly wages of an employee was `8,000/- and in view of the said notification, the Trial Court was bound to consider the monthly wages of the deceased employee as 30 `8,000/- notwithstanding the fact that his monthly wages was `11,589/-.

34. The answer to this contention of the learned counsel has been answered by the Apex Court in its recent pronouncement rendered in the case of K.Sivaraman & Others Vs. P.Sathishkumar & Another [Civil Appeal No.9046 of 2019 (arising out of SLP (C) No.18110/2019) disposed of on 13.02.2020]. - (2020) 4 SCC594 The Apex Court, while dealing with a case relating to a claim arising under the Act, has held as follows at paragraph 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.4,000 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 31 to all employees compensation for accidents which occur in the course of an 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. (underlining by us) 35. The Apex Court has thus clearly held that the objective of

the Amending Act 45 of 2009 was 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.

36. In view of the said ratio laid down by the Apex Court, the argument of the learned counsel for the appellant that the monthly income of the deceased employee - Shivakumar should have been capped at `8,000/- cannot be accepted.
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37. Thus, in line with the ratio of the Apex Court, the actual monthly income of deceased Shivakumar will have to be taken into consideration while determining the amount of compensation and the Trial Court has therefore rightly taken into consideration the actual monthly income at `23,177/-, which was not disputed as the monthly wages of the deceased by the Employer. The order of the Trial Court determining the compensation by taking into consideration his actual monthly wages cannot, therefore, be found fault with.

38. It may also be pertinent to state here that in the case of *Jaya Biswal and Others Vs. Branch Manager, IFFCO TOKIO General Insurance Company Limited* and another - AIR 2016 SC956 which is also a case in relation to an accident which occurred on 19.07.2011 i.e., after the Amending Act 45 of 2009 was enacted, the Apex Court in paragraph 25 of the said judgment had actually determined the monthly wages of the deceased 33 therein at `10,000/- and calculated the compensation by construing the monthly wages at `10,000/-, thereby leading to the inference that there was no capping of the monthly income of the employee at `8,000/-.

39. It is, therefore, clear that for the purposes of calculating the compensation in respect of death resulting from an injury, the actual monthly wages drawn by the deceased employee would have to be taken into consideration and not the monthly wages notified under Section 4(1B) of the Act.

40. In view of the judgment rendered by the Apex Court, we are of the view that there is no merit in the contention of the learned counsel for the appellant and by affirming the judgment of the Trial Court, we dismiss this appeal.

41. The amount in deposit shall be disbursed to the claimants in terms of the judgment of the Trial Court. 34 Parties to bear their respective costs. Sd/- JUDGE
Sd/- JUDGE PKS

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