

The General Manager vs Krishnan V.V.

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Court : Kerala

Decided On : Sep-30-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : MFA (ECC)/37/2016

Appellant : The General Manager

Respondent : Krishnan V.V.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
SATURDAY, THE 30TH DAY OF SEPTEMBER 2023 / 8TH ASWINA,
1945 M.F.A.(ECC) NO. 37 OF 2016 AGAINST THE ORDER DATED
20.10.2015 IN E.C.C.NO.265 OF 2014 OF THE EMPLOYEES
COMPENSATION COMMISSIONER, KOZHIKODE
APPELLANT/OPPOSITE PARTY: THE GENERAL MANAGER
BSNL,KANNUR. BY ADV SRI.SAJI VARGHESE,SC,BSNL
RESPONDENT/APPLICANT: KRISHNAN V.V. S/O. NARAYANAN
NAMBIAR, N.O HOUSE, PAPPINISSERY WEST P.O, KANNUR, PIN -
670 561. BY ADVS. SMT.D.N.NISHANI SRI.M.SURESH KUMAR
SRI.P.U.SHAILAJAN SRI.V.SREEJITH THIS MFA (ECC) HAVING

COME UP FOR FINAL HEARING ON 30.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 30th day of
September, 2023

JUDGMENT

This is an appeal filed under Section 30 of the Employees Compensation Act, 1923 (for short the Act). The appellant is the respondent in ECC No.265 of 2014, which was filed by the respondent seeking compensation on account of the injury sustained by him on 02.03.2009 during the course of his employment under the appellant.

2. The respondent was employed as a petty worker

under the appellant. At about 10.30 a.m. on 02.03.2009 while the respondent was engaged in his work happened to fall down from a post in consequence of electric shock. He was treated in the AKG Hospital, Talap for 17 days. He filed ECC No.265 of 2014 before the Employees Compensation Commissioner, Kozhikode (for short the Tribunal) claiming Rs.one lakh as compensation.

3. The appellant filed a counter statement admitting

that the respondent was a petty worker, however, disputing his claim for compensation for Rs.one lakh. The incident as well as the injuries sustained by the respondent are admitted. The contention of the respondent that he was drawing salary of Rs.5,000/- per month was refuted. The appellant contended that the payments against the bills drawn for the petty works done by the respondent were alone being made and the average amount being paid was Rs.2,500/- per month.

4. The Tribunal, after considering the evidence consisting of oral testimony of AW1 and RW1, and Exts.A1 to A7 and Exts.B1 to B6, allowed the claim petition by

ordering

the appellant to pay an amount of RS.1,80,253/- as compensation. Simple interest at the rate of 12% per annum from the date of accident, i.e., 02.03.2009 was also allowed.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

6. The learned counsel appearing for the appellant

would submit that the Medical Board, which examined the respondent as per the direction of the Tribunal, had certified occupational disability of 48% to the respondent; whereas the Tribunal computed compensation taking 48% permanent disability. In the view of the learned counsel, the said computation of compensation is against the provisions of Section 4(1)(c)(ii) of the Act, and therefore, the order of the Tribunal is against law and liable to be set aside. The learned counsel further would submit that inasmuch as the claim of

the respondent being only Rs.one lakh, awarding of Rs.1,80,235/- is uncalled for and for that reason also the impugned order is liable to be set aside. Yet another contention put forward is that the monthly wages was taken as Rs.4,000/-, without having any evidence; whereas, the actual income being derived by the respondent was only Rs.2,500/-.

7. Ext.A5 is the copy of the certificate issued by the

Medical Board, which was received in evidence and acted upon by the Tribunal to compute the disability of the respondent. True, the disability certified by the Board is only occupational disability of 48%. The respondent was a Lineman (piecemeal worker) and in consideration of that occupation, the Board has certified his disability. Considering the nature of injuries, compensation could be calculated as provided in Section 4(1)(c)(ii) of the Act alone.

8. The Tribunal, it is seen, calculated the

compensation taking into the percentage of disability as 48%, but it is not stated in the order as to whether the disability was treated as permanent or occupational. However, the Tribunal has invoked the provisions in Section 4(1)(c)(ii) of the Act in order to compute the compensation. When the Tribunal having the advantage of seeing the respondent/claimant, resorted to have such a calculation, that becomes a finding on fact. Hence, I am of the view that the same is not liable to be interfered with invoking the provisions under Section 30 of the Act.

9. Be that as it may, the monthly income of the

respondent was taken as Rs.4,000/-. The respondent was employed with the appellant, which is a Government owned company. The income being derived by the respondent must be borne by records. But the respondent has not produced any document to prove his income. The appellant contended in the counter statement that the monthly payment being paid to the respondent was Rs.2,500/- during the relevant period. In the absence of any reliable evidence, the said assertion of the appellant should have been accepted by the Tribunal. So the view taken by the Tribunal that the compensation should be determined taking the wages as Rs.4,000/- is per se incorrect. The monthly income should have been taken as Rs.2,500/- and to that extent the order of the Tribunal requires interference. The compensation entitled by the respondent by taking his monthly wages as Rs.2,500/- is,-

$$2500 \times 60 \times 156.47 \times 48 = \text{Rs. } 1,12,658.40 \quad 100 \times 100$$

order of the Tribunal is modified to the above extent. All other

directions shall be the same. Sd/- P.G. AJITHKUMAR, JUDGE dkr

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