* THE HON'BLE SMT JUSTICE M.G.PRIYADARSINI

+ Civil Miscellaneous Appeal No. 299 of 2012

And

Civil Miscellaneous Appeal No. 21 of 2024

% 09-08-2023

# 1. Mohd Afsar Medak
S/o. Md Akbar Sab, aged 37 years,
Occ: Lorry Ex-Laborer, R/o Ramayampet, Medak District.

... Appellant/Claimant

Vs.

$ 1. N.Laxmi Narayana, S/o. Gangadhar, Major,
Occ: Jeep Owner, R/o. H.No. 11-5/1, Kanteshwar,
Nizamabad Town & District.

2. The National Insurance Company Limited
represented by Branch Manager, Branch Office,
Jawahar Road, Nizamabad District.

... Respondents/Respondents

! Counsel for the Appellant: Mr. K. Mahendar Reddy,
Counsel, representing
Ms.K.Sarla Reddy

Counsel for Respondents: Mr.Naresh Byrapaneni

< Gist:

> Head Note:

? Cases referred:

(1) (2019) 11 SCC 514

(2) 2017 (2) ALD 14 (SC)

(3) 2007 ACJ 1497

(4) 2010 (2) ALD 281

(5) (2007) 5 SCC 428

(6) AIR 2005 SC 2337

(7) Common judgment, dt. 09.03.2023, CMA (SR) Nos. 4208, 4214 and 4220 of 2006

(8) 2000 ACJ 1 SC

(9) 2003 (2) SCC 223

(10) (2011) 1 SCC 343

(11) Civil Appeal Nos.8598-8599 of 2022 (arising out of Special Leave Petition (C) Nos.11730-11731 of 2021 decided on 18.11.2022

(12) 2023 (4) ALD 49 (SC)

(13) Civil Appeal No 209 of 2022, decided on 6 January 2022

**THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI**

**Civil Miscellaneous Appeal No.299 OF 2012**
**AND**
**Civil Miscellaneous Appeal No.21 OF 2024**

**COMMON JUDGMENT:**

Dissatisfied by the order dated 07.09.2011 in W.C.Case No.52 of 2010 NF passed by the learned Commissioner for Employee's Compensation and Deputy Commissioner for Labour at Nizamabad, the applicant filed Civil Miscellaneous Appeal No.299 of 2012 and whereas the opposite party No.2/Insurance Company filed Civil Miscellaneous Appeal No.21 of 2024.

2. Since the parties involved and the impugned order in both the cases is one and the same, this Court is inclined to dispose of both the cases by way of this common judgment.

3. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned Commissioner.

4. The brief facts of the case are that the applicant has filed an application under the provisions of Workmen's Compensation Act, 1923 (amended as Employees' Compensation Act, 1923) claiming compensation of Rs.4,00,000/- alleging that he was employed by opposite party

No.1 as labourer on Lorry bearing No. ADC 0045, which was insured with opposite party No.2. On 30.10.2004 the applicant in discharge of his duties in pursuance of the instructions of opposite party No.1 was returning on the above said lorry from Dilsuknagar after unloading the sand and when the lorry reached near Jeedipalli shivar, the driver of the said lorry applied sudden breaks to avert hitting of the bus, which was coming in the opposite direction and could not control it and dashed to a road side tree, which culminated into accident. The applicant along with other labour, cleaner and driver of the said lorry sustained fracture injuries and other injuries all over their bodies. The applicant was shifted to CNR Hospital, Medchal and thereafter the applicant took treatment in private hospitals. A case in Crime No.208 of 2004 was registered by Police, Toopran for the offence under Section 337 of the Indian Penal Code, however, after due investigation, charge sheet was filed for the offence under Section 338 of the Indian Penal Code. Due to the injuries, the applicant became permanent disabled and he was removed from the employment. The applicant was aged about 35 years and he was being paid Rs.4,000/- per month as salary by his employer as on the date of the accident. Hence, the applicant filed the application seeking compensation of Rs. 4,00,000/-. The lorry was insured with opposite party No.2 and

the insurance policy was subsisting as on the date of the accident. Hence, the opposite party being the employer and opposite party No.2 being the insurer of the said lorry, are jointly and severally liable to pay compensation to the applicant.

5. After receipt of notice, opposite party Nos.1 and 2 filed their respective written statements, wherein the opposite party No.1 admitted the employment of the applicant under him, payment of Rs.4,000/- per month as salary to the applicant, the manner of the accident, however, he claimed that the age of the applicant was more than 35 years. It is further contended that after the accident, the applicant was not attending to the duties. It is also contended that amount of compensation is highly excessive and exorbitant and since the lorry was insured with opposite party No.2 and as the insurance policy was subsisting as on the date of the accident, in case of awarding any compensation, opposite party No.2 alone is liable to pay the said compensation. On the other hand, the opposite party No.2 denied the averments of the application including the employment of applicant under opposite party No.1, age and salary of applicant, employee and employer relationship between applicant and opposite party No.1, coverage of

insurance of the lorry and finally prayed to dismiss the application.

6. Before the learned Deputy Commissioner, on behalf of the applicant, AWs 1 and 2 were examined and Exs.A1 to A12 were marked. Exs.A1 to A1 to A5 are the certified copies of FIR, Charge sheet, scene of offence – sketch plan, injury certificate and disability certificate. Exs.A6 to A12 are the copies of insurance policy, copy of driving license, good carriage permit, registration certificate, tax receipt, fitness certificate and salary certificate. Whereas, on behalf of the opposite party No.2, RW1 was examined and Exs.B1 and B2 were examined. Ex.B1 is the copy of insurance policy and Ex.B2 is the Photostat copy of letter submitted by opposite party No.1. The learned Deputy Commissioner after considering the evidence on record, both oral and documentary, by determining the salary of applicant at Rs.2,320.50 paise per month, loss of earning capacity @ 65% and by applying the factor '197.06' for the age of injured being 35 years, has awarded Rs.1,78,338/- towards compensation.

7. Dissatisfied by the impugned order, the applicant has filed Civil Miscellaneous Appeal No.299 of 2013 for enhancement of compensation and whereas the Insurance

Company has filed the Civil Miscellaneous Appeal No.21 of 2024 to set aside the impugned order.

8. Heard Sri K.Mahender Reddy, learned counsel representing Ms.K.Sarala Reddy, learned counsel on record for the injured/applicant and Sri N.J.Sunil Kumar, learned Standing Counsel for the Insurance Company – opposite party No.2 and perused the record.

9. Though, both the counsel have raised several grounds pointing out the infirmities in the impugned order, the Honourable Supreme Court in **North East Karnataka Road Transport Corporation v. Sujatha**[1] held as under:

> *"9. At the outset, we may take note of the fact, being a settled principle, that the question as to whether the employee met with an accident, whether the accident occurred during the course of employment, whether it arose out of an employment, how and in what manner the accident occurred, who was negligent in causing the accident, whether there existed any relationship of employee and employer, what was the age and monthly salary of the employee, how many are the dependents of the deceased employee, the extent of disability caused to the employee due to injuries suffered in an accident, whether there was any insurance coverage obtained by the employer to cover the incident etc. are some of*

[1] (2019) 11 SCC 514

*the material issues which arise for the just decision of the Commissioner in a claim petition when an employee suffers any bodily injury or dies during the course of his employment and he/his LRs sue(s) his employer to claim compensation under the Act.*

*10. The aforementioned questions are essentially the questions of fact and therefore, they are required to be proved with the aid of evidence. Once they are proved either way, the findings recorded thereon are regarded as the findings of fact.*

*11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lies only against the specific orders set out in clauses (a) to (e) of Section 30 of the Act with a further rider contained in the first proviso to the section that the appeal must involve substantial questions of law.*

*12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case."*

10. In **Golla Rajanna etc., v. The Divisional Manager and another etc.,**[2] the Honourable Supreme Court held as under:

[2] 2017 (2) ALD 14 (SC)

> *"11. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts. The Parliament has thought it fit to restrict the scope of the appeal only to substantial questions of law, being a welfare legislation. Unfortunately, the High Court has missed this crucial question of limited jurisdiction and has ventured to re-appreciate the evidence and recorded its own findings on percentage of disability for which also there is no basis. The whole exercise made by the High Court is not within the competence of the High Court under Section 30 of the Act."*

11. In view of the principle laid down in the above said authorities, it is clear that most of the contentions raised by both the counsel are not based on a question of law but they are purely based on questions of fact, which cannot be raised before this Court as per Section 30 of the Workmen's Compensation Act. Hence, it is quite clear that the scope of appeal under Section 30 of the Employee's Compensation Act is very limited, thereby the scope of interfering with the order passed by the learned Commissioner is also limited until and unless the order passed by the learned Commissioner is perverse or when there is patent irregularity or illegality committed by the learned Commissioner in passing the impugned order. Moreover, when two interpretations are possible, the interpretation, which is favourable to the claimant, shall be taken into consideration,

since the Workmen's Compensation Act (now Employees' Compensation Act) is a beneficial legislation enacted to protect the interest of employees. Therefore, based on the material available before this Court, let us see whether the impugned order suffers from any infirmities, which amounts to perversity.

12. It is the contention of the learned Standing Counsel for the Insurance Company that the vehicle was not used for carrying sand on the date of accident and thereby there is no employee and employer relationship between the applicant and opposite party No.1 and that the applicant and three others were travelling as an unauthorized passengers. In order to substantiate the said contention, RW1, who is the Assistant of opposite party No.2, deposed that as per the letter Ex.B2 issued by the opposite party No.1 to the opposite party No.2 the vehicle in question was not used for carrying the sand but it was carrying idols. However, RW1 admitted in his cross-examination that in general, wherever the vehicles not fitted with hydraulic system require labour for loading and unloading purpose. Ex.B2 is the letter dated 14.03.2011 addressed by opposite party No.1 to opposite party No.2, wherein it was averred that about six years ago he sent his lorry to Hyderabad to bring idols and while returning, an accident occurred in the

limits of Toopran Police Station and two years thereafter he sold the said lorry. Admittedly, the accident occurred on 30.10.2004. It is the contention of the applicant that the opposite party No.2 has obtained Ex.B2 by force from opposite party No.1. Though Ex.B2 was alleged to be addressed by the opposite party No.1 to opposite party No.2, it can be seen that Ex.B2 is a mere piece of paper and it is no where mentioned as to whom it was addressed and what is the purpose of addressing it. Thus, there is no sanctity to Ex.B2 to be accepted as genuine. In these circumstances, any amount of ambiguity would arise for consideration, as to whether the lorry was used for carrying sand or idols. If at all the opposite party No.1 has sent the lorry to Hyderabad for brining idols about six years from the date of Ex.B1, it would be around 2005 but not in the year 2004 i.e., the year of the accident. Moreover, as per Ex.A1 FIR and Ex.A2 charge sheet, the Police, Toopran after due investigation has come to a conclusion that the accident took place at the outskirts of Jeedipally while coming from Hyderabad to Nizamabad after unloading the sand. A perusal of Ex.B1 Insurance Policy, there is no condition stipulated that the lorry must be used for transporting only sand. Admittedly, the lorry is a goods carrying vehicle. Even as per the evidence of RW1, even idols come under the category of “goods”. Therefore,

it is irrelevant as to what kind of goods that are being carried in the said lorry. However, in the cross examination RW1 admitted that the vehicle is a goods carrying vehicle and that in general when the vehicles were not fitted with hydraulic system, labour are required for loading and unloading purpose and that the idols carrying in the insured vehicles comes under 'goods'. If at all there is hydraulic in the lorry, there is no necessity for the opposite party No.1 to engage the applicant and others as labourers for unloading the sand from the lorry. Even as per Ex.B1, it is the opposite party No.1, who has sent the lorry to Hyderabad for carrying idols and thus, an inference can be drawn that the persons travelling in the said lorry were discharging duties on the instructions of opposite party No.1 and thus, they are the employees working under opposite party No.1 on the date of the accident. Therefore, there is employee-employer relationship between applicant and opposite party No.1. It is also clear from the above evidence that applicant was not travelling as unauthorized passenger but he was travelling as labourer on the lorry to discharge his duties as instructed by opposite party No.1.

13. The other contention of the learned Standing Counsel for the Insurance Company is that though the insurance policy

under Ex.B1 is subsisting as on the date of the accident, the policy does not cover the risk of labourers, as no additional premium was paid by the opposite party No.1 and thus, opposite party No.2 is not entitled to pay any compensation. In support of such contention, the opposite party No.2 examined their Assistant as RW1, who deposed that the liability under Ex.B1 insurance policy is for two workmen i.e., driver and cleaner and it does not cover the risk of labourer as no additional premium was paid by the opposite party No.1.

14. In **Oriental Insurance Company Limited v. Thukaram Adappa and others**[3]**,** the High Court of Karnataka held as follows:

> *"In Asha Rani's case, Devi Reddy Konda Reddy's case, Ajit Kumar's case and Baljit Kaur's case, the Supreme Court has held that the legislative intent was to prohibit goods vehicle from carrying any passenger. Carrying passengers in a goods vehicle is not contemplated under the Act. Though the Act mandates compulsory coverage against death of or bodily injury to any passenger of a public service vehicle and compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle, the liability was limited to liability under the Workmen's Compensation Act, 1923. The legislature never intended to cover the*

[3] 2007 ACJ 1497

*risk of any passenger in goods carriage. The premium paid under the new Act would only cover a third party, any passenger of a public service vehicle as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise. However, once such a policy is taken to paying the premium, statutorily the employees of the insured such as driver, conductor, ticket collector and who are carried in the goods carriage, are also covered to the extent of the liability under the Workmen's Compensation Act, 1923."*

15. In **P. Venkata Ramana v. Chintaguntla Kumari and others**[4], the High Court for the erstwhile State of Andhra Pradesh held that putting a vehicle to use, the drivers, irrespective of the nature of the vehicle, conductors in public service vehicle and the coolies or labourers, engaged on a goods carriage are the essential operators and it is they, who become instrumental in operating the vehicle. In **Oriental Insurance Company Limited v. Meena Variyal and others[5],** the Honourable Supreme Court observed as under**:**

*"Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place,*

[4] 2010 (2) ALD 281
[5] (2007) 5 SCC 428

*and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of subsection (1) of Section 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act. 14. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods."*

16. In **National Insurance Company Limited v. Prembai Patel and others**[6]**,** the Honourable Supreme Court held as under:

> *"15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act."*

17. Even in the case on hand, a perusal of Ex.B1 – Insurance Policy in respect of Lorry bearing No. ADC 0045 clearly discloses that the policy was "Policy A Liability" and thereby, the principle laid down in the above said citation is squarely applicable to the facts of the case on hand. Thus, the liability of the insurance company qua the employees would be limited to that arising under the Workmen's Act.

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[6] AIR 2005 SC 2337

18. In **United India Assurance Company Limited v. Shandoorapu Gangavva and another**[7] the Single Judge of this Court, while dealing with the liability of Insurance Company in respect of death of a driver in case of the policy taken by the owner of the vehicle as 'Act Liability' without payment of extra premium, has dismissed the appeals filed by the Insurance Company by taking similar view, which was observed in **Prembai Patel** case (supra) and held that liability of insurance company *qua* employees of the owner could not be unlimited but it would be limited to that arising under Workmen's Compensation Act. It was further observed that in **New India Assurance Company Limited v. Satpal Singh Muchal**[8] the Honourable Supreme Court held that statutorily the employees of the insured such as driver, conductor and ticket collector, who are carried in the goods carriage, are covered to the extent of the liability under the Act without payment of any additional premium. Learned counsel for the opposite party No. 2 / Insurance Company has contended that the Commissioner grossly erred in awarding compensation relaying on Judgment of **Satpal Singh's** case, which was over ruled by the Apex Court

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[7] Common judgment, dt. 09.03.2023, CMA (SR) Nos. 4208, 4214 and 4220 of 2006
[8] 2000 ACJ 1 SC

in **Asha Rani's**[9] case. However, it is to be seen that the Honourable Supreme Court *in* ***Prembai Patel's*** case (supra), which is subsequent to **Asha Rani**'s case, held that where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

19. In view of the above discussion and considering the principle laid down in the above said authorities and since the applicant is not a gratuitous passenger and as the applicant is an employee rendering his services to the opposite party No.1 under employee-employer relationship, the contention of the learned counsel for the opposite party No.2 that the policy does not cover the risk of labourers in view of nonpayment of additional premium, is unsustainable. Therefore, the opposite party No.2 is liable to indemnify the opposite party No.1 i.e., owner of the lorry.

20. The other contention of the learned Standing Counsel for the Insurance Company is that the learned Commissioner erred in considering the evidence of the doctor, who is not competent to issue disability certificate and never treated the applicant.

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[9] (2003 (2) SCC 223)

On the other hand, the learned counsel for the applicant contended that the learned Commissioner erred in not considering the disability of applicant @ 100%.

21. Admittedly the applicant met with an accident and also sustained grievous injuries as evident from Exs.A4 and A5. Therefore, it is irrelevant as to who has treated the applicant. Moreover, in **Raj Kumar v. Ajay Kumar**[10] the Honourable Supreme Court held as under:

> *"13. We may now summarise the principles discussed above :*
>
> *(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
>
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*
>
> *(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning*

[10] (2011) 1 SCC 343

*capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*

*(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."*

22. In **T.J.Parameshwarappa v. The Branch Manager, New India Assurance Company Limited and others**[11]**,** the Honourable Supreme Court held as follows:

*"The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability."*

23. In view of the principle laid down in the above said authorities, it is not necessary that the doctor, who has treated the injured, has to give evidence with regard to disability of the injured, however, the doctor, who has examined the applicant subsequent to the accident can also depose about the disability of the injured. In the case on hand, AW2 can be considered as competent medical officer to assess the disability, as he is none other than Civil Assistant Surgeon at Government Headquarters Hospital, Nizamabad. In such circumstances and by

[11] Civil Appeal Nos.8598-8599 of 2022 (arising out of Special Leave Petition (C) Nos.11730-11731 of 2021 decided on 18.11.2022

considering the evidence of AW1 corroborated by the evidence of AW2 coupled with the documentary evidence in the form of Exs.A1 and A2, the disability certificate under Ex.A5 can certainly be taken into consideration, though the said certificate was not issued by competent Medical Board. Hence, the above contention of the learned counsel for the opposite party No.2 that the learned Commissioner erred in considering the evidence of AW2, is unsustainable.

24. The applicant, who is examined as AW1, has reiterated the averments of the application in the chief examination. The applicant got examined the medical officer i.e., AW2, who has deposed about the disability of the applicant. AW2, who is the consultant orthopedic surgeon and former Civil Assistant Surgeon, Government Headquarters Hospital, Nizamabad, deposed that he examined the applicant, aged about 46 years on 08.06.2010 and found fracture of left radius and ulna, fracture of left femur and fracture of left clavicle malunited with stiffness and painful range of movements of forearm left and left wrist shortening of left lower limb and episodes of neuralgia. He further deposed that the applicant was subjected to various exercises, clinical and physical examination. AW2 further deposed that he verified old record and assessed the loss of

permanent partial disability at 65% and the functional disability at 65% and loss of earning capacity at 65% and issued Ex.A5 disability certificate and that the injuries mentioned in Ex.A5 correspond to the injuries mentioned in Ex.A4. AW2 deposed that applicant cannot lift heavy weights or do not work, cannot sit and stand for a long time. It is not the evidence of AW2 that the injuries sustained by the applicant were permanent in nature. Admittedly, the applicant sustained non schedule injuries. Moreover, the evidence of AW2 is also silent with regard to the capability of AW1 not performing the duties as he used to do previously. It is not even the evidence of AW2 that the applicant cannot do any work in future. In the absence of any such evidence, the contention of learned counsel for the appellant that learned Assistant Commissioner ought to have assessed the percentage of disability of the applicant @ 100% is unsustainable. Therefore, this Court is of the considered view that the learned Commissioner after considering the evidence of AWs 1 and 2, oral and documentary evidence, has rightly assessed the percentage of disability and loss of earning capacity in consonance with the evidence of AW2 and thereby this Court finds no reason to interfere with the percentage of disability as assessed by AW2 and as fixed by learned Commissioner in computing the compensation.

25. The learned counsel for the applicant contended that the learned Commissioner erred in reducing the monthly salary of the applicant. The applicant claimed that he was paid Rs.4,000/- per month as salary by opposite party No.1 and in support of his contention, relied upon Ex.A12 salary certificate. The opposite party No.1 in his written statement admitted to have paid Rs.4,000/- per month as salary to the applicant. However, the learned Commissioner has fixed the monthly salary of the applicant @ Rs.2,320.50 paise by considering the minimum salary prevailing at the relevant point of time as per the G.O.Ms.No.30 L.E.T. & F (Lab-II) Department dated 27.07.2000 issued by Government of Andhra Pradesh in employment of Public Transport. The learned Commissioner did not consider the salary of the applicant @ Rs.4,000/- on the ground that the applicant did not file any other document except salary certificate. In **Mamta Devi v. The Reliance General Insurance Company Limited**[12], the Honourable Supreme Court held as under:

> *"11) Having regard to the object of the Act which envisages dispensation of social justice, we are of the considered view that the Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation fell in error in arriving at a conclusion that claimants' income is*

[12] 2023 (4) ALD 49 (SC)

*to be construed at Rs.3,900/- p.m. or the minimum wage to be computed should be at Rs.150/- per day in the absence of any proof of income. The written statement filed by the employer would be a complete answer to this, inasmuch as it is categorically admitted by the employer that deceased was drawing Rs.6,000/- per month as wages. The deceased was a truck driver and had four mouths to feed at the time of his demise in the year 2011. By no stretch of imagination, it can be construed that income which he was earning as claimed by his wife in her statement made on oath can be construed as excessive or not commensurate with the wages earned by a truck driver in the year 2011.*

*12) Thus, the irresistible conclusion which we have to draw is, the unchallenged statement of the wife of the deceased who had deposed that her husband was earning Rs.6,000/- per month deserves to be accepted as gospel truth. We see no reason for disbelieving her statement."*

26. Therefore, by considering the principle laid down in the above said citation and since the applicant and opposite party No.1 have categorically stated that the applicant was paid Rs.4,000/- per month as salary, this Court is of the view that the learned Commissioner erred in reducing the salary of the applicant and by considering the minimum salary instead of considering the salary stated in Ex.12 salary certificate. Hence, this Court is inclined to interfere with the findings of the learned Commissioner, so far as salary of the applicant is concerned

and thereby the salary of the applicant may be considered @ Rs.4,000/- per month while calculating the compensation.

27. Based on the above discussion, the applicant is entitled for compensation, which is calculated as under:

$$\text{Rs.4,000/- x } \frac{60}{100} \text{ x } \frac{65}{100} \text{ x 197.06 = Rs.3,07,413.6}$$

***(rounded off to Rs.3,07,414/-)***

28. The other contention of the learned counsel for the applicant was that the learned Commissioner erred in awarding interest from the date of default of deposit of the compensation amount. As seen from the impugned order, the learned Assistant Commissioner awarded interest on the compensation amount from the date of default of deposit of the compensation amount by the opposite parties. The Honourable Supreme Court in ***P. Meenaraj v. P. Adigurusamy***[13]*, held as under:*

> *"10. As regards the date of commencement of the liability of interest, the learned counsel for the appellant appears to be right that even in the case of Pratap Narain Singh Deo (supra), this Court has not laid down the law that the interest would be payable only 30 days after the accident. In our view too, the said statutory period of 30 days does not put a moratorium over the liability of interest. Such interest is related with the amount of compensation receivable*

[13] Civil Appeal No 209 of 2022, decided on 6 January 2022

*by the claimant and there appears no reason for not allowing interest for 30 days from the date of accident. In fact, in the referred decisions too, this Court has allowed interest from the date of accident. That being the position, the questioned part of the order of the High Court calls for interference and the same is modified to the extent that the appellant would be entitled to interest from the date of accident."*

29. In view of the principle laid down in the above said citation, it is evident that the applicant is entitled for interest @ 12% per annum on the compensation amount from the date of accident but not from the date of default of payment of compensation. Hence, this Court is inclined to award interest @ 12% per annum from the date of accident.

30. In view of the above facts and circumstances, this Court is of the considered opinion that the learned Commissioner after considering all the aspects has rightly awarded reasonable compensation as stated supra. However, this Court is inclined to interfere with the findings of the learned Commissioner only to the extent of awarding interest @ 12% per annum on the compensation amount from the date of accident as per the decision in ***P. Meenaraj*** *case (supra).*

31. Accordingly, the Civil Miscellaneous Appeal No.299 of 2012 is allowed in part. The order dated 04.01.2013 in W.C.Case No.52 of 2010 passed by the learned Commissioner for Employee's Compensation and Deputy Commissioner for Labour at Nizamabad, is modified to the extent of enhancing the compensation from Rs.1,78,338/- to Rs.3,07,414/-, which carries the interest @ 12% per annum from the date of the accident. The Civil Miscellaneous Appeal No.21 of 2024 is dismissed. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

**JUSTICE M.G.PRIYADARSINI**

Date: 09.08.2023
AS