

Court No. - 36

Case :- FIRST APPEAL FROM ORDER No. - 1360 of 2020

Appellant :- Kaptan Singh And Another

Respondent :- Sri Raj Narayan And Another

Counsel for Appellant :- Shreesh Srivastava

Hon'ble Vivek Agarwal,J.

1. Heard Sri Shreesh Srivastava, learned counsel for the appellants and Sri Arvind Kumar, learned counsel for the respondent-New India Assurance Co. Ltd.

2. This FAFO has been filed by the claimants being aggrieved by the award dated 14.08.2020 passed by the Commissioner under the Employees Compensation Act, 1923 at Kanpur only on the ground that the income of the deceased has been construed at Rs. 8,000/- (eight thousand rupees) per month whereas he was drawing a salary to the tune of Rs. 12,000/- (twelve thousand rupees), but learned tribunal has not even taken the income @ minimum wages as applicable on the date of the accident for a skilled labourer i.e., @ Rs. 9,873.08/- (nine thousand eight hundred seventy three rupees and eight paise) per month. However, taking into consideration the cap provided under the Employees Compensation Act on the maximum income to be computed for the purposes of compensation at Rs. 8,000/- (eight thousand rupees) per month, compensation has been calculated taking income at Rs. 8,000/- (eight thousand rupees) per month and not even @ of minimum wages prescribed by the State Government for a skilled labourer.

3. Learned counsel for the appellant though vehemently submits that wages should have been computed at least at the minimum wages prescribed by the State authorities, but is not in a position to dispute the fact that an amendment was affected in Section 4 (1B) of the Employees' Compensation Act, 1923 whereby it is provided that "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."

4. The Central Government has specified for the purpose of sub-section (1), "Eight thousand rupees" as monthly wages, vide S.O. 1258(E), dated 31st May, 2010. It is true that vide Gazette Notification published in the Gazette of India dated 3rd January, 2020, S.O. 71(E) has been issued whereby in exercise

of its authority provided under Section 4(1)(B), the notification dated 31st May, 2010 has been revised and the monthly wages, with effect from the date of publication of the notification in the Official Gazette has been enhanced to Rs. 15,000/- (fifteen thousand rupees).

5. Hon'ble Supreme Court in case of ***K. Shivaraman and Others vs. P. Sathishkumar and Another*** as reported in **2020 (4) SCC 594** has held that the effect of the notification is not retrospective but prospective inasmuch as the amendments enhancing the compensation payable under the 1923 Act confer a benefit upon employees, a corresponding burden is imposed on employers to pay a higher rate of compensation.

6. In case of ***Kerala State Electricity Board and Others vs. Valsala K. and Others*** as reported in **1999 (8) SCC 254**, it has been held that the benefit of an amendment, enhancing the rate of compensation does not have retrospective application to accidents that took place prior to coming into force of the amendment. Admittedly, in the present case, accident took place on 17.06.2019 and therefore, cap of Rs. 8,000/- (eight thousand rupees) per month as prescribed by the Central Government *vide* S.O. 1258(E) dated 31st May, 2010 fixing monthly wages @ Rs. 8,000/- (eight thousand rupees) per month will be applicable and therefore, there is no illegality or arbitrariness in the impugned award in not computing the minimum wages prescribed by the State Government for the purpose of calculation of compensation.

7. Therefore, F.A.F.O. deserves to be dismissed and is ***dismissed.***

Order Date :- 9.9.2020

Vikram/-