IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 25TH DAY OF MARCH 2026 / 4TH CHAITHRA, 1948

MFA (ECC) NO. 52 OF 2025

AGAINST THE JUDGMENT DATED 22.03.2024 IN ECC NO.34 OF 2017 OF THE COMMISSIONER FOR EMPLOYEES COMPENSATION (INDUSTRIAL TRIBUNAL), ALAPPUZHA

APPELLANT/OPPOSITE PARTY:

THE CHAIRMAN AND MANAGING DIRECTOR,
KERALA STATE ELECTRICITY BOARD LTD.,
VYDUDHI BHAVANAM, PATTOM,
THIRUVANANTHAPURAM, PIN – 695004.

BY ADVS.
SRI.C.JOSEPH ANTONY
SRI.JOSEPH JOSE
SRI.RAJU JOSEPH (SR.)

RESPONDENT/APPLICANT:

SUDHISH P.S.
S/O SUKESHAN, HOUSE NO, NRA/145,
VALLIPPARAMBIL HOUSE, SUFDERHASHMI LANE, PACHALAM PO,
KOCHI, PIN – 682012.

BY ADVS.
SRI.B.ASHOK SHENOY
SRI.P.S.GIREESH
SRI.UMASANKER U.U.
SRI.ADITYA A. SHENOY

THIS MFA (ECC) HAVING BEEN FINALLY HEARD ON 04.03.2026, THE COURT ON 25.03.2026 DELIVERED THE FOLLOWING:

[CR]

S.MANU, J.

M.F.A.(ECC)No.52 of 2025

Dated this the 25th day of March, 2026

JUDGMENT

Appellant was the opposite party in E.C.C.No.34/2017 before the Commissioner for Employees' Compensation, Alappuzha. The respondent was a Lineman Grade-II in Kumily Electrical Section under the appellant. On 4.4.2015, when the respondent and some other employees were engaged in replacing an old electric post, the post fell on the shoulder of the respondent resulting in a severe injury to his spinal cord. An amount of Rs.7,17,696/- was deposited by the appellant as compensation. The respondent approached the Commissioner, discontented with the amount deposited by the appellant. The appellant contended that it had deposited the compensation before the Tribunal and in addition to the same sanctioned an

amount of Rs.4,56,445/- towards reimbursement of medical expenses. It also extended the benefits under Section 47 of the Persons with Disabilities Act,1995. Taking into account the disability of the respondent, he was accommodated in a supernumerary post with all service benefits. Under such circumstances, there was no loss of earning to the respondent. Therefore, the appellant prayed that the application for compensation was liable to be rejected. In his rejoinder, the respondent contended that the compensation deposited by the appellant was inadequate. The respondent is suffering from paraplegia and is bedridden. He therefore contended that the compensation ought to have been calculated treating the loss of earning capacity as 100%.

2. The respondent was examined as AW1 and a doctor was examined as AW2 before the Commissioner. Exts.A1 to A11 were marked on the side of the respondent.

3. The learned Commissioner held that the benefits granted under Section 47 of the Persons with Disabilities Act, 1995 would not preclude the respondent from claiming benefits under the Employees' Compensation Act, 1923. It was also found that the disability had to be accepted as 100%.

4. Relying on the judgment of this Court in **Fertilizers and Chemicals Travancore Limited v. Sushama Kumari** [2023 SCC OnLine Ker 1564], the Commissioner fixed the compensation on the basis of the actual monthly wages of the respondent. Interest at the rate of 12% was granted for the period from the date of the accident till the date of deposit of the admitted amount by the appellant. The compensation payable was fixed as Rs.24,52,950/-. Subtracting the amount in deposit, the appellant was directed to deposit an amount of Rs.17,35,254/- along with interest. Aggrieved by this order, the instant appeal has been filed.

5. The following substantial questions of law have been raised in this appeal:-

> "i) Can the Commissioner for Employees Compensation suo-moto award compensation far beyond the request made by the applicant?
>
> ii) Whether the Commissioner is justified in disregarding notification issued by Central Government under Sec 4(1B) and taking recourse to Sec 5 of the Employees Compensation Act while awarding amount of compensation?
>
> iii) Whether, in the light of facts involved in the case and on a correct interpretation of Sections 4(1), 4(1B) and Section 5 of the Employees' Compensation Act, an employee is entitled to get compensation reckoning any amount beyond the monthly wages fixed by the Central Government invoking its power under Section 4(1B) of the Employees' compensation Act, 1923?
>
> iv) Whether the decision rendered by this Hon'ble Court in MFA(ECC) No.65 of 2017 dated 02.03.2023 (2023 (2) KHC 385), is correctly decided on a proper interpretation of Sections 4(1), 4(1B) and 5 of the Employees' Compensation Act, 1923?"

6. The first aspect to be discussed is whether the Commissioner has the power to fix a higher compensation than that claimed in the application. The duty enjoined on the Commissioners under the Act is to provide just and proper

compensation to the victims of employment accidents. The Commissioners play the most crucial role in implementing the provisions of the Act. Apart from adjudicating the claims for compensation, various other responsibilities are also enjoined on the Commissioners under various provisions of the Act. The proceedings before the Commissioner are not governed by stringent rules regarding pleadings and evidence as in the case of criminal and civil trials. It is also to be noted that applications for compensation will be filed by injured employees or their dependents who may not be much educated or equipped to engage in a complex legal fight. The legal assistance if any obtained by them may be of varying degrees in quality. Hence, if a strict view is taken that in no case shall the Commissioner grant compensation beyond what is sought for, even if the applicant is actually entitled to a higher sum, the outcome will be injustice. The Employee’s Compensation Act is a beneficial legislation, one among various legislative measures adopted to

ensure social security to the labour force of the country. While interpreting such a law, the Court shall bear in mind the peculiar environments of the intended beneficiaries. An interpretation without such sensitivity may lead to frustration of the objectives of the Act. Summing up the discussion on this issue, I hold that in view of the provisions of Sections 3 and 4 of the Act, the Commissioner is bound to grant just and proper compensation even though the compensation determined by the Commissioner in accordance with the provisions of the Act exceeds the amount claimed by the applicant. Power of the Commissioner to award just and proper compensation is not circumscribed by the amount claimed in the application for compensation.

7. I find support for the above view from various precedents. The Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others** [(2013) 9 SCC 54] held as under with respect to the proceedings before the Motor Accidents Claims Tribunal:

> "11. Underlying principle discussed in the above decisions is with regard to the duty of the court to fix a just compensation and it has now become settled law that the court should not succumb to niceties or technicalities, in such matters. Attempt of the court should be to equate, as far as possible, the misery on account of the accident with the compensation so that the injured/the dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim."

Though the Apex Court held as above in a case arising under the Motor Vehicles Act, in my view, the principle can be applied to the proceedings under the Employees Compensation Act as well.

8. More precisely, in the following judgments, Madras and Bombay High Courts have held that the Commissioner under the Employee's Compensation Act is empowered to grant compensation in excess of the amount claimed:-

1) **Century Chemicals and Oils (Private) Ltd. v. Esther Maragatham** [1998 (2) L.L.N. 583]

2) **Oriental Insurance Company Ltd. v. Srimati S. Sawant and another**
[2001 SCC OnLine Bom 356].

3) **Raiwantabai W/O Ramdas Sard Are v. Nagpur Municipal Corporation**
[2017 SCC OnLine Bom 9846].

9. Relevant observations in **Century Chemicals and Oils (Private) Ltd** *(Supra)* are as follows:

> "17. Learned counsel for the appellant further submitted that the compensation claimed by the claimants is much less than what has been awarded and, therefore, the authority has exceeded in its jurisdiction. The said submission also cannot be accepted. Once it is found that he is a skilled labourer, the Act provides that formula under which the compensation has to be calculated. That compensation will have to be awarded irrespective of the claim. Even if a mistake has been committed by the claimants, the authority is bound to pay due compensation payable on account of the death of the deceased. None of the grounds urged by learned counsel for the appellant can be sustained. The appeal is, therefore, dismissed. No costs. Consequently, the connected C.M.Ps are also dismissed."

10**.** It was held in **Oriental Insurance Company Ltd.** (Supra) as under:-

> "21. In this behalf it would be appropriate to advert to the decision of the Madras High Court in Century Chemicals and Oils (Private) Ltd. v. Esther Maragatham) reported in 1998 (2) L.L.N. 583, which

> has taken a view that even if a mistake has been committed by the claimant while setting up the claim for compensation under the provisions of the Act, however, it is the duty of the Commissioner to award compensation in terms of the provisions of the Act and not with reference to such a faulty claim. In my view, although the respondent No.1 claimant had filed application praying for compensation of Rs.30,000; however, the Commissioner was well justified in awarding higher compensation that what was prayed for by the applicants/respondent No.1, so long as the said compensation was in accordance with the provisions of the Act. In the circumstances, the grievance made on behalf of the respondent No.2 that the amount awarded travelled beyond the relief prayed for is wholly misplaced and untenable. In my view, the Commissioner was justified in awarding higher compensation than the one actually prayed for in the application, for it is the duty of the Commissioner to pass such order so as to meet the ends of justice in accordance with law. On plain language of S.4 of the said Act, it is seen that it is mandatory that, irrespective of the relief, it is the duty of the Commissioner to award amount of compensation as provided in the said Act."

11. In **Raiwantabai W/O Ramdas Sard Are** (Supra) the Bombay High Court held as under:-

> "5. As rightly submitted by learned counsel for appellant, the reasoning given by the Commissioner for awarding this amount of Rs.1,28,330/-, merely because it was claimed by the appellant, when in fact she was found to be entitled legally to get the amount of Rs.1,88,645/-, is completely erroneous and that finding

> has to be quashed and set aside. Needless to state that it is the duty of the Commissioner under Workmen's Compensation, to award the amount of compensation which is just, adequate and fair and which amount the claimant is found entitled to get under the statute and not that amount which the claimant demands or does not demand. The Commissioner for Workmen's Compensation has thus, failed in his duty in not awarding the reasonable amount of compensation to which the Commissioner has held the appellant entitled to, that is the amount of Rs.1,88,645/-. Hence, to that extent definitely interference is warranted in the impugned judgment and order of the Commissioner."

12. The next issue relates to the impact of the notification issued by the Central Government under Section 4(1B) of the Employees' Compensation Act, 1923.

13. In **Fertilizers and Chemicals Travancore Limited** (Supra), a learned Single Judge of this Court held that the monthly wages shall be the actual wages of the employee for the purpose of calculating compensation. The learned Senior Counsel for the appellant contended that the said judgment is incorrect. He submitted that if the interpretation of the provisions of Section 4(1B) and Section 5 of the Act adopted in the said judgment is accepted, then the provisions of Section

4(1B) would become redundant. He further submitted that an interpretation which would render a provision of the Act redundant should be avoided. He submitted that, at the time of the accident in this case, the notification issued by the Central Government fixed Rs.8,000/- as the monthly wages. He hence submitted that the learned Commissioner ought to have calculated the compensation by taking Rs.8,000/- as the monthly wages of the respondent. He placed heavy reliance on the judgment of the Hon'ble Supreme Court in **Sivaraman K and others v. P. Sathishkumar and another** [(2020) 4 SCC 594]. He contended that the Hon'ble Supreme Court has taken note of the cap on monthly wages incorporated by the legislature and in view of the law laid down by the Hon'ble Supreme Court, the judgment of the learned Single Judge in **Fertilizers and Chemicals Travancore Limited** (Supra) requires reconsideration. The learned Senior Counsel further contended that in the case at hand, the respondent has been

accommodated in a supernumerary post by the appellant and therefore he is still employed. He submitted that under such circumstances, if the respondent is treated as incapable of any work and compensation is granted for total loss of earning capacity, the same would lead to injustice as far as the appellant is concerned. The respondent will be in a position to work even after receiving compensation for total loss of earning capacity. The learned Senior Counsel submitted that, since the appellant seriously challenges the correctness of the judgment in **Fertilizers and Chemicals Travancore Limited** (Supra), the appeal may be referred for consideration by a Division Bench. He also placed reliance on the judgment of the Andhra Pradesh High Court in **Nagarjuna.D. v. DRN Infrastructure** [2024 KHC 2586] and submitted that the court elaborately considered the impact of notification under Section 4(1) and decided the dispute by following the notification issued by the Central Government under Section 4(1B).

14. Learned counsel for the respondent per contra submitted that the judgment of the learned Single Judge in **Fertilizers and Chemicals Travancore Limited** (Supra) was rendered by adopting an interpretation keeping in mind the object of the Employees' Compensation Act. He further submitted that the Hon'ble Supreme Court in **Sivaraman K and others** (Supra) has categorically held that the intention of the Amendment Act of 2009 was to remove the cap on the monthly income of employees and extend to them compensation on the basis of the actual monthly wages. He further contended that the notification would apply when there is no reliable evidence to prove the monthly income of the employee and when the employee is able to prove the monthly wages, the compensation is to be calculated as provided under Section 5 of the Act. The learned counsel relied on a judgment of the Madras High Court in **Mahalakshmi v. Krishna Raj** [2024 KHC OnLine 5472]. He also referred to a judgment of the High Court of the Himachal

Pradesh in **New India Assurance Company Limited v. Smt.Govindi Devi and others** [2019 SCC OnLine HP 2529]. The learned counsel further submitted that the observation of the Hon'ble Supreme Court in paragraph 26 of the judgment in **Sivaraman K and others** (Supra), even if treated as obiter has binding force in view of the law laid down by a Full Bench of this Court in **State of Kerala v. Parameswaran Pillai Vasudevan Nair** [1974 SCC OnLine Ker 87]. He pointed out that the law laid down by the Full Bench was quoted with approval by a Bench of three Judges of the Hon'ble Supreme Court in **Municipal Committee, Amritsar v. Hazara Singh** [(1975) 1 SCC 794]. The learned counsel also referred to a judgment of the Hon'ble Supreme Court in **Rani v. Branch Manager, Shriram General Insurance Company Limited** [2024 KHC 5474].

15. To address the questions of law raised in this appeal reference to the relevant statutory provisions is vital. Section

2(1)(m) defines 'wages'. The provision reads as under:-

> "**2. Definitions**.—(1) In this Act, unless there is anything repugnant in the subject or context,—
> .....
> (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 a employee towards any pension or provident fund or a sum paid to a employee to cover any special expenses entailed on him by the nature of his employment;"

16. Section 4 deals with the amount of compensation. The relevant part of the provision is extracted hereunder: -

> "**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 from the injury - an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor;
>
> or
>
> an amount of one lakh and twenty thousand rupees, whichever is more;
>
> (b) Where permanent total disablement results from the injury - an amount equal to sixty per cent of the monthly 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).”

17. Section 5 deals with method of calculating wages. The provision reads as under:-

“**5. Method of calculating wages.**—

In this Act and for the purposes thereof the expression “monthly wages” means the amount of wages deemed to be payable for a month’s service (whether the wages are payable by the month or by whatever other period or at piece rates) and calculated as follows, namely:—

(a) where the employee has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the employee shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a employee employed on the same work by the same employer, or, if there was no employee so

> employed, by a employee employed on similar work in the same locality;
>
> (c) in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period."

18. Comprehensive amendments were brought in to force by the Amendment Act of 2009 to the provisions of the Act. Before the amendment, Section 4(1) contained an explanation providing that where the monthly wages of a workman exceed four thousand Rupees, his monthly wages for the purposes of Clauses (a) and (b) of sub-section (1) shall be deemed to be four thousand Rupees only. Hence there was a cap on the monthly wages for the purpose of granting compensation. It is pertinent to note that the said cap was removed by Act 45 of 2009. Instead, Section 4(1B) was incorporated providing 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. The Central Government issued notifications under sub-section 1B and as per the latest notification dated 3.1.2020 the monthly wage has been notified for the purpose of Section 4 as Rs.15,000/-.

19. The conclusion of the learned Single Judge of this Court in **Fertilizers and Chemicals Travancore Limited** (Supra) was that the amount mentioned in the notification of the Central Government would not dis-entitle an employee from seeking compensation on the basis of the actual monthly wages. The learned Single Judge held that no provision was incorporated in the Act either by way of a non obstante clause or by deemed provision so as to curtail or limit or to take away the application under Section 5 of the Act. The learned Single Judge held that the amended provision, sub-section (1-B) will not have any overriding effect and Section 5 of the Act would come into operation in the matter of assessment or method of

calculation of monthly wages as mentioned under Section 4(1) of the Act. The relevant discussion in the judgment is extracted hereunder:-

> "4. There are two provisos attached to Section 4(1) and 4(1-B) of the Act. The proviso attached to Section 4(1) says 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). But clauses (a) and (b) has got two limbs, which are extracted below for reference:
>
> > "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 from the injury - an amount equal to fifty per cent of the monthly wages of the deceased employee multiplied by the relevant factor; or an amount of one lakh and twenty thousand rupees, whichever is more;
> >
> > (b) Where permanent total disablement results from the injury - an amount equal to sixty percent of the monthlywages 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)."
>
> 5. Going by the provision, it is clear that in clauses (a) and (b), there are two separate limbs and in both the clauses, the first limb deals with monthly wages and calculation of compensation thereof without specifying any amount to be paid by way of compensation. It is in

the second limb of both the clauses (a) and (b), an amount of compensation is made mentioned as a sum of Rs.1,20,000/- and Rs.1,40,000/- respectively. The proviso attached to Section 4(1) refers only enhancement of "amount of compensation" mentioned in clauses (a) and (b), which stands for the respective second limb of those clauses, hence may not have any application to the first limb of both the said clauses. So the authority given to the Central Government by virtue of the proviso to Section 4(1) is only to enhance the respective amount of Rs.1,20,000/- and Rs.1,40,000/- mentioned in the second limb of clauses (a) and (b) and it may not have any application to alter the amount that can be assessed as "monthly wages" and it is clear from the language used in the proviso which is restricted to enhance the "amount of compensation" made mentioned in clauses (a) and (b).

6. The amended provision, sub-section (1-B), which was inserted by virtue of the Amended Act is extracted below for reference:

> "(1-B) 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."

7. The earlier provision - Explanation II attached to Section 4(1) of the Act is also extracted below for reference:-

> "Explanation II – Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be <u>deemed to be</u> four thousand rupees only."
>
> (emphasis supplied)

8. The said provision – Explanation II had been taken away by virtue of the Amendment Act 45 of 2009 with effect from 18/1/2010 and thereby deleted the deeming provision therein and substituted with the newly inserted provision - Section 4(1-B), without a deeming provision or any restriction or upper limit regarding "monthly wages" made mentioned therein. Sub-section (1-B) says only that the Central Government may specify for the purpose of sub-section (1) such "monthly wages" in relation to an employee "as it may consider necessary". The expression initially used that "the Central Government may" makes the provision directory and not mandatory without imposing any obligation on the part of the Central Government to notify any such amount, but left open to the discretion of the Central Government, which is well evident from the wording and language used "as it (the Central Government) may consider necessary" in that provision. It is incorporated and inserted not in derogation of the application of Section 5 of the Act, which deals with the method of calculating "monthly wages", which stands and means the amount of wages deemed to be payable for a month's service, whether the wages are payable by month or whatever other period or at piece rate and should be calculated in accordance with clauses (a) to (c) therein. Clause (a) says that where the employee has, during the continuous period of not less than 12 months immediately preceding the accident, been in service of the employer who is liable to pay compensation, the monthly wages of the employee shall be 1/12th of total wages, which have fallen due for payment to him by the employer in the last twelve months of that period. The victim involved in the case was in continuous service for a longer period of more than 12 months prior to the alleged incident, hence falls under clause

(a) of Section 5 of the Act and his monthly wages for the purpose of the said Act should be calculated as 1/12th of the total wages payable to him for the last 12 months. No provision was incorporated either under the Amendment Act 45 of 2009 or anywhere in the Act either by way of a non-obstante clause or by deemed provision so as to curtail or limit or to take away the application of Section 5 of the Act. Necessarily, the newly amended provision – sub-section (1-B) to Section 4 of the Act and the language employed therein which makes the provision not mandatory to notify any sum by the Central Government must be understood not to make the other provision inoperative. It is also not permissible to have an interpretation to the abovesaid newly inserted provision so as to take away the method available for computation of monthly wages made mentioned under Section 5 of the Act. Hence, there cannot be any merit in the argument that the amount notified (Rs.8,000/-) by the Central Government by virtue of sub-section (1-B) should be the "monthly wages" for the purpose of determination of compensation cannot be accepted, otherwise, Section 5 of the Act would stand redundant and purposeless. Necessarily, the non incorporation of either a deeming provision akin to that of in the earlier provision - Explanation II attached to Section 4(1) of the Act or any non-obstante clause or any provision either limiting, reducing or specifying any upper limit with respect to the application of Section 5 of the Act would make the legal position clear that the "monthly wages" and its method of calculation narrated under Section 5 of the Act is applicable in the matter of determination of compensation by virtue of Section 4(1) of the Act, especially when it deals with the determination of compensation based on the "monthly wages". It is made clear in Section 5 of the Act that the method available under that Section is for the purpose

> of calculating "monthly wages" under that Act. It is Section 4 of the Act which says how the compensation has to be computed based on the "monthly wages". Except in Section 4 of the Act, no where the expression "monthly wages" is made mentioned in the Act. The legislature has in its wisdom incorporated the expression "monthly wages" with the highlight of double inverted comas in that provision – Section 5 of the Act. No restriction or limitation was incorporated so as to limit the application of Section 5 anywhere in the Act, even at the time of Amendment Act 45 of 2009. On the other hand, the deeming provision under the Explanation II limiting the liability has been taken away by the abovesaid Amendment Act. Necessarily, the amended provision (1-B) will not have any overriding effect or any legal consequence over and above Section 5 of the Act and Section 5 of the Act would come into operation in the matter of assessment or method of calculation of monthly wages as made mentioned under Section 4(1) of the Act."

20. The learned Senior Counsel vehemently submitted that the interpretation adopted in **Fertilizers and Chemicals Travancore Limited** (Supra) would render the provisions of Section 4(1B) redundant. He argued that the Court shall not adopt a construction which would render any provision of the law redundant. The learned Senior Counsel referred to the following paragraphs of the judgment in **State of Tamil Nadu**

and others v. K.Shobana [(2021) 4 SCC 686]:-

> "12. The appellant relied on Hardeep Singh v. State of Punjab [(2014) 3 SCC 92], paras 42 to 45 : (2014) 2 SCC (Cri) 86] wherein, though the dispute related to the interpretation of the provisions of Section 319 CrPC, what is relevant is the proposition sought to be laid down. It held that it was a settled principle of law that if an interpretation leads to a conclusion that the word used by the legislature is redundant, that should be avoided as the presumption is that the legislature has deliberately and consciously used the word for carrying out the purpose of the Act. The legal maxim a verbis legis non est recedendum which means, "from the words of law, there must be no departure" has to be kept in mind. There could be no assumption that a legislature committed a mistake when the language of the statute was plain and ambiguous. No word in a statute has to be construed as a surplusage nor could any word be rendered ineffective or purposeless if the Court required to carry out the legislative intent fully and completely."

21. The learned Senior Counsel referred to the judgment of the Hon'ble Supreme Court in **Sivaraman.K. and others** (Supra) and made specific reference to the following 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.4000 even where an employee was able to

> prove the payment of a monthly wage in excess of Rs.4000. 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. 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."

22. He submitted that the issue considered by the Hon'ble Supreme Court in the said judgment was regarding the retrospective operation of the amendment and the observation regarding the objective of the amendment was only a passing reference made during the discussion.

23. The learned Senior Counsel earlier relied on a judgment of the Andhra Pradesh High Court in **Nagarjuna.D.** (Supra). Paragraphs 13 to 15 of the said judgment read as follows:-

"13. S.4 of Act, 1923 provides the principle for computation of compensation. By virtue of Act 45 of 2009, several amendments were brought into for this S.4. The said Amendment Act came into force for most part of it on 18.1.2010. Earlier to this amendment, there was Explanation II to S.4 whereunder the monthly wages of an employee were capped at Rs.4,000. Thus, earlier to this amendment in the year 2009 even if the employee was able to prove that his monthly wage was in excess of Rs.4,000, by virtue of the cap fixed by the legislature, it was to be calculated only at Rs.4,000. This Explanation II to S.4 was omitted by the Amendment Act in the year 2009. The effect of that amendment is what the Hon'ble Supreme Court explained at para 26 of their Lordships' judgment which was extracted earlier in this judgment. However, that is not the end of the matter. In the amendment that was made in the year 2009, the legislature brought in sub-section (1B) in S.4, which reads :

"(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".

14. Exercising powers under that provision Central Government issued the following notification on 31.5.2010. The same is extracted here:
"S.O. 1258(E) - In exercise of the powers conferred by sub-section (1B) of S.4 of the Employee's Compensation Act, 1923 (8 of 1923), the Central Government hereby specified, for the purpose of sub-section (1) of the said section, the following amount as monthly wages, with effect from the date of publication of this notification in the official gazette, namely Eight thousand rupees."

15. These aspects could be noticed at para 8 and para 14 of the judgment of the Hon'ble Apex Court of India referred above. Thus, the cap of Rs.8,000 for the purpose of considering monthly wages while computing compensation under S.4 as notified by the Central Government was followed by the learned Deputy Commissioner of Labour in his impugned order here. It is that aspect which is questioned by the learned counsel for appellant based on what their Lordships of the Hon'ble Supreme Court explained at para 26 of the judgment. It has to be stated that in the said ruling, their Lordships were not concerned with Central Government notification of the year 2010 and sub-section (1B) of S.4 of Act, 1923. At para 15 their Lordships stated that the question that fell for consideration before their Lordships was as to whether the Amendment Act 45 of 2009 was prospective in operation or retrospective in operation. In the case before their Lordships, accident occurred on 31.1.2008. By then by virtue of Explanation II cap of Rs.4,000 was there. By the time the matter came to be decided Amendment Act of the year 2009 came into force. It was in those circumstances Hon'ble Division Bench of the Madurai Bench of Madras High Court thought it fit to apply the Amendment Act, 2009 retrospectively and thereby cap of Rs.4,000 was not considered and the actual wage was taken into consideration. After giving various reasons and citing various precedents at para 33 of its judgment, Hon'ble Supreme Court found that the approach of the High Court was erroneous and it ought to have decided the compensation considering Rs.4,000 cap and that the Amending Act, 2009 has no retrospective effect. It was never in the consideration of their Lordships as to whether under S.4(1B), Central Government was empowered to notify monthly wages or not. For the complete picture of the legal provisions, their Lordships were pleased to mention those

> provisions. However, those provisions did not fall for consideration before their Lordships. In that context of the matter only the removal of the cap and its purport was laid down by their Lordships at para 26 of the judgment. In the case at hand, the subject accident occurred on 3.3.2014. By then Amendment Act, 2009 already came into existence and by the time the case fell for consideration before the Deputy Commissioner of Labour, Kurnool, notification of the year 2010 from the Central Government under S.4(1B) came into existence. Bound by that notification and bound by the legal mandate in S.4(1B), learned Deputy Commissioner of Labour appropriately acted in accordance with law. In the cited ruling, their Lordships did not set aside Central Government notification dated 31.5.2010. In the cited ruling, the vires of S.4(1B) was neither questioned nor considered. Therefore, learned Deputy Commissioner, Kurnool acted in terms of Central Government notification dated 31.5.2010. Therefore it is to be upheld as it is in accordance with law. Therefore, the contention of the appellant in challenge to the cap of Rs.8,000 applied by the learned Deputy Commissioner of Labour is incorrect and is not in accordance with law and therefore this contention is negatived."

24. He submitted that the learned Single Judge of the Andhra Pradesh High Court has rightly distinguished the judgment of the Hon'ble Supreme Court in **Sivaraman.K. and others** (Supra). He contended that the view of the Andhra Pradesh High Court is in consonance with the statutory scheme

of the Employees' Compensation Act.

25. The learned Senior Counsel therefore contended that the judgment of the learned Single Judge of this Court in **Fertilizers and Chemicals Travancore Limited** *(Supra)* did not lay down the law correctly. He submitted that the said judgment requires reconsideration by a bench of higher strength. He therefore urged that this appeal may be referred for consideration by a Division Bench.

26. The learned counsel for the respondent supported the judgment in **Fertilizers and Chemicals Travancore Limited** (Supra) and urged that the contentions of the appellant may be rejected and the appeal be dismissed following the dictum laid down by the learned Single Judge. He argued that the Hon'ble Supreme Court in **Sivaraman K. and others** (Supra) has categorically held that the object of the amendment was to remove the cap in the case of monthly wages and to enable the employees to receive compensation on the basis of actual

monthly wages. He contended that the observation by the Hon'ble Supreme Court in the paragraph referred to by the learned Senior Counsel is binding and the judgment in **Fertilizers and Chemicals Travancore Limited** *(Supra)* is in consonance with the principles laid down by the Hon'ble Supreme Court. He referred to the following paragraph of the judgment of the Full Bench in **State of Kerala v. Parameswaran Pillai Vasudevan Nair :-**

> "10. There was some discussion at the Bar about the scope of Article 141 of the Constitution which says that the law laid down by the Supreme Court shall be binding on all the courts in the country. Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on mattes other than law have no binding force, Several decisions of the Supreme Court are on facts and that Court itself has pointed out in Gurcharan Singh v. State of Punjab, 1956 Cri LJ 827 and Prakash Chandra Pathak v. State of Uttar Pradesh, (1960 Cri LJ 283) that as on facts no two cases could be similar to its own decisions which were essentially on questions of fact and could not be relied upon as precedents for decision of other cases. In the State of Orissa v.

> Sudhansu Sekhar Misra, (1968) 2 SCJ 236) and Madhav Rao Jivaji Rao Scindia v. Union of India [(1971) 1 SCC 85], the Supreme Court held that it was not a profitable task to extract a sentence here and there divorced from the context from its judgment as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment and build upon it. In Rajeswar Prasad Misra v. State of West Bengal (1965-2 Cri LJ 317) the arguments advanced before the Supreme Court disclosed a tendency to read the observations made in the judgments of that court as statutory enactments. Dealing with it the court said that although the Indian Courts are bound by the law declared by the Supreme Court it should not be forgotten that that court does not enact. In Raval and Co. v. K. G. Ramachandran [(1974) 1 SCC 424], the Supreme Court held that general observations contained in any judgment of that court should be confined to the facts of that case and cautioned that they should not be applied in interpreting the provisions of an Act unless it had applied its mind and analysed the provisions of that particular Act."

27. The learned counsel submitted that the above conclusions of the Full Bench were quoted in the following paragraph of the judgment of the Hon'ble Supreme Court in **Municipal Committee, Amritsar** (Supra):-

> **"4.**It is plain from submission of counsel that the appellant's grievance is not so much against the acquittal as against a passing reference by the Sessions Court to an obiter observation of this Court in *Malwa Cooperative Milk Union Ltd., Indore* v. *Biharilal* [Cri.As.

No. 235 and 236 of 1964, decided on 14-8-1967]. Obviously, the Sessions Judge had concluded that a minor error in the chemical analysis might have occurred. He was perhaps not right in saying so. Anyway, a reading of his judgment shows that the mention of this Court's unreported ruling (supra) was meant to fortify himself and not to apply the ratio of that case. Indeed, this Court's decision cited above discloses that Hidayatullah, J. (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases. The point that arose in that case was whether the High Court was justified in upsetting an acquittal in revision, when the jurisdiction was invoked by a rival trader, the alleged adulteration having been so negligible that the State had withdrawn the prosecution resulting in the acquittal. Certainly, the revisional power of the High Court is reserved for setting right miscarriage of justice, not for being invoked by private persecutors. Such was the ratio but, in the course of the judgment, Hidayatullah, J. to drive home the point that the case itself was so marginal, referred to the microscopic difference from the set standard. To distort that passage, tear it out of context and devise a new defence out of it in respect of food adulteration cases, is to be grossly unjust to the judgment. Indeed, the Kerala case cited before us by counsel viz. *State of Kerala* v. *Vasudevan Nair* [Cr.A. No. 89 of 1973, decided by the Kerala High Court on July 18, 1974 — All India Prevention of Food Adulteration Cases Reporter, 1975 Part I, p. 8] itself shows that such distortion of the passage in the judgment did not and could not pass muster. When pressed with such misuse of this ruling, the High Court repelled it. The law of food adulteration, as also the right approach to decisions of this Court, have been set out correctly there:

> "Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that Court itself has pointed out in *Gurcharan Singh* v. *State of Punjab* [1972 FAC 549] and *Prakash Chandra Pathak* v. *State of Uttar Pradesh* [AIR 1960 SC 195 : 1960 Cri LJ 283] that as on facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied upon as precedents for decision of other cases.
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> The standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standard would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting unpredictability, uncertainty and impossibility of arriving at fair and consistent decisions are great."

28. He hence argued that in view of the legal position as clarified by the Hon'ble Supreme Court, the intention of the Amendment Act, 2009 can be understood only as to provide for compensation on the basis of actual monthly wages. The

learned counsel made reference to a judgment of the Hon'ble Supreme Court in **Rani v. Branch Manager, Shriram General Ins. Co.Ltd.** [2024 KHC OnLine 5474] to show that the ratio in **K.Sivaraman and Others** (Supra) was followed by the Hon'ble Supreme Court in **Rani** (Supra) also.

29. The learned counsel for the respondent pointed out that in **Mahalakshmi** (Supra) a learned Single Judge of the Madras High Court considered the same issue and held as under:-

> "22. As clarified by the Apex Court in *K.*Sivaraman and others vs. P.Sathishumar and others cited supra, if the claimants able to prove their actual monthly salary, which is more than the monthly wages notified by the Central Government, they are entitled to get the actual monthly wages. In the absence of proof of actual monthly wages, the Labour Commissioner has no other alternative, other than adopting the monthly wages notified by the Central Government as per Section 4-1(B) of the Act. Hence the question of law is answered that the adoption of minimum wages prescribed by the State Government could not be taken into account for awarding compensation under the Act 1923 and the monthly wages notified by the Central Government as per Section 4(1-B) shall be adopted for awarding compensation. Accordingly, the first question of law raised in this appeal is answered."

30. He pointed out that the learned Single Judge of the Madras High Court held that Section 4(1B) permits the Central Government to notify the monthly wages, if the employee was not able to prove his actual monthly wages.

31. In **Sivaraman.K. And Others** (Supra) the Hon'ble Supreme Court held as under:-

> "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."

32. The issues arising for consideration in the case on hand deserves to be analysed bearing in mind the objective of the Act. If the interpretation canvassed by the learned Senior Counsel is accepted, then the resultant position would be that in no situation compensation can be granted taking into account

the actual monthly wages if it exceeds the amount notified by the Central Government under Section 4(1B). If the purpose of Section 4(1B) is so understood, the provisions of Section 5 will become superfluous. It is to be noted that Section 5 is a specific provision providing for calculation of wages. The expression 'monthly wages' as applicable to various situations is specified under Section 5. If the intention of the legislature was to fix a uniform rate as monthly wages for the purpose of determining the compensation, Section 5 would not have been incorporated in the Act. It is also pertinent to note that the explanation, fixing a cap in the matter of monthly wages, was deleted by the Amendment Act of 2009. The manifest intention was therefore to remove the cap. If the construction suggested by the learned Senior Counsel for the appellant is adopted, it would amount to re-introduction of a ceiling in the matter of monthly wages. I am of the view that such an interpretation would not be in tune with the legislative intention, affirmed by

the Amendment Act of 2009.

33. The Act is unquestionably a social welfare legislation providing for remedies to employees who sustain injuries out of the employment and during the course of the employment to get adequate compensation. If an employee who draws monthly wages at a higher rate than that is notified by the Central Government under Section 4(1B) is deprived of compensation proportionate to his actual monthly wages, it cannot be said that just compensation was provided.

34. If the provisions of Section 4(1B) and Section 5 of the Act are construed harmoniously it can be certainly held that the provisions of Section 4(1B) enable the Government to fix the monthly wages from time to time in order to ensure that employees/dependants seeking compensation under the Act would be entitled for reasonable compensation even if they fail to adduce reliable evidence regarding the actual monthly wages. In various sectors of employment in our country, employees are

engaged under diverse arrangements. Large section of the workforce in our country is engaged in unorganised sectors. In many of the employments in the unorganised sectors, there may not be any proper system of keeping records regarding the wages. Hence in many situations, the employee/ dependents may not be in a position to provide authentic evidence to the Commissioner regarding the wages in the peculiar nature of engagement. Under such circumstances, the Commissioners can rely on the amount notified by the Central Government under Section 4(1B) to calculate the compensation.

35. Nevertheless, when the applicant before the Commissioner or the opposite parties adduces evidence proving the actual monthly wages of the injured employee, in view of the provisions of Section 5 of the Act, the Commissioner can determine the compensation on the basis of the actual monthly wages proved in evidence. But in view of the object of S.4(1B), providing for periodical notification of monthly wages by the

Central Government, the amount notified shall be considered as the basic minimum. Just and proportionate compensation in accordance with the provisions of the Act can be awarded even if the monthly wages proved before the Commissioner is higher than the amount notified by the Government. If the purpose of incorporating Section 4(1B) can be understood as above, there will not be any conflict between the two provisions. Such a construction would definitely advance the object of the Act. While interpreting two different provisions of an enactment, in reference to which incongruity is alleged, endeavour of the Court shall be to construe the provisions harmoniously, giving effect to both.

36. I find considerable force in the contention of the learned counsel for the respondent that the observation of the Hon'ble Supreme Court in **Sivaraman.K. And Others** (Supra) regarding the object of the amendment cannot be considered as a mere passing observation. The Hon’ble Court opined that the

objective of the amendment is to remove the deeming cap on monthly income and to extend compensation on the basis of actual monthly wages. It was held that the amendments to the 1923 Act were enacted to further the salient purpose of the Act, either by streamlining the compensation process or by enhancing the amount of compensation payable to the employee. In other words, the relevant observation was made after adverting to the nature of the legislation and its objectives. As rightly contended by the learned counsel for the respondent, even if the observation is reckoned as obiter, the same is binding.

37. It is pertinent to note that the Act defines 'wages' as including any privilege or benefit capable of being estimated in money, other than the allowances, contributions, etc., that are specifically excluded. Therefore, the expression 'wages' would cover the remuneration earned by an employee as a whole except the excluded elements. It is also relevant to note that

under Section 5, the provision providing for the method of calculating wages, no ceiling limit is contemplated. The opening part of Section 5 is emphatic that the expression "monthly wages" in the Act, for the purposes thereof, shall be understood as provided in Section 5. Section 3 of the Act places liability on the employer if personal injury is caused to an employee by accident arising out of and in the course of his employment. Section 4 provides for determination of compensation. Sub-section (1-B) enables the Central Government to specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary. It is to be noted that the provisions of Section 5 being placed in the statute following the provisions of Section 4, the provisions of Section 5 shall be deemed to have been incorporated keeping in mind the previous provision. When sub-section 1B was incorporated by way of an amendment in 2009, if the legislature had the intention to put a ceiling in the matter of monthly wages, appropriate

modifications to the provisions of Section 5 also would have been made. Hence, an analysis of the statutory scheme would show that the legislature had no intention to impose a cap on the maximum compensation liable to be granted. On the other hand, removal of the cap by the Amendment Act of 2009 is a clear indication that the intention was to remove the ceiling.

38. The learned senior Counsel had argued that the employee has been accommodated in a suitable post and therefore there is no loss of earning. The said contention was rightly rejected by the Commissioner taking note of the provisions of S.47 of the PWD Act. I uphold the conclusion of the learned Commissioner in this regard.

In the light of the discussion afore, all questions of law raised in this appeal are answered against the appellant. I am unable to subscribe to the view adopted by the Andhra Pradesh High Court in **Nagarjuna.D.**(Supra) and find no reason to doubt the correctness of the ultimate conclusion of the learned Single

Judge of this Court in **Fertilizers and Chemicals Travancore Limited** (Supra). The appeal therefore fails and it is accordingly dismissed.

S.MANU
JUDGE

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