

1944

Present: Soertsz J.

SANSONI, Appellant, *and* THE COMMISSIONER FOR
WORKMEN'S COMPENSATION, Respondent.

No. 81—Workmen's Compensation.

Workmen's Compensation—Motor car driver—Basis of Compensation—Amount of wages actually paid—Workmen's Compensation Ordinance, s. 6.

In assessing compensation due to a motor car driver under the Workmen's Compensation Ordinance the determining factor is the amount of wages actually paid and not the amount payable under the Motor Car Ordinance.

A PPEAL from an order of the Commissioner for Workmen's Compensation.

S. W. Jayasuriya, for the employer, appellant.

No appearance for the respondent.

Cur. adv. vult.

¹ (1926) *A. C.* 94.

² (1930) *A. I. R. Mad.* p. 209.

May 3, 1944. SOERTSZ J.—

An interesting question arises on this appeal, under the Workmen's Compensation Ordinance. The relevant facts are as follows. B. Simeon was the driver employed by the appellant to drive his hiring car. On August 5, 1942 this driver was killed in trying to avoid a collision with a Military truck that, suddenly came round a corner.

The Commissioner found—in my opinion, correctly—that at the time this man was killed he was acting within the scope and in the course of his employment under the appellant, and that he was a monthly paid servant receiving, in fact, twenty rupees a month as his wages. On that basis the compensation payable by the appellant would, in terms of section 6 of the Workmen's Compensation Ordinance read with Schedule IV. thereto be Rs. 630. But the Commissioner has fixed it at Rs. 1,200 on the ground that under the Regulations framed under the Motor Car Ordinance, No. 45 of 1938, the minimum wage payable in respect of a car of the weight of this case was Rs. 40 per mensem.

The question is whether for the purpose of assessing compensation under the Workmen's Compensation Ordinance the determining factor is *the amount actually paid or the amount payable*. In my opinion it is the amount *paid* that matters, for having regard to the fact that Schedule IV. compensates on the basis of the wages received by the labourer, giving more to him than he had, it would appear that the principle adopted is the practical principle of the standard of living that the workman may be supposed to have provided for his dependants on the wages he received.

Section 105 of the Motor Car Ordinance and the Regulations framed thereunder have, in my view no bearing on the question of compensation unless of course it has been complied with. Its violation would involve the employer in the penalty provided for its breach and would also render him civilly liable to make good the difference to the servant or to his estate and if before the question of compensation arises there is recovery of that difference it would be taken into account in fixing compensation for the dependent heirs. But this is not such a case. There has been no recovery nor would it have mattered if there had been, for the sole dependent, here, is not an heir.

I would, therefore, reduce the compensation payable to Rs. 630.

Varied.

