

Bonus forms part of wages

A division bench of the Kerala High Court in MFA 388/89 held that bonus paid to an employee can be taken into consideration while determining his wages for the purpose of Workmen's Compensation Act.

K R Jagadeesan of Arunapuram, an employee of Indian Crumb Rubber Factory, Puliyanoor, Palai, sustained injuries, causing permanent disabilities, while in employment.

He thus became entitled to compensation and claimed Rs 1.04,960.

The employer refused to pay the sum following which the employee moved an application before the Workmen's Compensation Commissioner, Kottayam.

The Commissioner came to the conclusion that the workman was entitled to a compensation of Rs 44,507 only.

The compensation payable is based on monthly wages which is one-twelfth of the total wages which have fallen due for payment to the employee by the employer in the previous 12 months.

The compensation payable is 50 per cent of the monthly wages multiplied by 'the relevant factor'.

The relevant factor is a figure based on the age of the workman on the date of the accident.

In this case, the employee was 30 years old and so the relevant factor was 207.98.

The commissioner determined the monthly wages as Rs 428. To arrive at that figure, he took the total actual wages for a period of 12 months and divided it by 12.

But, while calculating the total wages the commissioner did not include 40 per cent bonus received by the employee.

'Wages' has been defined in section 2(m) of the Act.

It includes any "privilege or benefit" which is capable of being estimated in money; but does not including travelling allowance, value of travelling concession, contribution to pension fund and provident

fund etc.

The Payment of Bonus Act provides for payment of bonus to persons employed in a factory or other establishment employing 12 or more persons.

Bonus is something given in addition to what is usually or strictly due; money or anything given in addition to employee's usual pay or salary.

The Supreme Court has held in *Shree Meenakshi Mills vs Workmen* (AIR 1958 SC 153) that bonus was not, as its etymological meaning would suggest, a mere matter of bounty gratuitously made by the employer to his employees; nor is it a matter of deferred wages.

It represents cash incentive given conditionally on attaining certain standards of attend-

Offence under 302 and 306 distinct

Can a person accused of an offence under Section 302 (murder) be convicted for an offence under Section 306 (abetting suicidal death)?

No, says the Supreme Court (JT 1997(5) SC 47)

In this case, the person was accused of uxoricide. He allegedly poured kerosene on his wife and set her on fire. The trial court convicted him for murder. But in appeal, the High Court of Andhra Pradesh set aside the conviction for murder and convicted him for abetting the wife's suicide.

Appeal against the High Court's order was allowed by

COURT Diary

SCARIA MELEDAM

P. A. Mohan (J)
Mari Mathan

ance and efficiency.

The claim for bonus being a right of the workman, independent of the willingness or otherwise of the employer, is a "benefit" falling within the definition of wages under section 2 (m) of the Act, held the High Court.

Workmen's Compensation Act is a beneficial legislation in favour of workmen who suffer injuries while in employment and are rendered with no means of sustenance.

The word benefit contained in the definition of wages in Section 2(m), therefore, gets the widest import so as to take in profit bonus used in the industrial sense.

The concept of industrial bonus is no longer regarded as an ex-gratia payment.

As the Supreme Court put it, it is a share in the profits of the company.

In whatever sense the word bonus is used or outlined, it will certainly come within the concept of the "benefit" envisaged in Section 2(m).

On the basis of this finding, the court upheld the claim of the workman that he was entitled to a compensation of Rs 1,03,960 with interest at the rate fixed by commissioner.

the Supreme Court for the simple reason that, the High Court having acquitted him of the charge under Section 302 IPC, which was the only charge framed against him, could not have convicted him of the offence under Section 306.

It is true that Section 222 of Criminal Procedure Code entitles a court to convict a person of an offence which is minor in comparison to the one for which he is tried. But Section 306 IPC cannot be said to be a minor offence in relation to an offence under Section 302 IPC, within the meaning of Section 222 of Criminal Procedure Code, because the two offences are distinct and fall in different categories. While the basic constituent of the offence under Section 302 is homicidal death, those under Section 306 are suicidal death and abetment thereof.

No review after SLP is dismissed

Once the Supreme Court passes an order in an appeal against a High Court order, the order of the High Court stands merged with the order of the Supreme Court. Thereafter, therefore, the High Court is de-