

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
MFA (EC) No.02 of 2021

1. New India Assurance Company, Divisional Office, Old R.M.S. Chowmuhani, Agartala, West Tripura, Insurer of the truck bearing registration No. NL-01-K-3095.

.....Appellant.

-VERSUS-

1. Bhanu Nath, son of late Jogesh Nath, village Sripur, P.O. Huplong, P.S. Dharmanagar, District: North Tripura.

..... Respondents-claimant.

2. Sri Bikash Ch. Bhattacharjee, son of late Naresh Ch. Bhattacharjee of Math Chowmuhani, P.S. East Agartala, P.O. Agartala, District: West Tripura, owner of the vehicle NL-01-K-3095.
3. Sri Dulan Nath, son of Sri Sashi Charan Nath of village Charupasa, P.O. Uptakhali, P.S. Panisagar, District: North Tripura.

.....Respondent-driver.

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE [ACTING]

For Appellant(s)	:	Mr. A. G. Choudhury, Advocate.
For Respondent(s)	:	Mr. D. C. Nath, Advocate.
Date of hearing and delivery of judgment and order	:	28.02.2023
Whether fit for reporting	:	<i>YES/NO</i>

JUDGMENT & ORDER [ORAL]

Heard Mr. A. G. Choudhury, learned counsel appearing for the appellant-insurance company. Also heard Mr. D. C. Nath, learned counsel appearing for the respondents.

[2] This appeal has been filed against the judgment dated 31.03.2021 passed by the learned Commissioner, Employees Compensation, Dharmanagar, North Tripura in connection with Case No. TS(E/C) 07 of 2018 for awarding compensation due to the injury sustained by one Bhanu Nath in course of his

employment as a Handyman-cum-driver of the vehicle bearing registration No. WL-01-K-3045 (Truck).

[3] The fact of the case as projected that on 08.08.2017 the vehicle bearing registration No. NL-01-K-3095 was coming towards Agartala from Gauhati at 9.00am and met and accident due to mechanical defect. In this accident the respondent No.1 sustained injuries. immediately after the accident he was shifted to Kheliehriat CHC for his treatment and then to Towai District Civil Hospital and then on 09.08.2017 referred to NEGRHMS, Shillong for treatment from Lumshnong Jainti Hills and reached Pommura at about 2.00am on 24.05.2012 another truck loaded with coal bearing registration No. AS-01-BC-1779 which was behind the aforesaid truck dashed the vehicle No. AS-01-DD-2553.

[4] Both the drivers decided to meet their respective owner at Guwahati over this issue, but the vehicle No. AS-01-DD-2553 at Pommura village hit another truck bearing registration No. AS-0-BC-7074. At that time deceased Ramakanta got down from the vehicle to which the situation standing on the road. The driver of the vehicle No. AS-01-BC-1779 started his vehicle and ran over Ramakanata by driving his vehicle and fled away from the spot with his truck. Out hat dash by the aforesaid vehicle Ramakanta sustained injuries. Thereafter, he was shifted to Shillong Civil Hospital by his driver namely Mohanta Shetiya where he was succumbed to his injuries. A specific police case was registered over this issue in Madanriting P.S. vide case No. 52(5)/2 under Sections-278/427/341/302 of IPC.

[5] After hearing the parties, the learned Commissioner, Employees Compensation, North Tripura, Dharmanagar has observed as under:

“In the result, it is ordered that the New India Assurance Co. Ltd. Old Motorstand, Dharmanagar, North Tripura, shall indemnify the owner and pay the amount of compensation to the tune of Rs.15,53,627/- (Rupees fifteen lakhs fifty three thousand six hundred twenty seven only) to the claimant petitioner with interest @8% per annum from 08.09.2017 i.e. one month after the date of accident till realization.

[6] Being aggrieved by and dissatisfied with the aforesaid observation, the appellant insurance company has preferred this present appeal before this Court.

[7] Mr. A.G. Choudhury, learned counsel appearing for the appellant has submitted that the Commissioner has committed error in passing the impugned judgment as the subject matter relating to the present case has not been dealt with the provisions of law. The learned Commissioner has erred by assessing the compensation under Section-4(1) (a) of the E.C. Act, as the compensation ought to have been assessed under Section-4(1)(c) (i) of the E.C. Act which should have been as follows:

“60% of monthly wages x relevant factor x loss of earning as per Part-II of Schedule-I of E.C. Act, as such, ought to have been:-

60% of Rs.6,000/- x 192.14 x 80%

Rs.3,600 x 192.14 = 6,91,704/-

80% of Rs.6,91,704/- = Rs.5,53,363.20 p.”

[8] The learned Commissioner has assessed the claimants monthly wages/salary to be Rs.6,000/- i.e. 50% or half of the consolidated salary of Rs.12,000/- affirmed to be paid by O.P. No.1 in his admission to the Court. This assumption of the Court on the followed basis as the salary of a driver and Handymen should not be the same. So the assessment made by the learned Commissioner is wrong and against the law, which should be set aside.

[9] In view of above discussion, this Court is of the view that the claimant-petitioner, the respondent herein, has substantiated his pleadings in his evidence. In cross-examination some suggestion were put to him but his credibility could not be shaken. From Exbt.1 i.e. certified copy of the GD Entry of Khliehriat P.S. vide G.D. Entry No.10 dated 11.08.2017 it reveals that one Sri Dulan Nath, the driver of Truck bearing registration No. NL-01-K-3095 appeared at the PS and reported that on 08.08.2017 he along with the Handyman Sri Bhanu Nath was

coming from Guwahati and proceeding towards Agartala loaded with Mustard Oil but after crossing Umlyia Weight bridge, NH-06 at about 9.00am owing to mechanical default and brake failure, suddenly the Handyman Sri Bhanu Nath jumped from the running truck to the ground and in this incident the Handyman received injury on his person and he was shifted to Kheliehriat CHC for his treatment and then so Shillong for better treatment.

[10] In the claim-petition it is stated that claimant-petitioner, the respondent herein, namely, Bhanu Nath was 37 years old at the time of the accident. To prove the age, claimant petitioner has proved his disability certificate which shows that the date of birth of the claimant-petitioner is on 06.05.1980 and the accident occurred on 08.08.2017 and thus, his age was proved. According to the Act, the completed years of age of the injured/deceased should be taken into consideration for selecting the factor. So, I find that the completed years of the age of the deceased was 37 at the time of accident.

[11] The factor 192.14 will apply in this case. As per the pleadings the monthly income of the claimant-petitioner was Rs.12,000/- per month as a handyman by profession. In support of his income, the claimant-petitioner has not filed any document but the OP No.1 admitted that the claimant-petitioner was the Khalashi and cleaner of the vehicle under his employment and he used to pay Rs.12,000/- as consolidated joint salary of both the driver and the handyman and he used to hand over the said amount to the driver.

[12] From Exbt.36 i.e. the disability certificate issued by the District Disability Medical Board, North Tripura District, Kailashahar it reveals that the claimant-petitioner is declared as a person having 80% locomotor disability due to amputation of left leg and the condition is non-progressive. Thus, it is also proved that the claimant-petitioner has

been suffering permanent disablement results from the injury due to the said accident.

[13] Thus, no documentary evidence regarding the income of the claimant-petitioner is available on record, the salary admitted by the opposite party No.1 is accepted as the salary of the claimant-petitioner. Thus, his monthly income is assessed at Rs.6,000/- out of the joint salary of the driver and handyman of Rs.12,000/-. As per the Act, claimant petitioner is entitled an amount equal to 80% of the monthly wages of him multiplied by the relevant factor. The relevant factor according to his age is 192.14 and 80% of Rs.6,000/- comes to Rs.4,800/-.

[14] The learned Commissioner, has applied Section-4(1) (a) of the Act, which is technically incorrect and the case needs to be treated under Section-4(1)(c) of the E.C. Act. Accordingly, the provision of law awarding compensation is modified to Section-4(1)(c) of the E.C. Act consequently, the computation should also be assessed under Section-4 Sub-section-(1) (c) of the Act, which comes to 60% of Rs.6,000/- x 192.14 x 80% thus, Rs.3,600/- x 192.14 = 6,91,704/- and 80% of Rs.6,91,704/- = Rs.5,53,363.20 P. From Exbt.4 to 34 which are the medical prescriptions, medical bills, money receipts and some other vouchers it reveals that the claimant-petitioner, the respondent herein took treatment at Guwahati and Kailashahar which justifies an amount of Rs.6,31,355. Thus, the total compensation would be Rs.6,31,355 + Rs.5,53,363 = Rs.11,84,718/-. सत्यमेव जयते

[15] From the insurance policy of the vehicle bearing registration No. NL-01-K-3095 proved as Exhibit-B and it reveals that it was valid for the period from 16.02.2017 to 15.02.2018. From the driving license of Sri Dulan Nath proved as Exbt.E and it reveals that it was issued on 16.04.2018 and valid till (NT) 15.04.2028 and valid till (T) 09.12.2019. The accident occurred on 08.08.2017 which is squarely covered by the

insurance policy. Hence, the insurance company shall indemnify the owner and pay the amount of compensation to the claimant-petitioner, the respondent.

[16] In view of above, discussion and observation, the present appeal stands modified to the extent as indicated above and thus, allowed in part. Draw the award accordingly and thereafter, send down the LCRs.

CHIEF JUSTICE [ACTING]

A.Ghash

