

**HIGH COURT OF TRIPURA
AGARTALA**

MFA(EC) No.02 of 2023

Sri Suhagan Sen, Son of Late Angshu Bimal Sen, Of Bhattapukur near Modern Club, PO. A.D. Nagar, PS. West Agartala, District – West Tripura, PIN 799003
.....Appellant(s);

Versus

1. The Director of Census Operations, Tripura, Government of India, Ministry of Home Affairs, Agartala, West Tripura, PIN 799001
2. The Union of India, Represented by the Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi, PIN 110001

.....Respondent(s)

For Appellant(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Kawsik Nath, Advocate,
Mr. D. Paul, Advocate.

For Respondent(s) : Mr. Biswanath Majumder, CGC.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing & Judgment: **16.02.2024**

Whether Fit for Reporting: **YES**

JUDGMENT & ORDER (ORAL)

Heard Mr. Kawsik Nath, learned counsel for the appellant and Mr. Biswanath Majumder, learned Central Government Counsel for the respondents.

2. The claimant/appellant herein is aggrieved by the award dated 11.09.2019 passed by learned Commissioner, Employees' Compensation, West Tripura, Agartala in T.S. (E/C) 16 of 2012 whereby the learned Court has held that the petitioner could not prove satisfactorily that he was an employee under the opposite parties at the time of incident and as such, he is not entitled to get any compensation from the opposite parties.

3. The incident occurred on 26.01.2011 as per the petitioner's case when he suffered electrocution and sustained injuries while fixing campaign materials i.e. banners at motor stand area, Agartala while under employment of the opposite parties. He developed gangrene in the feet and both his legs were amputated upto knee joint. He has been completely disabled and non-earning. He was aged 37 years and would be getting Rs.5,000/- per month as wages. His wife had also filed a written complaint before East Agartala Police Station. After serving statutory notice on 12.04.2012 to the O.P. No.1 without any response, he filed the claim for compensation of Rs.5,76,420/- against the opposite parties.

4. O.P. No.1 in his written objection has categorically denied that petitioner was an employee. He was never in the cadre of any post or grade in their department. He also denied fixing of any banner by the petitioner under employment of O.P. No.1 and his electrocution. He further denied treatment of the petitioner as well as the amputation of his legs and also the monthly wages claimed by him. The following three issues were framed for consideration by the learned Commissioner:

“4. In the light of the pleadings, following issues are framed:

1. Was the petitioner Suhagan Sen employee of O.P. No.1?
2. Whether the claimant was electrocuted on 26.01.2011 in an accident arising out of and in course of his employment under O.P. No.1?
3. Is the claimant entitled to be compensated under the provision of the Employees' Compensation Act? If so, to what extent and who shall be liable to pay the same?”

The claimant adduced 3(three) witnesses including himself and also exhibited certain documents such as original copy of G.D. entry (Exbt.1), certified copy

of particulars of patient (Exbt.2), certified copy of bed head ticket dated 26.01.2011 (Exbt.3), certified copy of investigation report dated 27.01.2011 (Exbt.4), certified copy of clinical haematology (Exbt.5), certified copy of progress report (Exbt.6), certified copy of refusal of treatment (Exbt.7), original discharge summary (Exbt.8), copy of legal notice (Exbt.9), photocopy of identity card (Exbt.10), photocopy of handicapped certificate (Exbt.11), CT scan report (Exbt.12), 41 nos. of prescriptions [Exbt.13(i) to 13(XLi)] and 44 nos. of cash memos and bills [Exbt.14(i) to 14(XLiv)].

5. One Prasenjit Nath Chowdhury was examined by the opposite parties, but no document was exhibited. Subsequently, petitioner proved one certificate of O.C., East Agartala PS as Exbt.15. Based on the above set of evidence, the learned Commissioner passed an award on 07.08.2018 granting compensation of Rs.5,43,500/- fixing liability on the opposite parties for payment.

6. The matter was challenged before this Court in MFA (EC) No.01/2019 which was disposed of by this Court vide order dated 07.03.2019 setting aside the findings recorded by the learned Commissioner to the limited extent indicated therein. The relevant part of the observations and directions contained in the order dated 07.03.2019 are extracted hereunder:

“8. Before this Court, it is reiterated by the appellants that respondent was never ever in their employment or engaged to carry out the work in question. While all this is a matter of trial and as the learned counsel for the parties jointly pray, on a limited issue, the matter is remanded back to the Tribunal for framing a fresh issue, limited to the extent of employer and employee relationship, further enabling the parties to lead evidence with regard thereto.

9. As such, on this limited point, findings returned by the Tribunal are quashed and set aside and the matter being remanded back for consideration afresh, in the following mutually agreed terms:-

(a) The party shall appear before the Tribunal on 02.04.2019, on which date, the authority below shall fix a date for framing a fresh issue, also dates for leading evidence.

(b) Parties undertake to fully cooperate and not take any unnecessary adjournment;

(c) Save and except for official witness, parties undertake to produce their evidence at their own responsibility;

(d) For official witnesses, Dasti summon shall be issued;

(e) Not more than three opportunities shall be afforded to each one of the parties to lead their respective evidence.

(f) It stands clarified that the appellant herein does not lay challenge to the occurrence of the incident, injury sustained by the claimant as a result thereof; disability sustained by the claimant and the quantum awarded in favour of the claimant.

10. The aforesaid limited extent, findings returned in the impugned award dated 07.08.2018 passed by the learned Commissioner, Employee's Compensation, West Tripura, Agartala in Case No.T.S. (E/C) 16 of 2012 is quashed and set aside;"

A perusal of the order dated 07.03.2019 indicates that the matter was remanded to the Tribunal on a limited issue of examining the extent of employer and employee relationship. Upon remand of the case, issue No.1 was framed and parties were given scope to adduce evidence. Petitioner examined one witness namely S.I. Mangesh Patari (PW4) who produced the GD book of East Agartala PS containing GD entry No.1268 dated 23.01.2015 and 518 dated 08.06.2011. GD entry No.518 dated 08.06.2011 was marked as Exbt.16 and GD entry No.1268 dated 23.01.2015 was marked as Exbt.17. Opposite parties adduced no evidence. The learned Tribunal proceeded to decide the only limited issue of employer-employee relationship. The relevant part of the findings of the learned Court at para 9 is extracted hereunder:

REASONS FOR DECISION AND DECISION

"9. As per direction of the Hon'ble High Court as mentioned above, now, mainly the case is required to be decided on a limited point about the employer-employee relationship between the opposite parties and the petitioner. The PW4 Mangesh Patari deposed that under instruction of O/C. of East Agartala P.S. he appeared before the court with necessary GD book. He proved the related GD entry no.518 dated 8.6.2011 wherein it is mentioned that at about 10.30 hours on 8.6.2011 Gouri Sen appeared in the police station and submitted one petition that on 26.1.2011 in the noon at about 1300 hours while her husband Suhagan Sen was engaged in fixing of banners of government organization at Motor Stand, at that time he was affected by electric shock from a transformer and fell down on the ground and he was undergoing treatment at GBP Hospital. The GD entry is

not much readable but so far could be gathered, it was supposed to be written that either his legs were amputated or were affected. From the GD entry No.1268 dated 23.1.2015 (Exbt.17) it appears that same was not at all in relation to the incident of the petitioner rather following was written:-

“This time C/1367 Shibabrata Choudhury left P.S. for bike mobile duty at P.S. area.”

He also on asking by the court replied that there was no indication in the GD book that any enquiry was done by police about said incident. In his cross examination he admitted that there is no record before him to show that Suhagan Sen was an employee of Department of Census and Operation, Govt. of India. Thus, it appears that the then O.C. of East Agartala P.S. in his report dated 25.8.2015 (Exbt.15) has without any basis certified that matter was verified locally and said facts of incident was revealed in such verification. As it appears, he also without any basis mentioned GD entry No.1268 dated 23.1.2015 in his said certificate. PW4 could not identify who was the officer in charge of that police station on 25.8.2015. In Exbt.1 i.e. the petition filed by Gouri Sen in the said police station, it reveals that there was a signature of one person with date 11.6.2011 regarding acknowledgment of said petition. But GD entry No.518 dated 8.6.2011 shows that on 8.6.2011 one petition was filed by Gouri Sen in the police station and not on 11.06.2011. According to PW4 there was no indication in the GD book regarding any petition received in said police station from Gouri Sen. Thus, it is also doubtful that any such petition (Exbt.1) was at all received by said police station on 11.6.2011. Certificate of O/C., East Agartala P.S. (Exbt.15) appears to be without sufficient basis and is not reliable. PW3 Rajesh Sen in his examination in chief on affidavit stated that he found one Sri Pradip Das, an employee under government organization for fixing census and pulse folio leaflet at the place of incident but said Pradip Das was also not examined. No other document is also proved by the petitioner to show that he was an employee under opposite parties. Situated thus, the petitioner could not prove that he was an employee under opposite parties. Therefore, it is held that he is not entitled to get any compensation from the opposite parties.”

7. The learned Tribunal found that the GD entry on which the petitioner has relied related to the inquiry by the police about the said incident. S.I. Mangesh Patari [PW4] who was examined by the petitioner in his cross-examination admitted that there is no record before him to show that petitioner was an employee of the Department of Census and Operations, Government of India. The learned Court found that the Officer-In-Charge in his report dated 25.08.2015 [Exbt.15] had without any basis certified that the matter was verified locally and said facts of incident were revealed in such verification. He also, without any basis, mentioned GD entry No.1268 dated 23.01.2015 in the said certificate. PW4 could not identify who was the Officer-In-Charge of the

PS on 25.08.2015. The above GD entries created doubt in the minds of the learned Court that any such petition [Exbt.1] was received at all by the police station on 11.06.2011. The certificate [Exbt.15] of the Officer-In-Charge, East Agartala PS was also without any sufficient basis and not reliable. PW3 in his examination-in-chief had stated that he found one Pradip Das, an employee under government organization for fixing census and pulse polio leaflet at the place of incident, but the said Pradip Das was also not examined. No other document was proved by the petitioner to show that he was an employee under opposite parties. Therefore, he could not prove that he was an employee under the opposite parties to be entitled to any compensation.

8. Assailing the aforesaid findings in the present appeal, the appellant has *inter alia* contended that Exbt.17 i.e. GD entry No.1268 dated 23.08.2015 should be called for to enable the appellant to adduce documentary evidence for deciding the appeal. The correct GD entry number would be 1268 dated 23.08.2015 of East Agartala PS whereas it has been erroneously mentioned as GD entry No.1268 of 23.01.2015. That entry had no relevance with the accident suffered by the appellant. As such, the learned Tribunal took into consideration irrelevant material to record a finding that the petitioner had not been able to show any relationship of employer and employee with the opposite parties. As such, the impugned order may be set aside.

9. Learned counsel for the appellant has suffered amputation of both legs in course of discharge of his duties while working under the respondents

and as such, he is entitled to compensation under the Employees Compensation Act, 1923.

10. Mr. Biswanath Majumder, learned Central Government Counsel for the respondents, has opposed the prayer and submits that this is the second round of litigation. The only issue which was required to establish by the petitioner i.e. the claimant was the employer-employee relationship with the O.P. No.1 to impose any liability for compensation in his favour on grounds of suffering amputation of both legs by electrocution. However, the appellant himself adduced PW4, an S.I. who produced the GD book of East Agartala Police Station containing entry No.1268 dated 23.01.2015 [Exbt.17] and entry No.518 dated 08.06.2011 [Exbt.16]. These documents adduced by the appellant have been examined in depth by the learned Court which not only found that these entries were not only non-readable but nothing much could be inferred about the incidents from the GD entry dated 23.01.2015. The petitioner himself adduced PW4 who produced these GD entries and nothing prevented him from adducing any other material during course of trial upon remand to establish the employer-employee relationship. As such, appellant/petitioner does not have any case.

11. Learned counsel for the appellant has also sought to press IA No.03/2023 which is a petition for adducing additional evidence in support of his case at the appellate stage that none of the pay bills/salary register of March, 2010 maintained in the Directorate shows that the appellant was in the list of

officers and staff of this Directorate. However, this Court at this appellate stage is not inclined to allow such prayer for adducing additional evidence.

12. The appeal is being heard and decided on the basis of the materials produced before the learned Tribunal alone which in the opinion of the Court are sufficient to decide upon the challenge.

13. The impugned award has been rendered after remand by the High Court in MFA (EC) No.01/2019 vide order dated 07.03.2019 on the limited issue of the extent of employer-employee relationship between the petitioner and the respondent. Though opportunity was granted to the petitioner to adduce evidence, the very evidence of PW4, an S.I. of East Agartala Police Station adduced by him along with the GD entries No.1268 dated 23.01.2015 [Exbt.17] and GD entry No.518 dated 08.06.2011 [Exbt.16] both have been duly considered by the learned Tribunal which failed to establish any semblance of employer-employee relationship between the parties. No other material evidence have been placed on record which could demonstrate that the petitioner was on the rolls of the respondent No.1 when the incident took place. Even in the grounds of appeal, appellant has only taken a plea that instead of the GD entry No.1268 dated 23.01.2015, the relevant GD entry No.1268 dated 23.08.2015 ought to be called for to establish the relationship of the petitioner as an employee of the respondent No.1. However, a GD entry could not be in the first place an evidence of employer-employee relationship. Petitioner has not been able to bring on record any record of attendance register or payment of salary through the office of respondent No.1 or any appointment letter to

substantiate that at the relevant point of time, he was on the rolls of the respondent.

14. As such, upon proper scrutiny of the materials adduced before the learned Tribunal available on the trial Court records, this Court is of the considered view that no grounds for interference in the impugned award is made out. There is no perversity in the findings of the learned Tribunal. Accordingly the present appeal is dismissed.

15. Learned counsel for the appellant submits that appellant may be allowed to pursue any other legal remedy as is permissible in law.

16. It is open for the appellant to do so, if permissible in law.

17. Pending application(s), if any, shall stand disposed of.

Stay order, if any, stands vacated.

Send down the Trial Court Records forthwith.

(APARESH KUMAR SINGH), CJ

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LODH

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