

**HIGH COURT OF TRIPURA
AGARTALA
MFA (EC). 4 OF 2023**

Cholamandalam MS General Insurance Company Ltd.

.....**Appellant(s)**

Versus

Sri Asit Deb & Ors.

.....**Respondent(s)**

For the Appellant(s) : Mr. Rajib Saha, Advocate.

For the Respondent(s) : Ms. R. Dey, Advocate.

Date of hearing and delivery of
Judgment & Order : 21.06.2024

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R(ORAL)**

Heard Mr. Rajib Saha, learned counsel appearing for the appellant as well as Ms. R. Dey , learned counsel appearing for the respondent No.1.

2. This present appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 filed by the appellant, insurance company challenging the judgment and award dated 22.06.2022, passed by the learned Court of Commissioner, Employee's Compensation West Tripura, Agartala in Case No. T.S. (E.C) 18 of 2016.

3. The appellant has prayed for the following reliefs:-

- i. Admit the appeal condoning the delay of 359 days;
- ii. Call for the case records from the Learned Commissioner, Employee's Compensation, West Tripura, Agartala in case No. T.S(E.C) 18 of 2016;
- iii. After hearing the parties be pleased enough to set aside/quashed and modify the impugned judgment and award dated 22.06.2022, passed by the learned Commissioner below and may be kind enough to pass an appropriate order in terms of the law laid down by the Hon'ble Apex Court by passing the various judgments in this regard, for the fair ends of justice;
- iv. Pending disposal of the present appeal, stay the operation of the impugned judgment and award dated 22.06.2022 in Case No. T.S(E.C) 18 of 2016,

passed by the Learned Commissioner, Employee's Compensation, West Tripura".

4. The case, in brief, as per the judgment and award of the learned Tribunal below is that Sri Asit Deb was employed by the original owner of the vehicle namely, Kanai Lal Debbath as driver of the vehicle bearing registration no. TR-01-R-1676 (LP Truck). On 20.12.2014 he was proceeding towards Agartala from Meghalaya by driving the said vehicle and at about 11.30 p.m. while he reached at Jayantia Hills, via bye-pass road at Pyllun, Ri-bho District under Umaim Police Station, Meghalaya, at that point of time he met with an accident due to collision with another vehicle bearing registration no. NL-01-G1988 (Truck) in discharge of his duties and also in course of his employment under the respondents. As a result he sustained grievous injuries on his person. Soon after the accident the local people shifted him to the Civil Hospital, Shillong wherein he got admitted on 21.12.2014. As there was none to look after him, he took discharge on request from the said hospital on that day itself. After discharge from the said Hospital, he was straightway brought to the AGMC & GBP Hospital, Agartala by his father in a lying condition with the help of Ambulance wherein he got admitted as an indoor patient on 23.12.2014 and discharged on 14.02.2015. During the period of his hospitalization amputation of his right leg through knee was done on 25.12.2014 and ultimately, he became a disabled person to the extent of 75%. He also stated that he has lost his earning capacity to the extent of 100% as a lorry driver on account of his amputation of his right leg through knee. The owner of the vehicle had the knowledge of the accident and the owner provided some financial assistance to him in course of his treatment and as such no notice under Section 10(1)(b) of the Act was served to him. He further stated that at the time of accident he was 27 years old and his monthly wages was Rs.15,000/-.

5. The learned Tribunal after hearing the parties and on perusal of the material evidence on record has observed as under:

O=R=D=E=R

In the result, petitioner is awarded a sum of Rs.17,50,600/- (Rupees Seventeen Lakh Fifty Thousand Six Hundred) only with interest @ 12% per annum from 20.01.2015 i.e. one month after the date of accident till realization. O.P. no.2, Choramandalam MS General Insurance Co. Ltd. will pay the amount of compensation with interest within 30 days from today.

Out of the total amount of compensation inclusive of interest, 70% shall be kept in fixed deposit in the name of the petitioner at the UCO Bank, District Court Branch, Agartala for a period of five years. Balance amount shall be paid to him through his bank account. No loan or withdrawal shall be permitted from the fixed deposit without permission of the Commissioner. Petitioner shall however be at liberty to withdraw monthly interest from his fixed deposit account for his day to day expenses.

Supply copy of this award free of cost to the parties.

The claim petition stands disposed of on contest.

Enter the result in the relevant register as well as in the CIS.

6. Being aggrieved and dissatisfied with the judgment and award dated 22.06.2022, passed by the learned Court of Commissioner, Employee's Compensation West Tripura, Agartala in Case No. T.S. (E.C) 18 of 2016, the present appeal has been preferred by the appellant.

7. It appears to this court that the petitioner i.e. (respondent no.1 herein) was driver by profession and as such his functional disability will be assessed as 100%. As per list given in First Schedule of E.C. Act, the nature of disability of the petitioner (respondent no.1 herein) comes within the purview of permanent total disablement. It is further appears to this court that the case of the petitioner (respondent no.1 herein) will come within the category of permanent disablement and thus, his compensation is required to be calculated as per Section 4 (1) (b) of the Act. The petitioner (respondent no.1 herein) sustained 100% total disablement, his compensation for loss of income would be 60% of his monthly wages multiplied by the relevant factor i.e. 60% of Rs.

13,500/- x 215.28 = Rs. 17,43,768/-. Thus total compensation is assessed at Rs. 17,43,768/-plus Rs. 6,806/- i.e. Rs. 17,50,574/- rounded off to Rs. 17,50,600/-.

8. In view of the overall analysis made by the learned tribunal below and after going through the material evidence in its entirety, this Court is of the view that the assessment of compensation as awarded by the learned tribunal below is just and proper and needs no interference thus, the findings as arrived by the learned tribunal below stands affirmed. Consequently, the present appeal stands dismissed. As a sequel, miscellaneous application(s) pending if any, shall stand closed. Draw the decree accordingly and thereafter, send down the LCRs forthwith.

JUDGE



Paritosh

SABYASACHI GHOSH
Digitally signed by
SABYASACHI GHOSH
Date: 2024.06.29
13:31:05 +05'30'