

**HIGH COURT OF TRIPURA
AGARTALA**

MFA (EC) 2 of 2024

National Insurance Company Ltd.

---Appellant(s)

Versus

Smt. Babita Kapali (Biswas) and 5 Ors.

---Respondent(s)

For Appellant(s)	:	Mr. Sankar Lodh, Advocate.
For Respondent(s)	:	Mr. Samarjit Bhattacharjee, Advocate. Mr. Saugat Datta, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Order

22.05.2025

Heard Mr. Sankar Lodh, learned counsel for the appellant-insurance company. Also heard Mr. Saugat Datta, learned counsel for the claimants-respondents and Mr. Samarjit Bhattacharjee, learned counsel for the owner of the vehicle.

[2] This is an appeal under Section 30 of the Employees' Compensation Act, 1923, against the impugned Judgment & Award dated 05.07.2022 passed by the learned Commissioner, Employees' Compensation, West Tripura, Agartala in T.S.(E.C) 09 of 2016, whereby the learned Commissioner, Employees' Compensation, West Tripura, awarded Rs.14,00,800/-

[3] The claimants-respondents case in brief is that the victim Sujit Biswas was a driver of the truck bearing no. AS-01-DD-5057 under the employer of the said truck. On 15.03.2016 he was on his duty under the direction of the owner of the vehicle and was proceeding towards FCI Godown of Nandannagar, Agartala from outside the State loaded with rice through the Assam Agartala Road for unloading the same in the said Godown but on the following morning i.e. 16.03.2016 he was found dead with bleeding injuries in the driver's cabin of the said vehicle. Thereafter, his body was brought to the GBP Hospital, Agartala and the doctor of the said hospital declared him dead and thereafter, post mortem examination was held over the dead body in the said hospital on

17.03.2016. Concerning the said incident a police case was registered at NCC Police Station vide NCC P.S. Case No.19 of 2016 under Section 302 of I.P.C. They also stated that the said incident occurred arising out of and in course of his employment as a driver of the vehicle bearing No. AS-01-DD-5057. They further stated that at the time of death, deceased Sujit Biswas was 33 years old and would get monthly wages of Rs.14,000/-. The claimants in their claim petition stated that the owner of the vehicle was fully aware about the incident and death of the deceased driver Sujit Biswas in course of his employment under the owner of the vehicle. The owner of the vehicle came to the place of occurrence on the morning of 16.03.2016 and as such notice under Section 10 of the said Act was not served upon the owner of the vehicle. Finally, the claimants claimed Rs. 15,00,000/- as compensation.

[4] The owner of the vehicle in her written statement admitted the incident and death of the deceased Sujit Biswas in course of his employment under the owner of the vehicle as driver of the Truck bearing no. AS-01-DD-5057. In her written statement she stated that on 15.03.2016 when the vehicle was in stationery condition in front of FCI Godown at Nandannagar area loaded with rice, the driver namely, Sujit Biswas was murdered by the miscreants and concerning the said incident a GD Entry was made with the GB TOP GD Entry No.389 dated 16.03.2016 and subsequently, a case was registered with the NCC Police Station vide NCC P.S. case no.19/2016 under Section 302 of I.P.C. She also stated that at the time of incident her vehicle was duly insured with the National Insurance Company Limited and the vehicle has its all valid documents such as registration, road tax, certificate of fitness, pollution certificate and Insurance Policy etc. and as such the Insurance Company is liable to pay any compensation, if any, awarded.

[5] The O.P. No.2, (the appellant herein) National Insurance Company Ltd., in their written objection denied that the deceased Sujit Biswas was driving the vehicle bearing no. AS-01-DD-5057 on the alleged date and time of incident under instruction of

his employer i.e. the owner of the vehicle. They also formally denied about the age, income, profession of the deceased at the time of incident, sustaining of injuries and succumbed to the injuries arising out of and in course of his employment. They further stated that after the incident neither the owner nor the petitioners informed the alleged incident to the answering opposite party as per provision of the Employees' Compensation Act. O.P. no.2 in their written objection stated that the answering opposite party has no knowledge about any incident occurred on 15.03.2016 and death of Sujit Biswas out of the road traffic accident in course of his employment. They also stated that no notice was served to them as per provision of Employees' Compensation Act. Lastly, they pray for dismissal of the case.

[6] On the basis of the pleadings and documents of the parties, following issues were framed by the learned court below:-

- 1) Whether deceased Sujit Biswas was an employee under O.P. No.1 at the time of alleged incident?
- 2) Whether said Sujit Biswas was murdered in the cabin of vehicle bearing registration No.AS-01-DD-5057, Truck, at any time, during the intervening night of 15.03.2016 and 16.03.2016 near FCI Godown at Nandannagar under NCC P.S. in course of and arising out of his employment under the O.P. no.1?
- 3) Are the petitioners entitled to get any compensation ? If so, to what amount and who is/are liable to pay the same?
- 4) To what other reliefs the parties are entitled ?

[7] After the dealing with the case at length, the learned Commissioner, Employees' Compensation, West Tripura, has finally passed the following order:

Award

In the result, the petitioners are entitled to get compensation of Rs. 14,00,800/- (Rupees Fourteen lakh Eight Hundred) only with interest @ 12% per annum from 15.04.2016 i.e. one month after the date of incident till realization. The O.P. no.2, National Insurance Co. Ltd. will pay the awarded amount of compensation of Rs.14,00,800/- only and the O.P. no.1 Smti. Gita Rani Saha (Roy), W/O. Sri Gopal Chandra Roy, resident of Barjala near TRTC of Barjala, Agartala, P.S. West Agartala, District West Tripura, owner of the vehicle bearing registration No. AS-01-DD-5057, will pay interest @ 12% per annum on the awarded amount of compensation w.e.f. 15.04.2016 till realization. Accordingly, the Insurance Company is directed to pay the awarded amount of compensation of Rs.14,00,800/- within 30 days from today and the O.P. No.1 Smti. Gita Rani Saha (Roy), W/O. Sri Gopal Chandra Roy, resident of Barjala near TRTC of Barjala, Agartala, P.S. West Agartala, District West Tripura,

owner of the vehicle bearing registration No. AS-01-DD-5057, is directed to pay the interest @ 12% per annum on the awarded amount of compensation within 30 days from today.

Out of the total amount of compensation inclusive of interest, the petitioner no.1 will get 40% and petitioners no.2, 3, 4 and 5 will get 15% each. Out of the respective share of petitioners no.1 and 2, 50% each of their share shall be kept in fixed deposit scheme in their respective name in any of the Nationalized Bank of their locality for a period of five years each and the balance amount shall be paid to them through their respective bank account. The entire share of minor petitioners no.3, 4 and 5 shall be kept in fixed deposit scheme in their respective names in any of the nationalized bank of their locality till they attain majority i.e. 21 years of age. Petitioners no.1 and 2 is at liberty to withdraw monthly interest from their respective fixed deposit account to meet their day to day expenses. Similarly, Petitioner no.1 is also at liberty to withdraw monthly interest from the fixed deposit account of minor petitioners no.3, 4 and 5 to meet their educational expenses and other required expenses also. No loan or withdrawal will be permitted against the said fixed deposit accounts without prior permission of this Commission.

[8] Aggrieved by the impugned judgment dated 05.07.2022, the appellant insurance company herein has approached before this court for seeking relief.

[9] It is contended by the counsel for the appellant that Ld. Commissioner below committed serious error in assessing the monthly income of the deceased at Rs.14,000/- per month. The claimant-respondent claimed that monthly wages of that the deceased was Rs.14,000/- including fooding and tiffin, and whereas, the owner said that monthly income of the deceased is Rs.14,000/-. Neither the claimant- respondent, nor the owner produced any document in respect of monthly wages of the deceased. While there is clear contradiction with reference to the monthly income of the deceased, assessing the monthly wages of Rs.14,000/- is not tenable in law, and hence, the same is liable to be interfered with.

[10] He further draws the attention of this court to the Section 3 of Employees' Compensation Act and contended that the appellant-insurance company is not liable to pay the compensation. The same is extracted herein under:

3. Employer's liability for compensation.— —

(1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable —

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

- (i) the employee having been at the time thereof under the influence of drink or drugs, or
- (ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or
- (iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

(2) If an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,—

- (a) that an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and
- (b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that an employee who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If an employee employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect of any injury—

- (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or
- (b) if an agreement has been come to between the employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

[11] On the other hand Mr. Saugat Datta, learned counsel appearing for the claimant-respondents has approached before this court that the impugned order passed by the learned court below is just and proper and needs no interference from this court. To support his claim, he also placed his reliance on a order dated 09.02.2023 passed by this court in ***The Oriental Insurance Company Limited vs. Smt. Babli Saha (Sharma) and Others*** in ***MFA(E/C) 05 of 2022***. The operative portion of the said order is extracted herein below for ready reference:

“After hearing the learned counsel for the appellant and after perusing the order of the court below, this Court is of the considered view that since the court below has answered all these issues while delivering the judgment, this Court finds that it is not a case of any interference. Accordingly, the appeal filed by the insurance company is dismissed. Award dated 08.07.2022 passed by the learned Commissioner, Employees’ Compensation, West Tripura, Agartala in T.S(EC) No. 07 of 2018 is confirmed.”

[12] He further prayed before this court to dismiss the appeal of the appellant by confirming the impugned Judgment & Award dated 05.07.2022 passed by the learned Commissioner, Employees’ Compensation, West Tripura, Agartala in T.S.(E.C) 09 of 2016.

[13] This Court has carefully considered the submissions made by the learned counsel for both parties and perused the record placed before it. It is not in dispute that the deceased was employed as a driver and was found dead in the cabin of the truck during the course of his employment. The circumstances clearly indicate that the death occurred while he was discharging his duties, he was entrusted with.

[14] This court has no hesitation to say that the deceased was on duty and had been operating or resting inside the vehicle as part of his work routine, and his presence

in the truck cabin at the time of death was in connection with his employment. There is no evidence on record to suggest that the driver had deviated from his official duty or that the cause of death was personal and unrelated to his job. In the absence of such contrary evidence, the presumption must be that the death occurred in the course of employment and arose out of the nature of his work.

[15] This court has no hesitation to hold that the the judgment of the apex court i.e. ***Regional Director, E.S.I. Corporation and Another versus Francis Costa and Another*** reported in ***(1996) 6 SCC 1*** as relied by the counsel for the appellant-insurance company is not applicable to the facts of the case.

[16] Accordingly, this Court finds no reason to interfere with the impugned order passed by the learned Commissioner. The order is legal, proper, and does not call for any modification. Hence, the present appeal is liable to be dismissed and the same stands dismissed, confirming the impugned Judgment & Award dated 05.07.2022 passed by the learned Commissioner, Employees' Compensation, West Tripura, Agartala in T.S.(E.C) 09 of 2016.

As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

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JUDGE

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