

THE HIGH COURT OF TRIPURA

AGARTALA

MFA(WC) No. 11 of 2011

Appellants :

1. Smt. Leima Singha,

W/o. Sri Subhash Singha.

2. Sri Subhash Singha,

S/o. Lt. Babadhan Singha,

Both are resident of Village & P.O: Dhaleswar,
Kalyani, P.S-East Agartala, District- West Tripura.

By Advocate :

Mr. S. K. Dutta, Adv.

Opposite Parties :

1. Sri Sujit Bhattacharji,

S/o. Lt. Satyapada Bhattacharjee, Nazir Patti,
P.O: Silchar, P.S: Silchar, District- Cachar. Pin-
788001,(Owner of the vehicle No. AS-11-A-5694,
Oil Tanker Truck)

2. The Oriental Insurance Company Ltd.,

Divisional Office, Central Road,
P.O-Agartala, P.S-West Agartala, Dist.-West
Tripura

Represented by its Divisional Manager.

(Insurer of the vehicle No. AS-11-A-5694, Oil
Tanker Truck).

By Advocates :

Mr. D. K. Biswas, Adv.

Mr. P. Gautam, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **29th June, 2015.**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

This appeal filed by the appellants who were the parents of the deceased is directed against the award dated 30.05.2011 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in

case No. T.S. (W.C) 05 of 2005 whereby he dismissed the claim petition on the ground that the claimants had failed to prove the accident.

[2] The claimants are the parents of deceased, Santosh Singha alias Raju. In the claim petition it was alleged that their son was working as an Assistant in vehicle No.AS-11-A-5694 and that on 11.08.2004 while he was on duty he died due to a motor vehicle accident in course of employment at Omping near Shillong, Meghalaya. Postmortem was performed at Shillong. The claimants had stated that they have filed the claim petition being the parents of the deceased workman. The owner did not deny the occurrence of the accident. He did not deny that the deceased was employed as an Assistant however, whereas the parents claimed that the deceased was earning Rs.4,300/- per month, the owner stated that the deceased was been paid at a salary of Rs.2,000/- per month.

[3] Earlier the petition was dismissed in default but on the claimant filing a petition in this Court the same was ordered to be restored. Thereafter the name of the owner was amended and the owner filed his written statement. The mother filed her own affidavit in support of the claim petition. She again repeated that her son was getting salary of Rs.4,300/-. She also proved certain documents. She was not subjected to any cross examination. The learned Commissioner only rejected the claim petition on the ground that the copy of the FIR had not been produced and it had not been proved that the deceased died in an accident.

[4] I am of the considered view that learned Commissioner, Workmen's Compensation misdirected himself while deciding this issue. I am

of the considered view that the following substantial question of law arises in this appeal:

"Where the owner admits the employment, the accident is it necessary for the claimant to prove the same?"

Under the Workmen's Compensation Act it is the primary duty of the employer to pay the compensation. He is required to pay the same even if no claim is made. The employer admitted that the deceased was his employee and admitted that an accident had taken place. In fact, neither the owner nor the insurance company led any evidence to the contrary and therefore, I am of the considered view that the Commissioner misdirected himself in holding that the claimant was not entitled to compensation.

[5] Having held so, I am of the considered view that only the mother would be entitled to compensation and not the father because there is not even a single allegation on record to show that the father was incapable of earning or was dependant on the deceased.

[6] Next comes the question as to what is the income of the deceased. The claimant claimed that the total income of the deceased was Rs.4300/- whereas the owner stated that he was paying only Rs.2000/- per month. There is no cogent proof of income. The accident took place in the year 2004 and I am of the view that at that time an Assistant could not have been getting less than Rs.100/- per day including his boarding and lodging charges and therefore, I assess the income of the deceased at Rs.100/- per day or Rs.3000/- per month. 50% of this income i.e. Rs.1500/- has to be multiplied by the relevant factor and since the deceased was aged 20 years at the time of accident the relevant factor in terms of 4th Schedule would be

224.00 and therefore, total compensation works out to Rs.3,36,000/-. The claimant mother shall also be entitled to interest @12% per annum from the date of accident till deposit of the amount.

[7] The insurance company is directed to deposit the entire awarded amount before the Commissioner, Workmen's Compensation within 3(three) months from today and the Commissioner shall disburse the compensation strictly in accordance with the provisions of Section 8 of the Workmen's Compensation Act.

[8] From the record, I find that the insurance company had requested for an adjournment but the Commissioner even on the first date did not give an adjournment to insurance company to prove its case. Other than giving the number of the policy in the written statement from the record I could not trace out the copy of the policy or the other documents. Therefore, though I have held the insurance company liable to deposit the compensation, the right is reserved to the insurance company to prove before the Commissioner that the vehicle was either not insured with it or that it was not liable to pay the compensation on any other grounds. The claimants need not contest the matter on that issue and the dispute will only be between the employer and the insurance company. Both the employer and insurance company are directed to appear before the Commissioner, Workmen's Compensation on 5th August, 2015. In case, the insurance company wants to produce any evidence it may do so within one month thereafter. If it fails to lead any evidence then it shall continue to be held liable. If it leads evidence then the owner shall also be given an opportunity to rebut the evidence and thereafter the matter shall be decided within six month thereafter.

[9] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE