

**THE HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**

*MFA(WC) No.3 of 2011*  
*along with CO(FA) No.7 of 2011.*

**A) MFA(WC) No.3 of 2011**

New India Assurance Company Ltd.,  
Agartala Branch, represented by its Branch Manager.

..... *Appellant.*

**By Advocate : Mr. A Gon Choudhury.**

- *Versus* -

1. **Smti Gita Das(Debnath)**  
W/o Late Nirendra Das.
2. **Master Antar Das,**  
S/o Late Nirendra Das, represented by his mother  
natural guardian respondent No.1.  
Both are residents of Tarapur,  
P.O - Mohanpur, P.S - Sidhai,  
Dist - West Tripura.
3. **Smti Renu Deb Roy,**  
W/o Shri Santi Deb Roy  
of Village - Taranagar, P.O - Mohanpur,  
P.S. - Sidhai, Dist - West Tripura.  
(Owner of the vehicle No.TRL-2789, Truck).

..... *Respondents.*

**By Advocates : Mr. D R Choudhury,  
Mr. D Deb.**

**B) CO(FA) No.07 of 2011**

1. **Smti Gita Das(Debnath)**  
W/o Late Nirendra Das.
2. **Master Antar Das,**  
S/o Late Nirendra Das, represented by his mother  
natural guardian respondent No.1.  
Both are residents of Tarapur,  
P.O - Mohanpur, P.S - Sidhai,  
Dist - West Tripura.

..... *Cross-objectors.*

**By Advocates : Mr. D R Choudhury,  
Mr. D Deb.**

***- Versus -***

**1. New India Assurance Company Ltd.,  
Agartala Branch, Mantribari Road,  
P.O. Agartala, PS. West Agartala,  
District - Tripura West.**

**2. Smti Renu Deb Roy,  
W/o Shri Santi Deb Roy  
of Village - Taranagar, P.O - Mohanpur,  
P.S. - Sidhai, Dist - West Tripura.  
(Owner of the vehicle No.TRL-2789, Truck).**

**..... Respondent-Opp. Party.**

**By Advocate : Mr. A Gon Choudhury.**

**\_B\_E\_F\_O\_R\_E\_**

**THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing and : 02.03.2015  
pronouncement of judgment.

Whether fit for reporting : Yes.

**JUDGMENT & ORDER(ORAL)**

This appeal and the cross-objection are being disposed of by a common judgment since they arise out of the same award, dated 15.11.2010 passed by the learned Commissioner, Workmen's Compensation, West Tripura.

2. The undisputed facts are that Sri Nirendra Das was employed as a driver of Truck No.TRL-2789. This truck met with an accident on 02.12.2008 and the driver suffered grievous injuries as a

result of the accident. He was shifted to Kolkata. Nirendra Das himself filed a claim petition claiming compensation for the injuries received by him but unfortunately died during the pendency of the petition and his wife and minor son were brought on record.

3. According to the insurance company, the death had not occurred due to the injuries received in the accident and since there was no post-mortem report, according to the insurance company, it could not be said that the deceased died as a result of the injuries received in the accident. The learned Tribunal, however, held that the death had occurred due to the injuries received in the accident, assessed the income of the deceased at Rs.3,500/- per month and applying the relevant factor of 192.14 assessed the compensation at Rs.3,36,245/- but also awarded Rs.2,00,000/- for cost of treatment at Kolkata. The learned Tribunal also awarded interest @ 12% per annum to the claimants w.e.f 27.02.2010 the date of death and further ordered that interest would be 15% per annum if the amount was not deposited within 30 days.

4. The insurance company in its appeal has mainly raised one plea that the Commissioner had no jurisdiction to award compensation for medical expenses. It is urged by Mr. A Gon Choudhury that this amount has been awarded without any jurisdiction. On the other hand Mr. D R Choudhury learned counsel for the claimants, submits that the income has been taken at the

lower side. He also submits that interest should have been awarded from the date of accident and not from the date of death.

5. As far as the appeal of the insurance company is concerned, I am clearly of the view that the Commissioner had no jurisdiction to award any amount under the head of medical expenses.

6. In proceedings under the Workmen's Compensation Act, the compensation has to be awarded strictly in accordance with the Schedule and the Commissioner, Workmen's Compensation has no jurisdiction to award either a penny less or a penny more than what is payable under the provisions of the Act. However, the Commissioner also awarded Rs.2,00,000/- in favour of the claimants as compensation towards his(deceased) medical expenses. This portion of the award, in my opinion, cannot be sustained.

7. Mr. D R Choudhury, learned counsel for the claimants, has drawn my attention to the provisions of the Employee's Compensation Act, 1923, especially sub-section (2A) of Section 4 which reads as follows:-

*“(2A). The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.”*

8. It would be pertinent to mention that the Workmen's Compensation Act, 1923 was amended in the year 2009 by the Workmen's Compensation (Amendment) Act of 2009. The Act was

renamed as the Employee's Compensation Act and many Sections were added. Section 2A was inserted with effect from 18-01-2010. This Section cannot have retrospective effect and will only be prospective in nature. Even in respect of Section 2A, it would be pertinent to mention that the employee can only be reimbursed the actual medical expenditure incurred by him for treatment of injuries during the course of employment. Therefore, it is for the employee to prove what was the expenditure actually incurred by him. In the present case, there is no proof of the same except a bald statement made by the employee.

9. Section 2A talks of reimbursement of the actual medical expenditure and unlike the provisions of the Motor Vehicles Act which provide for payment of just compensation, the provisions of the Employee's Compensation Act clearly indicate that the employee must be reimbursed the actual medical expenditure. Therefore, what has to be reimbursed is the amount which has actually been spent by the employee. The burden then lies upon the employee to show what was the amount spent by him. In the present case, as I have held earlier, Section 2A does not apply but even if it were to apply there is no proof of what amount was spent.

10. Coming to the cross-objection filed by the claimants, I am clearly of the view that the Commissioner has not properly assessed the compensation. The learned Commissioner wrongly took

the income of the deceased at Rs.3,500/-. There was evidence on record to show that the deceased was not only getting salary of Rs.3,500/- per month but was also getting daily expenses of Rs.50/- per day. Therefore, his income was more than Rs.4,000/- per month. At the relevant time the maximum wages which could have taken into consideration for calculation of compensation was Rs.4,000/- and, therefore, for calculating the compensation the income of the deceased is taken at Rs.4,000/- per month.

11. Next comes the question as to how the compensation has to be calculated. One must remember that this claim petition had been filed by the injured person when he was alive. The claim was for injuries and not for death. The legal heirs were substituted in a claim for injuries and not in a claim for death. Therefore, 60% of the income had to be multiplied by the relevant factor. Sixty per cent of Rs.4,000/- works out to Rs.2,400/- and the relevant is 192.14 and the compensation works out to **Rs.4,61,136/-**.

12. Therefore, the appeal and cross-objections are disposed of and the award of the learned Commissioner, Workmen's Compensation, is modified and the compensation reduced from Rs.5,36,245 to Rs.4,61,136/-. However, on this amount of Rs.4,61,136/- the claimants shall be entitled to interest @ 12% per annum from the date of accident i.e. 02.12.2008 instead of 27.2.2010 till payment/deposit of the amount. It appears that the

insurance company has deposited about 50% of the awarded amount and therefore, it is directed to deposit the balance awarded amount along with interest with the Commissioner, Workmen's Compensation within 8(eight) weeks from today after deducting/adjusting the amount, if any, already paid/deposited by it and the Commissioner shall ensure that the compensation is dealt with in accordance with Section 8 of the Workmen's Compensation Act.

Send down the lower court records forthwith.

**CHIEF JUSTICE**