

THE HIGH COURT OF TRIPURA
AGARTALA

MFA(WC) NO. 10 OF 2011

1. The Chairman-cum-Managing Director,
Tripura State Electricity Corporation Ltd.,
Buthoria, near Mara Chowmohani,
Agartala, West Tripura.
2. The Director (Finance),
Tripura State Electricity Corporation Ltd.,
Buthoria, near Mara Chowmohani,
Agartala, West Tripura.
3. The Senior Manager (Electrical),
Sonamura Electrical Sub-Division,
Sonamura, West Tripura.

..... **Appellant Petitioners.**

- V e r s u s -

Smt. Abharani Paul,
W/O. Sri Satish Chandra Paul of
Village & PO: Manaipathar,
PS: Jatrapur, Sonamura,
West Tripura.

..... **Respondent/Claimant.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Ms. S. Deb Gupta, Advocate.

For the respondent : Mr. A. De, Advocate.

Date of hearing and
delivery of judgment
and order. : 14.08.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This appeal by the employer, Tripura State Electricity Corporation Limited (TSECL), is directed against the award dated 14.12.2010 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala whereby the Commissioner

awarded a sum of Rs.3,25,365/- to the claimant along with interest @ 12% per annum from the date of the filing of the claim petition, i.e. 25.04.2008.

2. The allegations made by the petitioner are that her son Ratan Paul was engaged as a workman by the Electricity Corporation for digging earth for construction of electric tower at Barkhola tilla. According to allegations while the deceased was cutting bamboo for clearing the site, one bamboo struck with a live electric wire line and the deceased got electrocuted and died.

3. This occurrence took place on 02.11.1998. The claimant thereafter filed a petition under the Fatal Accidents Act claiming compensation by filing civil suit T.S.(FA) 13 of 1998. This case was ultimately withdrawn with permission to file a petition under the Workmen's Compensation Act and thereafter this petition was filed in the year 2008. The Electricity Corporation filed reply to the claim petition but in the reply it was admitted that the deceased was engaged for earth cutting between tower location No. 72 and 73 of the 66 KV power line.

4. The case of the Electricity Corporation is that the workers had been told that they should not come before 10 a.m. because at that time the line may be shut down and they should only work thereafter. However, on 02.11.1998 the deceased went to the spot before the other labourers and started his work and according to the employer, the activity of the deceased was

strange and he may have wanted to commit suicide. Therefore, what stands admitted is that the deceased was an employee.

5. It is contended by Ms. S. Deb Gupta, learned counsel for the appellants, that in the proceedings under the Fatal Accidents Act during cross-examination etc. it had been shown that the deceased was an employee of a contractor. This Court cannot permit the Electricity Corporation to take up a defence which it had not taken before the Commissioner, Workmen's Compensation. There is a clear cut admission that the deceased was engaged as labourer for doing earth cutting work. The main stand is that the petitioner violated the guidelines whereby he had been directed not to start work before 10 a.m. because the high tension wire may be live before 10 a.m. No evidence was led by the Corporation and not a scrap of paper placed on record to show that any such guideline was ever issued.

6. It is, indeed, shocking that the employer, that too a Public Sector Undertaking which is supposed to be a model employer instead of itself paying the compensation to the workman as is the mandate of the Workmen's Compensation Act first contested the petition under the Fatal Accidents Act and then had the audacity to file this appeal even after the claim petition had been allowed by the Commissioner. The Workmen's Compensation Act is a piece of social welfare legislation. The Electricity Corporation did not deny the fact that the deceased was an employee. The only defence taken was that the deceased violated some guidelines and went to work before 10 a.m.

7. The appellant-respondent examined one witness, i.e. Sri Krishnabandhu Debnath who was the Senior Manager, Electrical of Sonamura Electrical Sub-Division on 19.4.2010. From the record of the trial Court, I find that only the affidavit of this witness was filed but he was never produced for cross-examination. Therefore, there is no evidence. Even otherwise how could this witness who was the Manager in the year 2010 depose about the factual occurrence which took place in the year 1998 unless he had deposed that he himself was present in the year 1998?

8. Another aspect of the matter is that before the learned Commissioner the appellant-Corporation has not raised the plea which is now argued. From para-7 of the award, I find that the learned Commissioner held that the maintainability of the case has not been questioned. Before the Commissioner, it was admitted that the deceased was an employee because the O/Ps admitted that Ratan Paul was engaged as labourer. The learned Commissioner rightly held that it was the duty of the Corporation to pay the awarded amount.

9. The appeal could have been summarily rejected on this ground but I want to clarify one issue. Section 3(1) of the Workmen's Compensation Act (now renamed as the Employee's Compensation Act) reads as follows:-

“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.”

10. The proviso to Section 3(1) will apply only in case where the employee sustains an injury which does not amount to total partial disablement. In those cases where there is permanent disablement or where death is caused by the accident, then even if the employee was drunk at the time of the accident or even if he had willfully disobeyed any order expressly given or rule framed or has willfully disregarded any safe guards or other devices, the employer is still liable to pay compensation. The language of Clause (b) of the proviso to sub-section (1) makes it clear that the employer shall not be liable in respect of injury which does not result in total disablement or does not result in the death of the employee. If an injury has not resulted in total permanent disablement or death, then the employer can take a defence that the deceased at the time of the accident was either (a) under the

influence of drink or drugs; (b) had willfully disobeyed any order expressly given by the employer or any rule framed for the security of the employee; (c) the employee has willfully removed or disregarded any safety guard or other device which has been provided for his safety.

11. The legislature in its wisdom thought that when a person is totally disabled or when he dies, then such person who has become totally disabled during his employment or the heirs of a person who dies should not be denied compensation on the ground that the person is guilty of some negligent act.

12. The liability for the Workmen's Compensation Act is not a liability based on fault. It is an absolute liability and only one thing has to be proved that the workman died as a result of injuries sustained during the course of his employment. The injuries must have causal connection with his employment and nothing further is required.

13. The learned Commissioner has assessed the compensation in accordance with the provisions of the Workmen's Compensation Act. However, I find that interest has been awarded only from the date of filing of the claim petition, i.e. 25.04.2008. The Apex Court in ***Saberabibi Yakubhai Shaikh and others v. National Insurance Co. Ltd. and others [(2014) 2 SCC 298: 2014 ACJ 467]***, has clearly held that interest is payable from the date of accident and, therefore, though there is no appeal by the

claimant, she is held entitled to interest @ 12% per annum from the date of accident till payment of the awarded amount.

14. The appeal is accordingly dismissed. The Electricity Corporation is directed to deposit the interest as now awarded in the Registry of this Court within 8(eight) weeks from today.

15. Send down the lower court records forthwith.

CHIEF JUSTICE