

THE HIGH COURT OF TRIPURA
A G A R T A L A

MFA(WC) NO. 23 OF 2007

Appellant :

Shri Sunil Debnath,
S/O. Shri Debendra Debnath,
Vill.-Taijiling (Kalirbazar),
P.O.-Taxapara,
P.S.-Melagarh,
Sub-Division-Sonamura,
Dist.-West Tripura.

BY ADVOCATE :

Mr. P. Roy Barman, Advocate.

– **Versus** –

Respondents :

1. The Head Geo-Physics,
O.N.G.C. Limited,
50 Chowrangy Road,
Kolkata-71,
West Bengal.
2. The Basin Manager,
O.N.G.C. Limited,
50 Chowrangy Road,
Kolkata-71,
West Bengal.
3. Oil & Natural Gas Corporation Ltd.,
Tripura Project, Agartala,
West Tripura District,
The State of Tripura.
(To be represented by its
Project Manager)
4. The Deputy General Manager,
O.N.G.C. Limited,
Tripura Project, Agartala,
West Tripura District,
The State of Tripura.
5. The Head (PSA)/(F & A),
O.N.G.C. Limited,
Tripura Project, Agartala,
West Tripura District,
The State of Tripura.

6. Shri Amulya Ch. Das,
O.N.G.C. Contractor & Order supplier,
S/O. Unknown,
Vill. & P.O.-Amtali,
P.S.-Amtali,
Dist.-West Tripura.

C/o. O.N.G.C. Ltd.,
Tripura Project, Agartala,
West Tripura District,
The State of Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate,
Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 18 OF 2012

Appellants :

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura District.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 19 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 20 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 21 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 22 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 23 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 24 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 25 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 26 OF 2012**Appellants :**

1. Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowringhi Road,
Kolkata-71,
West Bengal.
2. The Basin Manager [CBM],
ONGC Ltd, 50
Chowringhi Road,
Kolkata 71,
West Bengal.
3. ONGC Ltd., Tripura Project,
Agartala, West
Tripura [to be represented
by its Asset Manager].
4. The Deputy General Manager,
ONGC Ltd.,
Tripura Project, Agartala,
West Tripura.
5. The Head [PSA]/[F & A],
O.N.G.C. Ltd,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATE :

Mr. P.B. Dhar, Advocate.

– **Versus** –

Respondent :

Shri Amulya Chandra Das,
ONGC Contractor and Order Supplier,
Son of Late Nikhil Chandra Das,
Village & PO Amtali,
PS: Amtali, West Tripura,
Pin: 799003.

BY ADVOCATES :

Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 03 OF 2015**Appellant :**

Sri Gouranga Das
S/O- Late Krishna Kumar Das
Village-Chandraur Colony
P.O-Tripureshwari Colony
PS-Radhakishorepur
Sub-Division-Udaipur
District- South Tripura

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
Mr. S. Bhattacharji, Advocate,
Mr. K. Nath, Advocate.

– **Versus** –

Respondents :

1. The Head Geo-Physics,
O.N.G.C. Ltd.,
50 Chowrangy Road,
Kolkata-71,
West Bengal.
2. The Basin Manager
ONGC Limited, 50
Chowrangy Road,
Kolkata 71,
West Bengal.

3. Oil and Natural Gas Corporation Limited,
Tripura Project,
[To be represented
by its Project Manager]
Agartala, West Tripura.
4. The Deputy General Manager,
ONGC Limited, Tripura Project,
Agartala, West Tripura.
5. The Head(PSA)/(F&A)
ONGC Limited, Tripura Project, Agartala,
West Tripura.
6. Sri Amulya Chandra Das,
S/O- Unknown,
ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District- West Tripura,
C/O- ONGC Limited,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate,
Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 04 OF 2015

Appellant :

Sri Harendra Das
S/O- Late Harmohan Das
Village-Taxapara
P.O-Taxapara
PS-Melagarh
Sub-Division-Sonamura
District- West Tripura.

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
Mr. S. Bhattacharji, Advocate,
Mr. K. Nath, Advocate.

– Versus –

Respondents :

1. The Head Geo-Physics,
O.N.G.C. Ltd., 50 Chowrangy Road,
Kolkata-71, West Bengal.
2. The Basin Manager
ONGC Limited, 50 Chowrangy Road,
Kolkata 71, West Bengal.
3. Oil and Natural Gas Corporation Limited,
Tripura Project,
Agartala, [To be represented
by its Project Manager] Agartala,
West Tripura.
4. The Deputy General Manager,
ONGC Limited, Tripura Project, Agartala,
West Tripura.
5. The Head(PSA)/(F&A)
ONGC Limited, Tripura Project, Agartala,
West Tripura.
6. Sri Amulya Chandra Das,
S/O- Unknown,
ONGC Contractor and Order Supplier,
Village + P.O + P.S – Amtali,
District- West Tripura,
C/O- ONGC Limited, Tripura Project,
Agartala, West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate,
Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 05 OF 2015**Appellant :**

Sri Kalipada Nama
S/O- Late Mangal Nama
Village-Chandrapur
P.O-Tripureshwari Colony
PS-Radhakishorepur
Sub-Division-Udaipur
District- South Tripura.

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
Mr. S. Bhattacharji, Advocate,
Mr. K. Nath, Advocate.

– **Versus** –

Respondents :

1. The Head Geo-Physics,
O.N.G.C. Ltd., 50
Chowrangy Road,
Kolkata-71,
West Bengal.
2. The Basin Manager
ONGC Limited, 50
Chowrangy Road,
Kolkata 71,
West Bengal.
3. Oil and Natural Gas Corporation Limited,
Tripura Project,
[To be represented
by its Project Manager]
Agartala, West Tripura.
4. The Deputy General Manager,
ONGC Limited,
Tripura Project,
Agartala, West Tripura.
5. The Head(PSA)/(F&A)
ONGC Limited, Tripura Project, Agartala,
West Tripura.
6. Sri Amulya Chandra Das, S/O- Unknown,
ONGC Contractor and Order Supplier,
Village + P.O + P.S – Amtali,
District- West Tripura,
C/O- ONGC Limited,
Tripura Project, Agartala,
West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate,
Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 06 OF 2015**Appellant :**

Smt. Usha Rani Das
 W/O- Late Subal Das
 Village-Bagmara
 P.O-Bagmara, PS-Melagarh,
 Sub-Division-Sonamura,
 District- West Tripura.

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
 Mr. S. Bhattacharji, Advocate,
 Mr. K. Nath, Advocate.

– **Versus** –

Respondents :

1. The Head Geo-Physics,
 O.N.G.C. Limited, 50
 Chowrangy Road,
 Kolkata-71,
 West Bengal.
2. The Basin Manager
 ONGC Limited, 50
 Chowrangy Road,
 Kolkata 71,
 West Bengal.
3. Oil and Natural Gas Corporation Limited,
 Tripura Project,
 [To be represented
 by its Project Manager]
 Agartala, West Tripura.
4. The Deputy General Manager,
 ONGC Limited, Tripura Project, Agartala,
 West Tripura.
5. The Head(PSA)/(F&A)
 ONGC Limited, Tripura Project, Agartala,
 West Tripura.
6. Sri Amulya Chandra Das, S/O- Unknown,
 ONGC Contractor and Order Supplier,
 Village + P.O + P.S – Amtali,
 District- West Tripura,
 C/O- ONGC Limited, Tripura Project, Agartala,
 West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
 Mr. P.B. Dhar, Advocate,
 Mr. D.R. Choudhury, Advocate,
 Mr. D. Deb, Advocate.

MFA(W/C) NO. 07 OF 2015**Appellant :**

Smt. Laxmi Bala Das
 W/O- Rasaraj Das
 Village-Taxapara
 P.O-Taxapara
 PS-Melagarh
 Sub-Division-Sonamura
 District- West Tripura.

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
 Mr. S. Bhattacharji, Advocate,
 Mr. K. Nath, Advocate.

– **Versus** –

Respondents :

1. The Head Geo-Physics,
 O.N.G.C. Limited, 50
 Chowrangy Road,
 Kolkata-71,
 West Bengal.
2. The Basin Manager
 ONGC Limited, 50
 Chowrangy Road,
 Kolkata 71,
 West Bengal.
3. Oil and Natural Gas Corporation Limited,
 Tripura Project,
 [To be represented
 by its Project Manager]
 Agartala, West Tripura.
4. The Deputy General Manager,
 ONGC Limited, Tripura Project, Agartala,
 West Tripura.

5. The Head(PSA)/(F&A)
ONGC Limited, Tripura Project,
Agartala, West Tripura.
6. Sri Amulya Chandra Das, S/O- Unknown,
ONGC Contractor and Order Supplier,
Village + P.O + P.S – Amtali,
District- West Tripura,
C/O- ONGC Limited, Tripura Project, Agartala,
West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate,
Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 08 OF 2015

Appellant :

Smt. Usha Rani Das
W/O- Late Subal Das
Village-Bagmara
P.O-Bagmara
PS-Melagarh
Sub-Division-Sonamura
District- West Tripura.

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
Mr. S. Bhattacharji, Advocate,
Mr. K. Nath, Advocate.

– **Versus** –

Respondents :

1. The Head Geo-Physics,
O.N.G.C. Limited, 50
Chowrangy Road,
Kolkata-71,
West Bengal.
2. The Basin Manager
ONGC Limited, 50
Chowrangy Road,
Kolkata 71,
West Bengal.

3. Oil and Natural Gas Corporation Limited,
Tripura Project,
[To be represented
by its Project Manager]
Agartala, West Tripura.
4. The Deputy General Manager,
ONGC Limited,
Tripura Project,
Agartala, West Tripura.
5. The Head(PSA)/(F&A)
ONGC Limited,
Tripura Project,
Agartala, West Tripura.
6. Sri Amulya Chandra Das, S/O- Unknown,
ONGC Contractor and Order Supplier,
Village + P.O + P.S – Amtali,
District- West Tripura,
C/O- ONGC Limited,
Tripura Project,
Agartala, West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate,
Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 09 OF 2015

Appellant :

Sri Nil Ratan Chakraborty
S/O- Late Tarak Chakraborty
Village-Dudh Puskarani
P.O-Jamjuri(Mog Puskarini)
PS-Radhakishorepur
Sub-Division-Udaipur
District- South Tripura.

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
Mr. S. Bhattacharji, Advocate,
Mr. K. Nath, Advocate.

– Versus –

Respondents :

1. The Head Geo-Physics,
O.N.G.C. Limited, 50
Chowrangy Road,
Kolkata-71,
West Bengal.
2. The Basin Manager
ONGC Limited, 50
Chowrangy Road,
Kolkata 71,
West Bengal.
3. Oil and Natural Gas Corporation Limited,
Tripura Project, [To be represented
by its Project Manager]
Agartala, West Tripura.
4. The Deputy General Manager,
ONGC Limited, Tripura Project,
Agartala, West Tripura.
5. The Head(PSA)/(F&A)
ONGC Limited, Tripura Project,
Agartala, West Tripura.
6. Sri Amulya Chandra Das, S/O- Unknown,
ONGC Contractor and Order Supplier,
Village + P.O + P.S – Amtali,
District- West Tripura,
C/O- ONGC Limited, Tripura Project,
Agartala, West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
Mr. P.B. Dhar, Advocate,
Mr. D.R. Choudhury, Advocate,
Mr. D. Deb, Advocate.

MFA(W/C) NO. 10 OF 2015**Appellant :**

Sri Narayan Das,
S/O- Late Sachindra Das,
Village-Chandrapur Colony,
P.O-Tripureshwari Colony,
PS-Radhakishorepur,
Sub-Division-Udaipur,
District- South Tripura.

BY ADVOCATES :

Mr. P. Roy Barman, Advocate,
 Mr. S. Bhattacharji, Advocate,
 Mr. K. Nath, Advocate.

– **Versus** –

Respondents :

1. The Head Geo-Physics,
 O.N.G.C. Limited, 50
 Chowrangy Road,
 Kolkata-71,
 West Bengal.
2. The Basin Manager
 ONGC Limited, 50
 Chowrangy Road,
 Kolkata 71,
 West Bengal.
3. Oil and Natural Gas Corporation Limited,
 Tripura Project,
 [To be represented
 by its Project Manager]
 Agartala, West Tripura.
4. The Deputy General Manager,
 ONGC Limited, Tripura Project,
 Agartala, West Tripura.
5. The Head(PSA)/(F&A)
 ONGC Limited, Tripura Project,
 Agartala, West Tripura.
6. Sri Amulya Chandra Das, S/O- Unknown,
 ONGC Contractor and Order Supplier,
 Village + P.O + P.S – Amtali,
 District- West Tripura,
 C/O- ONGC Limited,
 Tripura Project,
 Agartala, West Tripura.

BY ADVOCATES :

Mr. S. Deb, Sr. Advocate,
 Mr. P.B. Dhar, Advocate,
 Mr. D.R. Choudhury, Advocate,
 Mr. D. Deb, Advocate.

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

Date of hearing & : 26.06.2015.
delivery of judgment
and order.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

These 18 appeals are being disposed of by a common judgment since they arise out of the same occurrence and the questions of law and fact are similar.

2. Briefly stated, the facts of the case are that Sri Amulya Ch. Das (hereinafter referred to as "the contractor") was granted a contract by the Oil and Natural Gas Corporation (hereinafter referred to as "ONGC") for doing certain works in the State of Tripura. The agreement was entered into on 06.01.2000 and as per this agreement, the contractor had agreed to provide clear shot-holes by manual method of desired depth and quantities with his labour, personnel, instruments etc.

3. The undisputed facts are that the workmen engaged by the contractor to carry on the work in terms of the aforesaid agreement which work was entrusted to the contractor by the ONGC were kidnapped by militants on 19.03.2000. Thereafter, nothing was heard about the workmen but finally their dead bodies or skeletons were recovered almost 11(eleven) months later.

4. The heirs of the workmen filed petitions under the Workmen's Compensation Act (hereinafter referred to as the "W.C.

Act” and now renamed as the Employees’ Compensation Act) claiming compensation. Before the Commissioner, Workmen’s Compensation the contractor urged that he is not responsible to pay the compensation since he is not at fault and as per the terms of the agreement ONGC was to pay the compensation.

5. On the other hand, the ONGC urged that the deceased workmen were employees of the contractor and, therefore, it was not liable to pay compensation. The Commissioner, Workmen’s Compensation held that the deceased had died during the course of employment and their death had causal connection with employment and held the claimants entitled to compensation under the W.C. Act. He assessed the compensation properly but deducted Rs.50,000/- which was paid under the Group Insurance Scheme. According to the contractor it was he who had paid the premium for the Group Insurance Scheme. The Workmen’s Compensation Commissioner also held that the ONGC was liable to pay the compensation being the principal employer but the ONGC had the right to recover the same from the contractor.

6. The contractor filed appeals before this Court and a learned Single Judge of the Gauhati High Court vide order dated 20.6.2008 passed in MFA(WC) 27 of 2007 held as follows:-

“In the present case, the factum of accident, injuries/death occurred arising out of and in course of employment of the workmen concerned and the contract between the principal employer and the contractor are not in dispute.”

7. The learned Single Judge did not decide the question as to whether the contractor was liable to reimburse the ONGC in respect of compensation paid under the W.C. Act but remitted the matter with the observation that in case the ONGC files proceedings for realization of the amount, then the contractor would be at liberty to file objections to such realization proceedings.

8. Thereafter, when the ONGC instituted proceedings for recovery of the amount from the contractor, the contractor took an objection that he was not liable to pay the compensation and the learned Commissioner held that Clauses 4.9.24 and 4.9.27 of the agreement are not attracted and, therefore, the contractor cannot be asked to reimburse the payment made by the ONGC.

9. The claimants have filed 9(nine) appeals bearing No. MFA(WC) 23 of 2007, MFA(WC) 03 of 2015, MFA(WC) 04 of 2015, MFA(WC) 05 of 2015, MFA(WC) 06 of 2015, MFA(WC) 07 of 2015, MFA(WC) 08 of 2015, MFA(WC) 09 of 2015, and MFA(WC) 10 of 2015 in which the only substantial question of law involved is as follows:-

"Whether, the amount of Rs.50,000/- paid to the claimants under the General Insurance Scheme could be deducted from the amount of compensation awarded?"

10. The ONGC has filed 9(nine) appeals against the subsequent judgment of the Workmen's Compensation

Commissioner dated 15.5.2012 in which the only substantial question of law involved is—

"Whether the contractor is liable to reimburse the ONGC for the amount paid by the ONGC under the W.C. Act in terms of section 12 of the W.C. Act read with Clauses 4.9.24 and 4.9.27?"

11. As far as the first issue is concerned, there can be no manner of doubt that the said amount paid under the Group Insurance Scheme could not be deducted from the compensation.

12. Section 8 of the Workmen's Compensation Act, 1923(for short, the Act) lays down the method of distribution the compensation. Sub-Sections 8(1), 8(2) and 8(3) of the Act read as follows:

"8. Distribution of compensation.-

(1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation: Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees, and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer.]

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be

deposited with the Commissioner on behalf of the person entitled thereto.

*(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.] *****”*

A bare reading of section 8 shows that no payment in respect of a workman whose injury has resulted in death and no payment of lump sum compensation as payable to a woman shall be made, otherwise then by deposit with the Commissioner, Workmen’s Compensation. In a number of cases, the claimants are either minor children or women and under section 8 no payment can be made directly to them. No payment made directly by an employer to the legal heirs shall be deemed to be payment of compensation. Assuming for the sake of argument that any payment has been made to the victims then also the same is not to be taken into consideration while assessing compensation under the Act. Therefore, even if the compensation is paid directly by employer that cannot be deducted from the compensation payable under the Act and such compensation has to be deposited with the Commissioner. The idea behind this is to ensure that unscrupulous employers do not force the poor relatives to give receipts for amounts which they may not have received.

13. Reference may also be made to Section 17 of the Act which reads as follows:

“17. Contracting out.- Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the

course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.”

This section provides that any contract or agreement whereby a workman relinquishes any right of compensation on the employer shall be null and void. Though this section basically applies to relinquishment of claims by the workman in respect of injuries, in my view the principles thereof would also apply in death cases.

14. Reference may also be made to Section 28 of the Act which provides that where the parties have arrived at a settlement with regard to the compensation payable, the said settlement has to be sent by the employer to the Commissioner and only after the Commissioner is satisfied that such settlement is genuine and in accordance with law that the Commissioner can register the agreement and such registered agreement is enforceable under the Act.

15. Section 29 provides that where any such settlement which is required to be registered under Section 28 is not sent to the Commissioner as required by that section the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of the Act notwithstanding the terms of the settlement. It is thus more than amply clear that the law provides that compensation under the Act has to be determined by the Commissioner and the parties cannot mutually settle the compensation. It is also established on a bare perusal of these

sections that any payment made outside without involving the Workmen's Compensation Commissioner is not to be taken into consideration while assessing the compensation.

16. In view of the above discussion, there can be no manner of doubt that only those payments can be deducted which have been made in accordance with the provisions of the Act. Any payment made by way of insurance, ex-gratia etc. is not to be included in the compensation which is calculated under the W.C. Act. Even if a person is paid pension, gratuity or other benefits by the employer, those cannot be taken into consideration while assessing the compensation payable under the W.C. Act. Therefore, all the appeals filed by the claimants are allowed and it is held that the deduction of Rs.50,000/- made is illegal and the respondents are held jointly and severally liable to pay this amount of Rs.50,000/- along with interest @12% per annum w.e.f. the date of accident till payment of the amount. The ONGC being the principal employer is directed to deposit this amount in the Registry of this Court within 12(twelve) weeks from today.

17. Now, comes the question about who is liable to pay the amount. According to Sri Sankar Deb, learned Senior Counsel, and Sri P.B. Dhar, learned counsel appearing for the ONGC, though the ONGC being the principal employer may be liable to satisfy the award passed by the Workmen's Commissioner, in terms of Section 12 of the Act and the terms of the agreement entered into between the parties, the ONGC has the right to recover this amount from the contractor.

18. Reference in this behalf may be made to Section 12 of the W.C. Act which reads as follows:-

“12. Contracting.—(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere that on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

19. The ONGC was not the actual employer of the workmen. They were employees of the contractor. The ONGC had entered into a contract with the contractor. However, for purposes of the W.C. Act, the ONGC will have to be treated to be the principal employer. A bare reading of Section 12 of the Workmen’s Act leaves no manner of doubt that the Workmen’s Compensation Act which is a beneficial, social, welfare legislation was enacted in such a way that if the contractor is working for some other party, that other party shall be deemed to be the employer in terms of Section 12(1) of the Act. The deemed principal employer would be liable to pay the compensation to the workmen employed in the execution of the work. However, section 12(2) of the Act clearly lays down that where the principal is liable to pay compensation under this section, it is entitled to be indemnified by the contractor or any other person from whom the workman could have recovered the compensation.

20. This provision has been incorporated in the Act to ensure that workmen who are employed by petty contractors are not deprived of their right to compensation where the deemed principal employer has the wherewithal to pay the compensation. This, however, does not take away the right of the deemed

employer who has been made liable to pay the compensation to recover the same from the actual de facto employer.

21. The purpose of section 12(2) of the Act is to ensure that the workman does not suffer and he gets his compensation but he is an employee of the person who gave him employment and he has a right to recover compensation from that employee. In case there is any disagreement that also has to be decided by the Commissioner in terms of section 12(2) of the Act.

Therefore, in terms of the Act the ONGC is entitled to recover the amount of compensation from the contractor.

22. This brings me to the agreement entered into between the parties. Reference may be made to certain Clauses of the agreement. Clause 4.9.24 reads as follows:-

“4.9.24. The contractor shall be responsible for the payment of compensation in the case of fatal accident/serious accident/minor accident, wages for the disability period and compensation under Workmen’s Compensation Act 1923 for the accident arising out of and in the course of employment as applicable under Mines Act.”

A bare perusal of this clause leaves no manner of doubt that the contractor is responsible for making the payment of compensation under the W.C. Act. I fail to understand how the Commissioner in his second order could have held that this clause is not attracted. This clause specifically applies to payments made under the W.C. Act and it leaves no manner of doubt that this payment has to be made by the contractor. As far as clause 4.9.25

is concerned, that has no applicability to the facts of this case. This clause does not relate to workmen but relates to the responsibility of the contractor, to injuries, to persons, animals or property of third parties at places where the contractor may be working. In my view, this Clause has no application at all to claims under the W.C. Act. There is a well settled principle of interpretation of contracts that if there is specific provision in a contract relating to certain factual circumstances, then any other provision of the Act cannot be read into that Clause. Clauses 4.9.25, 4.9.26 and 4.9.27 of the agreement all contain provisions that the contractor shall indemnify the ONGC in respect of any costs, charges or expenses. These Clauses may not be applicable as far as W.C. Act is concerned because these will relate to damages caused by the contractor or his employees to other third parties and will not affect the liability under the W.C. Act. When we read clause 4.9.24 along with Section 12 of the W.C. Act, there can be no manner of doubt that the principal liability to pay the compensation was of the contractor. It was only under section 12 that the ONGC was held liable to pay the compensation and the ONGC cannot be denied its right to recover this compensation.

23. Sri D.R. Choudhury, learned counsel for the contractor, has lastly urged that the kidnapping of the workmen does not amount to an accident within the meaning of the W.C. Act and in this behalf he has made reference to the judgment of the Apex Court in ***Muralidhar Sarangi v. The New India Assurance Company Ltd. [AIR 2000 SC 934]***. As far as the judgment is

concerned, I am clearly of the view that that has no applicability in this case. In ***Muralidhar's*** case what the Apex Court decided was that the Insurance Company cannot be held liable to pay the compensation. That was a case under the Motor Vehicles Act and the question before the Apex Court was whether the terms of the insurance policy covered the liability and was the Insurance Company liable to pay compensation. In the case before the Apex Court, the claimants had claimed loss of property, i.e. their trucks which had been destroyed. The value of the truck was claimed and the Apex Court held that as per the terms of the policy, the Insurance Company was not liable to pay the compensation. This judgment has no applicability to the facts and circumstances of the present case.

24. Furthermore, in the earlier round of litigation a learned Single Judge of the Gauhati High Court has clearly held that the appellant before it had not challenged the correctness of the finding given by the W.C. Commissioner with regard to the fact of accident occurring and arising out of and in course of the employment of the workman concerned. Now in the second round of litigation, the contractor who had not contested this view in the first round of litigation cannot be permitted to raise this view. Even otherwise, I am clearly of the view that as far as this case is concerned, the occurrence had causal connection with the employment. The workmen were working in disturbed areas in a remote part of the State. The contractor knew that the workmen

were in such areas and, therefore, their kidnapping or killing by the terrorists has a direct connection with their employment.

25. The learned Commissioner, Workmen's Compensation while deciding this issue held that the killing of the workers was beyond the control of the contractor and was an incident unforeseen on the part of the respondent. He also held that the security of the worksite was under the control of the ONGC and, therefore, came to conclusion that the contractor was not liable. In my view, these findings are perverse. First of all, the Commissioner had no business of reopening the question whether the death had a connection with the employment or not in view of the judgment given by the higher Court. Judicial discipline demanded that the Commissioner should have obeyed the judgment of the High Court. Furthermore, liability under the W.C. Act is not a liability based on negligence. It is a strict liability. Whether the employer is at fault or not at fault is not a matter to be taken into consideration when proceedings are decided under the W.C. Act. The only issue is whether the death or injury is a result of an accident which arises out of or during the course of employment. This was the issue to be decided and not in whose control the security was.

26. If the reasoning of the Commissioner was to be accepted, then in any part of the country the security is the responsibility of the State and, therefore, if any person is murdered during the course of employment, the employer will

never be liable. Such reasoning would be perverse and cannot be accepted under any circumstances.

27. In view of the above discussion, the appeals filed by the claimants being appeal Nos. MFA(WC) 23 of 2007, MFA(WC) 03 of 2015, MFA(WC) 04 of 2015, MFA(WC) 05 of 2015, MFA(WC) 06 of 2015, MFA(WC) 07 of 2015, MFA(WC) 08 of 2015, MFA(WC) 09 of 2015, and MFA(WC) 10 of 2015 are allowed and it is held that any award of the learned Commissioner, Workmen's Compensation deducting Rs.50,000/- in each of the cases from the awarded amount is set aside. The ONGC is directed to deposit the amount of Rs.50,000/- along with interest @ 12% per annum from the date of the accident till deposit of the amount in the Registry of this Court within 12(twelve) weeks from today.

The appeals filed by the ONGC are also allowed and it is held that the ONGC is entitled to recover the amount already paid or which may be paid in future in terms of the award of the Commissioner, Workmen's Compensation and in terms of this judgment of this Court from the contractor Amulya Ch. Das by filing appropriate execution proceedings before the Commissioner, Workmen's Compensation.

All the appeals are disposed of.

28. Send down the records of the lower Court forthwith.

CHIEF JUSTICE