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

MFA (W/C) No.14 of 2011

Appellant :

The National Insurance Company Ltd.,
Represented by its Divisional Manager,
Agartala Division Office,
42, Akhaura Road, P.S. West Tripura,
District- West Tripura.

By Advocate :

Mr. P. Gautam, Advocate.

Respondents :

1. **Smti Helan Kar,**
W/O. Late Manik Ch. Kar,
Resident of Bhumihin Coloney,
P.S. Sidhai, District- West Tripura.

2. **Sri Manoj Kar,**
S/O. Late Manik Ch. Kar,
Resident of Bhumihin Coloney,
P.S. Sidhai, District- West Tripura,
(Petitioner respondent No.2 being minor
aged about 14 years will be represented by
his mother the petitioner respondent No.1).

3. **Sri Biswajit Saha,**
Proprietor of S.R. Construction,
Masjid Road, Shibnagar,
Agartala, West Tripura.

By Advocate :

Mr. P. Roy Barman, Advocate

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **20.8.2015**

Whether fit for reporting **: No**

JUDGMENT & ORDER(ORAL)

This appeal under the Workmen's Compensation Act, 1923 was admitted on the following substantial questions of law:-

"1. Whether any relationship of employer and employee existed in the present case?

2. Whether the deceased was a Workman within the meaning of Workmen's Compensation Act, 1923?

3. Whether the Commissioner could have imposed the liability to pay interest from the insurance company?"

The first two questions can be decided together because they both relate to the issue as to whether the deceased was an employee of the employer or not.

(2) The case set up by the claimant was that her deceased husband was an electrician employed with a proprietorship concern M/S. S.R. Construction and one Sri Biswajit Saha is the proprietor of the said firm. It was alleged that the deceased was earning Rs. 7000/- per month. According to the claim set up by the claimant, the deceased being an electrician was performing his duties at Kalapaniya under Lefunga Police Station and was repairing the over head electrical line when he suffered an electric shock and fell down on the ground. He was immediately taken to the hospital but unfortunately died as a result of the injuries received in the accident.

(3) The only question is whether the deceased was an employee or not. No doubt the claimant has not been able to produce any documentary evidence to show that the deceased was employed with M/S. S.R. Construction. However, she made a statement on oath that her deceased husband was engaged with M/S. S.R. Construction. Not only that she also examined one witness namely Sri Uttam Malakar who stated that he was a co-worker and was also employed by M/S. S.R. Construction and both he and the deceased were employees of M/S. S.R. Construction. As far as this witness is concerned, there is no cross examination to the fact that the deceased was not an employee of M/S. S.R. Construction.

(4) Even otherwise M/S. S.R. Construction is a firm of contractors. The least that the expected was that the owner of the firm or some official of the firm should step into the witness box and make a statement on oath before the Court. Mere denial in the written statement is meaningless. The averments made in the written statement are not evidence. In cases arising under the Workmen's Compensation Act, 1923 it will be very easy for the employers to deny the employment but if they do so they must produce the registers of employment and registers of workers which they are maintaining in their organization to show who were the persons employed by them and if on production of such documents it is shown that the deceased was not employed then consequences may follow. However, if the employer does not produce documentary evidence which it has in its possession then adverse inference will have to be drawn against the employer that he has purposely not appeared in the witness box. Therefore, I decide both these questions against the insurance company.

(5) It was next urged by Mr. P. Gautam, learned counsel for the appellant that the policy did not cover any claim under the Workmen's Compensation Act. However, I find this is not a defence taken before the trial Court. In the trial Court, written statement, the defence taken by the insurance company is as follows:

> **"1. The Firm of the O.P. No.1 viz., S.R. Constructions is insured under the policy of the answering-O. P. But the said policy does not cover the liability in respect of the claim under the present case.**

2. That the O.P. No.1, the owner of the Firm in his written statement very categorically denied the deceased Manik Chandra Kar was a workman under him. In the face of such unequivocal statement the Claimant's claim cannot survive. The insurer is only to indemnify the insured, but when the insured himself clearly denies the cause, insurer cannot come into the picture. Hence the policy obtained by O.P. No.1 is of no consequence in regard to the present case.

3. That the O.P. No.1 has served a copy of his Written Statement to this answering-O.P. He has taken difference stands in the Written Statement, but all such stands are subject to his denial of the fact that deceased Manik Chandra Kar was his workman. The answering O.P relies on this Written Statement of the O.P. No.1 and as such submits that the claim of the Petitioner is liable to be dismissed.”

(6) There is no such defence raised in the said written statement and it is clearly been stated that the insurer is only to indemnify the insured but when the insured himself clearly denies the cause insurer cannot come into the picture. There is no defence taken that the policy does not cover loss to workman. The insurance company cannot now urge something which it had not urged before the trial Court. Therefore, this question is also decided against the insurance company.

(7) The insurance company has also been unable to point out any specific clause whereby it was not liable to pay interest and, therefore, all the questions are decided against the insurance company.

(8) In view of the above discussion, the appeal is dismissed.

(9) Send down the LCRs forthwith.

CHIEF JUSTICE

Dipesh