

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MFA(W/C) No.17 of 2011
along with MFA(W/C) No.8 of 2012

A) MFA(W/C) No.17 of 2011

Smt. Shipra Saha,
W/o Late Sunil Saha,
Resident of Village - Mohanpur,
P.O. Majlishpur, P.S. - Ranir Bazar,
District - West Tripura.

..... *Appellant.*

By Advocate : Mr. S K Datta.

- *Versus* -

1. **The State of Tripura,**
Represented by its Secretary to the
Government of Tripura, Drinking Water
and Sanitation Department, Agartala,
P.O - Agartala (Previously Public Health
Engineering).
2. **Superintending Engineer, Circle - I,**
Agartala, Drinking Water and Sanitation,
Government of Tripura, Agartala, P.O -
Agartala, Dist. West Tripura, (Previously
Public Health Engineering, Agartala).
3. **The Assistant Engineer,**
Drinking Water and Sanitation Sub-
Division, Government of Tripura,
Khowai, P.O - Khowai, West Tripura.
(Previously Public Health Engineering,
Khowai).
4. **Shri Ajit Bhattacharjee, Contractor,**
S/o Dinesh Bhattacharjee,
Jirania ADC Chowmohoni,
P.O : Birendranagar, P.S Jirania,
Dist. West Tripura.

..... *Respondents.*

By Advocate : Mr. D C Nath.

B) MFA(W/C) No.8 of 2012

Sri Ajit Bhattacharjee,
S/o Dinesh Bhattacharjee,
Jirania ADC Chowmuhani,
P.S. Jirania, West Tripura.

..... *Appellant.*

By Advocate : Mr. D Bhattacharji.

- Versus -

1. Smt. Shipra Saha,
W/o Late Sunil Saha,
Resident of village Mohanpur, Mazlishpur,
P.S. Ranirbazar, District - West Tripura.
2. The State of Tripura,
Represented by its Secretary
to the Govt. of Tripura, Drinking Water & Sanitation
Department, Govt. of Tripura, Agartala.
3. The Superintending Engineer, Circle - 1,
Agartala, Drinking Water & Sanitation Department,
Govt. of Tripura, Agartala.
4. Assistant Engineer,
Drinking Water & Sanitation Sub-Division,
Govt. of Tripura, Khowai, P.O. Khowai, Trpura (W),
(Previously Public Health Engineering, Khowai).

..... *Respondents.*

By Advocate : Mr. P Gautam.

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing and : 23.11.2015
pronouncement of judgment.

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

These two appeals are being disposed of by a common judgment since they arise out of the one award, passed by the learned Commissioner, Workmen's Compensation, on 25th June, 2011 in case No.TS(/C) No.13 of 2008.

2. Briefly stated, the facts of the case are that claimant Smt. Shipra Saha filed a claim petition alleging that her husband Late Sunil Saha was employed as labourer-cum-Jugali(helper) of mason for construction of an overhead water tank in Khowai hospital premises. This work was being carried out by Sri Ajit Bhattacharjee, contractor who had been awarded this contract by the officials of the State of Tripura. She had, therefore, impleaded the State of Tripura, Superintending Engineer, Circle -1, Agartala, Assistant Engineer, Drinking Water & Sanitation Department, Tripura and the contractor Sri Ajit Bhattacharjee as respondents.

3. In the claim petition it was claimed that the deceased used to get salary of Rs.120/- per day and also used to get food and tiffin allowance of Rs.30/- per day and therefore, the total emoluments were Rs.4,500/- per month. It was alleged that he was aged about 50 years at the time of accident. The respondents 1 to 3 i.e. the State of Tripura, Superintendent Engineer and Assistant Engineer did not appear to contest the petition and were proceeded

against *ex-parte*. Only the contractor submitted his written statement and according to the contractor, deceased Sunil Saha was engaged as a casual labourer under the State for supply of tea, water etc. and he had been appointed as casual worker only one day prior to the accident. The learned Commissioner, Workmen's Compensation assessed the income of the deceased at Rs.3,600/- per month and awarded compensation of Rs.2,72,562/- along with interest. The contractor Ajit Bhattacharjee was saddled with the liability to pay the compensation.

4. Two appeals have been filed. First is by the claimant Smt. Shipra Saha being MFA(W/C) No.17 of 2011 wherein she has prayed for enhancement of compensation and the main ground raised is that the tiffin allowance of Rs.30/- per day has not been taken into consideration. Sri Ajit Bhattacharjee, the contractor has also filed an appeal [MFA(W/C) No.18 of 2012] and he submits that the liability to pay the compensation should have first been fixed upon the State in terms of the Workmen's Compensation Act, 1923. This stand of Mr. Bhattacharjee is supported by Mr. S K Dutta who submits that the enhanced amount of compensation may be directed to be paid by the State. At this stage, it may be noticed that as far as the contractor is concerned, he has already deposited the amount of compensation as awarded by the learned Commissioner, Workmen's Compensation.

5. There can be no manner of doubt that in terms of Section 12 of the Workmen's Compensation Act, 1923 renamed as Employee's Compensation Act, 1923 where the employee of a contractor is entitled to Compensation under the Act then the person who has awarded the contract to the contractor is deemed to be the principal and is liable to pay the compensation though such principal has a right to recover the amount of compensation from the contractor. This Court in *MFA(W/C) No.23 of 2008 the Tripura State Electricity Corporation Ltd. Vs. Sri Lal Mohan Das and others* dealing with Section 12 of the Workmen's Compensation Act held as follows :

"5. The next question which arises is, whether the appellant can be burdened with the liability to pay the compensation or not. In this behalf reference may be made to Section 12 of the Workmen's Compensation 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 than 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.”

6. *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 term of Section 12(1) of the Act. The deemed principal 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 recover the compensation.*

7. *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.

.....”

As far as the present case is concerned, since the contractor has already paid the amount of compensation awarded by the commissioner it is not necessary to answer that question. However, if compensation is enhanced then consequences may follow.

6. Coming to the question of enhancement of compensation, I find that in the claim petition the claimant had stated that the deceased was getting monthly wages of Rs.3,600/- per month and Rs.30/- per day for food, tiffin etc. The defendant No.4 stated that the deceased was a casual labourer and had been employed only on the previous day. The defendant No.4 did not state anything about the wages being paid to the deceased. The claimant Shipra Saha filed an affidavit in evidence and repeatedly allegations with regard to wages are the same. She has been cross-examined and in cross-examination she again reiterated that her husband was paid wages @ Rs.120/- per day and Rs.30/- for tiffin per day in addition to wages. A suggestion was put to her on behalf of the respondents 1 to 3 i.e the State of Tripura that she was getting wages of Rs.70/- per day and Rs.10/- per day as tiffin allowance. As far as the contractor is concerned, there was none present to cross-examine the witness.

7. The contractor did not appear in the witness box. He was the best person to prove the wages because he could have easily shown what were the wages in the records of the company. Even the State in its cross-examination has admitted the suggestion that some amount was being paid as tiffin allowance. Therefore, the version of the claimant-appellant that the deceased was being paid Rs.30/- as tiffin allowance cannot be said to be totally false. Therefore, I hold that the total emoluments of the claimant shall not only include wages but also his tiffin allowance and therefore, the wages works out to Rs.4,500/- per month. At the time when the accident took place i.e. in the year 2008 the maximum wages which could be taken into consideration were Rs.4,000/-. The age of the deceased was 50 at the time of accident. Therefore, 50% is multiplied by the relevant factor of 153.09 and the compensation works out to Rs.3,06,180/-. Therefore, the appeal of the claimant is allowed and the compensation enhanced from Rs.2,75,562/- to **Rs.3,06,180/-**. On this amount the claimant shall also be entitled to statutory interest @ 12% per annum from the date of the accident till payment of the amount. The contractor has already paid the amount as awarded by the learned Commissioner. The State is directed to deposit the enhanced amount after deducting/adjusting the amount already paid by the contractor in the Registry of this Court within 8(eight) weeks

from today but the State shall be at liberty to recover the amount deposited by it from the contractor in accordance with law.

8. In view of the discussion, the appeal is allowed and the award of the learned Commissioner, Workmen's Compensation, is modified as stated herein above. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu