

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

MFA(WC) No. 08 of 2011

MFA(WC) No. 18 of 2011

MFA(WC) No. 19 of 2011

MFA(WC) No. 09 of 2012

In MFA(WC) No. 08 of 2011

Appellant :

Smti. Maya Rani Debnath,

W/o. Sri Sankar Debnath,

C/o. Sri Swapan Banerjee,

Resident of Joynagar Road No.8, P.O-Agartala,

P.S- East Agartala, Agartala, District- West

Tripura.

By Advocates :

Mr. S. Deb, Sr. Adv.

Mr. M. K. Roy, Adv.

Mr. S. Dutta, Adv.

Respondent :

1. Sri Sankar Debnath,

Son of Late Ramani Mohan Debnath, Resident of

Lembucherra, P.S-Lefunga, District-West Tripura,

P.O- Lembucherra.

Pro-Respondents :

2. Sri Rabindra Debnath,

Son of Late Mukunda Debnath,

Resident of Harihardula, Bishalgarh, District-West

Tripura, P.O-Bishalgarh.

(Owner of Vehicle No.TR-01-B-4214, Cruiser Jeep)

3. The National Insurance Co. Ltd.

Divisional Office, Akhaura Road, Agartala, West

Tripura, P.O- Agartala.(Insurer of vehicle No. TR-

01-B-4214, Cruiser Jeep).

4. Smti. Beauti Datta (Saha),

Wife of Sri Sajal Saha,

Resident of Hospital Road, Sonamura, District-

West Tripura, P.O- Sonamura (Owner of Vehicle

No. TR-01-4461, Commander Jeep).

5. The Divisional Manager,

The United India Insurance Company Ltd.

Agartala, West Tripura. P.O-Agartala.

(Insurer of Vehicle No.TR-01-4461, Commander

Jeep).

6. Smti. Babita Saha,

Wife of Late Subal Saha,
 Resident of Pratapgarh, P.S-East Agartala,
 Agartala, District-West Tripura, P.O-Agartala,
 (Owner of vehicle No.TRA-2032, Mahindra &
 Mahindra Jeep)

By Advocates :

Mr. K. N. Bhattacharji, Sr. Adv.
 Mr. P. S. Roy, Adv.

In MFA(WC) No. 18 of 2011**Appellant :****The National Insurance Co. Ltd.**

Represented by its Divisional Manager, Agartala
 Division Office, Akhaura Road, P.S-West Tripura,
 District-West Tripura.(Insurer of the vehicle No.
 TR-01-B-4214 Cruiser Jeep).

By Advocates :

Mr. P. Gautam Adv.
 Mr. S. Debnath, Adv.

Petitioner-Respondent :**1. Smti. Maya Rani Debnath,**

W/o. Sri Sankar Debnath,
 Permanent resident of Yubatara,
 Lembucherra, P.S-Lufunga,
 Mohanpur, West Tripura Dist.

Presently residing at:

C/o. Sri Swapan Banerjee,
 Joynagar Road No.8,
 Opposite side of Mahabir Club,
 Dashamighat, Agartala
 P.O-Battala, P.S- West Agartala,
 District- West Tripura.

Owner-Respondent :**2. Sri Rabindra Debnath,**

Son of Late Mukunda Debnath,
 Resident of Harihardula, Bishalgarh, P.O & P.S -
 Bishalgarh. District-West Tripura,
 (Owner of Vehicle No.TR-01-B-4214, Cruiser
 Jeep).

By Advocate :

Mr. M. K. Roy, Adv.

In MFA(WC) No. 19 of 2011

Appellant :

The National Insurance Co. Ltd.

Represented by its Divisional Manager, Agartala Division Office, Akhaura Road, P.S-West Tripura, District-West Tripura.(Insurer of the vehicle No. TR-01-B-4214 Cruiser Jeep).

By Advocates :

Mr. P. Gautam Adv.
Mr. S. Debnath, Adv.

Petitioner-Respondent :

1. Sri Sankar Debnath,

S/o. Late Ramani Mohan Debnath,
resident of Lembucherra, P.S-Lefunga, District-West Tripura.

Owner-Respondent :

2. Sri Rabindra Debnath,

Son of Late Mukunda Debnath,
Resident of Harihardula, Bishalgarh, P.O & P.S - Bishalgarh. District-West Tripura,
(Owner of Vehicle No.TR-01-B-4214, Cruiser Jeep).

By Advocate :

Mr. M. K. Roy, Adv.

In MFA(WC) No. 09 of 2012

Appellant :

Sri Sankar Debnath,

S/o. Late Ramani Mohan Debnath,
resident of Lembucherra, P.S-Lefunga, District-West Tripura.

By Advocates :

Mr. K. N. Bhattacharji, Sr. Adv.
Mr. P. S. Roy, Adv.

Respondents :

1. Smti. Maya Rani Debnath,

W/o. Sri Sankar Debnath,
C/o. Sri Swapan Banerjee,
Resident of Joynagar Road No.8,
P.O-Agartala-799 001, P.S- West Agartala,
District- West Tripura.

2. National Insurance Co. Ltd.

Divisional Office, Akhaura Road, Agartala-799 001, West Tripura.(Insurer of the vehicle No. TR-01-B-4214 Cruiser Jeep).

By Advocates :

Mr. S. Deb, Sr. Adv.
 Mr. M. K. Roy, Adv.
 Mr. S. Dutta, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
 Judgment & Order : **27th March, 2015.**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER (ORAL)

These four appeals are being disposed of by a common judgment since they arise out of one common award filed in two separate claim petitions.

[2] The undisputed facts are that the deceased Bibrata Debnath was employed as a driver with Sri Rabindra Debnath at a salary of Rs.4500/- per month plus daily allowance of Rs.50/- per day. He unfortunately died in an accident which took place on 15.11.2008. Thereafter two claim petitions were filed. Claim petition being T.S(W/C) 02 of 2009 was filed by Smti. Maya Rani Debnath, mother of the deceased and case No. T.S(W/C) 03 of 2009 was filed by the father, Sri Sankar Debnath. Both claimed compensation.

[3] Under the Workmen's Compensation Act, 1923 (for short, the Act) the parents can claim compensation only if they proved that they are dependent on the deceased. Unless dependency is shown the parent is not entitled to any compensation under the Act. Reference in this behalf may be made to Section 2(1) (d)(iii)(b) which as follows:

"2. Definitions.-(1) In this Act, unless there is anything repugnant in the subject or context,-

(b) *****

(c) *****

(d) "dependant" means any of the following
relatives of deceased workman, namely:-

(i) *****

(ii) *****

(iii) if wholly or in part dependant on the earnings
of the workman at the time of his death, -

(a) *****

(b) a parent other than a widowed mother,

*****"

Therefore, if the parents are dependant both stand on the same footing but each of the parents will have to prove his/her dependency before claiming compensation.

[4] From the material on record it is more than apparent that the relations between the parents are strained. It is also apparent that they are not living together. None of the claimants in their claim petitions made the other parent a party. It would be pertinent to mention that by the written statement filed by the opposite parties, the Commissioner, Workmen's Compensation was apprised that another claim petition has been filed and in both the cases in the written statement reference was made to the other claim petition filed.

[5] Issues in the case filed by the wife were filed on 21.08.2010. Issues in the case filed by the husband were framed on 15.06.2010. The husband's case was listed for evidence on 23.08.2010 when a lengthy order was passed relevant portion of which reads as follows:

"23.08.2010

Ld. Counsel Mr. Paul has filed a petition that out of the same cause of action another case has been filed claiming compensation and that petition was filed by the mother of the deceased which has been registered as T.S(W.C) 2 of 2009.

Therefore, the present case and T.S(W.C) 2 of 2009 are required to be tried analogously for convenience.

Considered.

Case No. T.S(W.C) 2/2009 has been posted on 8th November, 2010. Therefore, this case is also adjourned till 8th Nov, 2010 for S.R.

Fix 8.11.2010 for S/R.”

Therefore, both the cases were taken up together on 06.01.2011. On this date the wife submitted an examination-in-chief by affidavit. However, the case filed by the husband was not taken up on 6.1.2011 but was fixed for 31.1.2011 and on 31.1.2011 an order was passed in the husband’s case that it be tagged with TS(W.C) 2 of 2009. The wife in her affidavit make serious allegations against the husband and claimed that she alone was dependent on the deceased son.

[6] The husband on the other hand in his affidavit stated that it was he who was dependent on the deceased son but did not clearly state whether he was working or not. Unfortunately, the Commissioner, Workmen’s Compensation did not follow proper system. Once the Commissioner had been apprised that both the cases arose out of the same accident he should have listed both for analogous hearing and should have further ordered that the evidence in one case would be read as evidence in other case also and should have also given the opposite party permission to cross examine the witnesses. The husband and the wife have not been cross-examined and therefore, I am clearly of the view that the matter should be remitted to the Commissioner, Workmen’s Compensation to decide this portion of the dispute.

[7] Coming to the appeals filed by the insurance company, the main ground raised by Mr. P. Gautam, learned counsel for the insurance company is

that the learned Commissioner, Workmen's Compensation has wrongly fixed the salary at Rs.6,000/- per month not taking into consideration the fact that the amendment which was made applicable in the year 2010 could not be applied to the present case because admittedly the accident had taken place in the year 2008. It is well settled law that the rights of the parties are determined by the date when the accident occurs. Merely because the case takes a long time to be decided does not mean that the subsequent amendment is to be made retrospectively applicable.

[8] Therefore, I am of the considered view that the maximum income which could be taken into consideration at the relevant time was Rs.4000/- per month and 50% of that works out to Rs.2000/- per month. Since the deceased had completed 22 years of age the relevant factor is 221.37 and the compensation works out to Rs.4,42,740/-. On this amount the insurance company shall also be liable to pay interest @ 12% per annum from the date of the accident till payment of the amount.

[9] The appeals of the insurance company (MFA(W.C) No.18 of 2011 and MFA(W.C) No.19 of 2011) are partly allowed. The insurance company need not be present before the Commissioner, Workmen's Compensation because the case has been remanded only to settle the dispute between the parents of the deceased.

[10] As far as the appeals (MFA(W.C) No.08 of 2011 and MFA(W.C) No.09 of 2012) filed by the parents are concerned in those appeals following order is passed:

That the matter only qua apportionment of the compensation as ascertained by me above is remitted to the

learned Commissioner, Workmen's Compensation who shall now permit the husband and the wife to cross examine the each other and if necessary give both of them one opportunity to lead any other evidence which they want to lead to prove who was dependent on the deceased son. This Court would however, like to make it clear that if the learned Commissioner, Workmen's Compensation finds that the deceased was living with the mother and she admittedly was living separately then the father would not be entitled to any compensation. He will decide whether any one of the parents or both of them were dependent on the deceased and shall grant compensation only to the parent who was dependent unless he finds that both were dependent and in that case the compensation shall be divided equally. The husband and the wife i.e. appellants in MFA(W.C) No.09 of 2012 and MFA(W.C) No.08 of 2011 are directed to appear before the Commissioner, Workmen's Compensation on 27th April, 2015 and the learned Commissioner shall try and dispose of the matter latest by 31st August, 2015. It is again made clarified that the insurance company need be appeared before the learned Commissioner, Workmen's Compensation.

[11] No order as to costs. Send down the LCRs forthwith.

CHIEF JUSTICE