

THE HIGH COURT OF TRIPURA
AGARTALA

MFA (W/C) 22 of 2011

1. Smti. Surabhakti Jamatia,
W/O. Late Jagat Bikram Jamatia
Of Village – Padaram Bari,
P.S. Killa,
District – South Tripura.

2. Sri Jagat Lila Jamatia,
S/O. Late Ratan Pada Jamatia
Of Village – Padaram Bari,
P.S. Killa,
District – South Tripura.

..... *Appellants*

- Vs. -

1. Sri Ramkumar Jamatia,
S/O Sri Niram Kumar Jamatia
of Indrabasi Bari,
P.S. R.K. Pur,
District – South Tripura.
(Owner of TR03B-1657 – Auto Van)/

2. The Oriental Insurance Company Limited,
Central Road, Agartala,
West Tripura.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. K.N. Bhattacharjee, Sr. Advocate.
Mr. P.S. Roy, Advocate.

For the respondent : Mr. K. Bhattacharjee, Advocate.
No.2.

Date of hearing : 11.06.2015.

Delivery of : 10.07.2015.
Judgment & order

Whether fit for : No.
Reporting

JUDGMENT & ORDER

This appeal under the Workmen's Compensation Act is directed against the award dated 23.09.2011 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in Case No.T.S. (W/C) No.02 of 2010 whereby learned Commissioner assessed the compensation at Rs.3,94,120/-, but held that only Sri Ramkumar Jamatia, the owner of the auto rickshaw was liable to pay the said amount.

2. The claimants are the widow and father of Jagat Bikram Jamatia. In the claim petition, it was alleged that the deceased was employed with auto van bearing No.TR03B-1657. The said auto van met with an accident on 08.08.2009 and as a result of injury sustained the deceased expired. According to the claimants, the deceased was employed as assistant in the auto van and he was proceeding along with the goods in the vehicle. The learned Commissioner held that the deceased had died in the accident, but went on to hold that it was not proved that the deceased was a workman. Learned Commissioner also held that there was violation of the terms of the policy and hence, exonerated the insurance company and held the owner of the vehicle liable to pay the compensation.

3. I have heard learned counsel for the parties.

4. It is submitted by Mr. K.N. Bhattacharjee, learned senior counsel that the learned Commissioner wrongly assessed the income Rs.4,000/- per month whereas it was proved to be more than Rs.4,500/- per month. He also urged that the insurance company had wrongly been exonerated.

5. As far as the first point is concerned, the learned Commissioner was absolutely right in limiting the income of the deceased Rs.4,000/- per month because prior to the amendment of 2009, the monthly wages of a workman could only be taken Rs.4,000/- per month. The accident happened prior to the amendment.

6. As far as the second point is concerned, there is merit in the case of the appellant-petitioner. The owner had admitted that the deceased was his employee. The widow of the deceased and the owner both appeared in the witness box and supported their case. There is no effective cross-examination and the insurance company led no evidence. The claimant has proved all the relevant documents such as driving licence of the driver, registration certificate etc. It may be true that at the relevant time, there were 10 passengers in the vehicle, but that will not be a ground to exonerate the insurance company for paying the amount which it is liable to pay under the Workmen's Compensation Act.

7. Therefore, I allow the appeal and hold that the widow Smt. Surabhakti Jamatia, wife of the deceased is entitled to compensation of **Rs.3,94,120/-** (Rupees Three lakh ninety four thousand one hundred twenty) along with interest @ 12% per annum from the date of accident till deposit of the amount.

8. The insurance company is directed to deposit this amount with the Commissioner, Workmen's Compensation within 3(three) months from today and the learned Commissioner, Workmen's Compensation shall ensure that this money is dealt with strictly in accordance with Section 8 of the Workmen's Compensation Act. Only an amount of **Rs.50,000/-** (Rupees Fifty thousand) shall be released in favour of the widow. The rest of the amount shall be kept in a fixed deposit for a period of 5 years. After 5(five) years, a sum of **Rs.1,00,000/-** (Rupees One lakh) shall be paid every year to the widow till the entire amount is released in her favour.

9. The appeal is disposed of in the aforesaid terms.

10. Send down the lower court records forthwith.

CHIEF JUSTICE

sima