

THE HIGH COURT OF TRIPURA

AGARTALA

MFA(WC) No. 09 of 2014

Claimant-Appellant :

Smt. Rabining Jamatia,
W/o. Lt. Kalikanta Jamatia,
Resident of Village-Garjantali,
P.S-Teliamura, District-West Tripura.

By Advocate :

Mr. S. K. Dutta, Adv.

Opposite Party-Respondents :

- 1. The State of Tripura,**
Represented by its Secretary, Forest Department,
Government of Tripura, Agartala.
- 2. The Principal Chief Conservator of Forest,**
Government of Tripura, Agartala.
- 3. The Divisional Forest Officer,**
Government of Tripura, Teliamura, West Tripura.

By Advocate :

Mr. B. Dutta, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **18th June, 2015.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

This appeal by the claimant is directed against the award dated 20.08.2014 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in case No. T.S. (W.C) 52 of 2003, whereby the Commissioner awarded nil amount in favour of the claimants.

[2] The claimants are the legal heirs being the widow and minor children of Late Sri Kalikanta Jamatia. It was alleged by the claimants that Kalikanta Jamatia died on 23.11.1999 at 12.45 hours during the course of his employment and therefore, they are entitled to compensation.

[3] The Commissioner, Workmen's Compensation has come to the conclusion that the deceased was a workman and the claimants were entitled to compensation. He has however, denied compensation to the claimants on the ground that the widow of the deceased was granted service by the employer and she will serve for many years and thus the benefit provided to the claimants is more than what was available to them under the Act.

[4] This finding of the Commissioner is totally against law. Under the Workmen's Compensation Act, 1923 renamed as the Employee's Compensation Act, 1923 this factor cannot be taken into consideration. The widow is granted employment not in lieu of compensation but pursuant to the scheme known as the Die-in-harness scheme. Under that scheme a family member of a deceased employee may be granted employment by the State regardless of the fact whether such employee dies due to an accident arising out of the employment or otherwise. The grant of employment to the family members of the deceased cannot be taken into consideration while assessing the compensation. The employee who is granted employment is paid salary for the work put in by such employee. What is given to the relatives is employment. That is an act of benevolence performed by the employer pursuant to a scheme framed by it. However, the payment of salary made by the employer to the next of kin is made for the work put in by the next of kin and as such cannot in any manner affect payment of compensation whether under the Workmen's Compensation Act, 1923 or under any other law of tort.

[5] Furthermore, 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 the provision shows that no payment of compensation in respect of a workman either in case of injury or death can be made otherwise by a deposit with the Commissioner, Workmen's Compensation. 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. True it is that in this case the employer is the State but the fact remains that the law prescribes that compensation can be paid only by paying through to the Commissioner and no other form of payment of compensation is accepted under the Act.

[6] 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.

[7] 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.

[8] 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.

[9] Having held so I must also state that the compensation as assessed by the Commissioner is totally illegal. The Commissioner was not only wrong in holding that the claimants are not entitled to compensation but he has calculated the compensation without any proof of income, without any proper proof of the date of birth and without even applying the law as it existed on the date of accident. The rights of the parties are determined by the law as it stood on the date of the accident. The cause of action arises on the date of accident. The compensation has to be assessed in accordance with the law as it stood on the date of the accident. Later amendments in the law, even if beneficial to the workman cannot work in his favour. Reference may be made to the decisions rendered by the Apex Court in ***Partap Narian Singh Deo Vs. Shrinivas Sabata & Another : AIR 1976 SC 222*** and ***Kerala State Electricity Board and another Vrs. Valsala K. and Another: (1999) 8 SCC 254.***

[10] As far as the present case is concerned, I had by the order dated 27.04.2015 directed the State to produce the record to prove the last income of the deceased as well as his date of birth. This claim relates to deceased Kalikanta Jamatia. His date of birth as per the service record was 26.12.1968 and his last pay certificate including all allowances shows that his income was Rs.2553/-. The accident took place on 23.11.1999. At that time the maximum salary which could be taken into consideration in terms of Section 4 of the Act was only Rs.2,000/- and therefore, the compensation has to be calculated accordingly. 50% of the maximum pay works out to Rs.1000/- and this should be multiplied by the relevant factor. As the

deceased had been completed 31 years of age at the time of accident the relevant factor in terms of 4th Schedule would be 205.95 and therefore, total compensation works out to Rs.2,05,950/-.

[11] Earlier the petition filed by the claimants was dismissed by the Commissioner Workmen's Compensation on the ground that they were time barred. A revision petition (*CRP No.88 of 2007: Smt. Rabining Jamatia Vrs. State of Tripura and another*) filed by the claimants was allowed by this Court but it was held that the claimant would be entitled to interest only from 07.04.2005 onwards.

[12] Next come the quantum of interest. As per section 4A(3) even the accident stood in the year 1999 the employer is liable to pay interest 12% per annum from the date of accident till payment of the amount, but this Court while allowing the revision petition filed by the claimants and condoning the delay in filing the petition had directed that the interest would be payable only w.e.f 07.04.2005 onwards. This judgment has not been challenged. Accordingly, the claimant in addition to the amount of Rs.2,05,950/- is entitled to interest @ 12% per annum w.e.f 07.04.2005 till payment of the entire amount.

[13] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE