

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

MFA(WC) No. 08 of 2013

Claimant-Petitioner-Appellant :

Sri Manoj Debnath.

S/o. Lt. Lal Mohan Debnath
Resident of Village Dhaleswar Road No. 16, P.O.
Dhaleswar, P.S-East Agartala, District-Tripura
West.

By Advocates :

Mr. D. R. Choudhury, Adv.
Mr. S. Sarkar, Adv.

Opp. Party-Respondents :

1. Sri Anup Bhattacharjee,

S/o. Lt. M. Bhattacharjee,
C/o. B-2 Smt. Gita Rani Bhattacharjee, Gayetri
Apartment, Block No.1, 5th Floor, Kalapahar, P.S-
Ambari, Fatashil, Guwahati-18, District-Kamrup,
Assam.
(Owner of the vehicle, bearing No. ML05D 5384,
Night Supper Bus)

2. Sri Nitai Saha @ Nitai Ch. Saha,

S/o. Lt. Brajabasi Saha @ Potabar Saha,
Resident of village Shibnagar, Agartala, P.S-East
Agartala, District-Tripura West.
(Driver of the vehicle, bearing No. ML 05D 5384,
Night Super Bus)

3. Shri Manik Das,

S/o. Lt. Jagabandhu Das,
C/o. Taswal motor Works, Gali No. 5 Opposite to
Assam Kata, Beltala, Guwahati-29, Assam.
(Owner-cum-Driver of the vehicle, bearing No.
AS 25C 4545, Truck).

4. The Oriental Insurance Company Ltd.,

Central Road, Agartala, P.S-West Agartala,
District West Tripura.
(Insurer of the vehicle, bearing No. ML 05D
5384, Night Super Bus)

By Advocate :

Mr. K. Bhattacharji, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **10th November, 2014.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

This appeal for enhancement of compensation has been filed by the petitioner-claimant who is admittedly a workman.

[2] The brief facts are that the petitioner-claimant was working as a conductor in a bus bearing registration No. ML 05D 5384. This bus met with an accident on 30th December 2008 near Shillong. According to the claimant he received some injuries on his chest and, therefore, he was suffering from pain and went to various doctors and got himself treated both at Shillong and at Chennai. He claimed compensation in this regard.

[3] The Commissioner Workmen's Compensation awarded sum of Rs.21,084 to the petitioner-claimant for the medical expenses incurred by him and another sum of Rs.15,000/- was awarded for loss of 3(three) months income i.e. a total of Rs.36.084/-. The respondent-insurance company with which the vehicle was insured was held liable to pay the compensation.

[4] In the State of Tripura I have repeatedly found that the Commissioners, who are Judicial Officers, exercising powers of Commissioner under the Workmen's Compensation Act are repeatedly assessing compensation not in accordance with the provisions of Workmen's Compensation Act,1923 (for short the Act) but by applying the principles which are applicable to assessment of compensation under the Motor Vehicles Act, 1988(for short M. V. Act). In my view this is not at all permissible.

[5] When the present appeal for enhancement of compensation came up for admission this Court noticed that the learned Commissioner

Workmen's Compensation had not followed the provision of Sections 3 and 4 of the Act while assessing the compensation and therefore, the appeal was admitted on the following substantial question of law:

"Whether the learned Commissioner totally misdirected himself while assessing compensation because he had not followed the provisions of Sections 3 and 4 of the Workmen's Compensation Act or the Schedule annexed thereto?"

[6] If an employee during the course of employment suffers injuries in a motor vehicle accident which has causal connection with his employment then he has an option of filing a claim either under the Workmen's Compensation Act or under the Motor Vehicles Act. He cannot file a claim under both the heads. Section 167 of the M. V. Act reads as follows:

"167. Option regarding claims for compensation in certain cases.—Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

By now law is well settled that it is for the petitioner-claimant to choose the forum of his choice, but once he chooses the forum of his choice he cannot turn around and then claim that he should be granted compensation in accordance with the principles applicable to the other forum.

[7] The Workmen's Compensation Act has a structured formula for assessment of compensation. Section 3 of the Act basically lays down that if a workman suffers injuries or dies in an accident arising out of or in course of his employment, the employer is liable to pay compensation in accordance with the Act.

[8] How the compensation has to be calculated is clearly set out in Section 4 of the Act. In case of death the compensation is calculated by multiplying 50% of the monthly wages by the relevant factor. In case of permanent total disablement 60% of the monthly wages have to be multiplied by the relevant factor. Under the proviso which has now been added, the Central Government can from time to time change the schedule and at present the maximum wages which can be taken into consideration are Rs. 8000/- as per notification dated 31.05.2010. Therefore, in case of permanent disablement or death the Commissioner has only to see what are the wages of the workman apply the percentage as provided under Clause (a) and Clause (b) of Sub Section 1 of Section 4 of the Act and keeping in view the age of the workman apply the relevant factor as set out in Schedule IV of the Act. There is no power with the Commissioner to award a penny more or a penny less than what is provided under the Act. The Commissioner cannot award other sums such as funeral expenses, loss of love and affection, loss to the estate etc. which can be awarded under the M. V. Act. If a claim petition is filed under the Employees Compensation Act, this Act provides a formula as to how the compensation has to be calculated and the Commissioner is bound to follow this formula and he cannot award anything more or less than what is provided under the Act.

[9] In cases of permanent partial disablement, compensation is to be granted in terms of Clause (c) of Sub Section 1 of Section 4. However before such compensation is calculated there must be evidence before the Commissioner that there is permanent partial disablement. In the present case no evidence has been led before the Commissioner that there is any disablement, temporary, permanent, total or partial. I have gone through the medical record and the petitioner-claimant is complaining of chest pain

because of injuries received in the accident. There is not an iota of evidence to show that he has suffered any disablement. Sub Clause (d) of Section 4 of the Act provides that in the case of temporary disablement whether total or partial, the Commissioner may award half monthly payment equivalent to 25% of the monthly wages. This means that the workman is to get 50% of his monthly wages for every one month for which he is disabled from doing work. Under the old Workmen's Compensation Act there was no provision for grant of medical expenses but by Act of 45 of 2009 now the Commissioner has been entitled to reimburse to the employee the actual medical expenditure incurred by him for treatment of his injuries caused during the course of employment. Nothing more can be awarded.

[10] In the present case, Sri D. R. Choudhury, learned counsel for the petitioner-claimant submits that the principles of the M.V. Act regarding assessment of compensation be applied while assessing the compensation under the Employees Compensation Act and in this regard he has made reference to two judgments. The first judgment is in the case of ***Ved Prakash Garg Vrs. Premi Devi and others: AIR 1997 SC 3854*** and the second is ***The Oriental Fire & General Insurance Company Vrs. Smt. Nani Bala Devi and anoter: AIR 1988 Gauhati 40***. I am clearly of the view that both the judgments are totally inapplicable to the facts of the present case.

[11] In ***Premi Devi's*** case the question which arose before the Supreme Court was whether the insurance company is liable to pay interest on the amount of compensation awarded under the Act or not? No other question has been decided by the Apex Court in the said judgment. In ***Smt. Nani Bala Devi's*** case decided by the Gauhati High Court the question raised before the Gauhati High Court was whether even in proceedings filed

under the Act, the Insurance Company could be given direction to pay the awarded amount or not. While deciding this issue the Hon'ble Single Judge of the Gauhati High Court referred to Section 97 of the M. V. Act, 1939 and held that the provision of Section 97 of the M. V. Act could be read in proceeding under the Act. This was done only for the limited purpose of avoiding multiplicity of litigation. Otherwise if a Commissioner, Workmen's Compensation passed an award against the employer then the employer would first have to satisfy the award and then claim reimbursement from the insurance company. This judgment nowhere says that the principles regarding assessment of compensation under the M. V. Act can be imparted while deciding cases under the Act. That cannot so because when the Act i.e. the Workmen's Compensation Act or the Employee's Compensation Act itself provides a complete system, method and formula for assessing the compensation then no amount of legal ingenuity can be used to incorporate something into those provisions which is not provided for.

[12] At the time of exercising option it is for the workmen who may have legal advice or not to decide what is the forum which he wants to choose? If he decides to choose a particular forum then compensation has to be granted only in accordance with the law applicable to that forum. Here, one may also refer to Section 163-A of the M. V. Act. If a claim petition is filed under Section 163-A of the Motor Vehicles Act, 1988 then compensation has to be awarded in accordance with the second schedule. In such a petition, the claimant cannot claim that he should be granted loss for pain and suffering , loss for the estate, funeral expenses etc. as per the various judgments of the Apex Court rendered in matters under Section 166 of the Act. The compensation will have to be calculated as per the schedule. In the present case the compensation awarded by the Commissioner, Workmen's

Compensation is even more than what was payable under the Schedule. The insurance company has not challenged the award so I am not going into that aspect of the matter but there can be no enhancement in terms of the Act. Therefore, I find no merit in the appeal. Accordingly, the prayer for enhancement of compensation is rejected.

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

[14] Send down the lower court records forthwith.

A copy of this judgment be circulated to all the Judicial Officers in the State of Tripura.

CHIEF JUSTICE