

THE HIGH COURT OF TRIPURA

AGARTALA

MFA(WC) No. 05 of 2004

1. Smt. Gitarani Das Baisnab(Goswami),
W/O. Late Haripada Goswami,

2. Smt. Mani Goswami,
D/O. Late Haripada Goswami,

3. Sri Suman Goswami,
S/O. Late Haripada Goswami,

4. Smt. Minakshi Goswami,
D/O. Late Haripada Goswami,

- all are resident of village-Baikhura,
P.S. Baikhura, District-South Tripura,
At present living at Dhaleswar, Road No.16,
P.S. East Agartala, District-West Tripura.

(Sl.No.2, 3 and 4 are minor daughters and son
of the deceased. They are living with their mother,
i.e. Sl.No.1, who is also legal guardian of the said
minors and they are represented by the Sl.No.1,
i.e. their mother in the instant case.)

..... **Appellants.**

- V e r s u s -

1. Sri Santi Lal Baidya,
S/O. Anil Chandra Baidya of
Village-Julaibari, P.S. Baikhura,
District-South Tripura,
(Owner of vehicle No. TRL-6012),

2. The Oriental Insurance Company Ltd.,
Divisional Office, Central Road,
Agartala, West Tripura, represented by
its Branch Manager,

..... **Respondents.**

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. S.K.Datta, Advocate.

For the respondent-
Insurance Company : Mr. P. Gautam, Advocate.

Date of hearing and
delivery of judgment
and order. : 28.05.2013.

Whether fit for reporting : **Yes/No.**

JUDGMENT & ORDER (ORAL)

This appeal by the claimants is directed against the award of the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in T.S.(WC) No. 13 of 1998, decided on 15.04.2004, whereby the claim petition filed by the petitioners under Section 4 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Act') was dismissed.

2. The undisputed facts are that Hari Prasad Goswami, husband of Smti. Gita Rani Das Baishnab (Goswami) and father of the other claimants died while he was travelling in vehicle No.TRL-6012. It is not disputed that when this vehicle was proceeding extremists attacked the vehicle and the deceased suffered gun shot wounds and died as a result thereof. The claimant filed a petition claiming that the deceased was engaged as an assistant in the vehicle and, therefore, he was a workman and, hence, the petition under the Workmen's Compensation Act.

3. The owner of the vehicle, i.e. the employer, admitted that the deceased was his employee and also admitted that the deceased died as a result of extremist attack. The Insurance Company contested the matter. The main issue was whether the deceased was an employee of the owner.

4. The learned Commissioner held that though the employer had admitted the fact of employment, he had perused the police record and relying upon the statement of the widow allegedly recorded by the police wherein it was stated that her husband had purchased 112 bags of rice and hired the vehicle to transport the said paddy, held that in view of this statement the deceased was the owner of the goods carried in the vehicle and could not be said to be an employee or a workman falling within the ambit of Workmen's Compensation Act.

5. I have gone through the entire record. I have not found the statement of the widow on the trial Court record. While appearing in Court the widow stated that her husband was an employee working with the owner. She denied the suggestion that her husband was a businessman dealing in the sale and purchase of paddy.

6. Assuming that the widow had made some statement to the police that her husband was a businessman, then she should have been confronted with such statement and the statement allegedly made by her should have been got proved from the police official, who had allegedly recorded the statement. This has not been done.

7. It appears that the learned Commissioner relied upon the record of the police. The statement recorded under Section 161 Cr.P.C. can only be used to confront the maker of

the statement. Unless the maker of the statement is confronted with the statement, such statement has no value whatsoever and cannot be relied upon by any Court or Tribunal. In Court the only evidence on record is the statement of the widow and one Sri Paluram Patari as P.W.2 and exhibited documents are the Death Certificate, FIR along with complaint. None of these in any manner indicate that the deceased was a businessman. Therefore, in view of the claim of the claimant which was not disputed by the employer the deceased must be held to be a workman.

8. The accident occurred in 1996 and at the relevant time the maximum wages which could be taken into consideration at Rs.2,000/-. 50% of the wages comes to Rs.1,000/-. The claimants are alleged to be within 35 years. Therefore, the relevant factor would be 197.60 and the compensation would be Rs.1,97,600/-. In addition thereto the claimants are entitled to interest @ 12% per annum w.e.f. 07.08.1996, i.e. one month after the date of accident.

9. In view of the above discussion, the appeal is allowed. The award of the learned Tribunal is set aside. The claimants are held to be entitled Rs.1,97,600/- along with interest @ 12% per annum w.e.f. 07.08.1996. Since the vehicle was insured with the Oriental Insurance Company Ltd., it is directed to deposit the awarded amount, i.e. Rs.1,97,600/- along with interest @ 12% per annum w.e.f. 07.08.1996 till

deposit of the amount in the Registry of this court within four months from today.

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

CHIEF JUSTICE