

**THE HIGH COURT OF TRIPURA  
AGARTALA**

**MFA (WC) No. 33 of 2004**

1. **Smti. Suradhani Das,**  
W/O Late Tarini Das
  2. **Smti. Sabita (Dipali) Das,**  
W/O Late Pradip Das
  3. **Master Dipan Das,**  
S/O Late Pradip Das
- All are residing at Tarapur, P.S. Sidhai,  
District- West Tripura.

*.... Appellants*

**- V e r s u s -**

1. Shri Bhola Saha,  
S/O Late Matilal Saha,  
Santipara, Agartala, West Tripura,  
*(owner of the vehicle No. TRS-488 (bus))*
2. The Divisional Manager,  
Oriental Insurance Company Limited,  
Central Road, Agartala, West Tripura.

*.... Responodents*

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

For the Appellants	: Mr. B. Debnath, Advocate.
For the respondent- Insurance Company	: Mr. K. Bhattacharjee, Advocate.
Date of hearing	: 21.06.2013.
Date of delivery of judgment	: 27.06.2013
Whether fit for reporting	: <b>NO</b>

## **JUDGMENT & ORDER**

This appeal by the claimants is directed against the award dated 8<sup>th</sup> October, 2004 passed by the learned Commissioner, Workmen's Compensation, West Tripura in case No. T.S. (W.C) 191 of 1998, whereby he awarded a sum of ₹ 1,63,960/- in favour of the claimants along with interest @ 12% per annum. However, the liability to pay interest was fixed on the employer and the insurance company was exonerated.

**2.** This appeal was admitted on the following substantial questions of law –

***1. Whether the learned Commissioner, Workmen's Compensation, West Tripura, Agartala was right in directing the owner to pay the interest on the basis of the case reported in 2004 ACJ 452 (P.J. Narayanan versus the Union of India & Others) ;***

***2. Whether the learned Commissioner, Workmen's Compensation erred in law in holding the monthly wages of the workman at the rate of 1500/- per month when on the face of the pleadings as well as the materials on records disclosed that the monthly wages of the workman was ₹ 2,500/- .***

**3.** I shall take up the second substantial question of law first. According to the claimants, the deceased who was working as a conductor in the bus was being paid ₹ 2,500/- per month. It is urged by Sri B. Debnath, learned Counsel for the petitioners, that the deceased conductor was getting a salary of ₹ 2,500/- per month and his salary has wrongly been assessed at ₹ 1,500/-. The learned Commissioner, Workmen's Compensation, came to

the conclusion that the conductor could not have been getting ₹ 2,500/- per month. He held that in a previous case instituted by the driver of the said vehicle, the wages of the driver were assessed at ₹ 2,000/- per month and, therefore, it would be impossible to believe that the conductor was getting a salary higher than that of the driver.

4. In the present case, the claimant had claimed that the total wages of the workman was ₹ 2,500/- . The owner, in fact, denied that the deceased was workman/his employee or that he was getting salary of ₹ 2,500/- per month. The widowed mother of the claimants, stepped into the witness box and stated that her son was earning ₹ 2,500/- per month as a conductor. Other than this, there is no other evidence on record. Ratan Ghosh, who was the driver of the bus and according to him the deceased was a conductor in the same bus. However, he has not stated what were the wages being paid to the deceased. Sri Debnath, has relied upon the statement of PW 3, Dilip Kumar Saha, who is the Secretary of the Bus Service owners' Association. In my opinion, no reliance can be based on this statement. Dipali Das, widow of the deceased, appeared before this Court and she also has not stated what was the income of the deceased.

5. The accident occurred in the year 1997 and the findings of the learned Tribunal that the income should be assessed at ₹ 1,500/- per month is a pure finding of fact based on material on record. Therefore, the same cannot be interfered within this appeal.

6. Next comes, the question, as to whether the insurance company is liable to pay the interest or not. In my view, the insurance company cannot escape its liability to pay interest. The compensation becomes due on the date of the accident itself and must be paid within one month of the accident.

Reference in this behalf may be made to the judgment of the Apex Court in *Oriental Insurance company Ltd. vs. Siby George & Ors., 2012 AIR SCW 4384*. Reliance placed on the judgment of *PJ Narayan vs. Union of India and others 2004 ACJ 452* is totally misconceived. Infact, in *New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya and another in (2006) 5 SCC 192*, the Apex Court dealing with this issue, held as follows :

*'By reason of the provisions of the Act, an employer is not statutorily liable to enter into a contract of insurance. Where, however, a contract of insurance is entered into by and between the employer and the insurer, the insurer shall be liable to indemnify the employer. The insurer, however, unlike under the provisions of the Motor Vehicles Act does not have a statutory liability. The Act does not contain a provision like Section 147 of the Motor Vehicles Act. Section 17 of the Act does not provide for any restriction in the matter of contracting out by the employer vis-à-vis the insurer. The terms of a contract of insurance would depend upon the volition of the parties. A contract of insurance is governed by the provisions of the Insurance Act. In terms of the provisions of the Insurance Act, an insured is bound to pay premium which is to be calculated in the manner provided for therein. With a view to minimize his liability, an employer can contract out so as to make the insurer not liable as regards indemnifying him in relation to certain matters which do not*

***strictly arise out of the mandatory provisions of any statute. Contracting out, as regards payment of interest by an employer, therefore, is not prohibited in law'.***

**7.** No doubt an insurance company can enter into contract whereby it is not liable to pay the interest. If the insurance company wants to escape its liability to pay the interest, it must produce and prove the insurance policy and show that there is a clause therein that the insurance company is not liable to pay interest. In case, the insurance company does not discharge the onus which lies upon it, it must be held liable to pay the interest.

**8.** In view of the above discussion, the appeal is partly allowed. The award of the learned Commissioner, Workmen Compensation, is upheld, so far as the assessment of compensation is concerned. However, it will be the insurance company which shall be liable to pay the interest on the awarded amount from one month after the date of the accident i.e. w.e.f. 19.11.1997 till the principle amount of the compensation was deposited before the Commissioner, Workmen's Compensation. The entire interest be deposited within 4 (four) months from today.

**9.** The compensation and interest is apportioned equally to the widow, mother and the minor children of the deceased. The amount falling to their share shall not be released unless an appropriate application is filed under Section 8 of the Workmen Compensation Act, 1923.

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

Send the LCRs forthwith.

**CHIEF JUSTICE**