

**THE HIGH COURT OF TRIPURA,
AGARTALA**

MFA (WC) No. 26 of 2009

- 1. The Commander,**
Headquarter, 755 BRTF (GREF),
Lichu Bagan, Agartala, West Tripura,
C/O 99 APO.
- 2. The Officer Commanding,**
78 Road Construction Company,
GREF, C/O 99 APO.

.... Appellant

- V e r s u s -

Shri Atindra Chakraborty,
S/O Late Ashit @ Ajit Chakraborty,
Resident of village- Tuichindrai, East Howaibari,
P.S.- Teliamura, District- West Tripura.

.... Respondents

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

For the appellants : Mr. P.K. Biswas, Asstt. S.G.
For the respondent : Mr. S.K. Datta, Advocate.
Date of hearing and : 30.09.2013.
delivery of judgment.
Whether fit for reporting: **NO**

JUDGMENT & ORDER(ORAL)

The short issue involved in this appeal by the employer, is whether, the learned Commissioner was right in assessing the income of the deceased at Rs. 4,500/- per month and assessing the compensation by taking his income to be Rs. 4,000/- per month.

2. No doubt, the claimant in his statement stated, that his total wages including tiffin, food etc. were Rs. 4,500/- per month. But Sri Hari OM, Second-In-Command, 78 RCC (GREF),

C/O 99 APO, had filed his affidavit as DW-1, and in that affidavit the employer had clearly stated that as per the record the monthly wages of the claimant at the relevant time was Rs. 2,150/- per month and not Rs. 4,500/- per month. This witness was not subjected to any cross examination by the claimant, meaning thereby, that it was accepted that his salary was Rs. 2,150/- per month.

3. In fact, I find that the learned Commissioner has given no reason, whatsoever, while coming to the conclusion that the income of the claimant was Rs. 4,000/- per month. He has straightway calculated the compensation. Even the manner in which the compensation has been calculated is totally wrong and not at all in consonance with the provisions of the Workmen's Compensation Act. In case of 100% disability, 60% of the wages have to be multiplied by the relevant multiplier to assess the compensation payable in case of 100% disability. Where the disability is not 100% but only 20%, then this amount has to be proportionate to the percentage of disability.

4. In the present case, the learned Commissioner has straightway multiplied the income by the relevant factor, which is totally illegal. It is apparent that the learned Commissioner did not even care to read the provisions of the Workmen's Compensation Act. Under Section 4(1)(c) of the Act, where

permanent partial disablement results from an injury, (in the case of an injury not specified in schedule 1), the compensation payable is such percentage of compensation, which is payable in the case of permanent total disablement. Under Section 4(1)(b) when permanent total disablement results, then 60% of the monthly wages have to be multiplied by the relevant factor. The wages in this case are Rs. 2,500/- and 60% of that works out to Rs. 1,500/- per month. In case of total disablement Rs. 1,500/- was to be multiplied by the relevant factor. The claimant was aged 49 years, and therefore, the relevant factor is 156.47. Therefore, the compensation payable, in case of total disablement, would have been Rs. 2,34,705/-.

5. Since, the claimant has suffered 20% disablement, the claimant was only entitled to Rs. 46,941/- as compensation and not Rs. 1,25,176/-, as awarded by the learned Commissioner. However, the learned Commissioner gravely erred in granting simple interest @ 12% per annum from one month after the date of passing of the award. The claimant shall be entitled to interest @ 12% per annum from one month after the date of accident.

6. Compensation falls due immediately when the accident takes place and under Section 4A of the Workmen's Compensation Act, the employer is given one month time to

make the payment. Therefore, the liability to pay the interest starts one month after the date of accident. The accident took place on 22.10.2005, and therefore, the claimant is entitled to simple interest @ 12% per annum from 22.11.2005 till payment of the amount.

7. The appeal is accordingly allowed. The award of the learned Tribunal is modified, and the amount of compensation is reduced to Rs. Rs. 46,941/- from Rs. 1,25,176/-,but the interest shall be payable, as detailed hereinabove.

8. Send down the LCRs forthwith.

CHIEF JUSTICE