

THE HIGH COURT OF TRIPURA
AGARTALA

MFA (W/C) 21 of 2011

Sri Gopal Sarkar
S/O Sri. Tushar Kanti Sarkar,
Resident of Maiganga, P.S. – Teliamura,
District – West Tripura.

..... *Appellant*

- Vs. -

1. Sri Sumen Baishya,
S/O Sri Sunirmal Baishya,
Rajnagar, P.S. – Teliamura,
P.O. – Teliamura,
District – West Tripura,
(Owner of the vehicle No.TR-01-A-
3941, Tata Spacio).
2. The Divisional Manager,
The National Insurance Co. Ltd.,
42, Akhaura Road, Agartala,
Tripura West.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant	: Ms. S. Deb Gupta, Advocate.
For the respondent No.2.	: Mr. K. Bhattacharjee, Advocate.
Date of hearing & delivery of Judgment & order	: 31.03.2015.
Whether fit for Reporting	: No.

JUDGMENT & ORDER (ORAL)

This petition under the Workmen's Compensation Act is
directed against the award dated 09.09.2011 passed by the

learned Commissioner, Workmen's Compensation whereby he dismissed the petition.

2. Learned Commissioner held that the claimant had failed to prove whether he had been temporarily disabled and even if the period of hospitalization is taken to be temporary disablement then also since the period was less than 28 days the petitioner was not entitled to any compensation.

3. Reference may be made to Section 4(1), 4(d) and 4(2) of the Workmen's Compensation Act, 1923 as follows:-

"4. Amount of compensation.-(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(d) Where temporary disablement, whether total or partial, results from the injury - a half- monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2).

***(2) The half- monthly payment referred to in clause (d) of sub- section (1) shall be payable on the sixteenth day--
(i) from the date of disablement where such disablement lasts for a period of twenty- eight days or more, or
(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty- eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:"***

It is not necessary to refer to the other provisions.

4. I am clearly of the view that the learned Commissioner erred in holding that where the disablement is less than 28 days no compensation is payable in terms of 4(1)(d). It would be appropriate to reiterate that Section 4(1)(d) is the provision which gives the right to claim compensation. According to this provision

where temporary disablement whether total or partial results from the injury the workmen is entitled to payment of half monthly payment equivalent to 25% of monthly wages. Therefore, if the monthly wages of the claimant are Rs.1,000/- he would be entitled to get Rs.250/- for every half month. What section 4(2) lays down is the method of making the payment. Section 4(2) does not deal with the rights of the parties, but only lays down the procedure for making payment to the employee. In case where the disablement is 28 days or more, then the payment will have to be made on half monthly basis. If the disablement is less than 28 days then obviously it has to be made in one go because there cannot be two half monthly payments when the disablement is not even for one month. It is obvious that the period of 28 days have been very wisely chosen by the legislature because that is the minimum days in a month that too only in the month of February.

5. As far as the present case is concerned, the claimant was admitted in hospital on 24th July, 2008 and was discharged there from on 13th August, 2008. In the discharge slip, it is also mentioned that after his discharge he was to rest in Thomas splint for 25 days. This means that he was partially disabled if not totally disabled for these 25 days. Therefore, the total period of disablement works out to 46 days.

6. It is contended by Ms. S. Deb Gupta, learned counsel that the claimant has stated in his oral statement that he could not

work for 8 months. Under the Workmen's Compensation Act, this cannot be accepted. The party must lead medical evidence to show what is his period of disablement.

7. I accept the period of disablement to be 46 days and therefore, the claimant is entitled to 50% of the wages for payable 46 days. According to the claimant, his wages was Rs.8,000/- per month and even if this is accepted to be true, the maximum wages which can be taken into consideration at the relevant time were only Rs.4,000/- per month. The claimant would be entitled to **Rs.2,000/-** for one month and another **Rs.1,000/-** for the next 16 days. Therefore, he is entitled to **Rs.3,000/-** (Rupees Three thousand) in all.

8. On this amount, the claimant shall also entitle to interest @ 12% per annum from the date of accident till payment of the same.

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

10. Send down the lower court records forthwith.

CHIEF JUSTICE

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