

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

MFA(E.C) No.05 of 2017

Sri Mitan Deb

son of Sri Nitai Deb, resident of village-
Tebaria, P.O. K.K. Nagar, P.S.
Bishalgarh, District-Sepahijala, Tripura

..... Appellant

- V e r s u s -

1. Senior Manager [HR & A]

Indo Nobin Projects Ltd., [formerly
known as Indo -Power Projects Limited,
2nd Floor, South end conclave, 1582
Rajdanga Main Road, Kolkata-700107,
West Bengal

2. The Chief Manager,

Power Grid Corporation of India Ltd.,
Girish Bhawan, Kunjaban, Agartala,
P.S. New Capital Complex, District-
West Tripura

..... Respondents

For the Appellant : Mr. A. Nandi, Adv.

For the respondents : Mr. Samarjit Bhattacharjee, Adv.
Mr. R.K. P. Singh, Adv.

Date of hearing & delivery : **31.08.2018**

of Judgment & Order

Whether fit for reporting :

Yes	No
✓	

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

JUDGMENT & ORDER [ORAL]

This is an appeal under Section 30(1) of the Employees Compensation Act, 1923 questioning the judgment and award dated 14.07.2017 delivered in T.S.(EC) No.01 of 2014 by the Commissioner, Employees Compensation, West Tripura, Agartala.

[2] What the appellant has suggested as the substantial question of law is that the amount received from the employer before the employee approached the Commissioner for compensation under Section 4 of the Employees Compensation Act, 1923 cannot be treated as part of the compensation as deduced, and the deduction cannot be held sustainable. The other questions as suggested to be the substantial question of law, according to this court, are not the substantial question of law in view of the procedure for determination of compensation, which is well encompassing. However, if the employer paid some amount for defraying the medical expenses that cannot be treated as the part of the compensation in view of the Section 4(2)-[Explanation] and newly added sub Section 2(A) of the Employees Compensation Act, 1923. For purpose of reference, those provisions are gainfully reproduced hereunder:

Explanation: Any payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso

[(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment.]

[3] There is no dispute that the appellant suffered 40% [temporary] disability from the accident that occurred in the course of and out of his employment, when on 01.11.2012 at about 1330 hours he was working in the newly set-up HT line in Singerbill near Indo-Bangladesh Border under supervision,

suddenly the electric line became live and he was electrocuted. From the fall that occurred from the impact of electrocution, he suffered multiple injuries on his person. Initially, he was treated in GBP hospital at Agartala and thereafter, he was sent to Kolkata for better management of his injuries. There is no dispute that the appellant [the employee] used to earn Rs.4,950/- per month and he was aged about 24 years at the time of the accident. The claim for compensation was estimated at Rs.12,00,000/- but after recording the evidence, the Commissioner, Workmen Compensation determined the total compensation at Rs.2,32,432/- inclusive of the medical expenses which was estimated at Rs.83,932/-. Since the appellant received a sum of Rs.1,00,000/- as the compensation before he approached the Commissioner, the said amount has been deducted to be deducted from the total compensation. The employer, Indo-Power Projects Limited, has been mandated to pay the remainder of compensation to the extent of Rs.1,32,432/- with interest at 12% p.a. from 01.12.2012 i.e. the one month after accident till realization.

[4] Mr. Nandi, learned counsel appearing for the appellant has strenuously argued that the appellant is entitled to the entire cost of the treatment as compensation. That apart, the deduction as made is not permissible inasmuch as that was paid as the exgratia. When queried by this court, Mr. Nandi, learned

counsel has fairly submitted that the appellant did not produce any vouchers, cash memos and money receipt etc. in support of his claim of the medical expenses. On the contrary, the employer has produced the cash memos, prescriptions, money receipts and bill for fooding etc. [Exbt.B series] from their custody as they had paid those expenses.

[5] Mr. S. Bhattacharjee, learned counsel appearing for the respondents has submitted that the loco motor disability that the appellant suffered is of temporary nature and hence, it was recommended by the District Disability Medical Board in their certificate dated 08.07.2015 [Exbt.1], for reassessment after five years as the condition was progressing. Thus, the assessment as made by the Commissioner is completely in tune with law taking all due factors liberally. That apart, Mr. Bhattacharjee, learned counsel has submitted that the entire expense of the treatment has been borne by the employer as would be evident from the evidence [Exbt.B series].

[6] Having appreciated the submissions made by the learned counsel appearing for the parties, this court at the beginning is persuaded to refer the statement made by the appellant [PW-2] in the cross-examination. The appellant has clearly stated as follows:

Cross by OP 1

I was given medical treatment in Kolkata and my employer incurred the said medical expenditure. I was paid Rs.19,800/- on 30.01.2014 by my employer as 25% of my monthly wages for the period w.e.f. November, 2012 to November, 2013. It is not a fact that my claim is excessive.

Cross by OP No.2

I have received Rs.1,00,000/- from OP No.2 as compensation. I use my scratch in my left hand. My immediate employer is Indo Power Project Ltd.

The said statement got further ratified by the statement of DW-1 [Prabir Krishna Dey]. DW-1 has testified in the inquiry that the appellant was provided with adequate medical treatment by Indo-Power Project Company Ltd. During that time, he was also provided 25% of his wages as per law as the appellant suffered temporary disablement. He has also stated as follows:

But the applicant did not submit any report to the Indo Power Project Co. Ltd. despite letter dated, 18.07.2013 of the Indo Power Project Co. Ltd. In the letter dtd. 19.12.2-13 reference was also given to the meeting that, was held in the office of the Chief Manager, Power Grid Corporation Ltd, on 27.11.2013 and in that meeting the father of the applicant was present. The father of the Applicant admitted fault so far forwarding the medical report was concerned. After the accident the applicant received Rs.9 lakhs in total from our office i.e. Indo Power Project Co. Ltd.

All the relevant documents [Exbt.B series] as regards the payment as claimed to have been made are admitted in the evidence. The said claim was not seriously disputed in the cross-examination as carried out by the appellant save and except projecting some general suggestions of denial.

[7] Situated thus, this court is of the view that the deduction that was made is in conformity with the law inasmuch

as the appellant did not question the mode of assessment of the compensation as carried out under Section 4(d) of the Employees Compensation Act, 1923. That apart, he has clearly admitted in the cross-examination that he received that amount as compensation.

[8] In the result, the appeal being devoid of merit stands dismissed.

Send down the LCRs forthwith.

JUDGE

Sujay



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