

(2016) 11 TP CK 0001
In the Tripura High Court
Case No : MFA (W/C) No. 26 of 2004

Shri Sanjoy Debbarma

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2017) AAC 311 : (2017) 1 ACC 785 : (2016) 151 FLR 1074 : (2017) 1 TAC 411

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : Sankar Bhattacharjee, Advocate, for the Respondent No. 4; G.S. Bhattacharjee, Advocate, for the Respondent Nos. 1, 2 and 3; Ms. K. Roy, Advocate, for the Appellant

Final Decision : Allowed

Judgement

S.C. Das, J.(Oral) - This appeal under Section 30 of the Workmen's Compensation Act, 1923 is directed against the judgment and award dated 19-03-2004, passed by the Commissioner of Workmen's Compensation, West Tripura, Agartala in Case No.TS(W/C)19/2001.

2. Heard learned counsel, Ms. K. Roy for the appellant and learned counsel, Mr. G.S. Bhattacharjee for the respondent Nos. 1, 2 and 3 and learned counsel, Mr. Sankar Bhattacharjee for the respondent No. 4.

3. It is urged by learned counsel, Ms. K. Roy that the learned Commissioner, Workmen's Compensation has clearly held that the appellant-petitioner suffered 100% disability for the purpose of his earning but while calculating compensation, the learned Tribunal taken 60% out of the monthly income of the appellant-petitioner and that was an apparent wrong committed by the Tribunal. She has also submitted that the appellant-petitioner was an Electrical Mechanic and that is the job of a skilled worker whereas the Tribunal treated him as a daily labourer and applied the Govt. rate of Rs. 56/- as the wages of daily labourer

and calculated the compensation accordingly.

4. Mr. Bhattacharjee, learned counsel for the respondent Nos. 1, 2 and 3 has submitted that the petitioner could not prove that he was a skilled worker or an Electrical Mechanic and also could not prove that he was engaged as a skilled worker by the respondents. The disablement certificate has been produced but no Medical Officer has been examined. He submitted that the judgment was wrong but, however, the compensation which was determined was paid and that was sufficient.

5. Learned counsel, Mr. Sankar Bhattacharjee appearing for the respondent No. 4 submitted that the petitioner was paid sufficient compensation though it has been denied by the respondent No. 4 that the appellant-petitioner was an employee engaged by the respondent.

6. The appellant-petitioner challenged the judgment in respect of the quantum of compensation and not on other issues. The respondents did not challenge the judgment. The factual aspects i.e. all the issues framed in course of trial have been decided by the Commissioner of Workmen's Compensation in favour of the petitioner and while the findings have not been challenged by the respondents, the submission made by Mr. Bhattacharjee, learned counsel for the respondent Nos. 1, 2 and 3 appear to be of no merit for consideration.

7. On perusal of the judgment, I find that the Tribunal arrived at a conclusion that the appellant-petitioner Sanjoy Debbarma sustained injury while he was working as an employee under respondent No.4, the Contractor and the disablement certificate shows that he suffered 60% disability. The learned Tribunal while considering the disability observed-

"Learned Counsel appearing for the Applicant submitted that Sanjoy Debbarma was a labourer and he became 60% disabled due to his injuries and since he being a labourer became 60% disabled, for the purpose of his earning, such disablement should be treated to be 100% disablement. I agree with the submission of the Learned Counsel and inclined to believe that nobody will engage a daily rated worker like Sanjoy Debbarma with 60% disablement to perform any manual labour and as such, in my opinion, Sanjoy Debbarma though became 60% disabled medically, but for the purpose of his earnings he became 100% disabled. Accordingly, I hold Sanjoy Debbarma to be 100% disabled for the purpose of his earning."

8. So, according to the Tribunal, the petitioner was suffering 100% disability for the purpose of his earning. The disablement certificate is placed on record which has been marked as Exbt.1 series. It shows that 60% disability was permanent physical disability. So, while the Tribunal arrived at a finding that for the purpose of earning is concerned, the petitioner was suffering 100% disability, the Tribunal in the next paragraph itself while calculating the compensation reduced it to 60%. The findings of the Tribunal while calculating the compensation in the next paragraph reads thus:-

"Sanjoy Debbarma in his deposition has stated that his daily wages was Rs. 100/-, but from the notification of the Government of Tripura of 2001, issued from the Labour Department, I find that during that period wages of the labourer was Rs. 56/- (fifty six) per day. Accordingly I hold that daily wages of Sanjoy Debbarma was Rs. 56/-. So, monthly income of Sanjoy Debbarma on calculation comes to Rs. 1,680/- (Rupees one thousand six hundred eighty). 60% of the 1,680/- on calculation comes to Rs. 1,008/- (Rupees one thousand eight). Sanjoy Debbarma is 32 years old. So, factors in this case will be 203.85. Now multiplying Rs. 1,008/- by 203.85 on calculation it comes to Rs. 2,05,480.00 (Rupees two lacs five thousand four hundred eighty) and this is the amount which the Applicant is entitled to get as compensation in this case for his becoming permanently disabled. Now the question is who will pay the compensation."

9. So, it is apparent that the above findings while calculating the compensation was contrary to the finding of the Tribunal while deciding the percentage of disability.

10. Ms. Roy, learned counsel for the appellant strenuously argued that the petitioner was a skilled worker and an Electrical Mechanic but to that effect there is no document to show that he was a skilled worker. The Tribunal arrived at a finding as per the Govt. notification that the wages of a daily labourer was Rs. 56/- per day. That finding of the Tribunal cannot be said to be a wrong finding since there was no cogent evidence to show that the petitioner was paid Rs. 100/- per day by the respondents. It is not disputed that the petitioner was 32 years old at the time of accident as has been decided by the Tribunal. So, taking into account Rs. 56/- per day, the monthly income as calculated by the Tribunal was Rs. 1680/-. The Tribunal wrongly excluded 40% from that amount. The petitioner was entitled to get the compensation multiplying the amount with the multiplier 203.85. So, the amount stands at Rs. 1680 X 203.85 and it comes to Rs. 3,42,468/-.

11. The appeal to that extent is allowed. The appellant-petitioner was entitled to get compensation of Rs. 3,42,468/- (Rupees three lakhs forty two thousand four hundred sixty eight) in the same terms and conditions as decided by the Tribunal in respect of the interest w.e.f. 09.02.2001 i.e. the date of accident.

12. The respondents are directed to make payment of the additional amount of compensation with interest within 90(ninety) days from today.

13. The appeal accordingly stands disposed of.