

**(2014) 08 TP CK 0008**  
**In the Tripura High Court**  
**Case No : MFA(WC) No. 22 of 2007**

**The Executive Engineer VsSabitri Rani Sen**

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**Date of Decision :** 06-08-2014

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 2(1)(n), 2(n), 30, 4A, 4A(3)

**Citation :** (2014) 143 FLR 439 : (2014) LabIC 4069

**Hon'ble Judges :** Deepak Gupta, C.J

**Bench :** Single Bench

**Advocate :** S. Chakraborty, Addl. G.A, Advocate for the Appellant; A. Das, Advocate for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Deepak Gupta, C.J.—This appeal u/s 30 of the Workmen's Compensation Act was admitted on the following substantial questions of law:-

"(i) Whether, Braja Gopal Sen, predecessor-in-interest of respondent Nos. 1, 2 and 3 is a workman within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923; and

(ii) Whether the learned Commissioner, WC was justified in awarding penalty u/s. 4A(3) of the WC Act, 1923."

2. Briefly stated, the facts of the case are that the claimants who are the wife and minor children of deceased Braja Gopal Sen filed the petition under the Workmen's Compensation Act. In this petition, it was alleged that Braja Gopal was working as a daily rated worker in the office of the Executive Engineer, Public Health Engineering and was engaged as watchman/night guard. On the night intervening 02-01-2006 and 03-01-2006 while Braja Gopal was discharging his official duty in the office of Opposite party No. 1 at Kumarghat, he was murdered by some unknown miscreants within the office premises and the office room was ransacked by the said persons. The miscreants had also tried to open the cash chest and take away valuable papers and almirahs. They failed in taking away the cash chest but killed Braja Gopal.

3. The occurrence is not denied but according to the appellant-State, the deceased was not a workman and further that his death had no causal connection with his employment.

4. The learned Commissioner allowed the petition and held that the claimants were entitled to compensation of Rs. 3,17,002/- along with interest @ 6% per annum. The only issue is whether the claimant was a workman or not.

5. Section 2(n) of the Workmen's Compensation Act, now renamed as the Employees Compensation Act defining "workman" at the relevant portion of the section reads as follows:-

"2(n). "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is--

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(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them."

Therefore, any employee specified in schedule II would be a workman.

6. Coming to Schedule II. As far as the application of the Act to the State of Tripura is concerned, entry (xxxiii) has been inserted w.e.f. 15-09-1995 which reads as follows:-

"II(xxxiii). The following persons are employee within the meaning of section 2(1) (n) and subject to the provisions of that section, that is to say, any person who is--

xxx xxx xxx

(xxxiii) employed as watchman in any factory or establishment;"

7. Therefore, any watchman employed in any factory or establishment is a workman. This office of the P.W.D. is definitely an establishment and, therefore, the deceased was a workman. Accordingly, the first question is decided against the appellants.

8. As far as the second question is concerned, it would be pertinent to mention that the Commissioner has awarded compensation along with interest @ 6% per annum and no penalty has been awarded. In fact, under law the interest cannot be less than 12% per annum in terms of section 4A of the Workmen's Compensation Act.

9. In this view of the matter, the appeal of the State is dismissed but the award

of the Commissioner is modified and it is held that the claimants shall be entitled to compensation of Rs. 3,17,002/- along with interest @ 12% per annum w.e.f. 10-08-2006, i.e. the date of the accident till payment/deposit of the entire amount.

10. The appeal is disposed of in the aforesaid terms. No order as to costs.

11. Send down the lower court records forthwith.