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## **The State of Tripura and Another Vs Sridhan Choudhury and Another**

### **Civil Revision No"s. 63 and 64 of 1998**

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**Court:** Gauhati High Court (Agartala Bench)

**Date of Decision:** Nov. 5, 2002

**Acts Referred:**

Fatal Accidents Act, 1855 " Section 1A

**Citation:** AIR 2003 Guw 66 : (2003) 1 GLT 373

**Hon'ble Judges:** B.B. Deb, J

**Bench:** Single Bench

**Advocate:** P. Datta, for the Appellant; D. Chakraborty, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

B.B. Deb, J.

In both the Civil Revisions identical questions of law have been raised by the petitioners, the State of Tripura and another and

as such it is prepared to decide and dispose of both the Civil Revisions by a common judgment.

Civil Revision No. 63 of 1998

2. This Civil Revision u/s 115 of the CPC is directed at the instance of the State of Tripura and another against the final judgment/Order dated 4-

8-1998, passed by the learned Commissioner, Fatal Accident Claims Tribunal, South Tripura, Udaipur in Case No. Title Suit (Fatal Accident)

165 of 1997.

The respondents herein Shri Sridhan Choudhury and another filed the case bearing No. T.S. (Fatal Accident) 165 of 1997 seeking compensation

for the accidental death of Bishakha Choudhury (wife of the respondent No. 1 Shri Shridhan Choudhury) and minor daughter Supriya Choudhury.

The deceased Bishakha Choudhury taking her minor daughter Supriya in her own lap was walking through a road in her own village and suddenly

came in contact with a live high voltage electric wire which being snapped away from over head line was lying on the road on 21-10-97. Due to

the aforesaid electrocution, Bishakha Choudhury and her minor daughter Supriya died. Due to the negligence of the Power Department of the

State of Tripura, the live electric wire was snapped from the over head line and that was not removed by the departmental authority in due time.

The petitioners herein contested the matter before the learned Tribunal as opposite-parties contending inter alia, that the petition was not

maintainable inasmuch as there was no negligence on the part of the Power Deptt. of the Govt. of Tripura, rather due to negligence of the local

people who eventually used to draw hook line from the over head electric line, the accident happened and the Power Department of the Govt. of

Tripura could not be held responsible.

However, the learned Tribunal by the impugned Judgment/order awarded a compensation of Rs. 1,31,600/- with 12% interest per annum from the

date of filing of the petition i.e. 6-12-1997 till realisation of the entire amount for death of the wife and minor daughter of the respondent No. 1

herein Shri Shridhan Choudhury.

Civil Revision No. 64 of 1998

3. This Civil Revision u/s 115 of the CPC has been arisen put of the judgment/order dated 20-8-1998, passed by the learned Commissioner. Fatal

Accident Claims Tribunal, South Tripura, Udaipur in Case No. Title Suit (Fatal Accident) 166 of 1997.

The respondents herein filed a petition claiming compensation before the learned Commissioner, Fatal Accident Claims Tribunal, South Tripura,

Udaipur for the accidental death of Afral Jamatia, the husband of respondent No. 1 and father of minor respondent Nos. 2 and 3.

According to the claim petition, on 21-10-1997 while the deceased Afrai Jamatia was going to Udaipur through his village road at Pitra he came in

contact with a live electric line snapped down from over head high voltage electric line on the road, as a result he died.

The State opposite-parties contested the case by filing written statement and raised pleas identical to those of the earlier case (Title Suit (Fatal

Accident) No. 165/1997).

The learned Commissioner on completion awarded a compensation of Rs. 1,02,000/-with 12% interest per annum from the date of filing of the

petition i.e. 6-12-97 till realisation of the entire amount.

4. The crux of the attack made in the revision petitions is that the learned District Judge who passed the impugned judgments/orders has never

been appointed as Commissioner under any provision of the Fatal Accidents Act, 1855 nor there is any provision under the said Act to appoint

any officer to be the Commissioner.

5. Mr. P. Dutta, learned counsel appearing on behalf of the State petitioners submits that the learned District Judge identifying himself to be the

Commissioner under the Fatal Accidents Act passed the Impugned judgments/orders though in fact the learned District Judge, South Tripura,

Udaipur has never been appointed as Commissioner under the Fatal Accidents Act, 1855 nor there is any provision under the said Act to

constitute any Tribunal and as such the impugned Judgments/orders passed by the learned District Judge, South Tripura, Udaipur identifying

himself to be the Commissioner under the Fatal Accidents Act is without jurisdiction and void ab initio.

6. On perusal of the Fatal Accidents Act, 1856 it reveals that no power has been vested with the State Government to constitute any Tribunal

whatsoever nor at any point of time, the State Government constituted any Tribunal putting the learned District Judge to head the same and as such

it cannot be held that the learned District Judge being a Commissioner passed the impugned judgments/orders.

7. Next, the question comes to be answered as to whether regardless of the status of Commissioner under the Fatal Accidents Act, 1855, the

learned District Judge had the power to adjudicate such applications in such manner as he did?

8. Mr. Dutta, learned counsel for the petitioners submits that in view of Sections 1-A and 3 of the Fatal Accidents Act, 1855, the party aggrieved

due to the accidental death covered by the aforesaid Act could bring any ""action"" or ""suit"" before the competent Court.

9. On perusal of the written statements of the State opposite-parties, petitioners, herein, it appears that no such specific plea has been raised

before the learned Tribunal nor any such issue was framed and as such it would be pre-judicial to the claimant-respondents if the matters are

decided in the present revision petitions instead of remitting the cases to the learned Tribunal itself.

10. It is correct and I am constrained to hold that there is no provision under the Fatal Accidents Act, 1855 to constitute any Tribunal for

adjudicating any ""action"" or ""suit"" under the said Act. In absence of such provision empowering the State Government to constitute any Tribunal,

the persons aggrieved have right to seek for remedy by filing suit in the appropriate Civil Court having jurisdiction over the matter. The learned

District Judge being the principal Civil Court of the District, subject to other provisions as embodied in Tripura Courts Order, has jurisdiction to

adjudicate any ""action"" or ""dispute"" of civil nature. Whether seeking any remedy under the Fatal Accidents Act, 1855, the claimant is to file a suit

paying adequate court fee and following the prerequisite conditions embodied under the provisions of CPC is to be decided, but unfortunately no

such issue was framed due to the lack of specific plea being raised in the written statements and as such, in my considered opinion, these are fit

cases to be remanded for fresh decision.

11. In the result, I am constrained to hold that the learned District Judge cannot decide any matter covered under the Fatal Accidents Act, 1855

claiming him to be the Commissioner of any Tribunal. No Tribunal is permitted to be constituted under the said Act. The, learned District Judge of

course may, subject to other provisions of Tripura Courts Order and Civil Procedure Code, entertain and decide any lis covered under the said

Act. The impugned Judgments/orders are hereby set aside and the matters are remitted back to the learned District Judge to decide the same

afresh in the light of observations given above. Liberty is granted to file additional written statement raising the aforesaid legal pleas only.

12. With the above observations and direction, both the Civil Revision Petitions are allowed and disposed of accordingly.

Send down the records.