THE HIGH COURT OF TRIPURA

A G A R T A L A

W.P(C) No. 142 of 2013

Petitioner :

Smt. Rupa Roy,
W/o. Sri Shyam Kanta Roy, P.O: Teliamura, P.S: Teliamura, Teliamura, Khowai, Tripura.

By Advocate :

Ms. S. Deb Gupta, Adv.

Respondents :

1. Tripura State Legal Services Authority,
Represented by – Member Secretary, Melarmath, P.O: Agartala, P.S- West Agartala., Dist.-West Tripura.

2. Lok Adalat,
Court No. 1, P.O: Khowai, P.S: Khowai, Khowai, Tripura.

3. Smt. Rakhi Roy,
W/o. Lt. Raj Kumar Roy @ Samir Roy, D/o. Sri Khumod Roy, presently residing at Icharbil, Teliamura, P.O: Teliamura, P.S: Teliamura, Dist.- Khowai, Tripura.

4. Smt. Laxmi Roy,
D/o. Lt. Raj Kumar Roy @ Samir Roy, presently residing at Icharbil, Teliamura, P.O: Teliamura, P.S: Teliamura, Dist.- Khowai, Tripura.
(Respondent No. 4 being minor is represented by the Respondent No.3)

5. Sri Sanjit Ghosh,
S/o. Lt. Anil Ch. Ghosh of Teliamura, Goalbari, P.O: Teliamura, Dist.: Khowai, Tripura.

6. The National Insurance Company Ltd.
Divisional Office, Agartala, 42, Akhaura Road, P.O: Agartala, P.S: West Agartala, West Tripura.

By Advocates :

Mr. D. C. Saha, Adv.
Ms. K. Roy, Adv.
Mr. G. K. Nama, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **9th September, 2014.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

By means of this petition, the petitioner who is the mother of the deceased Late Sri Raj Kumar Roy has prayed that she be granted compensation for the death of her son. The facts of this case exemplify how a casual approach to deciding such matters leads to unnecessary complications of issues and multiplicity of litigations.

[2] The undisputed facts are that the private respondent, Smt. Rakhi Roy filed a claim petition on behalf of herself and her minor daughter Miss. Laxmi Roy. In this claim petition it was alleged that her husband Late Sri Raj Kumar Roy had died in a motor vehicle accident on 04.09.2008. Though the parents of the deceased were not made parties to the petition, in para 20 of the claim petition it was stated that the deceased had left behind old aged parents, minor daughter and wife. Thus, the petitioner had stated that the deceased had parents. Unfortunately counsel for the claimant-petitioners did not choose to array the parents, or at least the mother of the deceased as a respondent in the petition. In case the counsel was aware that the deceased had left behind the parents it was the duty of the counsel to have arrayed the parents or at least the mother of the deceased as a proforma respondent in the petition. Unfortunately this was not done. The learned Motor Accident Claims Tribunal also did not try to ascertain whether there were any other heirs.

[3] The matter was thereafter taken up before the Lok Adalat where the claimant, Smt. Rakhi Roy agreed to accept Rs.4,00,000/- in full and final compensation in respect of the death of her husband. The order of the Lok Adalat reads as follows:

> **"09.4.11**
>
> **The case record is put up today in the Lok Adalat in Court No.1.**
>
> **The Claimant Petitioner/Petitioners is/are present/absent.**
>
> **The O.P owner of the offending vehicle is present/absent.**
>
> **The representative of the O.P. Insurance Company is present/absent.**
>
> **Received the terms of settlement through the Conciliator and as per the terms of the settlement, it is decided that the O.P Insurance Company/owner will pay Rs.4,00,000/- (Rupees four lakh) only to the petitioner/petitioners as compensation within sixty days from today failing which the Insurance Company/owner will be liable to pay interest @ 6%(six percent) per annum from 9.4.11 till the date of realization.**
>
> **The terms of settlement is found most reasonable and lawful one, accordingly the same is accepted.**
>
> **As per terms and condition of settlement, the O.P Insurance Company is directed to pay Rs.4,00,000/- (Rupees four lakh) only to the Claimant Petitioner/Petitioners within sixty days failing which the amount of compensation shall care interest @ 6%(six percent) per annum from 9.4.11 subject to verification of driving licence.**
>
> **Supply copy of this order/award to both parties free of cost.**
>
> **Accordingly the case is disposed of.**
>
> **Send back the case record to the respective court."**

To say the least the order is totally incorrect. Even if the Lok Adalat was not aware about the fact that the deceased had also left behind a mother, the Lok Adalat was at least aware that one of the claimants was a minor. No order was passed by the Lok Adalat with regard to the investment of the amount payable to minor.

[4] The Apex Court in ***General Manager, Kerala State Road Transport Corporation, Trivandrum Vrs. Susamma Thomas (Mrs.) and Others : (1994) 2 SCC 176*** had laid down the following guidelines for the Tribunals as to how the money which is payable to minors, widows, illiterate, semi-literate and literate claimants is to be dealt with:

> **"(i) The Claims Tribunal should, in the case of minors, invariably order the amount of compensation awarded to the minor invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may however be allowed to be withdrawn;**
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> **(ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a rouge to withdraw money;**
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> **(iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out at (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding and existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the amount is invested for the purpose for which it is demanded and paid;**
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> **(iv) In the case of literate persons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to do order;**
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> **(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above;**
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> **(vi) In personal injury cases if further treatment is necessary the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;**

> **(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the Bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;**
>
> **(viii) In all cases Tribunal should grant to the claimants liberty to apply for withdrawal in case of an emergency. To meet with such a contingency, if the amount awarded is substantial, the Claims Tribunal may invest it in more than one Fixed Deposit so that if need be one such F.D.R. can be liquidated;"**

In addition to the above, this Court in ***Sri Joydeep Chakraborty Vrs. Sri Pintu Sharma and another: (2014) 1 TLR 478*** has also issued following additional guidelines which must be followed by the Tribunals in the State of Tripura:-

> **"(ix) Even on the minor attaining majority, the Court shall not immediately release the amount because an 18 year old boy or girl may not be able to handle such a big amount, but shall normally deposit the amount for five more years. However, if money is needed for educational purposes, marriage of the claimant or similar grounds, suitable amount may be released;**
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> **(x) If it is found that the amount released has not been used for the purpose for which it was released, then the balance amount shall be kept in fixed deposit for a further period of 10 years and shall not to be released for 10 more years.**
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> **(xi) In all cases the amount to be released shall be released only by transmitting it directly from the Court to the Bank Account of the claimant alone. It shall not be transmitted to a joint bank account held by the claimant with any other member(s) of the family or any other persons. The Tribunal(s) shall ensure this by obtaining a photocopy of the passbook duly certified by the banker. In the register to be maintained, the photograph, name and address of the person to whom the cheque/draft/pay order etc. has been handed over shall be duly entered."**

Even the Lok Adalats while settling matters should ensure that the amount payable to the claimants especially minor claimants is invested and not paid to them till they attain majority. Even with regard to major

claimants where the claimants are widows, totally illiterate or semi literate persons it is the responsibility of the Tribunal and the Lok Adalat as well as High Court to ensure that the money is actually received by the claimants and invested in a proper manner, where claimants are educated and aware of these rights and the guidelines quoted above must be followed by the Tribunals & also the Lok Adalats. The Tribunals feel that they can handle their money. The Tribunals are at liberty to release the amount to them immediately after decision of the cases. But where claimants belong to that strata of society where they have to depend on this compensation alone for their existence in the future, it would always be better to invest the compensation or the major portion thereof in fixed deposit and ensure that the interest either on monthly basis or quarterly basis is paid to the claimants so that they can meet their day to day expenses. Some portion of the awarded amount can be released immediately after trial but in cases of widows, those persons suffering from disabilities etc. the effort should be to protect their interest by investing the money for five years at least.

[5] Even in cases of injured persons where they are totally disabled and dependent on others, it is in the interest of such a disabled person that the entire money is not released at one go. The money should be kept in a fixed deposit and the interest should be released for meeting the expenses of the injured claimant. This Court is not oblivious to the fact that even close relatives do not look after such disabled persons or destitute widows once they have no money left with them. They are looked after only for the time when they have money and after they are left with no money then nobody looks after them. When a Tribunal grants just compensation it is the duty of

the Tribunal to ensure that this just compensation is also disbursed in a just manner.

[6] The Tribunal should not take over the control of the money in all cases. As pointed out above, where people are educated or they are looking after their own business interests or are of that age where their money does not require protection, the Tribunals should release the amount. However in cases of minors the amount must be kept in deposit till they attain majority and in this case the majority shall be attained at the age of 21 and not 18 because if the Court is the guardian of the minor and under Section 3 of the Indian Majority Act, 1875 the majority in such cases, is attained at the age of 21.

[7] Under Section 3 of the Indian Majority Act though the age of attaining majority is 18 years, in case, before the minor attained the age of 18 years any guardian to look after his/her property is appointed then such minor shall not be deemed to have attained majority before completing the age of 21 years. I am of the considered view that in cases under the Motor Vehicles Act where the Court is under an obligation to make adequate safeguards for protection of the amount payable to the minor it must be presumed that his/her property is in the protection of a guardian or in the protection of the Court and in cases under the Motor Vehicles Act, the minor shall be deemed to have attained majority only on attaining the age of 21 years. As far as the Guardians and Wards Act, 1890 is concerned, it only defines minor as being a minor who has not attained majority under the Indian Majority Act.

[8] Even once the minor attains the age of majority the Tribunal or the Court must find out for what purpose the money is required. Supposing a minor has been awarded rupees fifteen or twenty lakhs as compensation for

the death of his mother or father it would not be in the interest of the minor to immediately handover the entire amount of rupees fifteen or twenty lakhs on his attaining majority because a minor at that age does not even know how to handle such a big amount. No parent would handover such a large amount to his own child only on the age of attaining 21 and the Tribunal or the Court stands on the same footing as a parent.

[9] At the same time, it is made clear that if money is required for medical treatment, for educational expenses and/or for any other valid or legal purpose and the claimant satisfies the Tribunal that the money is genuinely required for such purpose the Tribunal should release the amount.

[10] In the present case what has happened is indeed shocking. The Lok Adalat passed an order on 9th April, 2011 awarding Rs.4,00,000/- as compensation. In the order which has been quoted above it is not even clear as to what was the share of each of the two claimants in this compensation. The Lok Adalat was dealing with a minor but still did not make any effort to determine what was the share of the minor in the compensation. The matter did not end here. On 30th June, 2011 the Insurance Company deposited a sum of Rs.4,00,000/- in compliance with the order of the Lok Adalat. Prior to this deposit on 8th June, 2011 the present petitioner, Smt. Rupa Roy along with her husband Sri Shyma Kanta Roy (father of the deceased) filed a petition in which they stated that they were the parents of the deceased and also entitled to compensation. This petition was filed before the amount had been even deposited by the Insurance Company and much before it was disbursed by the Tribunal to the original claimants. The learned Motor Accident Claims Tribunal passed an order on 28th June, 2011 rejecting this prayer. Even more shocking is the fact that though this order is purported to be passed on 28th

June, 2011, it is more than apparent that this order was in fact not passed on 28th June, 2011. It was passed after 30th June, 2011, because in the order dated 28th June, 2011 there is reference to the order dated 30th June, 2011. How could the learned Motor Accident Claims Tribunal have visualized what order he was going to pass on 30th June, 2011 if he had actually passed the order on 28th June, 2011. The relevant portion of the order dated 28th June, 2011 reads as follows:

> **"****Accordingly, the National Insurance Co. ltd. issued cheque of Rs.4,00,000/- vide cheque No.072186 dated 16-6-11 for making payment to the original petitioners and accordingly on 30-6-11 this court passed an order to deposit the cheaue in the A/C of this Tribunal and at this stage the present petitions Smti. Rakhi Roy and Shyma Kanta Roy being parents of the deceased made a prayer before this court to incorporate their names as claimants-petitioners.****"**

This in my view is a prima facie case of forging the judicial records by the Motor Accident Claims Tribunal concerned.

[11] Thereafter the matter was taken up by the Motor Accident Claims Tribunal on 14th July, 2011 and on that date the claimant, Smt. Rakhi Roy filed an application that she is the legal guardian of the minor Miss. Laxmi Roy and then prayed that the entire amount of Rs.4,00,000/- be released in her favour. One must remember that this application was filed within a fortnight of the amount being deposited. Though the Lok Adalat had not apportioned the share of the minors, the Motor Accident Claims Tribunal vide order dated 14th July, 2011 held that the share of the each claimants would be Rs.2,00,000/- and on 14th July, 2011 itself the Motor Accident Claims Tribunal directed that two lakhs be released in favour of Smti. Rakhi Roy by issuing an account payee cheque in her favour. With regard to the amount falling to the share of the minor, the Motor Accident Claims Tribunal held that as per the

Guardians and Wards Act, 1890 the property of the minor cannot be disposed of without sanction of the learned District Judge and therefore, this prayer for release of the amount of the minor was rejected. While releasing the amount of Rs.2,00,000/- to Smti. Rakhi Roy no conditions were laid down and the entire amount was released within 15 days of its deposit without ensuring how this money is to be invested. The guidelines laid down by the Apex Court in ***Susamma Thomas's*** case were not even referred to by the learned Motor Accident Claims Tribunal. The matter takes an even more interesting turn hereafter.

[12] In the present case, the MACT himself had the power to pass orders for ensuring that the amount falling to the share of the minor is protected and the interest should have been released in favour of the mother to meet the day to day expenses of the child. This was not done, but the learned Tribunal directed the mother, Smt. Rakhi Roy to obtain an order under the Guardian and Wards Act, 1890. Surprisingly, the application being Misc (GC) 01 of 2011 filed under the Guardian and Wards Act, 1890 was an application under Order XXXII, Rule 3 of the CPC. Order XXXII would apply only in a pending litigation e.g. when the mother filed the claim petition for compensation. A suit by a minor has to be filed through the next friend. Order XXXII 32, Rule 3 deals with an appointment of guardian of a minor defendant. I fail to understand how the application under Order XXXII, Rule 3 was filed in respect of the minor claimant before Guardian and Wards Court.

[13] Though the application was filed under Order XXXII, Rule 3 of the CPC and without obviously reading the provisions of Order XXXII, Rule 3 CPC the learned ADJ who was the same Officer issued notice but while passing the order has stated that the application has been filed under Section

7 of the Guardian and Wards Act, 1890 (for short the Act). In the application there is no reference to Section 7 of the Act. Why I am dealing with this issue in detail is that this obviously was an application under the Act. Section 7 of the Act empowers a Court to make an order of guardianship. Section 8 deals with the persons entitled to apply for such order under Section 7 and Section 9 of the Act empowers the District Court to entertain such an application. Section 10 deals with the form of the application. Sub-section 3 of Section 10 of the Act clearly lays down that the application must be accompanied by a declaration of the willingness of the proposed Guardian to act and the declaration must be signed by him and attested by at least two witnesses. The application also did not comply with other provisions as naming the other near relations of the minor wherein the names of grand parents should have been found mention. However, this order has never been challenged before me and, therefore, I am not going into this aspect of the matter. But the Court totally lost sight of the fact that in terms of Section 17 of the Act, the Court while declaring the guardian of the minor, it is the welfare of the minor which is of utmost importance and that must be considered by the Court while passing any orders for release of the property of the minor. This aspect has also been totally ignored by the learned Court below.

[14] The only reason given for release of the amount is that the petitioner Smt. Rakhi Roy intends to withdraw the share of minor daughter from MACT since there is no other alternative source of income to maintain the minor daughter's education, cost of welfare and livelihood. There is no other need pointed out. In this petition, notice on this petition was published by advertisement in the newspaper and this petition has been allowed on 14.12.2011 and the amount of the minor who was aged about 7(seven) years

at that time was released in favour of the mother without laying down any condition as to how she is to utilize the money. The only ground given is that since Smt. Rakhi Roy has been appointed as legal guardian of the minor she is permitted to withdraw the amount of Rs.2,00,000/-. Merely because the mother is the guardian of the minor does not mean that the Court under the Guardians and Wards Act, 1890 must release the amount. The provisions of the Guardians and Wards Act, 1890 (for short, the Act) clearly lay down that the guardian must prove before the Guardian and Wards Court that for certain emergent purposes property of the minor should be permitted to be sold or handed over to the guardian. A guardian can be appointed under Section 7 of the Act and there is no problem in appointing the mother as guardian in the present case. However, when the amount is to be released then the interest of the minor has to be looked after by the Court.

[15] After Smt. Rakhi Roy was appointed as guardian, she again applied to the Motor Accident Claims Tribunal for release of the amount of the minor and this application was disposed of on 11th January, 2012. While allowing this application all that the Motor Accident claims Tribunal has said is that since the learned Additional District Judge, Khowai(as stated above the Officer is the same) has issued Guardianship Certificate in favour of the respondent No.3 in respect of the property of the minor, the amount of Rs.2,00,000/- of the minor be released in her favour. The Motor Accident Claims Tribunal did not even take into consideration the fact that the mother of the deceased had already approached him in the meantime claiming that she is also entitled to some part of the compensation.

[16] After this petition was filed I had called for the parties to see some settlement could be arrived at between them and after going through

the record which has been referred to above this Court had directed Smt. Rakhi Roy, the widow of the deceased to file an affidavit as to how she had dealt with the money, especially the amount of Rs.2,00,000/- which was paid to her on account of the amount being payable to her minor daughter. This affidavit has been filed and as per this affidavit the claimant states that after the accident her parents-in-law had thrown her out of her matrimonial house and she had no source of income. With regard to the amount of Rs.4,00,000/- which was released to her she states that she had to spend Rs.3,000/- per month for the food expenses of her daughter and this amount of Rs.36,000/- she had borrowed by taking loan from her parents, relatives and well-wishers. Similar for the year 2009 she stated that she had spent Rs.48,000/- for the education of her daughter and according to her she has utilized the entire two lakhs which was payable to the minor. Tomorrow, if the minor falls ill who will spend money on her? Is the Presiding Officer of the Motor Accident Claims Tribunal not responsible for the misery which has fallen on the minor who lost her father and who is not getting a single paisa out of the money which was awarded to her since the mother has spent all the money. Surprisingly, along with the affidavit, the widow has filed LIC policy which shows that she took out a policy of Rs.30,000/- in July, 2011 and also invested Rs.10,000/- in six years National Savings Certificate, Rs.2,000/- in Kisan Vikas Patra and made investment of Rs.1,000/- in Riju Cement Private Limited. How a person who is in such destitute circumstances could invest money for the purchase of shares and insurance policies is beyond my comprehension.

[17] I had called the parties to my chamber and on talking to them I find that even the widow has been duped of the money by some other persons and the investments she has made is at asking of some other

persons. She stated in chamber that in fact she has nothing left out of the four lakh rupees except these investments of about Rs.40-45,000/-. This is indeed a shocking a state of affairs and therefore in this sort of case the principles with regard to investment of amounts payable to widows and minor children in motor accident cases, workmen's compensation cases and such other cases need to be reemphasized. Therefore, this Court is pleased to reiterate the guidelines laid down as above.

[18] As far as the present case is concerned, all that this Court can say is that nobody involved with this case has done his true duty. The counsel for the petitioner despite being aware that the mother is alive did not make the mother as a respondent in the case. Under Section 166 of the Motor Vehicles Act, 1988 a petition for award of compensation in respect of a deceased is to be filed by the legal representatives. The proviso to Section 166 clearly lays down that where all the legal representatives of the deceased have not been joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. Therefore, when a party knows that there are other legal representatives that party is duty bound to inform the Tribunal of that fact. It is also the duty of the Tribunal after reading the claim petition to ascertain whether there are other legal representatives or not? Before any settlement in any Motor Accident Claims Tribunal is arrived at the Courts must ensure that all the legal representatives of the deceased are on record. This can be done by even asking the claimant to file a legal heir certificate.

[19] In the affidavit filed before this Court Smt. Rakhi Roy has stated that she was driven out of her matrimonial home immediately after the death of her husband. This fact is not stated in the claim petition and if this fact is true then it was all the more reason that the parents with whom the daughter-in-law was fighting should have been made respondents in the claim petition. Even the Motor Accident Claims Tribunal before sending the matter to the Lok Adalat should have ascertained who are the claimants. Either a legal heir certificate should have been insisted upon or some affidavit from the claimant that she is the only claimant and there are no others. The Members of the Lok Adalat unfortunately also did not do their duty. They also only appeared to be in a hurry to dispose of matters in the Lok Adalat without considering how the money is to be invested. No order was passed for investment of the money not only of the widow but even of the minor daughter. The Motor Accident Claims Tribunal after passing of the award was approached by the mother that she is also entitled to compensation. The Tribunal may be right that he could not set aside the award of the Lok Adalat but at least he could have then referred the matter back to the Lok Adalat and asked for instructions as to how he should deal with the matter. If he had any doubt he could have directed the mother to approach the Lok Adalat or the High Court but could have at least stayed the disbursal of the amount. He however, appears to have been in an unholy hurry to disburse the amount and the amount was disbursed in favour of the widow without laying down any condition on the day when the application for release of amount was listed. With regard to the share of the minor a novel procedure as described above has been followed which again shows that something is wrong. This Court does not want to say anything more at this stage.

[20] Even the Insurance Company did not bother to find out if there is any other legal heir. The mother of the deceased would have been entitled to some portion of the compensation at least and in a compensation of Rs.4,00,000/- even if she would not be entitled to 1/3rd she would have been entitled to at least a sum of Rs.1,00,000/- in my view. Since everybody has been negligent, I direct that the mother of the deceased shall be paid Rs.1,00,000/-, out of which Rs.50,000/- shall be paid by the Insurance Company which has been also negligent in not contesting the matter properly and Rs.50,000/- shall be paid by Smt. Rakhi Roy, respondent No.3 herein. This order is being passed because otherwise the Insurance Company has settled the matter for Rs.4,00,000/- and now it cannot be burdened to pay an additional amount of Rs.1,00,000/- only for the fault of the original petitioner, Smt. Rakhi Roy. She also must bear some portion of the blame because she has not only taken away her own share but has also finished the entire share of the minor child also.

[21] In this view of the matter, the petition is allowed to the extent that the petitioner, Smt. Rupa Roy, mother of the deceased shall be entitled to Rs.1,00,000/-, out of which Rs.50,000/- shall be paid by the National Insurance Company Ltd. and the balance amount of Rs.50,000/- shall be paid Smt. Rakhi Roy, respondent No. 3 by depositing the same in Registry of this Court on or before 15th November, 2014. In case this amount is not paid by that date then the petitioner shall the entitled to recover the amount from the concerned party along with interest @ 12% per annum from today.

[22] The petition is disposed of in the aforesaid matter. No order as to costs.

A copy of this judgment shall be sent to the Judicial Officer concerned and he is directed to explain his conduct in the matter.

A copy of this judgment shall also be circulated to all the Judicial Officers in the State and also to the Member Secretary, Tripura State Legal Services Authority to ensure that in future guidelines given hereinabove are followed by the Tripunals and Lok Adalats.

Send down the LCRs forthwith.

CHIEF JUSTICE