

Muhammed Vs. Devassia

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Court : Kerala

Decided On : May-23-2003

Reported in : III(2003)ACC475; I(2004)ACC120; 2004ACJ1341; AIR2003Ker354; 2003(2)KLT1068

Judge : R. Rajendra Babu, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 140 and 142

Appeal No. : M.F.A. No. 746 of 2002

Appellant : Muhammed

Respondent : Devassia

Advocate for Pet/Ap. : N.J. Antony, Adv.

Disposition : Appeal dismissed

Judgement :

R. Rajendra Babu, J.

1. The appellant, K.P. Muhammed, aged 48 years, sustained certain injuries in a motor traffic accident occurred on 20.6.1998 which he was riding on his motor cycle bearing No.KLW 918. It was alleged that the jeep bearing No.KL-12/A-1710 owned by the 2nd respondent and driven by the 1st respondent in a rash and

negligent manner hit against the motorcycle and thereby the appellant fell down and sustained injuries. The Kalpetta Police registered Crime 141/1998 against the 1st respondent alleging the commission of offences under Sections 279 and 337 IPC. The appellant filed O.P. (MV) 327/98 before the Motor Accidents Claims Tribunal, Wayanad, claiming a total compensation of Rs. 1 lakh. Thereafter he filed I.A. 1214/01 claiming interim award of Rs. 25,000/- under Section 140 of the Motor Vehicles Act, the above claim was disallowed. 'Aggrieved by the above order, the petitioner has' come up in appeal.

2. Heard the learned counsel for the appellant.

3. The main argument advanced by the learned counsel for the appellant was that the appellant had sustained injuries and in view of Ext.A3 disability certificate issued by an orthopaedic surgeon, the appellant was entitled to an interim award under Section 140 of the Motor Vehicles Act. The following are the injuries alleged to have been sustained by the appellant as revealed from para 11 of the petition:-

1. Vein cut below left knee.

2. Injury to chest.

3. Minor injuries and pain on several parts of the body.

The injuries as revealed in the petition do not disclose any fracture of any bones or any injury to the tendon. Ext.A3 is the certificate of disability issued by Dr. Vinod Govind, Orthopaedic Surgeon, on 5.8.99. The certificate reads:

'This is to certify that I have this day examined K.P. Mohamed, C/o. Kadeeja, Karigaparamban House, Kamblaka P.O., Wayanad, who states that he was involved in an RTA on 20.6.98 and find that he has a partially ankylosed ankle with minimal mobility in plantarflexion and without movement in abduction - adduction plane.

His permanent partial disability is 6% (six percent only).'

It is on the basis of the above certificate that the appellant made a claim for Rs. 25,000/-invoking Section 140 of the Motor Vehicles Act.

4. Section 140 of the Motor Vehicles Act (for short, the Act) deals with the liability to pay compensation in certain cases on the principle of 'no fault'. It provides that when death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement in accordance with the provisions of Section 140 of the Act. The above amount of compensation payable also had been fixed under Sub-section (1). The permanent disablement for the purpose of fixing the compensation under S. 140 has been defined under Section 142. Section 142 reads:

'Permanent disablement. For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in Sub-section (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.'

Ext.A3 disability certificate issued by the doctor would show that the appellant had sustained 6% permanent partial disability as a result of the injuries sustained in the motor traffic accident. But I do not think that any reliance can be placed on the above certificate as the doctor had not seen any of the treatment records or the wound certificate before the certificate was issued. Further, the certificate does not disclose as to whether the disability is to the right leg or to the left leg though the injury is alleged to have sustained to the left leg. Even the injuries as disclosed in the petition do not disclose any serious injury causing any disability. For attracting Section 140 of the Act, the disablement suffered by the injured should come within any of the clauses in Section 142. A claim under Section 140 cannot be put forward for all the injuries sustained in a motor traffic accident. A high degree of disablement is contemplated for attracting Section 140 of the Act. The injuries mentioned in item 11 of the petition do not come within any of the classes

mentioned in Section 142. A Division Bench of this Court in United India Insurance Co. Ltd. v. Thomas (2000 (1) KLT 516) held that the liability under Section 140 would arise only in case of death or very serious permanent disablement as defined under Section 142 of the Act. There it was observed:-

'Such liability would arise only in case of death or very serious permanent disablement as defined under Section 142. The word 'member' is used in Clause (a) to mean a limb. Privation of the sight of either eye or the hearing of either ear are equated with privation of any member or joint under Clause (a). This would clearly indicate the high degree of disablement contemplated by the Statute. When we come to Clause (b), what is provided is destruction or permanent impairing of the powers of any member or joint. It would mean that even if an injured is not deprived of any member of joint, he will be treated as having suffered permanent if the power of any member or joint is permanently destroyed.'

The injuries mentioned in the petition do not come within the definition of the disability mentioned in Section 142 and as such Section 140 of the Act cannot be attracted and the Court below was fully justified in disallowing the prayer for interim relief under Section 140 of the Act and I find no reasons to interfere with the above finding. Hence the appeal has only to be dismissed.

In the result this appeal is dismissed.

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