

(1991) 10 KL CK 0036

In the High Court Of Kerala

Case No : M.F.A. No. 88 of 1983 (Original Petition No. 1003 of 1980)

Fathima and Others

APPELLANT

Vs

Sathish Kumar Jolly and Another

RESPONDENT

Date of Decision : 11-10-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140

Citation : (1992) 1 ACC 328 : (1992) ACJ 144 : (1993) 77 CompCas 50

Hon'ble Judges : T.V. Ramakrishnan, J;K.P. Radhakrishna Menon, J

Bench : Division Bench

Advocate : V.K. Gopalakrishna Pillai, for the Appellant; S. Parameswaran, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishna Menon, J.—The petitioners in Original Petition No. 1003 of 1980 in the court of the M. A. C. T., Ernakulam, are the appellants. They are the wife and children of one Mohammed Shereef who died in a motor accident which took place on November 5, 1978.

2. The Tribunal after evaluating the evidence adduced by the parties found that the appellants were not able to establish negligence on the part of the third respondent, the driver, and consequently dismissed the petition by a judgment dated June 14, 1982.

3. Learned counsel for the appellant argues that the Tribunal was not justified in entering the finding that the evidence adduced by the appellants was not sufficient to establish negligence. The evidence available on record would positively show that the third respondent was negligent, counsel submits. On going through the records including the judgment appealed against we are of the view that there is little scope to interfere with the said finding because the same cannot be said to be perverse.

4. Learned counsel for the appellants none the less advanced an alternative argument that, in any event, the appellants must be held to be entitled to get the benefit of Section 92A of Chapter VIIA of the Motor Vehicles Act, 1939, introduced in the statute by Act No. 47 of 1982 with effect from October 1, 1982. Section 92A of Chapter VIIA (corresponding to Section 140 of the 1988 Motor Vehicles Act), counsel further submitted, fastens on the owner of the vehicle or, as the case may be, the owners of the vehicles, the liability to pay the fixed amount of compensation even if the claimant has not pleaded and established that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. Counsel for the insurance company, however, submits that Chapter VIIA has no retrospective operation and, therefore, the claim of the appellants for compensation cannot be considered and decided under the provisions contained in this Chapter.

5. Before we go into the merits of the above competing contentions we shall refer to a Division Bench ruling of this court construing Section 140 of the 1988 of the Motor Vehicles Act (vide *United India Insurance Co. Ltd. v. Padmavathy* [1990] 1 KLT 750 : [1991] 70 Comp Cas 542 Sc). The Division Bench has observed as follows (at page 548) :

" In effect, Parliament has only retained the same right which was conferred on the victims through Chapter VIIA of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on par with the earlier fixed amount. Hence Section 6 of the General Clauses Act would not impede the enforcement of Section 140 of the new Act in relation to an accident which occurred prior to the coming into force of the new Act. Section 6 of the General Clauses Act permits switching over to the repealed Act only if a different intention does not appear in the new statute. Such a different intention can be discerned from the new Act. It is in Chapter X of the new Act that provisions regarding "no-fault liability" have been included. The chapter starts with Section 140 and ends with Section 144. The last Section reads as follows : "The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force". The different intention manifested in the new Act is that the provisions in Chapter X should get predominance over all other laws. The provisions contained in that Chapter must be given effect to notwithstanding any contrary provision in any other law including Section 6 of the General Clauses Act. All other provisions, therefore, must yield to the provisions contained in Chapter X of the new Act. This is the legislative intention manifested through Section 144 of the new Act."

6. The Division Bench which rendered the above ruling had no need to go into the question as to whether Section 92A covers claims for compensation in respect of death or permanent disablement of any person arising out of motor accidents which took place prior to the introduction of Chapter VIIA in the 1939

Act. This ruling, however, would help a claimant to get a fixed sum as compensation falling under the caption "liability without fault in certain cases".

7. It is in this backdrop that we have to find an answer to the question as to whether the claim for compensation in respect of death or permanent disablement of a person arising out of a motor accident which took place prior to October 1, 1982, will come u/s 92A of the 1939 Act. We shall now reproduce the relevant Sections in Chapter VILA.

"92A. Liability to pay compensation in certain cases on the principle of no-fault.

-- (1) Where the 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, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

8. It is clear from these provisions that Parliament has created certain substantive rights that could be claimed by the claimants, vide Section 92A of the 1939 Act. Sub-sections (3) and (4) of Section 92A read and understood in the light of the provisions contained in Section 92B, which provides that the right to claim compensation u/s 92A shall be in addition to any other right, i.e., the right based on the principle of fault to claim compensation, however, makes it very clear that the right to claim compensation based on the principle of no-fault recognised by Section 92A can successfully be agitated provided the claim petition for compensation u/s 110A had not finally been disposed of prior to October 1, 1982, the date on which Chapter VIIA of the 1939 Act came into force. In other words, a claim petition u/s 110A pending at the time of the introduction of these provisions requires to be disposed of taking into account these provisions also. That this is the object sought to be achieved is clear from

the plain and unambiguous words employed in the section. We, therefore, are of the view that Section 92A, a special welfare legislation, to the above extent, is retrospective. Since the appeal is a continuation of the proceedings from which the appeal has arisen, the above claim, the claimant can agitate in the appeal he may file against the order/judgment of the Claims Tribunal disposing of his claim petition. We, therefore, are of the view that the claim petitions which are pending before the Tribunals or the courts in appeal at the time of the introduction of this provision require to be considered and disposed of keeping in view Section 92A also. If that be the position, the claim of the appellants for the benefit of Section 140 is sustainable. A reference in this connection to the following observation of the Division Bench in *United India Insurance Company Ltd. v. Padmavathy* [1991] 70 Comp Cas 542 (Ker) is profitable (at p. 548) :

"Therefore, in effect Parliament has only retained the same right which was conferred on the victims through Chapter VIIA of the repealed Act. The difference in the quantum of compensation is only intended to make the right realistic and on par with the earlier fixed amount. Hence Section 6 of the General Clauses Act would not impede the enforcement of Section 140 of the new Act in relation to an accident which occurred prior to the coming into force of the new Act."

9. To put it differently, the claimants are entitled to the "no-fault" benefit envisaged u/s 140 and, accordingly, they are entitled to get a sum of Rs. 25,000 as compensation. The award, accordingly, is set aside. The claim petition is allowed. The claimants are, accordingly, found entitled to a sum of Rs. 25,000 as compensation. The insurance company shall pay this amount with interest at 12 per cent from the date of filing of this appeal, within four weeks from today.