
(2005) 09 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (C) No. 165 (SH) of 2004

New India Assurance Company Ltd.

APPELLANT

Vs

Stevenson Khyriem

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1988 — Section 140, 140(1), 142, 149, 158

Citation : (2005) 4 GLT 487

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : A. Paul, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Ms. A. Paul learned Counsel for the Petitioner. None appears for the Respondent despite notice.

2. By this application under Articles 226/227 of the Constitution of India, the Petitioner has challenged the order dated 24.11.2003 passed by the learned Member, Motor Accident Claims Tribunal, at Shillong (for short, "the MACT") in MAC case No. 64 of 2002 which granted interim relief of Rs. 25,000/- to the injured claimant as an interim relief while entertaining an application u/s 140 of the Motor Vehicles Act, 1988 (for short "the Act").

3. Assailing the impugned order, Ms. Paul has forcefully contended that the impugned order granting interim relief of Rs. 25,000/- to the claimant by the MACT, was passed mechanically, arbitrarily and without any application of mind inasmuch as the learned Member failed to consider the nature of injury sustained by the claimant/Respondent. As per Section 140 of the Act, an award on no fault liability can be granted in case of death or permanent disablement of any person arising out a vehicular accident and as such in case of injury, such injury must be in nature of permanent disablement. According to her, in the instant case it is

apparent from the face of records that the nature of injury suffered by the Respondent was not supported by any medical evidence nor was there any proof whatsoever in this regard to show that the claimant/Respondent had sustained permanent disablement in order to get the interim relief u/s 140 of the Act.

4. To appreciate the submissions made by the learned Counsel for the Petitioner, it would be apposite and necessary to refer to Section 140 of the Act which reads as under:

Liability to pay compensation in certain cases on the principle of no fault- (1) Where 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 maybe, the owner 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 (fifty thousand rupees) and the amount of payable under that Sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty five thousand 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.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this Section or u/s 163 A.

5. The phraseology "permanent disablement" occurring in the above provision of law has been defined u/s 142 of the Act which is quoted hereinbelow:

Permanent disablement: For the purpose 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.

6. A conjoint reading of the above provisions of law clearly goes to show that in order to get an interim relief for permanent disablement u/s 140 of the Act, the claimant must prove that he or she has suffered such an injury in the motor vehicular accident so as to cause permanent disablement. In the instant case, on perusal of the impugned order as well as the claim petition so filed by the Petitioner, it goes to show that no proof whatsoever has been placed on record before the learned Member justifying the claimant's injury to the extent permanent disablement. It was observed by the learned Member that the injured/claimant stated in the evidence that he was hospitalized for two months as a result of the accident and that both of his thighs and front hip were fractured. It was categorically observed by the learned Member that though he could not produce the medical certificate, according to him, the statement of the claimant needed not necessarily be disbelieved. Since the interim relief under no fault liability of Section 140 of the Act is available only in a case of injury where permanent disablement is occurred, it is incumbent on the part of the claimant to procure a medical certificate justifying his/her claim of permanent disablement. Until and unless any cogent proof in the nature of medical certificate issued by a competent authority is being produced, no assumption on the basis of the statement of the claimant to the effect that the injury leads to permanent disablement is permissible.

7. Ms. Paul, in support of her submissions has placed reliance on the following two decisions:

- (1) K.P. Muhammed Vs. Devassia and Others, and
- (2) New India Insurance Co. Ltd. v. Lalhlmingthangi and Anr. reported in (2004) 2 GLR 567

8. The Kerala High Court in K.P. Muhammed's case (supra), relying on a decision of the Division Bench of the same Court in United India Insurance Co. Ltd. v. Thomas (2000) 1 Ker LT 516, categorically held that a high degree of disablement is contemplated for attracting Section 140 of the Act to the exclusion of all injuries mentioned in the petition not coming within the definition of "disability" and accordingly compensation under the said Section was refused. In the aforesaid case, it was also observed that the injury indicated in the petition did not disclose any serious nature of injury causing any disability to make that permanent disablement.

9. In paragraph 4 of the above cited case his Lordship observed as follows:

...Ext. A-3 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 injures should come within any of the clauses in Section 142. A claim u/s 140 cannot be put forward for all the injured 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 Ker LT 516, held that the liability u/s 140 would arise only in case of death or very serious permanent disablement as defined u/s 142 of the Act. There it was observed:

Such liability would arise only in case of death or very serious permanent disablement as defined u/s 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 or equate with privation of any member or joint under Clause (a). This would clearly indicate the high degree of disablement contemplated by the Statue. 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 or 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 for interim relief u/s 140 of the Act...

10. In *Lalhlmingthangi's* case (supra), this Court explicitly held that direction by the Tribunal for payment of Rs. 25,000/- as interim compensation on "no fault" count without any finding to the fact that the injury sustained by the claimant resulted in the "permanent disablement" as defined u/s 142 of the Act, cannot be sustained as the Tribunal, in arriving at the finding to issue such direction of payment, acted mechanically, arbitrarily and without any application of judicial mind.

11. The paragraphs 12 and 14 of *Lalhlmingthangi's* case (supra), may be reproduced as under:

12. Without that being done any stereotyped or mechanical order directing the payment of no falt compensation, in my opinion, is neither desired by the legislators not warranted for ends of justice. No doubt it is a welfare legislation

but fact remains no one, whatever may be his status in the society, should be denied justice by the Court/Claims Tribunal, if he himself is not responsible for any omission/commission laches. It may be further impressed that insurance company can be saddled with the liability u/s 140 as insurer, keeping also in view the provisions of Section 149, only if either the insurance company admits the fact that the offending vehicle had been insured with it, or such a fact is prima facie established from the materials on record. It may be highlighted here that codification of Section 140 pursuant to long felt aspiration of the claimants and wishes of the Judiciary. To summaries, it is the duty of the Claims Tribunal even to act suo motu, in the right spirit of Section 158 Clauses (6) of the Act, to give relief provided u/s 140 which is a constitutional duty of the Claims Tribunal and the Court but not without due adherence to the law and procedure.

14. At the risk of repetition the payment of Rs. 25,000 as compensation on no fault may be directed only on a positive and clear finding in writing that injury sustained by the victim amounted to a case of "permanent disablement" as denied u/s 142 of the Act, and not otherwise. Law will get reduced to a farce if in each and every case there is an initial payment of no fault of Rs. 25,000 in addition of a case of travesty of justice and the ignorance of the provision of the law. We cannot presume such a loophole in the factual proposition that as and when an accident happens and somebody is injured. Claims Tribunal on approach would be giving mechanically an immediate pecuniary relief of Rs. 25,000 when ultimately on adjudication he may not be entitled to any compensation or even a compensation much less than Rs. 25,000.

12. Having regard to the authorities cited above and also on close perusal of the impugned judgment as well as materials available on record, this Court is of the view that to attract Section 140 of the Act the claimant/injured person must sustain any injury to the extent of making him or her "permanent disablement" as culled down in definition u/s 142 of the Act as noticed above. In the instant case, neither any medical certificate nor has any evidence been placed before the Tribunal to disclose that the claimant suffers permanent disablement. Section 140 of the Act cannot be attracted to any other injury save and except the injuries resulted in the permanent disablement. In the instant case, it is seen that the learned Member merely relying on the statement of the injured/Respondent himself, granted the relief of interim compensation in terms of Section 140 of the Act without satisfying himself to the nature of injury as to whether the same was a permanent disablement.

13. In that view of the matter, this Court is inclined to interfere with the impugned order and accordingly the same stands quashed.

14. The case is remitted back to the file of the learned Member, MACT with the direction that he shall decide the matter afresh by seeking the medical evidence to justify the injury so sustained by the claimant/Respondent as expeditiously as possible and pass appropriate and necessary orders in accordance with law and also in terms of the observation as indicated above.

15. In the result, this petition stands allowed. However, taking into account the facts and circumstances of the case, there shall be no order as to costs.