

(2005) 06 KL CK 0019
In the High Court Of Kerala

New India Assurance Company Ltd.

APPELLANT

Vs

Ushakumari and Others

RESPONDENT

Date of Decision : 06-06-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 142, 163A

Citation : (2005) 3 ACC 813

Hon'ble Judges : M.N. Krishnan, J

Bench : Single Bench

Judgement

M.N. Krishnan, J.—This is an appeal preferred against the award passed in O.P. (MV) 89/99 of the Motor Accident Claims Tribunal, Neyyattinkara. The brief facts are as follows. According to the claimant, while he was travelling in a tempo van bearing Reg. No. KRA-8608 from east to west and when it reached Amaravila it hit with a lorry bearing Reg. No. KEV-5353 driven by the 2nd respondent and thereby the petitioner sustained injuries. The petition is filed u/s 163A of the Motor Vehicles Act.

2. On the other hand it is contended by the Insurance Company that the petition is barred by limitation and the accident took place on account of the rash and negligent driving of the tempo van driver and the petitioner is not entitled to claim compensation. The learned Counsel for the Insurance Company contended before me that the Motor Accident Claims Tribunal had gone wrong in allowing the application mainly on two grounds. It is submitted that the accident took place in the year 1992, whereas the provisions regarding Section 163A of the Motor Vehicles Act came into existence only on 14.11.1994 and Section 163A is not having retrospective effect. It is also contended that in order to enable a person who claim compensation u/s 163A of the Motor Vehicles Act he has to prove n, that a death has taken place or there has been permanent disablement or in other words in a case of injury unless claimant is able to satisfy that he has sustained permanent disablement as contemplated u/s 142 of the Motor Vehicles Act he will not be entitled to get compensation u/s 163A of the Motor Vehicles

Act. It is also contended by him that the negligence was also on account of the rash driving of the claimant involved in this accident. Since the claim is made u/s 163A, I feel that the question of negligence need not be decided in this case.

3. The learned Counsel had cited before me a Full Bench decision of the Karnataka High Court reported in *Guruanna Vedi v. G.M. K.S.R.T.C. III* (2003) ACC 350. It is held in that decision that section confers substantial rights to claimants. Compensation received is final and any interim application on Section 163A is prospective and not retrospective. It was a case where the accident takes place on 28.3.1987. The Full Court found that the section is not having retrospective operation. The Court held that every enactment which takes away vested rights under existing laws or creates a new obligation or imposes a new duty or attaches a new disability must be presumed to be intended not to have retrospective effect. Therefore, in the light of this pronouncement I find the claimant was not entitled to file an application u/s 163A of the M.V. Act.

4. Even if it is admitted for argument sake that Section 163A can be invoked, in order to entitle the claimant to have compensation, either death must have taken place or there should have been permanent disablement as defined u/s 142 of the Motor Vehicles Act. There is no document produced before the Courts below to show the permanent disability. It is seen from the award in paragraph 7 that the claimant had sustained lacerated injuries and there was also a fracture on the tibia. He had also sustained a fracture on the forearm. The learned Tribunal had taken the permanent disability at 16% and it is not known on what basis he had taken up such a figure. I do not find any document produced before Court to show the permanent disability of the petitioner. Moreover, it is not the permanent disability that attracts Section 142 of the Motor Vehicles Act. It is the permanent disablement that is described in Section 142 which deals with three types of injuries that is:

(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.

It is imperative on the part of the claimant to establish before the Tribunal that one of such defects as contemplated under Sections 142(a) to (c) had occurred on account of the accident by producing evidence and if possible by medical evidence in this regard. Absolutely no document is available or produced before the Motor Accident Claims Tribunal to establish this claim. Therefore, I find that since Section 163A is not applicable to the present case and further that there is no evidence to prove the permanent disablement as contemplated u/s 142 which forms the basis u/s 163A, the petition filed by the claimant is not maintainable and it is, therefore, liable to be dismissed. The award passed by the Motor Accident Claims Tribunal suffers from the above infirmities and, therefore, I set aside the award and dismiss the claim petition.