

(2011) 11 KL CK 0026
In the High Court Of Kerala
Case No : M.A.C.A. No. 637 of 2011

P.P. Babu

APPELLANT

Vs

Jacob K. Thomas and Others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 163(A), 163(A)(1), 163A, 163A(1), 165
Workmens Compensation Act, 1923 — Section 2(9), 2(g), 4(1)(c)(ii)

Citation : (2012) ACJ 1924 : (2011) 4 KLJ 705 : (2011) 4 KLT 733 : (2012) 1 TAC 757

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : Mathew John and Domson J. Vattakuzhy, for the Appellant; T.J. Lakshmanan Iyer, for the Respondent

Judgement

R. Basant, J.—i) What does the explanation to Section 163A(1) of the Motor Vehicles Act convey?

ii) Is it really intended to explain the expression "permanent disablement" referred to in Section 163A(1)?

iii) How is one to understand the explanation?

iv) Is permanent total disablement to be proved in all cases u/s 163A?

v) How is the extent of "permanent partial disablement" to be assessed in the case of non scheduled injuries in a claim u/s 163A?

These questions are raised for consideration in this appeal. Claimant is the appellant. He claimed compensation for personal injuries suffered by him in a motor accident which took place on 04.08.2002. Earlier the claim was considered and allowed by the Tribunal. A total amount of Rs. 74,700/- was awarded by the Tribunal. The insurance company came up in appeal and by judgment dated 09.11.2009, the appeal was allowed in part and the matter was sent back to the

Tribunal for fresh disposal reckoning the claim as one u/s 163A of the Motor Vehicles Act. The matter went back to the Tribunal. The Tribunal, by the impugned award, came to the conclusion that the claim is not maintainable u/s 163A. Accordingly the Tribunal proceeded to pass the impugned order dismissing the claim.

2. We have heard the learned counsel for the appellant/claimant and the 3rd respondent/insurance company. That the policy covers the liability of the insurance company is not disputed. The learned counsel for the appellant first of all contends that the Tribunal erred grossly in assuming that a claim u/s 163A would be maintainable only if total permanent disability has resulted. The learned counsel relies on the following observations in para. 10 of the impugned award, which convey that the Tribunal was under that erroneous impression.

From the contents of Ext. A11, I am fully convinced that the petitioner never sustained any permanent total disablement for maintaining a petition under S. 163 (A) of the Act. In my view, Ext. A11 certificate suggest only a permanent partial disablement, which cannot be a subject matter for awarding compensation under S. 163(A) of the Act. Hence in my opinion, the present claim petition under S. 163(A) of the Act is not maintainable. Issue No. 1 is answered accordingly.

(emphasis supplied)

3. The learned counsel for the appellant contends and we readily accept that the approach made by the Tribunal is legally erroneous and unacceptable. Section 163A employs the expression permanent disablement. In the explanation to Section 163A an attempt is made, evidently to explain the said expression "permanent disablement". But Section 163A(1) and the explanation as enacted read as follows:

163 A. Special provisions as to payment of compensation in structured formula basis--(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation--For the purposes of this subsection, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act. 1923 (8 of 1923).

(Emphasis supplied)

4. The explanation, to say the least, is not carefully drafted. The body of Section 163A (1) does not employ the expression "permanent disability". It employs the expression "permanent disablement". The explanation does not refer to permanent disablement. It refers to "permanent disability". Inference is

irresistible that notwithstanding the inadequacy in semantics, what is intended to be explained by the explanation is the expression "permanent disablement" in the body of Section 163A (1). That inadequacy does not leave behind any doubt in substance in the mind of this Court. Moreover, the Workmen's Compensation Act does not also employ the expression "permanent disability". Section 2(g) of the Workmen's Compensation Act defines the expression "disablement" and the body of that definition throws light on what is permanent disablement. We therefore assume that "permanent disability" referred to in the explanation actually refers to and explains "permanent disablement" referred to in Section 163(A)(1) of the M.V. Act as also Section 2(9) of the Workmen's Compensation Act.

5. It will be apposite straightaway to refer to the following stipulation in clause 5 of the Second Schedule.

Injuries deemed to result in Permanent Total Disablement/Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.

6. The Tribunal was evidently under a totally erroneous impression that only the total permanent disability can attract a claim u/s 163A. Such a view is impermissible in the light of the explanation to 163A (as understood by us earlier) as also the stipulations in clause 5 of the Second Schedule to the M.V. Act. Clause 5 (a) refers to computation of compensation in cases of permanent total disablement, whereas clause 5 (b) refers to the computation of compensation in case of permanent partial disablement. In these circumstances, there is absolutely no room for any confusion of thought on this aspect. We make it clear that u/s 163A, a claim for compensation is perfectly maintainable, where either permanent total disablement or permanent partial disablement has resulted.

7. Though the Tribunal has not said so in so many words, reading of the impugned award conveys that the Tribunal entertained a further confusion of thought as to whether the injuries not scheduled in Schedule I of the Workmen's Compensation Act can be taken into reckoning for the purpose of awarding compensation u/s 163A. The note under clause 5 extracted above only makes it clear that deemed permanent total disablement or permanent partial disablement shall be as specified in Schedule I of the Workmen's Compensation Act. That does not militate against the stipulations in Section 2(g). Non scheduled injuries can also result in permanent partial or total disablement. That confusion has to be disabused straightaway.

8. Section 4(1)(c)(ii) of the Workmen's Compensation Act, prescribes how the extent of partial disablement is to be ascertained when an injury is not a scheduled injury as per Schedule I. Assessment by a qualified medical practitioner is permissible u/s 4(1)(c)(ii). In these circumstances, if there is a competent assessment by a qualified medical practitioner as contemplated u/s

4(1)(c)(ii), such assessment of extent of permanent partial disablement can be accepted by a Tribunal.

9. That takes us to the further question as to whether permanent partial disablement has been proved in this case. The claimant on his own showing is a flower merchant. Ext. A11 document which has been perused by us in detail, reveals that a competent medical practitioner assessed the extent of disability to be 11%. It is true that the competent medical practitioner has not specifically referred to the extent of reduction in earning capacity. The medical practitioner refers only to physical disablement following the Mc Bride scale. The certificate Ext. A11 does not specifically say that 11% is the extent of reduction in earning capacity.

10. There is force in this submission that to ascertain whether permanent total or partial disablement has resulted and also to ascertain the extent of disability, what is crucial is not physical disability, but only the extent of reduction in earning capacity. On that proposition also, there can possibly be no dispute.

11. The next question is whether Ext. A11 and the claim for the appellant should be rejected in an omnibus manner for the simple reason that Ext.A11, which confirms physical disability, does not certify the extent of reduction in earning capacity. This Court is convinced that 11% physical disability has resulted. The details of the physical disability are given in extenso in Ext.A11. Considering the nature of injuries, the period of treatment, the resultant disability etc., we find it safe to accept that 11% physical disability has resulted.

12. The next question is as to whether there is any reduction in earning capacity. Though the author of Ext. A11 has not referred to the extent of reduction in earning capacity, the Tribunal, whose primary commitment must be to the mandate u/s 165 of the M.V. Act to ascertain and ensure payment of just compensation, cannot in this situation throw its hands up in helplessness and dismiss the petition. The Tribunal is expected to ascertain whether the physical disability has resulted in any reduction in earning capacity. Even in the absence of any better evidence, looking at the nature of the physical disability proved and the nature of the employment of the appellant, we find it absolutely safe to conclude that there must have been reduction in earning capacity to the extent of 9% at least. We feel that we are justified in the circumstance of this case in not remanding the matter again to the Tribunal with a direction to ascertain the precise extent of reduction in earning capacity. For want of crisp, cogent and satisfactory evidence, it is only the claimant who can be put to suffer. So reckoned, we take it that the physical disability proved under Ext. A11 must have resulted in some reduction in earning capacity, which, on the basis of the totality of inputs, we hold, could not have been below 9%.

13. We now come to the quantum of compensation payable. The Tribunal has not adverted to the materials in detail. The learned counsel for the appellant presses into service the findings recorded by the Tribunal earlier. Bills for medical

expenses exceeding Rs. 15,000/- were produced and accepted by the Tribunal in the previous round of litigation. We find it absolutely safe to conclude that the bills produced cover medical expenses exceeding Rs. 15,000/-, which is the maximum payable under clause 4 (ii) of the Second Schedule to the M.V. Act.

14. The claimant has suffered grievous injuries including 2 fractures. Rs. 5,000/- is the compensation" for pain and suffering prescribed under clause 4(1)(a) of the Second Schedule to the M.V. Act for grievous injuries suffered.

15. We now come to the quantum of monthly income of the claimant. According to him, he has a monthly income of Rs. 3,250/-. The Tribunal earlier accepted Rs. 2,500/- as the monthly income. The accident had taken place on 04.08.2002. We take note of the presumption of prudence available under clause 6 of the Second Schedule, which enables Tribunals to conclude, from 1994, that a non earning person can also be assumed to earn an income of Rs. 1,250/-. We do take note of the dictum in *Lata Wadhwa and Others Vs. State of Bihar and Others*, and *Laxmi Devi and Others Vs. Mohammad Tabbar and Another*, . We do, in these circumstances, find it absolutely safe to assume that the claimant must have been earning an income of Rs. 3,000/- per mensem on the date of the accident.

16. Under clause 5, compensation is admissible for loss of income for actual period of disablement not exceeding fifty two weeks. In the instant case, according to the appellant, he was disabled for a considerably long period of time after the accident. We have evidence about the nature of the injuries suffered and the period of inpatient treatment (14 days). We find it absolutely safe to assume that there must have been involuntary unemployment on account of the injuries and the disablement for a period of 21/2 months (10 weeks). The appellant is consequently entitled for compensation for loss of income during the said period of 10 weeks.

17. The above discussions lead us to the conclusion that under the Second Schedule to the M.V. Act the appellant is entitled to an amount of Rs. 76,100/- as compensation as per the details given below;

18. We are satisfied that interest @ 7.5% per annum is liable to be awarded from the date of the petition to the date of payment. We further direct that proportionate cost for the entire amount of compensation hereby awarded shall also be paid to the claimant as held in *Jeena Vs. Satheesan Babu and others*, . In the result:

- a) This M.A.C.A. is allowed in part;
- b) The appellant is found entitled to an amount of Rs. 76,100/- (Rupees Seventy six thousand and one hundred only) as compensation;
- c) We direct that the entire amount of compensation shall carry interest @ 7.5% per annum from the date of the petition to the date of payment;

d) We further direct that proportionate cost throughout for the entire amount of compensation hereby awarded shall be paid to the claimant as held in Jeena (supra);

e) The 3rd respondent/insurance company shall satisfy the direction to pay compensation by production of a cheque for the entire amount (less amounts if any paid already) before the Tribunal, within a period of 30 days. Appropriate directions regarding deposit/release shall be issued by the Tribunal.