(2017) 03 KL CK 0004

In the High Court Of Kerala

Case No : MACA.No. 1884 of 2016

Remya APPELLANT

Vs

Rajin RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2017) AAC 1345 : (2017) 2 KLT 335

Hon'ble Judges : Mr. P.D. Rajan, J.

Bench : Single Bench

Advocate : Sri. A.V.M. Salahudin, Advocate, for the Appellants; Smt. T.C. Sowmiavathy, Advocate, for the Respondent No. 2; Sri. A.A. Ziyad Rahman, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. P.D. Rajan, J.—Whether the legal representatives of the wrong doer (rider of the motor cycle) are entitled to get compensation under Section 140 of the Motor Vehicles Act 1988 (in short, `the Act'') ? The appellants are legal heirs of deceased Sajeev who died in an accident on 15.5.2014 at 6.45 am at Pachakkil bye pass. Their case is that on 15.5.2014 at 6.45 am, the deceased was riding a motor cycle, KL 53 B 9092 from Velliparamba to Cherarambalam. When he reached at Pachakkil bye pass junction, due to mechanical defect, the vehicle slipped and hit on a concrete post, thereafter capsized, as a result, he sustained serious head injury. Immediately, he was removed to Medical College Hospital. While undergoing treatment, he succumbed to the injuries. Subsequently, the legal heirs preferred O.P(MV) No.155 of 2015 before MACT, Kozhikode.

2. The insurance company admitted the policy and contended that the accident was due to negligence of the deceased himself and hence the legal heirs are not entitled to claim for any compensation. In the trial court, Ext.A1 to A3 were marked. After analysing the documents, the claim under Section 140 of Motor

Vehicle Act (for short, ''MV Act'') was dismissed by the Tribunal. Being aggrieved by that, they preferred this appeal.

3. The liability under Section 140 of MV Act is to pay compensation on the basis of no fault liability. 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 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. According to Section 140 of the MV Act, in respect of a death, the amount shall be fixed at Rs.50,000/- and in respect of permanent disablement, the amount shall be fixed at Rs.25,000/-. It is specifically stated that in a claim under Section 140(1) of the MV Act, the claimant shall not be required to plead and establish that death or permanent disablement in respect of which such claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned. Ext.A1 is the F.I.R and Ext.A2 is the Postmortem certificate. Ext.A2 shows that death was caused due to the head injuries sustained in the accident.

4. A Division Bench of this court in New India Insurance Co. Ltd v. Parameswaran (2005(4) KLT 343) held as follows:-

"4. Under Section 140 of the Act, liability to pay compensation is absolute when the death or permanent disablement of any person is arising out of the use of a motor vehicle. Irrespective of the negligence, there is no necessity for the claimant to plead or establish that the death or permanent disablement was due to the wrongful act or negligent act of the owner of the vehicle. No-fault liability under Section 140 is created by the Statute is outside the law of tort and there is no necessity to enter into an enquiry that who was the wrongdoer. This is a substantive right accrued and the liability is incurred on the date of the accident and not on the date of consideration of the claim. So, the accidental death of the driver of the jeep occurred during the use of the vehicle by the owner and, in turn, the insurance company is liable to pay compensation under Section 140. Therefore, the Tribunal was right in awarding compensation under Section 140 and direction to pay the above with interest by the insurance company. Direction to pay interest is also fully justified as amount due under Section 140 was not made in time and there is erosion of money value due to passage of time.

5. Apex Court in Indira Devi and others v. Bhagadha and another (AIR 2010 SC 2919) held that compensation under Section 140 of MV Act is regardless of any wrongful act, neglect or default of any person in respect of whose death, the claim is made. It was held in the above decision as follows:-

" The impugned direction is clearly erroneous and unsustainable in law. The Tribunal has completely failed to realize the true nature and character of the compensation in terms of Section 140 of the Act. The marginal heading to Section 140 describes it as based '' on the principle of no fault''. As the expression ''no fault'' suggests the compensation under Section 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death the claim is made".

6. Normally no fault liability is made at the threshold of the proceedings. This statutory liability is created ignoring the principle of law of tort and a substantive right incorporated under the Motor Vehicles Act. It is specifically stated that in a claim under Section 140(1) of the MV Act, the claimant shall not be required to plead and establish that death or permanent disablement in respect of which such claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned. The payment of compensation is made as an interim award.

7, Ignoring the statutory direction, the Tribunal dismissed the claim under Section 140 of MV Act, which is inhumane. The Insurance Company is directed to pay Rs.50,000/- under Section 140 of MV Act within a period of 30 days from today.