
(2025) 01 KL CK 1846
In the High Court Of Kerala
Case No : M.A.C.A No. 34 of 2019

Revathy S.Sanan

APPELLANT

Vs

Shine S

RESPONDENT

Date of Decision : 31-01-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2025) 01 KL CK 1846

Hon'ble Judges : Johnson John, J

Bench : Single Bench

Advocate : Anchal C.Vijayan, P.K.Manojkumar, Jacob Mathew P, Mathews Jacob

Final Decision : Dismissed

Judgement

Johnson John, J.

1. This appeal is filed by the claim petitioner in O.P.(MV) No. 468 of 2014 on the file of the Motor Accident Claims Tribunal, Punalur.

2. According to the petitioner, on 11.11.2013, while she was driving a car through Kollam Schencottah road, the vehicle caused to hit against a compound wall on the side of the road and thereby, she sustained serious injuries. The petition was filed under Section 163-A of the Motor Vehicles Act, 1988 ('Act, 1988' for short) claiming a total compensation of Rs.12,00,000/-. The 1st respondent is the owner of the car and the 2nd respondent is the insurer.

3. Before the Tribunal, Exhibits A1 to A16 were marked from the side of the petitioner and Exhibit B1 marked from the side of the 2nd respondent. The Tribunal awarded a total compensation of Rs.1,55,435/- to the petitioner. The Tribunal calculated the compensation payable under different heads as per the structured formula in the Second Schedule of the Act, 1988. According to the appellant, the Tribunal has jurisdiction to deviate from the structured formula in appropriate cases and that the Tribunal ought to have accepted the medical bills for Rs.5,90,992/- for fixing the compensation towards medical expenses and the

Tribunal erred in fixing the compensation under the head 'medical expenses' at Rs.15,000/- as per the Second Schedule of the Act, 1988.

4. Heard both sides and perused the records.

5. The learned counsel for the appellant cited the decision of the Honourable Supreme Court in *Sapna v. United India Insurance Co. Ltd.* [(2008) 7 SCC 613], wherein the Honourable Supreme Court held that the court can deviate from the structured formula in exceptional cases to ensure that the amount of compensation is just and fair in the facts and circumstances of the case. The counsel for the appellant also relied on the decision of the Calcutta High Court in *National Insurance Co. Ltd. v. Mainak Ghosh and others* [2017 ACJ 986] and argued that even in a petition filed under Section 163-A of the Act, 1988, the claimant is entitled for actual medical expenses incurred from the date of accident.

6. The learned counsel for the appellant pointed out that as per Exhibits A10, A11 and A12 medical bills, the total amount claimed towards medical expenses is Rs.5,90,992/- and the Tribunal allowed only Rs.15,000/- as per the structured formula in the Second Schedule of the Act, 1988. The learned counsel for the appellant pointed out that the appellant was aged only 22 years at the time of the accident and she was an M. Tech student and considering the serious nature of the injury sustained and disability, the Tribunal ought to have fixed the compensation towards medical expenses on the basis of the actual medical bills produced. It is argued that the Honourable Supreme Court has declared the Second Schedule as redundant, irrational and unworkable in *Puttamma v. Narayana Reddy* [2014 (1) KLT 738 (SC)]. In paragraph 56 of the said decision, the Honourable Supreme Court held thus:

"56. The Central Government was bestowed with duties to amend the Second Schedule in view of S.163-A(3), but it failed to do so for 19 years in spite of repeated observations of this Court. For the reasons recorded above, we deem it proper to issue specific direction to the Central Government through the Secretary, Ministry of Road Transport & Highways to make the proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament. Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under sub-section (3) of S.163A of Act, 1988 or amendment is made by the Parliament, we hold and direct that for children upto the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000/- (Rupees one lakh) and persons more than 5 years of age shall be entitled for fixed compensation of Rs.1,50,000/- (rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under S.163-A of the Act, 1988.

(emphasis supplied)

7. As noticed earlier, the total compensation awarded by the Tribunal is Rs.1,55,435/- and the same is above the fixed compensation of Rs.1,50,000/-, as per the decision of the Honourable Supreme Court in Puttamma (supra). The payment of compensation on structured formula basis under Section 163-A of the Act, 1988 inserted by Act 54 of 1994, with effect from 14.11.1994 is to avoid long drawn litigation and delay in payment of compensation to victims, and the liability to pay compensation under Section 163-A is on the principle of no fault and therefore, the question as to who is at fault is immaterial and foreign to an enquiry under Section 163-A of the Act, 1988.

8. A Division Bench of this Court in Abdul Majeed C. M. and Others v. Mohammad Shafeque @ Shafeeque and Others [2016 (1) KHC 613] held that in a claim filed under Section 163-A of the Act, 1988, the actual loss/expenses suffered by the claimant is irrelevant while ascertaining the compensation payable under different heads. Therefore, in view of the guidelines of the Honourable Supreme Court in Puttamma's case (supra) and the facts and circumstances of the case, I find that the contention of the appellant that she is entitled for the actual medical expenses incurred in connection with her treatment, is not legally sustainable.

For the aforesaid reasons, I find that this appeal is devoid of merit and is liable to be dismissed.

In the result, this appeal is dismissed.