

**(2014) 06 KL CK 0236**

**In the High Court Of Kerala**

**Case No : M.A.C.A. Nos. 440, 460 and 461 of 2010**

Sherin J. Thankom

APPELLANT

Vs

Thankom

RESPONDENT

**Date of Decision : 11-06-2014**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 141, 142, 163A, 166

**Citation :** (2014) 4 ACC 317 : (2014) ACJ 2673 : (2014) 3 ILR 211 : (2014) 3 KLJ 250 : (2014) 3 KLT 44

**Hon'ble Judges :** Harun-Al-Rashid, J;Anil K. Narendran, J

**Bench :** Division Bench

**Advocate :** R.T. Pradeep and V. Vijulal, Advocate for the Appellant; P.K. Manoj Kumar, T.C. Sowmiavathy and Rajesh Thomas, Advocate for the Respondent

## **Judgement**

Anil K. Narendran, J.—These appeals arises out of the common award dated 30.11.2009 in O.P.(MV) Nos. 680/2004, 690/2004 and 768/2004 on the file of the Motor Accident Claims Tribunal, Neyyattinkara. In the accident alleged to have occurred on 25.1.2004 at 1.15 p.m., a car bearing registration No. KL-01-F-48, driven by the 3rd respondent capsized resulting injuries to the appellants herein, who were the passengers in that vehicle. M.A.C.A. No. 440/2010 is filed by the applicant in O.P. (MV) No. 680/2004, who was aged 14 years at the time of accident. M.A.C.A. No. 460/2010 is filed by the applicant in O.P. (MV) No. 768/2004, who was aged 52 years and working as Junior Superintendent in Tirupuram Grama Panchayat at that time and M.A.C.A. No. 461/2010 by the applicant in O.P.(MV) No. 690/2004, who was a farmer aged 45 years at that time. The claim petitions were filed before the Tribunal under Sections 140 and 166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained in the motor vehicle accident. The compensation claimed in O.P.(MV) No. 680/2004 and 768/2004 is Rs. 50,000/- each and that in O.P.(MV) No. 690/2004 is Rs. 2,00,000/-.

2. According to the applicants, at the time of accident, they were travelling in a

car bearing registration No. KL-01-F-48, which was driven by the 3rd respondent, along Balaramapuram-Vanikatheruvu-Kattakkada road, from west to east. Upon reaching Thannikuzhi, the 3rd respondent abruptly applied break, while the car was running at a very high speed, as a result of which the car capsized and fell into a ditch and the applicants sustained serious injuries. According to the applicants, the accident occurred due to the rash and negligent driving of the 3rd respondent. After the accident, the applicants were taken to the Medical College Hospital, Thiruvananthapuram, for treatment. In connection with the said accident, the Police has registered Crime No. 33/2003 of Balaramapuram Police Station. The 1st respondent is the registered owner and the 2nd respondent is the insured owner of the car involved in the accident, which was driven at the time of accident by the 3rd respondent. The 4th respondent is the insurer of the said car.

3. Before the Tribunal, respondents 1 to 3 remained ex parte and the 4th respondent-insurer alone contested the case. The insurer filed written statement admitting the insurance coverage of car bearing registration No. KL-01-F-48, which stood insured in the name of the 2nd respondent, at the time of the accident. The transfer of ownership of the car in favour of the 1st respondent was never intimated and hence the 4th respondent is not liable to indemnify the 1st respondent. The insurer has also denied any negligence on the part of the 3rd respondent. According to them, the 3rd respondent had to apply break to save a pedestrian, who abruptly crossed the road.

4. The Tribunal ordered joint trial of all the three claim petitions. On the side of the applicants, Exhibits A1 to A18 were marked and Exhibits B1 to B3, B3(a) and B3(b) were marked on the side of the respondents. No oral evidence was adduced by both sides.

5. The Tribunal, by a common award dated 30.11.2009, dismissed all the three claim petitions holding that, the mere production of the First Information Report, Scene Mahazar and the report of the Assistant Motor Vehicles Inspector concerned are not sufficient to prove the accident in the manner alleged. The Tribunal further held that, though the applicants have produced medical records they failed to prove that the accident occurred due to the negligence on the part of the 3rd respondent in driving the car and they suffered permanent disablement as a result of the accident, entitling them to claim compensation in claims filed under Sections 140 and 166 of the Motor Vehicles Act, 1988.

6. The applicants are in appeal before us against the said common award passed by the Motor Accident Claims Tribunal, Neyyattinkara, in dismissing their claim petitions. The appellant in M.A.C.A. No. 440/2010 has also produced certain additional documents, along with I.A. No. 603/2010, which includes medical prescriptions, medical bills, etc., and also the final report in Crime No. 33/2004 of Balaramapuram Police Station and the judgment of the Judicial First Class Magistrate Court-III, Neyyattinkara, evidencing the conviction of the 3rd respondent-driver, on plea of guilty.

7. We heard the learned counsel for the appellant in all the three appeals and the learned Standing Counsel for the 4th respondent-insurer.

8. The learned counsel for the appellants strenuously contended that, the Tribunal erred in law in dismissing the claim petitions filed by the appellants when the documents already on record prima facie prove the accident occurred on 25.1.2004 involving rash and negligent driving of the car by the 3rd respondent, the injuries sustained in the accident and also the resultant disability. The learned counsel submitted further that, though the appellants were ready to mount the witness box to tender oral evidence regarding the factum of accident, the injuries sustained in the accident and also the resultant disability, they could not do so, as there was no proper communication from their counsel before the Tribunal regarding the posting of the cases for evidence. The learned counsel also pointed out that the criminal case registered against 3rd respondent driver ended in conviction, as evident from the additional documents produced before this Court. The final report filed by the Police and the judgment of the Magistrate court could not be produced before the Tribunal for the very same reason stated above. Therefore, the learned counsel would pray for a remand to the Tribunal, so as to enable the appellants-applicants to adduce oral as well as documentary evidence regarding the factum of accident involving negligence on the part of the 3rd respondent-driver, the injuries sustained in the accident and also the resultant disability.

9. Per contra, the learned Standing Counsel for the insurer contend that, the findings in the impugned common award does not require any interference at the hands of this Court and that the appellants-applicants are also not entitled for a remand to the Tribunal.

10. We have considered the rival submissions made at the Bar.

11. The appellants have approached the Tribunal, by filing an application under Ss. 140 and 166 of the Motor Vehicles Act, claiming compensation for the injuries sustained and the resultant disability, arising out of the motor vehicle accident occurred on 25.1.2004. Section 140 of the Act deals with the liability to pay compensation, on the principle of no fault, in cases 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 and as per sub-s. (2), the amount of compensation payable under sub-section (1) in respect of the death of any person shall be a fixed sum of Rs. 50,000/- and the amount of compensation payable in respect of the permanent disablement of any person shall be a fixed sum of Rs. 25,000/-. Going by Section 141 of the Act, the right to claim compensation under S. 140 in respect of death or permanent disablement shall be in addition to any other right, except the right to claim under the scheme referred to in S. 163A, to claim compensation in respect of such death or permanent disablement on the principle of fault, under any other provisions of the Motor Vehicles Act or any other law for the time being in force. As per S. 142 of the Act, for the purpose of no fault liability under Chapter X of the Act,

permanent disablement of a person shall be deemed to have resulted from an accident arising out of the use of a motor vehicle or motor vehicles, if such person has suffered by reason of that accident, any injury or injuries involving those enumerated in Clauses (a) to (c) to that Section. Therefore, Ss. 140 and 141 make it abundantly clear that the payment of a fixed sum made under S. 140, in respect of cases involving death or permanent disablement is only ad hoc and interim, and the claimants in such cases, even after claiming such fixed sum under Section 140 of the Act, are entitled to claim the entire amount of compensation, which would otherwise be payable by resort to S. 166 of the Act. The only stipulation is that, the fixed sum already paid under S. 140 has to be adjusted towards the compensation amount that would be payable under S. 166 of the Act. In cases other than death cases, if the claimant failed to prove the permanent disablement suffered by reason of any injury or injuries involving those enumerated in Clauses (a) to (c) to S. 142 of the Act, he will not be entitled to claim the fixed sum prescribed under S. 140 of the Act, on the principle of no fault liability. But, it will not disentitle the said claimant from claiming compensation for the injuries sustained by him, in an application filed under S. 166 of the Act. In such circumstances, even in cases where the Tribunal finds that the claimant failed to prove any permanent disablement in terms of S. 142 of the Act, the Tribunal should proceed with the matter under S. 166 of the Act.

12. The specific allegation made in all the three the claim petitions is that, the accident occurred due to the rash and negligent driving of the 3rd respondent, who abruptly applied break, while the car was moving in a heavy speed, as a result of which the car capsized and fell into a ditch, whereby the appellants sustained injuries resulting in disability. The 4th respondent-insurer alone contested the matter before the Tribunal and respondents 1 to 3 remained ex parte. In the written statement, the 4th respondent-insurer admitted the insurance coverage of the car, but it was contended that, the transfer of ownership in favour of the 1st respondent was not intimated to them. Regarding the negligence on the part of the 3rd respondent-driver, the averments in the written statement are as follows:

There was no negligence on the part of the 3rd respondent. The 3rd respondent had to apply break to save a pedestrian, who abruptly crossed the road, from being hit.

The appellants have produced various documents, which were already marked by the Tribunal as Exhibits A1 to A18, to prima facie prove the factum of the accident occurred on 25.1.2004 involving rash and negligent driving of the car by the 3rd respondent and also the injuries sustained and the resultant disability. The said documents include Exhibit A15 first information report. Exhibit A16 scene mahazar and Exhibit A17 report of the Assistant Motor Vehicles Inspector. The remaining documents, i.e., Exhibits A1 to A14, A14(a) to (n) and P18 are treatment records, disability certificates, medical bills, etc., issued to the

appellants, to prove the injuries sustained and the resultant disability.

13. In *Kusum Lata and Others Vs. Satbir and Others*, the Apex Court held as follows; It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind. Later, in *Parmeshwari Vs. Amir Chand and Others*, the Apex Court reiterated that, in a road accident claim, the strict principles of proof in a criminal case are not attracted. In *Parameshwari's* case (supra), the Apex Court had taken note of the observation made in its earlier judgment in *Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others*, that, the claimants were merely to establish their case on the touchstone of preponderance of probability and that standard of proof beyond reasonable doubt could not have been applied.

14. Prima facie we find that the reasoning given by the Tribunal in the impugned common award is in conflict with the principle laid down in the judgments of the Apex Court referred to above. In deciding matters arising out of accident cases the Tribunal should bear in mind the caution struck by the Apex Court that a claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a claim before the Tribunal the standard of proof is much below than what is required in a criminal case as well as in a civil case. No doubt before the Tribunal, there must be some material on the basis of which the Tribunal can arrive at or decide things necessary to be decided for awarding compensation. In such circumstances, we hold that the reasoning given by Tribunal in the impugned common award, in order to reject the claim petitions filed by the appellants are unsustainable and the said common award is liable to be set aside in these appeals.

15. We are of the opinion that, all the three cases require to be remanded back to the Tribunal, so as to enable the appellants-applicants to adduce oral as well as documentary evidence regarding the factum of accident involving negligence on the part of the 3rd respondent-driver, and also the injuries sustained in the accident and the resultant disability.

16. In the result, we set aside the common award dated 30.11.2009, of the Motor Accidents Claims Tribunal, Neyyattinkara, in O.P.(MV) Nos. 680/2004, 690/2004 and 768/2004. The claim petitions are remanded back to the Tribunal for fresh consideration, so as to enable the appellants-applicants to adduce oral as well as documentary evidence, if any, regarding the factum of accident involving negligence on the part of the 3rd respondent-driver, and also the injuries sustained in the accident and the resultant disability. It will be open to the 4th respondent-insurer also to adduce oral as well as documentary evidence, if any, in support of its contentions. The parties shall appear before the Tribunal on 1.7.2014. As the claim petitions are of the year 2004, we direct the Motor Accident Claims Tribunal, Neyyattinkara to dispose of the claim petitions, as directed above, as expeditiously as possible, at any rate on or before 30.9.2014. It is made clear that, the Tribunal shall proceed with the cases untrammelled by

the observations, if any, made in this judgment touching the merits of the cases.  
The appeals are disposed of as above. No order as to costs.