
(1994) 07 KL CK 0052
In the High Court Of Kerala

The Divisional Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Murugan

RESPONDENT

Date of Decision : 22-07-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 142

Citation : (1995) 1 ACC 55 : (1994) 2 KLJ 329

Hon'ble Judges : M.M. Pareed Pillay, J; Cyriac Joseph, J

Bench : Division Bench

Judgement

M.M. Pareed Pillay, J.—Second respondent in O.P. (MV) 526 of 1987 of the Motor Accident Claims Tribunal, Kollam has filed the appeal challenging the award of compensation of Rs. 12,000/- in favour of claimant (1st respondent) mainly on the ground that the Tribunal overlooked Section 142 of the Motor Vehicles Act. Contention of the appellant is that the injuries sustained by the first respondent would not come u/s 142 of the Act. It is also contended by the appellant that at any rate the award of compensation calls for interference as the Tribunal went wrong in awarding Rs. 12,000/- as compensation instead of the legally permissible amount of Rs. 7,500/-.

2. Appellant's first contention is that the injuries sustained by the first respondent would not attract Section 142 of the Act and hence the Tribunal went wrong in awarding compensation. It is pointed out by the Counsel for the appellant that Section 142 can be invoked only in a case of death or permanent disablement of any person which has resulted from an accident arising out of the use of a motor vehicle or motor vehicles and as the wound certificate does not reveal of any permanent disablement as a result of the injuries sustained by the first respondent it is a case where the Tribunal ought to have dismissed the petition.

3. Section 142 provides for liability to pay compensation in certain cases on the principle of no fault. The benefit of the Section can be availed of only in a case of death of permanent disablement of any person resulting from an accident arising

out of the use of a motor vehicle or motor vehicles. In such a case the owner of the vehicle or vehicles shall be liable to pay compensation. Section 140(2) specifies Rs. 25,000/- as the amount of compensation in respect of death of any person and Rs. 12,000/- in the case of permanent disablement. Section 142 throws sufficient light with regard to permanent disablement under the Act, If a person has suffered by reasons of the accident any injury or injuries involving permanent privation of the sight of either eye or the hearing of either ear or privation of any member or joint or destruction or permanent impairing of the powers of any member or joint or permanent disfiguration of the head or face, he is deemed to have permanent disablement.

4. Ext. A-5 discharge card shows that the first respondent is having 20% permanent partial disability on account of the compression fracture of 6th vertebra. As the injuries sustained by the first respondent has caused a fracture on the vertebra appellant cannot contend that it would not amount to a permanent disablement as envisaged u/s 142. As the evidence in the case shows that the injuries sustained by the first respondent would amount to permanent disablement contention of the appellant that the Tribunal went wrong in awarding compensation is not tenable.

5. As the accident occurred before the commencement of the new Act (Motor Vehicles Act, 1988) the first respondent is not entitled to get Rs. 12,000/- as awarded by the Tribunal. As the accident occurred before the present Act the appellant's liability can only be limited to Rs. 7,500/-. In that view of the matter the compensation awarded by the Tribunal requires modification. It is hereby held that the first respondent is entitled to get only Rs. 7,500/- as compensation from the appellant. Accordingly, the award is modified.

6. M.F.A. is partly allowed.