

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 15TH FEBRUARY 2006 / 26TH MAGHA, 1927

MFA.No. 758 of 1994()

OP.(MV) No.1019/1989 of M.A.C.T., PALAKKAD

APPELLANT/PETITIONER:

NOORJAHAN, WIFE OF SHAHUL HAMEED,
10/308, METTUPALAYAM STREET,
PALGHAT.

BY ADV. SRI.T.C.MOHANDAS
SMT.S.CHITHRA
SRI.T.M.SUNIL
SMT.M.PREETHA

RESPONDENTS/RESPONDENTS::

1. KALADHARAN, SON OF VASU, KALLIYANA
KUNNATHU VEED, KENATHUPARAMBU,
CHITTUR ROAD, PALGHAT.
2. V.MANI, SON OF VELAYUDHAN, VALIYAPADAM,
KALPATH7Y, PALGHAT-3.
3. THE UNITED INDIA INSURANCE CO. LTD., PALGHAT.
4. VELAYUDHAN, LORRY DRIVER, CHITHALI,
PALGHAT.

ADV. SRI.A.K.MADHAVAN UNNI
SRI.GEORGE VARGHESE NARAYANPARAMBIL FOR R3.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 15/02/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.HEMA, J.

M.F.A.No.758 of 1994

Dated this the 15th day of February, 2006

JUDGMENT

Petitioner is a claimant in O.P.(M.V).No.1019 of 1989 on the file of the Motor Accidents Claims Tribunal, Palakkad. According to the claimant, she sustained a fracture and a permanent disability arising out of the use of a motor vehicle. She made a claim under "Section 110(a) and 92(a) of the Motor Vehicles (Amendment) Act, 1988 and Rule 3 of Motor Accidents Claims Tribunal Rules, 1977", as noticed in the petition. The Tribunal held that the petitioner is permanently disabled on the basis of the medical certificate. But the award was passed on account of permanent disability only at Rs.1,500/- for the 3% disability. The appellant is aggrieved by the said finding and the portion of the said award.

2. Learned counsel appellant confines the argument only in respect of the amount awarded for permanent disability. He vehemently contended that the Tribunal ought to have awarded at least Rs.12,500/-, since the appellant is entitled to such amount under Section 140 of the Motor Vehicles Act having established that the appellant has permanent disability as referred to in Section 142 of the Motor Vehicles Act. But, on going through the petition, there is nothing therein to show that a claim is made under Section 140 of the Act. However, page No.1 of the petition

shows that the claim petition is filed under “Section 110A... and 92 of the Motor Vehicles (Amendment) Act, 1988.

3. It is submitted by learned counsel for petitioner that it is only a mistake in quoting the section. But in the copy of the petition the Sections mentioned are 140 and 166. It was pointed out that a close perusal of the petition will go to show that what is type written was actually Sections 140 and 166 of the Motor Vehicles Act, 1988. It is also pointed out that in cases where no claim is made under Section 140 of the Act, a claimant is bound to mention the same specifically in the claim petition itself under his or her signature as provided under Section 166(2) of the Act. It is provided under Section 166(2) of the Act that if no claim for compensation under Section 140 of the Act is made in an application filed under Section 166, the application shall contain a separate statement to the effect immediately before the signature of the applicant. It is submitted by learned counsel for the appellant that since no such declaration was made in the petition under the signature of the appellant, it is to be deemed that the appellant has made the application under Section 140 of the Act also. Therefore, the claim made by her under Section 140 ought not have been foreclosed, it is submitted.

4. The provisions in Chapter 10 of the Act shows that when a claim is made under Section 140, it has to be dealt with and decided under the provisions in the said Chapter. Section 141 of the Act provides that the right to claim compensation under section 140 of the Act in respect of death or disablement of any person shall be in addition to any claim for compensation in

respect of thereof under any other provision of the Act. It is clear that in addition to the claim made under Section 140 of the Act a person can make a claim under Section 166 of the Act also. Both the claims have to be considered and dealt with if such a claim is made both under Sections 140 and 166 of the Act. A claim for compensation under Section 140 of the Act requires to be disposed of as expeditiously as possible at the first place. It is submitted that though the application itself was made putting forward a claim under section 140 of the Act such claim was not considered at all as required under Section 141 and Chapter X of the Act. It is also submitted that at least when considering the claim under Section 166 of the Act, the Tribunal ought to have considered the appellant's entitlement under Section 140 of the Act. In these premises it is strongly contended that the Tribunal erred in not awarding the minimum of Rs. 12,000/- for the 3% permanent disability, which was found by the Tribunal.

5. On going through the records, especially the petition, it can be seen that Section 140 was not referred to therein specifically. It was filed under Sections 92(a) and 110(a) of the Motor Vehicles (Amendment) Act, 1988. But it may appear appellant has not made any statement as required under the proviso to Section 166(2) of the Act. On considering the facts and circumstances of this case, a question will arise whether it was only a case of wrong quoting of the Section or not. Hence, I find that this is a fit case where the appellant has to be given one more opportunity to moot the question before the Tribunal itself. The Tribunal has to consider whether the appellant is entitled to

any compensation under Section 140 or whether she can be awarded compensation for the permanent disability at Rs.12,500/-. For this purpose the matter has to be remanded.

In the above circumstances, the Tribunal is directed to reconsider the matter afresh in the light of the observations made in this judgment. The case being one of the year 1989 and the question is only a narrow one, it shall be considered and disposed of by the Tribunal within 45 days from the date of receipt of a copy of this judgment, after hearing both sides.

The appeal is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.No.758 of 1994

14th February, 2006

JUDGMENT