MACApp. 1/2011
HON'BLE MRS. JUSTICE ANIMA HAZARIKA
JUDGMENT AND ORDER
This appeal arises from the order dated 28.08.2009 passed by the learned Deputy Commissioner-cum-Presiding Officer, Motor Accident Claims Tribunal, Anjaw, Tezu District in MACT Case No. 09/2009 (Anjaw) whereby and whereunder the Tribunal awarded the claimant, compensation under the no-fault liability principle to the tune of Rs.25,000/- under section 140 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. Heard Mrs. S Nag, learned counsel appearing for the appellant Insurance Company. None appeared for the respondents despite service of notice.

3. The brief facts of the case, as appears from the pleadings, are as under : -
On 11.05.2009, while the respondent No. 2 in the instant appeal [hereinafter referred to as 'claimant'] was going on foot to the nearby village Sutti along with his daughter and others, suddenly a vehicle bearing Registration No. AS 23/AC/0521 (Tata 207) coming from Wallong lost control due to mechanical defect and fell into the deep river Lohit, hitting the claimant and his daughter, causing grievous injuries to the claimant and killing his daughter on the spot.

4. Therefore, the claimant filed the MACT Case No. 09/2009 (Anjaw) before the Motor Accidents Claims Tribunal, Anjaw, Tezu District. On 28.08.2009, the learned Tribunal passed the impugned order granting compensation under the 'no fault liability' principle to the claimant and the insurance company has preferred the instant appeal against this order.

5. In the appeal, the appellant has taken the ground that there was no material before the learned Tribunal to come to a conclusion that the claimant suffered from any permanent disablement. It was further submitted that the prescription filed by the claimant did not disclose any disablement nor is there any certificate by the attending doctor with regard to any disablement.

6. Mrs. Nag, learned counsel appearing for the appellant-insurer National Insurance Co. Ltd. referred to the grounds adduced in the appeal and submitted that the claimant did not deserve to be granted compensation under the 'no-fault liability' principle under section 140 of the Act as he did not suffer from any permanent disablement.

7. To buttress her argument Mrs. Nag has referred to the following decisions,
    1) 2004 ACJ 1341= III (2003) ACC 475,
[Muhammed -vs- Devassia],

    2) 2004 ACJ 1561= II (2004) ACC 282,
        [National Insurance Co. Ltd. -vs- Abdul Latheef]

8. Learned counsel has further argued that a perusal of the impugned order of the learned Tribunal dated 28.08.2009 would reveal that service upon the opposite parties in the claim petition [including the appellant herein] was made only in that order i.e. first, the award under section 140 of the Act was granted and then service was directed to be made upon the opposite parties by the learned Tribunal which implies that the learned Tribunal did not even provide an opportunity to the opposite parties to appear before it before passing the award under Section 140 of the Act.

9. Section 140 of the Act makes it clear that compensation under the 'no fault liability' principle can be granted only if the person involved in the accident has died or suffered from permanent disablement. It is true that under Secti

on 140, the learned Tribunal needs to be satisfied only on a prima facie basis as regards the permanent disablement or death that occurred as a result of the accident. But the learned Tribunal does have to arrive at the prima facie conclusion before awarding the compensation under Section 140 of the Act.

10. In the case of Muhammed (supra), the learned Single Judge quoting a Division Bench judgment of the same High Court regarding the granting of compensation under section 140 of the Act in case of death or permanent disablement has held as thus,

“4. Section 140 of the Motor Vehicles Act (for short, the Act) deals with the liability to pay compensation in certain cases on the principle of 'no fault'. It provides that 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 be liable to pay compensation in respect of such death or disablement in accordance with the provisions of Section 140 of the Act. The above amount of compensation payable also had been fixed under Sub-section (1). The permanent disablement for the purpose of fixing the compensation under S. 140 has been defined under Section 142. Section 142 reads:

\Permanent disablement. For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in Sub-section (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-
(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
(b) destruction or permanent impairing of the powers of any member or joint; or
(c) permanent disfiguration of the head or face.\

Ext.A3 disability certificate issued by the doctor would show that the appellant had sustained 6% permanent partial disability as a result of the injuries sustained in the meter traffic accident. But I do not think that any reliance can be placed on the above certificate as the doctor had not seen any of the treatment records or the wound certificate before the certificate was issued. Further, the certificate does not disclose as to whether the disability is to the right leg or to the left leg though the injury is alleged to have sustained to the left leg. Even the injuries as disclosed in the petition do not disclose any serious injury causing any disability. For attracting Section 140 of the Act, the disablement suffered by the injured should come within any of the clauses in Section 142. A claim under Section 140 cannot be put forward for all the injuries sustained in a motor traffic accident. A high degree of disablement is contemplated for attracting Section 140 of the Act. The injuries mentioned in item 11 of the petition do not come within any of the classes mentioned in Section 142 . A Division Bench of this Court in United India Insurance Co. Ltd. v. Thomas (2000 (1) KLT 516) held that the liability under Section 140 would arise only in case of death or very serious permanent disablement as defined under Section 142 of the Act. There it was observed:-

\Such liability would arise only in case of death or very serious permanent disablement as defined under Section 142 . The word \member\ is used in Clause (a) to mean a limb. Privation of the sight of either eye or the hearing of either ear are equated with privation of any member or joint under Clause (a). This would clearly indicate the high degree of disablement contemplated by the Statute. When we come to Clause (b), what is provided is destruction or permanent impairing of the powers of any member or joint. It would mean that even if an injured is not deprived of any member of joint, he will be treated as having suffered permanent if the power of any member or joint is permanently destroyed.\

The injuries mentioned in the petition do not come within the definition of the disability mentioned in Section 142 and as such Section 140 of the Act cannot be attracted and the Court below was fully justified in disallowing the prayer

for interim relief under Section 140 of the Act and I find no reasons to interfere with the above finding. Hence the appeal has only to be dismissed.
In the result this appeal is dismissed."

11. In the case of Abdul Latheef (supra), the Court at paragraph 5 held as thus,
"The learned counsel for the appellant submitted that the liability under Section 140 would arise in cases of death or cases of permanent disablement caused as a result of the accident. So far as the present case is concerned, no disability certificate has been produced by the insured to establish that he suffered any permanent disablement as defined under Section 142 of the Act. The first respondent sustained some injury, to one of his eyes and there was some loss of vision and the Tribunal assessed disability at 5%. I do not think that the above assessment could be accepted to be a permanent disablement as defined under Section 142 of the Act. For claiming compensation under section 140, there was no evidence to show that there was disablement which would come within the ambit of Section 142 of the Act. A Division Bench of this Court in National Insurance Co. Ltd. v. Sasilatha (2000 ACJ 661) held that for awarding compensation under no fault liability, there should be finding that the insured had suffered permanent disablement within the ambit of Section 142 of the Act. In the absence of any such evidence, it is not possible to hold that the first respondent was entitled to compensation under Section 140 of the Motor Vehicles Act. The liability of the insurer is to reimburse the insured. When once the insured is found not liable for the compensation, the insurer is also not liable and insurer cannot be held liable independently. Thus the award passed by the Tribunal directing the Insurance Company to pay compensation to the injured after entering a finding that the driver and owner of the vehicle were not liable to compensate the injured was unfounded and was liable to set aside and this appeal has only to be allowed."

12. Thus, there is no manner of doubt that in a case involving injury [and not death], the injuries have to come within the definition of disability for grant of compensation under section 140 of the Act.

13. But in this case, in the claim petition filed by the claimant before the learned Tribunal, under the heading "Nature of injuries sustained", it has been shown as "Grievous injurious internal injuries". Even the document accompanying the claim petition does not at all show that the claimant had suffered from any grievous injuries. There is a medical prescription dated 18.05.2009 which was given a week after the accident which took place on 11.05.2009. That itself is an indicator that the nature of the injuries could not have been serious. In this prescription, the observation was made to the effect that "Mildly tender (C) mid rib". Thus there is no indication that the claimant had suffered any permanent disablement, particularly in light of section 142 of the Motor Vehicle Act. Furthermore, there is no Medical Certificate attesting to any permanent disability of the claimant.

14. It is, therefore, very clear that the learned Tribunal erred in law in awarding compensation under section 140 of the Act to the claimant. Moreover, the Court also notes that the Tribunal ordered service upon the opposite parties in the claim petition only after granting of the award under section 140 of the Act. This means the learned Tribunal did not grant any opportunity to the opposite parties in the claim petition [including the appellant herein] to oppose the claim of the claimant, particularly with regard to the award under section 140 of the Act. This is also a grave and incurable procedural violation on the part of the learned Tribunal.

15. In light of the observations made above, this Court has no option but to allow the appeal. Accordingly, the impugned order dated 28.08.2009 passed by the learned Presiding Officer, Motor Accidents Claims Tribunal, Anjaw, Tezu District in MACT Case No. 09/2009 (Anjaw) awarding the claimant compensation under the

'no-fault liability' principle to the tune of Rs.25,000/- under section 140 of the Motor Vehicles Act, 1988 is hereby set aside. Consequently, the order dated 15.1.2010 insofar as it relates to rejection of the prayer of the appellant for setting aside the order granting no fault liability is also set aside.

16. In the result, the appeal is allowed. However, any observation made in this case should not be a bar in deciding the issue on merit.

17. No order as to costs.

18. Send down the Lower Court Record.

19. The Registry is directed to release the statutory deposit of Rs.12,500/- (Rupees twelve thousand five hundred) only in favour of the appellant Insurance Company forthwith.

JUDGE

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