

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

MACA.No. 2173 of 2011 ()

AGAINST THE AWARD IN OPMV 841/2004 of M.A.C.T., THALASSERY DATED 21-01-
2011

APPELLANT(S) :

SHAHNAS MONANGATTU(MINOR) AGED 14 YEARS
D/O.ASHRAF, REP.BY HER MOTHER RASHEEDA MONANGATTU
W/O.ASHRAF, AGED 34 YEARS
RASHEEDA MANZIL, P.O.PRAPOYIL, (VIA) CHRUPUZHA
KANNUR DIST

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S) :

UNITED INDIA INSURANCE COMPANY LIMITED
RAHMATH SHOPPING COMPLEX, KOTTACHERRY, KANHANGAD
KASARAGOD, PIN-671315

BY ADV. SRI.P.JACOB MATHEW
BY SRI.JOHN JOSEPH VETIKAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMACHANDRA MENON

&

K. HARILAL, JJ.

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M.A.C.A. No. 2173 of 2011

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Dated, this the 17th day of September, 2015

JUDGMENT

Ramachandra Menon, J.

This appeal has been filed by the claimant/minor represented by her mother, being totally dissatisfied with the extent of award passed by the Tribunal in respect of the injuries sustained in the road traffic accident occurred on 08.01.2004.

2. The accident occurred was on 08.01.2004 at about 7 p.m. The claimant was stated as standing on the side of the road, when a tipper lorry bearing No. KL 14 8679 came and knocked down the child causing serious injuries. Originally, the child was admitted in the BKM Hospital, Payyannur and subsequently, she was admitted in Pariyaram Medical College. The injuries sustained were sought to be compensated by filing a claim petition. The next friend of the claimant was examined as PW1 and Ext. A1 to A6 documents were marked, besides marking Ext. X1 which is a disability certificate issued from KCHS Hospital, Pariyaram, certifying the permanent

disability as 10%. No evidence was adduced from the part of the respondents, either oral or documentary. On conclusion of the trial, the Tribunal arrived at a finding that the matter of negligence was immaterial in so far as the claim petition was preferred under Section 163A of the Motor Vehicles Act and proceeded to grant compensation accordingly. Eventhough the child was only a minor, aged about 15 years, a notional figure of Rs.2500/- was taken as the monthly income for working out the compensation; based on 10% disability as certified vide Ext. X1. Compensation under this head was granted to an extent of Rs.45,000/- (though calculation appears to be wrong, having stated as $450000 \times "5\%" = 45000$). Observing that the claim was under Section 163A, the medical expenses were limited to Rs.15,000/-, as provided in the second schedule; though the Tribunal was satisfied of the medical expenses to an extent of Rs.30,992/- certified vide Exts. A6 series bills. The Tribunal awarded amounts under other heads as well, granting a total compensation of Rs.90,300/-, which was directed to be satisfied with interest @ 7% from the date of filing i.e. 20.06.2004 till the date of realization, plus cost, which is sought to be enhanced by filing this appeal.

3. Delay of 227 days in filing the appeal stands condoned as per order dated 24.01.2012 in C.M. Appln. No. 3200 of 2011.

4. Heard both the sides.

5. During pendency of the proceedings, the appellant filed I.A. No. 721 of 2015 seeking to cause the proceedings to be amended under Section 166 of M.V Act, instead of 163A of the M.V. Act. The respondent Insurance Company filed counter affidavit to the said I.A. as well, stating that the said amendment is not possible as on date, in view of the law declared by the Apex Court in **Oriental Insurance Co. Ltd. Vs. Dhanbai Kanji Gadhvi [2001 (1) KLT 617 (SC)]**. The appellant sought to place reliance on the decision of a division Bench of this Court reported in **United India Insurance Co. Ltd. Vs. M. Usman Haji & Ors. [2013 (1) KLJ 167]** to the effect that misquoting of provision cannot be treated as a hurdle.

6. It is settled law that beneficiaries are not entitled to pursue remedy by way of parallel proceedings under both the provisions/streams i.e. under Section 140 as well as 163A. The purpose of incorporation of Section 163A is only with an intent to have speedy remedy, based on the structured formula as given in the second schedule. It is also true that the parameters provided

therein cannot be widened under any circumstances. But the question to be considered is, whether the Tribunal has treated the matter strictly under Section 163A or not ?.

7. The learned counsel for the appellant submits that the materials on record clearly reveal that the accident occurred was only because of the negligence on the part of bus driver, against whom a crime was registered as Crime No. 12/04 of Peringome Police Station. Respondents also did not choose to contest the matter in any manner.

8. After hearing both the sides, this Court finds that the Tribunal, though has limited the compensation payable towards the Medical Expenses as Rs.15,000/- with reference to claim under Section 163A, however proceeded to grant compensation under various heads beyond the second schedule. This is evident from the discussions in paragraphs 13 and 14 of the Award. In a claim petition preferred under Section 163A, notional income has to be reckoned as Rs. 15,000/- p.a., whereas the Tribunal in respect of the injuries sustained by the minor claimant has reckoned Rs.2500/- (Rs.30000/- p.a.) as monthly income for fixing compensation for the disability. The amounts awarded by the Tribunal under various heads are as given below :

Sl. No.	Head of claim	Amount Claimed (in Rs.)	Amount Awarded (in Rs.)	Basis - vital details in a nut shell
1.	Loss of earning (Total)	Nil	N.A.	
2.	Loss of earning (partial)	Nil	N.A.	
3.	Medical and miscellaneous expenses	50000	15000	Maximum amount provided u/s 163(A) of M.V. Act.
4.	Future treatment	Nil	N.A.	
5.	Bystander expenses	Nil	4100	For 41days @Rs.100/- per day
6.	Transportation expenses	2000	1000	Considering two admissions.
7.	Extra nourishment	5500	3000	Considering fracture
8.	Damage to clothing etc	500	200	
9.	Pain and suffering	25000	20000	Considering fracture $2,500 \times 10 = 30,000$
10.	Disability Income	1,00,000	45,000	$15 = 4,50,000 \times 5\% = 45000$
11.	Loss of consortium	Nil	N.A.	
12.	Loss of love and affection	Nil	N.A.	
13.	Loss of estate	Nil	N.A.	
14.	Loss/reduction in earning capacity	1,00,000	N.A.	
15.	Loss of amenities and conveniences etc.	Nil	N.A.	
16.	Any other heads (review treatment)	Nil	2000	Considering review

Total	283000 90300	Rs.90,300 along
	claim	with interest at
	limited	the rate of 7.5%
	to	per annum from
	200000	the date of petition
		to the date of
		realization with
		cost of Rs.1,500/-

8. The amounts which are actually payable as per Second schedule in respect of the general injuries are follows :

"4. General Damages in case of injuries and Disabilities :

(i) Pain and sufferings

(a) Grievous injuries : Rs.5000/-

(b) Non-grievous injuries : Rs.1000/-

(ii) Medical Expenses - Actual expenses

incurred supported by bills/vouchers

but not exceeding as one time payment :Rs.15000/-"

9. From the above, it is very much obvious that the Tribunal has gone beyond the track and has awarded more amounts under different heads, which cannot be possible under the second schedule. This points to the fact, though the claim petition was preferred under Section 163A, the amounts awarded were more under Section 166 under the concerned heads, beyond the stipulated extent u/d 163A. It is true that there is no challenge from the part of the Insurance company with regard to the

quantum or the course and proceedings. But since the Tribunal has sought to pursue the matter taking materials/details from both the streams, this Court finds that the said course is not correct and the matter to be confined to a particular channel/stream for payment of compensation, as there cannot be any valid claim simultaneously under Section 163A and 166 of the Act.

10. In the said circumstances, matter requires clarity and and reconsideration. As such, the Award passed by the Tribunal is set aside and the matter is remanded to the Tribunal for fresh consideration in accordance with law. Since the accident was of the year 2004, the matter shall be considered and finalized, at the earliest, at any rate within four months from the date of receipt of a copy of this judgment.

The parties shall appear before the Tribunal on 05.10.2015.

The appeal stands disposed of.

Sd/-
P. R. RAMACHANDRA MENON,
JUDGE

sd/-
K. HARILAL,
JUDGE

kmd

M.A.C.A. No. 2173 of 2011

: 8 :