

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

MACA.No. 2075 of 2014 ()

OPMV 1415/2006 OF MACT, THRISSUR.

APPELLANT(S)/PETITIONER:

MOHANDAS,
S/O KUNJUKUTTAN, VALIYAVALLAPPIL HOUSE, KUMBALANGAD
P.O.KANJIRAKODE, VIA-WADAKKANCHERY, THRISSUR DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS :

1. V K SIVADAS,
S/O.KUNJIKUTTAN, VALIYAVALLAPPIL HOUSE, KUMBALANGAD
P.O.KANJIRAKODE, VIA-WADAKKANCHERRY
THRISSUR DISTRICT-680587.

2. THE ORIENTAL INSURANCE CO.LTD,
BRANCH OFFICE-2, KPN SHOPPING COMPLEX
THIRUVAMBADY TEMPLE, SHORNUR ROAD, THRISSUR.

R2 BY ADV. SRI.VPK.PANICKER

R2 BY ADV.SMT.K.S.SANTHI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

M.A.C.A. No.2075 of 2014

Dated 10th July, 2015.

J U D G M E N T

The claimant in a proceedings for compensation under Section 163A of the Motor Vehicles Act ('the Act' for short) is the appellant in this appeal.

2. The claimant sustained injuries in the accident took place on 2.1.2004 while riding a motor cycle. The first respondent was the owner of the vehicle and the second respondent was the insurer. According to the claimant, when the motor cycle ridden by him reached at the place called Parlikkad, the vehicle fell into a gutter, overturned and thereby he sustained injuries. The case of the claimant is that he sustained permanent partial disablement on account of the accident and therefore, he is entitled to compensation as provided for under Section 163A of the Act.

3. The claimant relied on Ext.A6 wound certificate and Ext.A7 discharge certificate issued from the Taluk Hospital, Vadakkanchery. He had also relied on Ext.A8 disability

certificate issued by Dr.Jyothish, Assistant Professor of Orthopedics, Government Medical College, Thrissur. The Tribunal rejected the claim petition holding that the claimant had not established that he sustained any permanent disablement in the accident.

4. Heard the learned counsel for the appellant.

5. Section 163A of the Act reads thus :

“163A. Special provisions as to payment of compensation on structured formula basis

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or

default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

The expression "permanent disablement" as contained in Section 163A is not defined under the Act. The Explanation to Section 163A, however, clarifies that permanent disability referred to in the Section shall have the same meaning and extent as in the Workmen's Compensation Act, 1923. The expression "permanent disability" though not contained in Section 163A, it is seen that what is meant by the expression "permanent disability" in the Explanation is "permanent disablement" referred to in the Section. The Workmen's Compensation Act defines two types of permanent disablement. Section 2(g) of the said Act defines "partial disablement" and Section 2(l) defines "total disablement". The said definitions read thus :

“2(g) "partial disablement" means, where the disablement is of a

temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in [Part II of Schedule I] shall be deemed to result in permanent partial disablement;"

"2(l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement :

[provided that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent. or more;"]

The definitions of "partial disablement" and "total disablement" in the Workmen's Compensation Act take in both temporary as well as permanent disablement. Section 163A, however, deals only with permanent disablement. It is now settled that a claim for compensation under Section 163A of the Act is maintainable

in respect of both permanent total disablement and permanent partial disablement. It is thus evident that in the matter of disposing of a petition for compensation under Section 163A of the Act, the Tribunal has to see whether the claimant has sustained any permanent partial disablement or permanent total disablement, as defined in Section 2(g) and (l) of the Workmen's Compensation Act.

6. In the instant case, a perusal of the impugned award indicates that the Tribunal was of the view that only in a case where the claimant sustains any fracture, he is entitled to claim compensation invoking Section 163A of the Act. The said view taken by the Tribunal is incorrect. As stated above, in the matter of disposing of a petition for compensation under Section 163A of the Act, the Tribunal has to see whether the claimant has sustained any permanent partial disablement or permanent total disablement, as defined in Section 2(g) and (l) of the Workmen's Compensation Act. Since the Tribunal has not considered the petition for compensation filed by the claimant in the above perspective, I deem it appropriate to

remit this matter for fresh consideration by the Tribunal.

In the result, the appeal is allowed and the impugned award is set aside and O.P.(MV).No.1415 of 2006 is remitted to the Motor Accidents Claims Tribunal, Thrissur for fresh disposal.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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