

(1995) 07 KL CK 0051

High Court Of Kerala

Case No: M.F.A. No. 634 of 1995

Babu

APPELLANT

Vs

Remesan and Others

RESPONDENT

Date of Decision: July 26, 1995**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 140, 140(2), 166

Citation: (1996) ACJ 988 : AIR 1996 Ker 95**Hon'ble Judges:** K.T. Thomas, J; K.S. Radhakrishnan, J**Bench:** Division Bench**Advocate:** K. Balakrishnan and C. Vijayan, for the Appellant; B. Suresh Kumar and Mathews Jacob, for the Respondent**Final Decision:** Allowed

Judgement

K.T. Thomas, J.

Appellant is aggrieved as the Motor Accidents Claims Tribunal (for short the Claims Tribunal) declined to grant interim award envisaged in Section 140 of the Motor Vehicles Act, 1988 (for short "the Act") 2. The facts in brief are these: On the noon of 15.5.1993 some workmen were engaged in loading a goods vehicle KRU 3544. For the safe transportation of the load in the vehicle, a rope was used for tying the load. One of the workmen, in order to make the end of the rope reach the other side of the vehicle, threw it up but accidentally the rope, which was wet in the rain, became suddenly live from the electricity transmitted through a 66 K.V. high tension wire drawn above that place. In a trice all the workmen engaged in the loading exercise were electroded and they sustained severe burn injuries from the high voltage power passed through them. Appellant sustained such amount of burns on his right hand that the said hand had to be amputated. He filed a claim petition before the Claims Tribunal for compensation under the provisions of Section 166 of the Act. He also filed an application for interim award as envisaged u/s 140 of the Act. Claims Tribunal rejected the said application on the premise that the accident did not arise

from the use of any motor vehicle and hence the interim award prayed for was not granted.

2. Section 140 is included in Chapter X of the Act With the title "Liability without fault in certain cases". The material portion of the Section is the following: "Where 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 this section".

3. The expression "accident arising out of the use of a motor vehicle" has received a pragmatic interpretation from the apex Court. In the decision reported in [Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More](#), - their Lordships held that the expression "use of a motor vehicle" covers accidents which occur both when the vehicle is in motion and when it is stationary. "The word "use" has a wider connotation to cover the period when the vehicle is not moving and is stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break down or mechanical defect or accident". This was followed by a Division Bench of this court in *Sharlet Augustine v. Raveendran* - 192(1) KLT 795.

4. Learned counsel for the Insurance Company tried to distinguish those decisions on the facts by pointing out that the use of the motor vehicles in those two decisions is direct, though the vehicles were stationary whereas in this case the use of the motor vehicle was only indirect though the rope was used for the purpose of keeping the load in the vehicle intact. The said distinction on the facts is not enough to exclude the accident which occurred in this case out of the ambit of the words "use of a motor vehicle". Such use need not necessarily be so intimate and closely direct as to make it "a motor accident" in the sense in which that expression is used in common parlance. The expression employed by the Legislature is "accident arising out of the use of a motor vehicle" in the place of "accident caused by the use of motor vehicle". Evidently the legislature wanted to enlarge the scope of the word "use" and not to restrict it for denying compensation in deserving cases. The test should be whether the accident was reasonably proximate to the use of a motor vehicle, whether or not the motor vehicle was in motion then. After all the provisions for dealing with the compensation cases are intended for a sublime social objective. We are, therefore, not inclined to adopt a restrictive interpretation for the word use in the present context.

5. Learned counsel for the Insurance Company then alternatively contended that if an accident was caused entirely due to the negligence of a claimant he is not entitled to the award under the provisions of Section 140 of the Act. To bolster up the contention, learned counsel invited our attention to the decision of a Division Bench of the Madras High Court in [K. Nandakumar Vs. Managing Director, Thanthai Periyar Transport Corporation Ltd.](#), We do not think it necessary to consider the said

legal position in this case, because nobody has a case that there was any negligence on the part of the claimant here for causing the accident.

6. We find no reason to deny the benefit of Section 140 of the Act to the appellant. We, therefore, allow this appeal and set aside the order impugned. We direct the Insurance Company to pay the amount payable u/s 140 of the Act to the Appellant. As we are passing the interim award now we consider that the amount should be as mentioned in Section 140 (2) as amended by Act 54 of 1994. We base the said consideration on the decision of the Division Bench of this Court reported in *United India Insurance Co. Ltd. v. Padmavathy* - 1990 (1) KLT 750 - and reiterated by another Division Bench in [New India Assurance Co. Ltd. Vs. Unnimayamma and Others](#), . In other words, the amount payable to the appellant should be Rs. 25,000/- (Rupees twenty five thousand only) u/s 140 of the Act. Third respondent/Insurance Company is directed to pay the said amount within one month from today.