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Krishna Pillai Vs Jalal Ahamed and Others

None

Court: High Court Of Kerala

Date of Decision: June 1, 1989

Acts Referred:
Motor Vehicles Act, 1988 â€" Section 110

Citation: (1990) 1 ACC 111 : (1989) ACJ 991

Hon'ble Judges: U.L. Bhat, J; Krishnamoorthy, J

Bench: Division Bench

Judgement

U.L. Bhat, J.
Petitioner herein is the appellant in the above appeal. He was injured in a motor vehicle accident on 1-12-1985. He filed

claim petition before the Tribunal claiming Rs. 1,00,000/- as compensation on the allegation that the motor vehicle was driven in a rash and

negligent manner and such driving was responsible for the accident. The Tribunal held against the claimant and accordingly dismissed the claim

petition, dismissal is challenged in the appeal.

2. Petitioner has filed this C.M.P. contending that in any event u/s 92A of the Motor Vehicles Act he was entitled to be awarded a sum of Rs.

7,500/- (on account of permanent disablement) and the Tribunal was in serious error. He, therefore, prays that this Court may award it. The

application is strenuously opposed by the third respondent, insurer, who has filed a counter. Learned Counsel for the respondent submits that no

amount could be directed to be paid by the insurer u/s 92-A because the claimant did not file a formal application in that behalf. According to the

learned Counsel, Tribunal could not exercise the power suo motu. He also contends that permanent disability has not been proved.

3. There can be no dispute that the claimant had sustained certain injuries in the accident. He received medical treatment also. Exh. A-5 is a copy

of the wound certificate. Exh. A-6 is the discharge card issued to him from the Medical College Hospital, Trivandrum, Exhs. A-7 and A-8 are

similar cards, Exh. A-9 series are medical bills. Exh. A-12 is the disability certificate issued by the Medical Officer of the Medical College,

Trivandrum, Exh. A-6 shows that the petitioner had compound fracture of both bones of the right leg and has undergone three major surgical

procedures at the hospital. The certificate shows that 100 per cent temporary disability from the date of injury till February, 1987 and 17 per cent

permanent disability has been assessed. Permanent disability is on account of limitation of right ankle movement and limitation of knee flexion upto

80E (Rt) with chronic osteomyelitis right tibia. Certificate was marked evidently without objection and provides ample material to show that there

is a permanent disablement sustained by the petitioner.

4. The present claim is u/s 92-A of the Motor Vehicle Act. It reads thus:

92-A. Liability to pay compensation in certain cases on the principle of no fault.-(1) Where the 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, or, as the case may be, the

owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the

provisions of this section.

(2) The amount of compensation which shall be payable under Sub- section (1) in respect of the death of any person shall be a fixed sum of fifteen

thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a

fixed sum of seven thousand five hundred rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of owners of the vehicle or

vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect

of whose death or Permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

5. A reading of the above provision would make it clear that wherever death or disablement of any person has resulted from an accident as

contemplated therein, the owner of the vehicle shall be liable to pay compensation in accordance with the provisions thereof. This liability arises

irrespective of rashness or negligence on the part of the driver in the driving of the vehicle to any extent. In other words, it creates a no fault liability

to the extent indicated above. This is clear from Sub- section (3) which states that the claimant shall not be required to plead and establish that the

death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner of the

vehicle or of any other person.

Sub-section (2) quantifies the claim, that is, Rs. 15,000/- in the case of death and Rs. 7,500/- in the case of permanent disablement. There is

nothing in Section 92-A which would indicate that the owner can be ordered to pay compensation only on a claim application to be filed by the

claimant. Section 110 deals with establishment of Claims Tribunals. Sub-section (1) states that the State Government may constitute tribunals for

the purpose of adjudicating non claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the

use of motor vehicles or damages to any property of a third party so arising, or both. The procedure for putting forward such a claim is prescribed

in Section 110-A. This provision contemplates an application for compensation to be filed in such form and with such particulars as may be

prescribed. Rules have prescribed the form and particulars. No doubt proviso to Sub-section (2) of Section 110-A states that where any claim for

compensation u/s 92-A is made in such application the application, shall contain a separate statement to that effect immediately before the signature

of the applicant. We do not understand this provision as laying down a condition that compensation u/s 92-A can be awarded only on a formal

application or a formal claim being made in the main application. It is not as if the claim under an order to be passed u/s 92-A is always

independent of the claim u/s 110-A.

6. The provisions of Section 92-B are also relevant to an extent. Sub-section (1) states that right to claim compensation u/s 92-A shall be in

addition to any other right (based on the principle of fault) to claim compensation in respect thereof under any other provision of the Act. Sub-

section (2) requires such a claim be disposed of as expeditiously as possible. Sub-section (3) lays down the manner in which adjustment is to be

made in regard to compensation provided u/s 92-A when compensation is directed to be paid on the main application. The former is deducted

form the latter.

7. All these provisions have some purpose to serve. It may be that in some cases the accident would have arisen on account of no fault of the

drover. It may be that in some cases the claimant may not be in a position to prove the fault of the driver. Legislature did not evidently want the

injured in such cases to be totally denied any compensation. It is in this background that Section 92-A has been enacted to provide for

compensation to be paid in extreme cases, namely death or permanent disablement even in the absence of fault of driver. To hold that the liability

can be recongnised only in cases where formal application in filed will go against the salutary purpose of the provision. It is necessary for the

claimant to bring it to the notice of the Tribunal so as to enable the Tribunal to exercise its jurisdiction u/s 92-A. If the Tribunal for some reason or

other fails to take into consideration this aspect, parties could bring this to the notice of the Tribunal in order to enable the Tribunal to exercise its

jurisdiction. Where, however, the Tribunal fails to exercise its jurisdiction, it is open to the appellate, it is open to the appellate court to pass

appropriate order. We see no reason to reject the claim for compensation u/s 92-A.

8. For the above reasons we direct respondent Nos. 1 and 3 to pay Rs. 7,500/- to the petitioner.