NC: 2023:KHC:46025
MFA No. 6841 of 2013

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

MISCELLANEOUS FIRST APPEAL NO. 6841 OF 2013
(MV-DM)

BETWEEN:

SRI HEMANTH RAJU,

…APPELLANT

(BY SRI. SURESH M. LATUR, ADVOCATE)

AND:

1. SRI. PUNITHA H.J.

2. THE MANAGER
FUTURE GENERAL INSURANCE CO. LTD.,
PADASENA NO.18/7, (OLD NO. 125/A),
100 FT. ROAD, 1ST BLOCK, JAYANAGAR,
WARD NO.62, BENGALURU- 560 011.

…RESPONDENTS

(BY SRI. O. MAHESH, ADVOCATE FOR R2;
VIDE ORDER DATED 22/09/2017,
SERVICE OF NOTICE TO R1 IS DEEMED TO BE COMPLETE)

THIS MFA FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 05.03.2013 PASSED IN MVC NO. 4568/2012 ON THE FILE OF THE 24TH ADDITIONAL

SMALL CAUSES JUDGE, 22ND ACMM, MACT, BANGALORE, DISMISSING THE CLAIM PETITION FOR COMPENSATION.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Heard Sri.Suresh M.Lathur, learned counsel for the appellant as well as Sri.O.Mahesh, learned counsel appearing for respondent No.2. Despite service of notice, none appeared for respondent No.1.

2. Disputing the validity and the legality of the order that is rendered by the Motor Accidents Claims Tribunal, Bengaluru, in MVC No.4568/2012 dated 5.3.2013, the present appeal is preferred.

3. As per the material borne by record, the appellant moved an application claiming damages of Rs.2,00,000/- for the loss suffered by him due to the damage caused to his car bearing Registration No.KA.02 AA.1320. The Tribunal by the impugned order dismissed the claim made by the appellant and thus, the present appeal is preferred.

4. The case of the appellant as per his pleadings is that on 23.10.2011 at about 6.20 a.m. while he was proceeding

in his Indica Car bearing Registration No.KA.02 AA.1320 near City Market Circle, one Car bearing Registration No.KA.51.6050 approached his vehicle at a high speed and in a rash and negligent manner and dashed against his car, due to which he lost control over his vehicle and hit against an electric pole, due to which his car got totally damaged.

5. The second respondent resisted the claim of the appellant on several grounds, firstly, he denied the manner of happening of accident as projected by the appellant.

Secondly, he denied the occurrence of any damages to the vehicle of the appellant. Thirdly, that the insurer of the appellant had paid a sum of Rs.78,000/- towards full and final settlement of the claim and therefore, claiming the same amount again is unjustifiable.

6. As earlier indicated, the Tribunal dismissed the claim of the appellant.

7. Subjecting the evidence of PWs.1 and 2, RW1, Exs.P1 to P14, Exs.R1 and R2 to scrutiny, the Tribunal came to such a conclusion.

8. Arguing in respect of merits of the matter, learned counsel for the appellant states that, the appellant incurred huge amount for getting his vehicle repaired. The appellant did not receive the total amount which he spent from his insurer. Learned counsel contends that the appellant was eking out his livelihood by running his vehicle as a taxi and he could not run his vehicle on road for a period of two months and thus, sustained loss of Rs.60,000/-. Learned counsel states that the appellant was earning Rs.30,000/- per month through his vehicle and the loss sustained by him therefore is required to be compensated by the second respondent. Learned counsel thereby seeks to allow the appeal as prayed for.

9. The submission made by the learned counsel for respondent No.2 is that the appellant cannot take double benefit. Having received compensation from his insurer appellant cannot again claim the same amount from respondent No.2 and hence considering the said aspect, the Tribunal has rightly dismissed the claim petition and therefore, the present appeal is liable to be dismissed.

10. As per the contents of Ex.P10 tax invoice, the amount charged for the repairs is Rs.1,10,375/-. By the contents of Ex.P9 it is clear that the insurer of the appellant approved his liability to an extent of Rs.77,051/- As per the contents of Exs.P9 and P10 it is also clear that basing on contents of Ex.P10, the insurer of the appellant issued Ex.P9. Therefore, the genuineness of Ex.P10 cannot be doubted. Thus, it is clear that the appellant incurred a sum of Rs.1,10.375/- for the repairs to the damaged vehicle. The amount which was paid by his insurer as per the contents of Ex.P9 is admittedly Rs.77,051/-. Therefore, the appellant had incurred an additional expenditure of Rs.33,324/-.

11. Making a submission that when the total amount spent is not paid by the insurer of the aggrieved, the insurer of the offending vehicle is liable to pay the balance, learned counsel for the appellant relied upon the decision of this Court in the case between **R.P.Zuber Vs. Basavarajappa and another** reported in **2016 ACJ 2307**, wherein this Court at paragraph No.7 of the order held as follows:

> *"7."Therefore, the claimant would be having two options; one to approach the owner and insurer of*

the offending vehicle seeking recovery of total value of goods as compensation in addition to compensation to towards personal damages or approaching his insurer and receiving the same. Assuming for a moment, if he chooses to approach his insurer and takes whatever compensation is offered to him in terms of the policy as full and final settlement of his claim against his insurer, the same cannot be construed as full and final settlement of entire damages suffered by him. The full and final settlement is with reference to the right of claimant to secure compensation from his insurer. If the compensation so received falls short of the value of vehicle, then nothing prevents him from initiating proceedings against the owner of offending vehicle and its insurer for recovery of the balance amount and also for other damages like compensation for personal injuries, loss of income during the period when vehicle was not available for him for his use and if it is the vehicle that is used for hire, the loss of income which he would have suffered due to non-availability of said vehicle for running it on hire. Therefore, it is seen that claimant has several options. If he chooses to exhaust his remedy from his insurer to the extent he is entitled to realize under the policy issued in his favour and seeks balance amount from the owner of offending vehicle, the same cannot be construed as dual advantage of him unless the owner and insurer of offending vehicle can establish that in the guise of seeking difference in the loss the claimant is collecting compensation or damages in excess of the loss he has suffered or that he is taking benefit for the same damages from both the insurance companies independently twice for same

compensation then he cannot be permitted to do so."

12. In the case on hand, it is clear that, the total loss sustained by the appellant is not compensated by his insurer. It is also clear that for getting his vehicle back on road, the appellant was required to pay the balance amount. It is not in dispute that the accident occurred due to the rash and negligent driving of the driver of respondent No.1.

13. The claimant cannot claim the same amount which he received from his insurer towards damages to the vehicle again from the insurer of the offending vehicle. However, if total amount is not reimbursed by his insurer, the claimant will have every right to seek the Tribunal to order for payment of the balance amount from the insurer of the offending vehicle.

14. Therefore, this Court is of the view that the second respondent i.e. the insurer of the offending vehicle is at liability to pay the balance. As per the discussion went on supra, the balance amount comes to Rs.33,324/- (1,10,375 - 77,051).

15. The appellant also claimed compensation for the loss of earnings. As per the version of the appellant, by running

the damaged vehicle as taxi he was earning Rs.30,000/- per month. To establish the said fact, the appellant produced the evidence of PW2 and also Ex.P7. The contents of Ex.P7 bills neither contains the signature of the concerned nor the details of the person who issued the said bills. Further more, the evidence of PW2 does not inspire the confidence in the light of the points elicited during the cross examination of the said witness.

16. Answering with regard to the genuineness of Ex.P7 bills during the course of cross examination he states that those bills are received on the same day, but they were prepared on different dates. The bills does not contain the exact date on which they were issued. Also there is no substantive material on record to show that the appellant was working under Guru Tours and Travels. However, as per the contents of Ex.P11 which is the Certificate of Registration, the appellant's vehicle which got damaged is a taxi. A person who maintains a taxi would do so only for the purpose of getting some income out of it.

17. In the light of absence of any concrete evidence with regard to the amount generated as earnings through the use of said taxi, this Court considers desirable to take nominal income as Rs.10,000/- per month. As per the version of the appellant, he could not use the taxi for eking out his livelihood for a period of two months. Therefore, loss of earnings comes to Rs.20,000/-.

18. Submitting that when the vehicle remains idle for repairs for a quite long time, the aggrieved is entitled for compensation under the head loss of earnings, learned counsel relied upon the decision of this Court in the case between **Karnataka State Road Transport Corporation and Another Vs. V.K. Abdul Majeed and Others** reported in **1991 ACJ 453**.

19. Damages are the pecuniary compensation which is recoverable by a person who has sustained loss due to the wrongful acts or wrongful omission of another. Damage caused to the property includes not only the damage caused to the said property but also the loss of income caused due to said damage to the property. When due to the acts of other, the

vehicle in use gets damaged and where proof to the effect that during the period which took for getting the vehicle repaired, the owner of the vehicle could not earn as he could do so through the use of the said vehicle is produced, the Motor Accidents Claims Tribunal is under obligation to make good the loss sustained by the owner of the vehicle, due to the non use of the said vehicle for income generation which occurred due to the fault of another.

20. Therefore, this Court is of the view that, the appellant is entitled for compensation to an extent of Rs.20,000/- which he could not earn during the relevant period. Thus, with the above findings, this Court hold that the appellant is entitled to a total sum of Rs.53,324/-, i.e. Rs.33,324/- being the difference of amount and Rs.20,000/- towards loss of earnings.

21. Thus, the appeal is ***allowed in part.***

The order of the Motor Accidents Claims Tribunal, Bengaluru in MVC No.4568/2012 dated 05.03.2013 is set aside. Thereby respondents No.1 and 2 are jointly and severally held liable to pay compensation of Rs.53,324/- together with interest

at the rate of 6% per annum from the date of petition till the date of deposit.

The respondents to deposit the amount ordered within one month.

On such deposit, the appellant is entitled to withdraw the entire amount.

Sd/-
JUDGE

AP
CT:TSM
List No.: 1 Sl No.: 51