

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 7TH DAY OF JULY 2022 / 16TH ASHADHA, 1944

MACA NO. 1805 OF 2013

AGAINST THE COMMON AWARD DATED 24.4.2013 IN OPMV 941/2010 OF
MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

APPELLANT/PETITIONER:

THOMAS, AGED 47 YEARS, S/O.ABRAHAM, 10/308,
KIZHAKKEDATH HOUSE, THRIKKAIPETTA.P.O, MUTTIL,
WAYANAD-673 577.

BY ADVS.

SRI.ANIL S.RAJ

SMT.ANILA PETER

SMT.C.PRABITHA

SMT.K.N.RAJANI

SRI.J.VIVEK GEORGE

RESPONDENTS/RESPONDENTS:

1. R.MURUGASAMY, S/O.RAMANNA GOWNDER, ARUNGAN
THOTTAM, MASANDI PALAYAM, KARAGOUNDEN PALAYAM,
AVINASHI, TAMIL NADU 638 601.

2. SELVARAJ, S/O.MURUGASAMY, DOOR NO.3/50 C,
ARUNUGAN THOTTAM, MASANDI PALAYAM, KARAGOUNDEN
PALAYAM, AVINASHI, TAMIL NADU 638 601.

3. THE UNITED INDIA INSURANCE COMPANY LIMITED,
D.O.NO.3, JOS TRUST BUILDING, CHITTOOR ROAD,
COCHIN 682 035.

BY ADV SRI.LAL GEORGE

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 30.06.2022, THE COURT ON 07.07.2022 DELIVERED THE
FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

M.A.C.A.No.1805 of 2013

Dated this the 7th day of July, 2022

JUDGMENT

This appeal arises out of common award dated 24.04.2013 in O.P(MV).No.941/2010 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The petitioner is the appellant and the respondents before the Tribunal are the respondents herein.

2. Heard the learned counsel for the appellant, Smt.Rajani.K.N and Advocate Lal George appearing for the insurer.

3. *The question emerges for consideration is; whether reduction permissible towards value of spare parts incurred by the claimant on account of repair of a vehicle got damaged in*

consequence of a motor accident?

4. The appellant herein lodged claim under Section 166 of the Motor Vehicles Act on the allegation that Omni Van bearing Reg.No.KL-12B-1118 owned by the appellant got damaged in consequence of an accident occurred on 21.11.2009 at about 5 p.m at Koratti junction. According to the appellant, the accident was the outcome of contribution of negligence on the part of the 2nd respondent. Accordingly, he claimed damages to the tune of Rs.1,62,000/- from respondents 1 to 3 jointly and severally.

5. The 1st and 2nd respondents were set exparte by the Tribunal.

6. The 3rd respondent insurer of the Tempo van bearing Reg.No.TN.38Z-7225 filed written statement and resisted the contention. Allegation of negligence on the part of the 2nd respondent was denied and the same was alleged against the driver of the Omni van KL-12B-1118. Policy to the Tempo van was

admitted while disputing the quantum of compensation claimed.

7. The Tribunal tried 3 cases arising out of the same accident together. PW1 examined and Exts.A1 to A20 were marked on the side of the appellant. No evidence let in by the respondent.

8. Finally the Tribunal granted Rs.45,380/- along with interest @ 8% per annum from the date of petition till realisation of the amount.

9. The learned counsel for the appellant zealously argued that the Tribunal went wrong in reducing 50% of the amount assessed by the approved surveyor towards value of spare parts. She submitted further that though the value of the spare parts assessed by the approved surveyor is to the tune of Rs.38,649/-, the Tribunal reduced 50% of the same and granted Rs.19,325/-. According to the learned counsel, such reduction is not permissible under law and, therefore, the same requires revisit.

10. Refuting this contention, the learned counsel for the insurer would submit that the Tribunal relied on a decision of this Court reported in [2009(4) KLT 679 : 2009 KHC 5125], **Abraham v. Johnny**, wherein it was held that 50% of the reduction is permissible towards value of spare parts. Therefore, the said finding does not require any interference.

11. In this matter, it is pertinent to note that the decision in **Abraham's** case (*supra*) when found to be in conflict with the decision in [2008 (4) KHC 114], **Mathew.K.V v. Paul Varghese**, the matter was referred to a larger Bench. Thereafter, the issue was considered by a Full Bench of this Court in the decision reported in [2016 (1) KHC 756 : 2016 (1) KLT 802 : 2016 (1) KLJ 764 : AIR 2016 Ker.101 : 2016 ACJ 1134], **Joseph M.M v. Venkata Rao M. & Ors.** In the decision the Full Bench answered the issue as under:

“The only factor that requires to be considered is with regard to the reasonableness of the compensation. As already

indicated and as evident from the above discussion, what is required to be paid is just compensation. If the vehicle can be repaired and used, to make it roadworthy, necessarily, the cost incurred by the claimant will be the proper compensation. The compensation can include the actual cost of repairs, labour charges and other expenses. Only in instances, where the cost of repairs exceed the market value of the vehicle, that the claim can be limited to the market value. One cannot expect a person to repair his vehicle with old spare parts. Therefore, necessarily, new spare parts will have to be purchased for making the vehicle roadworthy. Even assuming for the sake of argument that the utility of the vehicle might be increased on account of new spare parts being fitted into the vehicle, it is by way of restitution, to enable the claimant to use the vehicle as he was using it before the accident. In other words, without effecting such repairs, it may not be possible for the claimant to put the vehicle on road. Therefore, making a further reduction to the actual value of spares will in effect amount to reduction from the actual loss suffered by him.”

12. In para.12 of the above decision, it was held as under:

“The principle of law as far as the grant of compensation is well settled. Compensation for damages suffered, especially pecuniary damages suffered by a claimant is normally “actual damages”. What is the actual damage suffered by the present claimant is the first question. Necessarily, the answer would be the

actual value of spares for repairs, labour charges and other expenses like surveyor's fee, towing expenses etc.. In Reshma Kumari v. Madan Mohan, 2009 KHC 6018 : 2009 (13) SCC 422 : JT 2009 (10) SC 90 : 2010 (1) SCC (Cri) 1044, Apex Court referring to Livingstone v. Rawyards Coal Co. held that grant of compensation involving an accident is within the realm of law of torts. It is based on the principle of restitutio in integrum. The said principle provides that a person entitled to damages should, as nearly as possible, get that sum of money which would put him in the same position as he would have been if he had not sustained the wrong."

Finally the Full Bench held that the decision in ***Abraham v. Johnny's*** case (*supra*) does not lay down the correct law and judgment in [2009 KHC 5125 : 2009 (4) KLT 679], ***T.A.Kuriakose v. Ittoop & Ors.*** held the correct law.

13. In view of the ratio in ***Joseph M.M v. Venkata Rao M. & Ors.***'s case (*supra*), as held by the Full Bench of this Court, without much ado, it has to be held that the compensation for damages, especially pecuniary damages, suffered by a claimant is normally the 'actual damages' inclusive of 'actual value of spare parts and labour charges'. Therefore, the claimant in such a case is entitled to get compensation for actual damages inclusive of value

of spare parts as well and no deduction is liable to be made from the value of spare parts. In view of the said fact, the finding entered by the Tribunal reducing 50% of the amount towards value of spare parts is not legally sustainable and, therefore, the said finding is set aside.

In the result, the appeal stands allowed. It is ordered that the appellant is entitled to get Rs.19,324/- (Rupees Nineteen thousand three hundred twenty four only) as enhanced compensation with 8% interest granted by the Tribunal. The insurance company is directed to deposit the same in the name of the appellant within two months from today and on deposit, the appellant can release the same.

sd/-

(A. BADHARUDEEN, JUDGE)

rtr/