(2015) 03 KL CK 0293

In the High Court Of Kerala

Case No : M.A.C.A. No. 845 of 2007

A. Balan and Others — APPELLANT

Vs

M.V. Abdul Gafoor and Others — RESPONDENT

Date of Decision : 05-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0293

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : M.V. Amaresan, for the Appellant; Sunil Nair Palakkat, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J—This appeal is only on the quantum of compensation concerning damage to a vehicle involved in the accident. The appellants are supplemental petitioners 2 to 7 in O.P.(MV) No. 354/2000 on the file of the Motor Accidents Claims Tribunal, Thalassery. The original petitioner was one Balan. While the jeep bearing Reg. No. KED 3713 was being driven by his son Sugathan, it was hit by a bus and grievous injuries were caused to Sugathan. He succumbed to the injuries and due to his accidental death, his wife and child also committed suicide. Balan thereafter filed an application for compensation and during the pendency of the application he also died and thereafter his legal representatives have been impleaded. Learned counsel for the appellants submitted that going by the report of the survey of the vehicle, a total amount of Rs. 63,975/- has been assessed as loss, but nothing has been granted by the Tribunal.

2. The Tribunal considered the matter in paragraph 17 of the award. It is observed that the vehicle was purchased 12 years back and the evidence of P.W.2, the surveyor will show that he has not assessed the depreciation to the vehicle. According to the Tribunal, if the vehicle is older by more than 10 years, 50% depreciation has to be assessed to the spare parts. After referring to Ext.

A16 series estimate and quotation and Exts. A12 and A17 series bills, the Tribunal observed that the claimant is not entitled for any amount. P.W.3 was examined to prove that the vehicle was repaired in his workshop. He deposed that he had received Rs. 26,500/- and he had purchased spare parts worth Rs. 70,000/-. But the same also was not accepted by the Tribunal.

3. Learned counsel for the appellants submitted that the damage sustained to the vehicle is clear from the report of the surveyor. We extract the same hereinbelow:

"FINAL ASSESSMENT

OBSERVATIONS AND COMMENTS:

1. The chassis number and engine numbers of the vehicle have been physically verified and found correct as given in R.C.

2. The damages noticed on the vehicle could be occurred due to an accident as described in page No. 3 of this Report.

3. Taxes on cost of parts may be paid extra.

4. The available details about the vehicle are given in this report and other details may be collected, if required.

5. The salvages (irreparably damaged items removed from the vehicle) may be worth about Rs. 1500/-."

The assessment made by the surveyor shows the net labour charges, cost of spare parts and spot repair charges. The same have been assessed at Rs. 9,640/-, Rs. 52835/- and Rs. 1500/- respectively. Thus, the total amount is calculated as Rs. 63,975/-.

4. Arguments have been raised on both sides.

5. Learned counsel for the insurance company submitted that if 50% depreciation is calculated, then the claimant will not be entitled for the entire amount claimed. But as far as purchase value of the vehicle is concerned, there is no dispute and as regards the market value, there is no evidence. Therefore, it will not be safe to adopt the said method and we will have to make a reasonable assessment of the expenses involved in repairing the vehicle. Going by the evidence of P.W.3, it will be around Rs. 96,000/-. But as rightly pointed out by the learned counsel for the insurance company, the said amount cannot be accepted in the absence of proper bills and vouchers and bills for purchase of spare parts also.

6. In that view of the matter, we are of the view that after adopting a reasonable deduction from the total assessed amount, viz. Rs. 63,975/-, proper compensation can be fixed. A reasonable amount will be thus, Rs. 45,000/- towards repair charges as well as cost of spare parts. The fact that late Shri Sugathan was the registered owner was not under dispute. The amount will carry

interest at the rate of 9% per annum from the date of petition.

The appeal is allowed accordingly. There will be no order as to costs in the appeal.

