(2008) 11 KL CK 0046

In the High Court Of Kerala

Case No : M.A.C.A. No. 990 of 2005

Abraham APPELLANT

Vs

Johny RESPONDENT

Date of Decision : 04-11-2008

Acts Referred:

Citation : (2008) 4 KLT 679

Hon'ble Judges : Harun-Ul-Rashid, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.V. Baby and A.N. Santhosh, for the Appellant; Mathews Jacob P. Jacob Mathew and T.N. Manoj, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised in this appeal is whether the Motor Accidents Claims Tribunal, Irinjalakuda was justified in reducing depreciation for the spare parts of the car while granting compensation under third party claim.

2. We have heard Counsel appearing for the appellant and senior standing Counsel appearing for the Insurance Company.

3. Appellant''s contessa car sustained major damage when another vehicle came and hit his car while it remained parked. In support of the claim for compensation for damage to the vehicle, appellant relied on the survey report and produced bills and receipts for repair and replacement. The claim was partly allowed by the Tribunal by granting Rs. 39,000/- .Then main grievance of the appellant is that even though the Tribunal fixed Rs. 65,000/- towards damages, it reduced 40% towards depreciation. The case of the appellant is that no depreciation can be deducted while granting compensation under third party claim. It was a 90 model car and the accident was in the year 1998 and depreciation at the rate of 5% was deducted per year while granting compensation. Senior standing Counsel for the Insurance Company submitted

that depreciation is normally deducted while granting compensation because in the course of repair, the old parts get replaced with new ones which have longer life. Counsel for the appellant contended that the principle of deduction of depreciation is applicable only when the claim is under comprehensive policy which specifically provides for deduction of depreciation on the value of parts while granting compensation. However, according to him, no such deduction is provided under third party claim where liability of the Insurance Company is unlimited. We are unable to accept this contention because even under third party claim, compensation has to be adjudicated. The Tribunal is bound to take into account the materials including the age of the vehicle and the actual damage sustained by the claimant. Claimant cannot make a fortune under the cover of insurance policies. If the appellant''s case that no depreciation should be reduced while granting compensation for damage to the vehicle is accepted, then for total loss of the old car in an accident, the claimant would be entitled to replacement by a new car. In fact, in principle, replacement of a totally old car with a new one and replacement of parts of the old car with new parts is the same. So, depreciation has to be deducted for replacement of parts because the claimant, in the course of replacement, gets new parts as against the old parts of the car which would have suffered erosion in value on account of long use.

4. However, there is no justification for reducing any amount towards depreciation for labour charges paid for replacement. In other words, we are of the view that depreciation should be reduced while granting replacement of vehicle as such or parts of vehicle and no depreciation should be deducted for labour costs for repair and replacement. However, there is nothing to indicate in the award that any depreciation is deducted for labour charges and so much so, reduction of depreciation for replacement of the old parts does not warrant any interference.

Consequently, we dismiss the appeal.

