

(2016) 02 KL CK 0102
In the High Court Of Kerala
Case No : MACA No. 1373 of 2013

M.M. Joseph

APPELLANT

Vs

Venkata Rao M. and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 3 ACC 322 : (2016) ACJ 1134 : (2016) 161 AIC 630 : (2016) AIR(Kerala) 101 : (2016) 4 ALLMR 89 : (2016) 1 KerLJ 764 : (2016) 1 KHC 756 : (2016) 1 KLT 802 : (2016) 2 RCRCivil 776 : (2016) 3 TAC 731 : (2016) 1 TNMAC 335

Hon'ble Judges : Ashok Bhushan, C.J., A.M. Shaffique and A.K. Jayasankaran Nambiar, JJ.

Bench : Full Bench

Advocate : Abraham Mathew, Advocate, for the Appellant; George Cherian, for the Respondent

Final Decision : Disposed off

Judgement

A.M. Shaffique, J.—1. This case has been referred for consideration by a Full Bench, as per reference order dated 20th August, 2015 on account of an apparent conflict between two Division Bench judgments of this Court in T.A. Kuriakose v. Ittoop and others (M.A.C.A. No. 693/2004) decided on 4/6/2008 and Abraham v. Johny (M.A.C.A. No. 990/2005) [2009 (4) KLT 679] decided on 4/11/2008.

2. The appeal is filed by a claimant in a motor vehicle accident alleging that his vehicle bearing Reg. No. KL-5/T-6379 sustained damages, in an accident which occurred on 23/8/2009. An assessment was made by a Surveyor, according to whom the damages were assessed at Rs. 5,62,511/-. However, he gave a report stating that after depreciation, the cost for repairs would come to Rs. 4,14,244.85 ps. Petitioner submitted a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the MV Act) claiming the said

amount. The Tribunal by its award dated 30/11/2012 having found that the petitioner is entitled for compensation for damage to his vehicle, reduced 35% from the amount fixed by the Surveyor as spare parts charges. The contention urged by the petitioner/appellant was that the Tribunal could not have deducted 35% from the value of spare parts as assessed by the Surveyor. The Division Bench while hearing the matter observed the apparent conflict between the aforesaid two judgments. Reference is also made to a judgment in Mathew K.V. v. Paul Varghese and others [2008 (4) KHC 114] (M.A.C.A. No. 1781/2006 decided on 22/7/2008) and a judgment of the Karnataka High Court in M.R. Narahari Pandit v. Veenadevi Jalan , (1997 ACJ 245), wherein, it was held that a third party claimant is entitled for the actual cost of spare parts which was necessary to make the vehicle roadworthy.

3. We heard the learned counsel for the appellant Sri. Abraham Mathew and learned counsel for the 3rd respondent Sri. V.P.K. Panicker.

4. Before proceeding further, it will be useful to quote the relevant portion of the judgments in T.A. Kuriakose v. Ittoop and others (M.A.C.A No. 693/2004) and Abraham v. Johny (M.A.C.A No. 990/2005) , [2009 (4) KLT 679].

5. In M.A.C.A. No. 693/2004 (supra), an identical issue had arisen where the claimant's scooter was damaged. He raised a third party claim before the Motor Accidents Claims Tribunal. This Court held at para 3 as under:

"3. The Tribunal was considering the case of a third party claim. The appellant's scooter was damaged. He had to repair the same. He had purchased spare parts for the same. There is no point in deducting depreciation for spare parts or the actual labour charges spent by him. He had to make his vehicle road worthy and in the previous condition. Therefore, the entire amount of Rs. 13,736/- spent by him for purchasing the spare parts and the labour charges ought to have been granted by the Tribunal apart from Rs. 1,000/- as Surveyor fee. What was awarded by the Tribunal is only Rs. 9,643/-. The additional amount payable will be Rs. 5,093/-. We round the same as Rs. 5,000/-. The above amount of Rs. 5,000/- should be deposited by the third respondent - Insurance Corporation with 7% interest from the date of application till its deposit. On deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is partly allowed."

6. In M.A.C.A No. 990/2005 (supra), a similar question had arisen, where the claimant sought for damages for his vehicle. The Tribunal fixed compensation after giving a depreciation of 40%. It was held by this Court at paragraphs 3 and 4 as under:

"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."

7. In M.AC.A. No. 1781/2006 (supra) reference is made to the judgment of Karnataka High Court in M.R. Narahari Pandit v. Veenadevi Jalan , (1997 ACJ 245), in which case reliance is placed on a Division Bench judgment in Mysore (Now Karnataka) State Road v. Somashankar N.R. (ACJ (Supp) 39). Para 4 of the said judgment is relevant, which reads as under:

"4. Mr. Masalamani, learned counsel for the appellant, firstly contended that out of the damages awarded 20 per cent ought to have been deducted against depreciation as the Tourist bus was two years old at the time of the accident, we do not think that this contention could be accepted. The question of depreciation

would arise only when the bus becomes a scrap or total loss for which the damages have to be determined. In the instant case, the damages awarded were to meet the actual expenses incurred for the repairs and replacement. Therefore, the question of depreciation does not arise."

8. Learned counsel for the petitioner also relied upon the judgment in *Yadava Kumar v. Divisional Manager, National Insurance Co. Ltd. and another* [, (2010) 10 SCC 341]. That was a case relating to personal injuries suffered by a person in which the Supreme Court observed at paragraphs 18 to 20 as under:

"18. It goes without saying that in matters of determination of compensation both the tribunal and the court are statutorily charged with a responsibility of fixing a "just compensation". It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of "just compensation" obviously suggests application of fair and equitable principles and a reasonable approach on the part of the tribunals and the courts. This reasonableness on the part of the tribunal and the court must be on a large peripheral field. Both the courts and the tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result becomes just and equitable (see *Helen C. Rebello v. Maharashtra SRTC*).

19. This Court also held that in the determination of the quantum of compensation, the court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale (see *Hardeo Kaur v. Rajasthan State Transport Corpn.*).

20. The High Court and the Tribunal must realize that there is a distinction between compensation and damages. The expression compensation may include a claim for damages but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation."

9. Yet another judgment relied upon is *Karnataka State Road Transport Corporation v. Mahadeva Shetty* [, (2003) 7 SCC 197]. That was also a case relating to personal injury. However, the Supreme Court was considering the question as to what is compensation. Paras 10, 11 and 13 are relevant, which read as under:

"10. The term "compensation" as stated in the Oxford Dictionary, signifies that which is given in recompense, an equivalent rendered. "Damages" on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of

something lost or withheld. The term "compensation" etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent. Pecuniary damages are to be valued on the basis of "full compensation". That concept was first stated by Lord Blackburn in *Livingstone v. Rawyards Coal Co.*

11. The "rule of law" requires that the wrongs should not remain unredressed. All the individuals or persons committing wrongs should be liable in an action for damages for breach of civil law or for criminal punishment. "Compensation" means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay; it need not, therefore, necessarily be in terms of money, because law may specify principles on which and the manner in which compensation is to be determined and given. Compensation is an act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as an equivalent; rendering of equivalent in value or amount; an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage of every description. The expression "compensation" is not ordinarily used as an equivalent to "damages", although compensation may often have to be measured by the same rule as damages in an action for a breach. The term "compensation" as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered; "damages" on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. "Compensation" is a return for the loss or damage sustained. Justice requires that it should be equal in value, although not alike in kind."

"13. The damages for vehicular accidents are in the nature of compensation in money for loss of any kind caused to any person. In case of personal injury the position is different from loss of property. In the latter case there is possibility of repair or restoration. But in the case of personal injury, the possibility of repair or restoration is practically nonexistent. In *Parry v. Cleaver* Lord Morris stated as follows: (All ER p. 564 I)

"To compensate in money for pain and for physical consequences is invariably difficult but ... no other process can be devised than that of making a monetary assessment."

10. On the other hand, learned counsel appearing for the 3rd respondent submits that depreciation of the actual loss towards purchase of spare parts is an acceptable formula for arriving at a just compensation. When a vehicle is damaged on account of an accident and it is repaired, definitely new spare parts

will be used which will give an advantage to the owner of the vehicle to have a prolonged use of the vehicle. Therefore, to arrive at the actual loss suffered, it is always necessary that a depreciation has to be worked out, failing which, there will be instances when old vehicles are being damaged on account of accidents, on repairs with new spare parts, the vehicle owner will be entitled to utilize the said vehicle after repairs as if it is a new vehicle. Therefore, it is well within the jurisdiction of the Tribunal to consider all these aspects and direct proper depreciation to be made towards the value of spare parts. It is submitted that when no depreciation is made to the labour charges, an appropriate depreciation depending upon the number of years the vehicle was put into use, is an appropriate method and therefore, the judgment in M.A.C.A. No. 990/2005 (supra) lays down the correct legal position.

11. In order to answer the reference, the short point to be considered is whether in a third party claim for property damage (motor car) made under Section 166 of the MV Act, the claimant is entitled for the actual value of spare parts used for repairing the vehicle, or could there be a depreciation from the actual value of spare parts.

12. 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) 13 SCC 422], 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.

13. On Damages (18th Edition) by Mc Gregor, the learned author after referring to observation of Greer L.J. in *The London Corporation* [(1935) P.70 CA at 77], has stated as under:

"The normal measure of damages is the amount by which the value of the goods damaged has been diminished. This, in the ship collision cases, has invariably been taken as the reasonable cost of repair."

The commentary further proceeds as follows:

"In the case of goods, other than ships the cost of repair has now become established as, *prima facie*, the correct measure of the claimant's loss. This has been accepted in a number of cases at first instance, (*London Transport Executive v. Court* (1954) C.L.Y. 888 and *London Transport Executive v. Foy Morgan* (1955) C.L.Y. 743.) and is confirmed by *Darbishire v. Warran* [(1963) 1 W.L.R. 1067 CA] where it was said by Harman L.J. that "it has come to be settled

that in general the measure of damage is the cost of repairing the damaged article".[(1963) 1 W.L.R. 1067 CA at 1071] Moreover if, despite the repairs, the market value of the goods is less than before, the claimant should be entitled to such diminution in value in addition to the cost of repair. Thus in *Payton v. Brooks* [(1974) R.T.R. 169 CA] Roskill L.J. said:

"There are many cases... where the cost of repairs is a prima facie method of ascertaining the diminution in value. It is not, however, the only method of ascertaining the loss. In a case where the evidence justifies a finding that there has been, on top of the cost of repairs, some diminution in market value... I can see no reason why the plaintiff should be deprived of recovery under that head of damages also. [1974) R.T.R. 169 CA at 176]."

Thus in *The Georgiana v. The Anglican* [(1873) 21 W.R. 280] the claimant was held entitled to recover, in addition to the cost of partial repairs to a yacht which did not make her as strong and seaworthy as formerly, the amount by which the value of the partially repaired yacht was less than before the damage occurred. [Cooper v. Kirby (Harboro) (1972) C.L.Y. 810].

The cost of repair is, however, appropriate only if in the circumstances it is reasonable for the claimant to effect the repair; it might be cheaper to buy a replacement on the market and sell the damaged item for what it will fetch. (*Thatcher v. Littlejohn* (1978) R.T.R. 369 CA]. The cost of repair is expected to reflect the diminution in the value of the ship, or other chattel, so that, if it can be shown that the diminution in value is below, possibly well below, the cost of repair, then it may be inappropriate to award the cost of repair."

The learned author also referred to *Aerospace Publishing Ltd. v. Thames Water Utilities Ltd.* [(2007) 110 Con. L.R.1 CA]. That was a case in which damage was caused on account of flooding. It was observed that while computing damages, the test is whether it is reasonable or not for the person whose item of personal property had been damaged to decide whether it should be repaired or not. If it is repaired, the cost of repair is recoverable and if not, only the diminution value is to be awarded.

14. The question of reasonableness of repairing has arisen in a common case of damaged motor car. In *Darbishire v. Warran* [(1963) 1 W.L.R.1067 CA], it was observed that if it can be proved that the cost of repair greatly exceeds the value in the market of a damaged vehicle, the repairs would be uneconomic. The court of appeal held that in such circumstances the claimant, in having the car repaired at a cost exceeding its market value instead of trying to replace it with a comparable car at the market price, had failed to mitigate his loss and was entitled to recover, not the cost of repair but only the lower market value. The relevant question is whether he had acted reasonably as between himself and the defendant in view of his duty of mitigation.

15. Therefore, 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.

16. It is submitted by the learned counsel for the appellant that the Surveyor himself had reduced certain percentage as depreciation. It need not be stated that each case will depend upon its own facts and circumstances. If the claim is found to be genuine and if it is found that the claimant has suffered the loss as claimed, there is no reason why a further depreciation should be ordered by the Tribunal.

17. In the case of M.A.C.A. No. 990/2005 (supra), the Division Bench took a view that when a vehicle is repaired, the owner will get a better utility for the vehicle as if it is a new vehicle and therefore depreciation is justified to arrive at the actual damage. But what is to be considered is whether these spare parts are required for making the vehicle roadworthy. 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.

18. Hence we are of the view that the judgment in Abraham v. Johny , [2009 (4) KLT 679] does not lay down the correct law and we approve the judgment in T.A. Kuriakose v. Ittoop and others (M.A.C.A No. 693/2004).

19. In the result, the appeal is disposed as under:

"The award passed by the Tribunal is modified. The deduction of 35% from the assessed amount of Rs. 4,14,244.85 ps. is set aside. The claimant is entitled for a further amount of Rs. 1,44,986/-. In all other respects, the award is confirmed."