

(2010) 08 KAR CK 0095

In the Karnataka High Court

Case No : M.F.A. No's. 7949 of 2003 and 1466 of 2004

New India Assurance Co. Ltd.

APPELLANT

Vs

Mrs. Sharmila Devadas, Mudasar Nazar Aboobakkar Kaji and
National Insurance Co. Ltd.
 Sharmila Devadas Vs
Mudasar Nazar Aboobakkar Kaji and New India Assurance
Company Limited

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Citation : (2011) ACJ 1332

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : B.C. Seetharama Rao, in M.F.A. No. 7949 of 2003, Giridhar. H., for Bopanna, Giri and Bopaiah A.G., in M.F.A. No. 1466/2004, for the Appellant; Giridhar H., for Bopanna, Giri, for R-1 and A.N. Krishnaswamy, for R-3 in M.F.A. No. 7949 of 2003 and K. Suryanarayana Rao, for R-2 in M.F.A. No. 1466/2004, for the Respondent

Final Decision : Allowed

Judgement

K.N. Keshavanarayana, J.—These two appeals, one by the claimant and other by the Insurance Company are directed against the common judgment and award dated 30.9.2003 passed by the MACT-II, D.K., Mangalore, in MVC. No. 1784/2001 and connected cases.

2. The appellant in M.F.A. No. 1466/2004 is the claimant while the appellant in M.F.A. No. 7949/2003 is the insurer of the offending vehicle. Claimant filed the claim petition seeking compensation for the damages caused to the vehicle in the motor vehicle accident that occurred on 13.5.2001 at about 10.15 p.m. on Udupi-Mangalore Road. The claim petition was contested by the insurer of the offending vehicle mainly on the ground that the claimant having received the entire market value of the vehicle as on the date of accident, from his insurer pursuant to a comprehensive policy taken by him, is not entitled to make any claim against the

insurer of the offending vehicle. The parties led evidence. Learned member of the Tribunal, on assessment of the evidence placed by the parties, allowed the claim petition and held that the claimant is entitled for compensation of Rs. 2,13,500/- with interest at 7% per annum from the date of the petition till the date of payment from the owner and insurer of the offending vehicle. Being dissatisfied with the quantum of compensation awarded, the claimant has presented the appeal in MFA. No. 1466/04 while being aggrieved by the award passed by the Tribunal directing the insurer of the offending vehicle/ to pay the said amount to the claimant, the insurer has filed the appeal in MFA. No. 7949/2003.

3. We have heard Sri. Giridhar, learned Counsel appearing for the appellant/ claimant and Sri. B.C. Seetharama Rao, learned Counsel for the respondent - Insurance Company. Perused the records.

4. Sri. Giridhar, learned Counsel for the appellant contended that the Tribunal is not justified in holding that the claimant is entitled only for Rs. 2,13,500/-, the amount which he has received from his insurer, on the other hand, the Tribunal ought to have awarded the entire value of the vehicle as compensation and ought to have directed the insurer of the offending vehicle to pay the entire amount. He sought to place reliance on the decision of the Apex Court in Union of India (UOI) Vs. Sri Sarada Mills Ltd., with regard to the maintainability of the petition against the insurer of offending vehicle.

5. On the other hand, Sri. B.C. Seetharama Rao, learned Counsel for the Insurance Company contended that the claimant is not entitled for any compensation at the hands of the insurer of the offending vehicle in view of the fact that the claimant having accepted the market value of the vehicle as on the date of the accident at Rs. 3,65,000/- in terms of the report of the valuer marked as Ex.P.46, and having also accepted the salvage value of the wreckage at Rs. 1,50,000/- and having agreed that he himself would work out the same by sale of the wreckage, had received the entire market value of the vehicle as on the date of the accident from his insurer, therefore he is not entitled to claim from the insurer of the offending vehicle any amount over and above the amount already received from his insurer and the salvage value. Alternatively, Sri. B.C. Seetharama Rao, contended that even the amount awarded by the Tribunal at Rs. 2,15,000/- cannot be paid to the claimant as he has received the same from his insurer and that the Insurance Company having been impleaded as party respondent to this claim petition, the Tribunal ought to have directed payment of the said amount to the insurer of the claimant.

6. We have bestowed our serious consideration to the submissions made by learned Counsel on both the sides. We have also carefully examined the ratio laid down in the decision cited by the learned Counsel for the appellant.

7. There is no dispute regarding the manner in which the accident occurred and also the damage caused to the vehicle owned by the appellant. It is also not in dispute that the claimant had taken a comprehensive policy in respect of his

vehicle from the National Insurance Company - respondent No. 3 herein. After the accident, the claimant made a claim to the insurer of his vehicle as agreed under the policy. It is also not in dispute that the insurer of the claimant appointed a surveyor to assess the value of the vehicle and the damage caused to it. The market value of the vehicle as on the date of accident was assessed by the valuer at Rs. 3,65,000/- as per his report Ex.P.46 and this assessment of market value of the vehicle as on the date of accident was accepted by the insured. Ex.P.46 further establishes that, the valuer assessed the salvage value of the wreckage at Rs. 1,50,000/- and the claimant accepted the same and he agreed that he himself would take the wreckage and the salvage value be deducted from out of the market value and balance be paid to him. There is no dispute that the claimant received from his insurer a sum of Rs. 2,15,000/- after adjusting the salvage value of Rs. 1,50,000/-. Thus, the claimant has received in all Rs. 3,65,000/-. Therefore, the appellant is estopped from contending to the contrary and seek a higher value of the damaged vehicle either in the proceedings before the court below or in this appeal. Hence, the argument fails.

8. Though the argument that in the wake of the judgment of the Supreme Court in the case of *Union of India v. Sarada Mills* cited supra, the appellant is entitled to maintain the claim against the owner and insurer of the offending vehicle to the entire extent of the market value of the damaged vehicle notwithstanding the receipt of the damages from his insurer, is tenable, as the present situation being the one of subrogation and not an assignment, nevertheless the amount cannot be sustained for the benefit of the claimant or the plaintiff as the case may be, but will have to be undoubtedly made over to the insurer who had already paid the market value of the vehicle in question to the claimant. As noticed above, the market value of the vehicle as on the date of accident as assessed by the valuer and accepted by the claimant was Rs. 3,65,000/- and the claimant has received the entire market value from his insurer, as such the claimant has no right to seek any amount over and above the same from the tortfeasor. As the claimant has received Rs. 2,15,000/- from the insurer after appropriating Rs. 1,50,000/- being the salvage value, in the light of the observation of the Supreme Court in *Sarada Mills Case*, the tribunal ought to have directed the amount to be paid in favour of the insurer of the claimant who was a party to the proceedings before the Tribunal as also in this appeal as third respondent and not to the claimant himself.

9. Accordingly, the appeal of the claimant filed in M.F.A. No. 1466/2004 is dismissed. The appeal filed by the Insurance Company in M.F.A. No. 7949/2003 is allowed in part. The Judgment and Award dated 30.9.2003 passed by Motor Accidents Claims Tribunal-II, D.K., Mangalore in MVC. Nos. 1784/2001, is modified to the extent that, the award amount of Rs. 2,15,000/- with interest shall be paid over to respondent No. 3 the insurer of the claimant.

The statutory deposit made by the Insurance Company in its appeal is ordered to be refunded to the appellant/Insurance Company.