

(2015) 07 KAR CK 0041
In the Karnataka High Court
Case No : M.F.A. No. 4748/2011 (MV)

R.P. Zuber

APPELLANT

Vs

Basavarajappa and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Citation : (2015) 4 AKR 628 : (2015) ILR (Kar) 4533

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : Pruthvi Wodeyar, Advocate, for the Appellant

Final Decision : Allowed

Judgement

S.N. Satyanarayana, J.—Claimant in MVC. No. 10/2008 on the file of MACT, Sagar, has come up in this appeal challenging the judgment and award dated 19.2.2011 in dismissing his claim petition. Though this appeal has come up for orders, since lower court record is received, at the request of counsel for the parties it is taken up for final disposal.

2. Brief facts leading to this appeal are as under:

Claimant before the tribunal is owner of Toyota Innova bearing registration No. KA-19/NT-M-2010. The said vehicle met with an accident on 16.2.2006 involving KSRTC bus bearing registration No. KA-27/F.84 resulting in total damage to the vehicle i.e., damage to the engine as well as shell of the vehicle rendering the entire vehicle unfit to use. The records would disclose that aforesaid Toyota Innova vehicle of claimant was a brand new vehicle purchased just one month prior to the date of accident at the cost of Rs. 8,80,000/-. In addition to that claimant had also incurred expenses in a sum of Rs. 90,000/- towards lifetime tax to make it fit for use on road. Therefore, the cost of investment of claimant on the said vehicle was in the range of Rs. 9,70,000/- as on January 2006.

3. Admittedly, in the accident dated 16.2.2006 there being total damage to the

vehicle, the claimant immediately after the accident approached its insurer, namely IFFCO Tokio General Insurance Company Limited seeking to realize the value of vehicle, which was insured with it one month prior to the date of accident. However, in terms of the policy of said Insurance Company, the claimant was not entitled to get the entire value of the vehicle. Therefore, he opted for the best choice available to him in seeking to settle his claim on cash loss basis, for which Rs. 4,39,000/- was offered by his insurer and in addition to that he was allowed to keep the fully damaged vehicle either to get it repaired if possible or to sell it as scrap and realize proceeds out of that. The claimant would state that he received Rs. 4,39,000/- in full and final settlement of his claim against the insurer of his vehicle and thereafter, sold the damaged vehicle as scrap and realized a sum of Rs. 2,50,000/-. With this, as against the value of vehicle at Rs. 9,70,000/-, he realized Rs. 6,89,000/- due to settlement with his insurer under cash loss scheme and also in selling the damaged vehicle as scrap. For the balance he filed a claim petition against the owner of offending vehicle, namely NWKRTC seeking recovery of the same to ensure that he would be able to secure the difference, which was quantified at Rs. 2,81,000/-, plus the transportation and vehicles release expenses in a sum of Rs. 19,000/-, to purchase another Brand new vehicle in place of damaged new vehicle, which was purchased in the month of January 2006.

4. However, the NWKRTC took up a defence in the claim proceedings that in view of claimant having received certain amount from his insurer in full and final settlement, he is not entitled to any further compensation from the owner of offending vehicle, which line of defence was upheld by the tribunal and the claim petition of claimant seeking compensation is dismissed. Being aggrieved by the same, the claimant has come up in this appeal seeking to set aside the judgment and award passed by the tribunal in dismissing his claim petition filed seeking compensation in a sum of Rs. 3,00,000/-.

5. Heard the learned counsel for appellant as well as contesting respondent. Perused the grounds of appeal, pleading oral and documentary evidence available on record with reference to judgment impugned. The undisputed facts in this case are that claimant is the registered owner of Toyota Innova bearing registration No. KA-19/NT-M-2010; said vehicle was just one month old as on the date of accident; the claimant had invested a sum of Rs. 9,70,000/- for acquisition of vehicle, which includes cost of vehicle and lifetime tax paid thereon. It is further not in dispute that after the accident he has approached his insurer and realized a sum of Rs. 4,39,000/- in full and final settlement of his claim, which should be understood as full and final settlement as against the policy issued by his insurer towards damage, if any caused to said vehicle as well as to the injuries caused to third party. The acceptance of same as full and final settlement against the insurer of the claimant would not come in the way of his right to seek compensation from third party with reference to difference in value of vehicle and for the loss and damages.

6. On analyzing the arguments rendered by both the counsel this Court would like to visualize the outcome of finding of tribunal in the following manner:

In a given scenario where the owner of a vehicle seeks total damage to his vehicle where the policy issued to cover the said vehicle not being comprehensive, he will not have any other option but to approach the tribunal seeking compensation for the damages suffered to his vehicle against the owner and insurer of the offending vehicle. In such a scenario, the tribunal depending on the extent of damage to the vehicle would award compensation to cover the same and in addition, would also award compensation for personal injuries, if any. Further, in the said case if the damage caused to vehicle is total loss and if the claimant is able to prove that the vehicle is brand new vehicle, then the claimant would be entitled to recover the entire cost of vehicle and in addition to that any other damages suffered by him from the owner and insurer of offending vehicle. Suppose, the very same owner in the event of having a comprehensive policy were to approach his insurer for compensation in a situation where there is total loss of vehicle as it is in the instant case, then his right to recover compensation from the insurer is not the total value of vehicle but to the extent it is permissible under the policy issued.

7. Therefore, the claimant would be having two options; one to approach the owner and insurer of offending vehicle seeking recovery of total value of goods as compensation in addition to compensation for personal damages or approaching his insurer and receiving the same. Assuming for a moment, if he chooses to approach his insurer and takes compensation whatever that is offered to him in terms of the policy as full and final settlement of his claim against his insurer, the same cannot be construed as full and final settlement of entire damages suffered by him. The full and final settlement is with reference to the right of claimant to secure compensation from his insurer. If the compensation so received falls short of the value of vehicle, then nothing prevents him from initiating proceedings against the owner of offending vehicle and its insurer for recovery of the balance amount and also for other damages like compensation for personal injuries, loss of income during the period when vehicle was not available for him for his use and if it is the vehicle that is used for hire, the loss of income which he would have suffered due to non availability of said vehicle for running it on hire. Therefore, it is seen that claimant has several options. If he chooses to exhaust his remedy from his insurer to the extent he is entitled to realize under the policy issued in his favour and seeks balance amount from the offending vehicle, the same cannot be construed as dual advantage to him unless the owner and insurer of offending vehicle can establish that in the guise of seeking difference in the loss the claimant is collecting compensation or damages in excess of the loss he has suffered or that he is taking benefit for the same damages from both the insurance companies independently twice for same compensation then he cannot be permitted to do so.

8. In the instant case, admittedly the total loss suffered by claimant is to the

extent of Rs. 9,70,000/- towards the value of vehicle and Rs. 19,000/- towards towing charges and other expenses. In addition to that infact he is also entitled to other compensation i.e., for loss of use of vehicle, mental agony, trauma and on other various counts, where the new vehicle which he had purchased using all his resources and also loan was rendered unavailable to him for his use. In that view of the matter, the appeal which is filed by claimant is required to be allowed.

9. Accordingly, this appeal is allowed. The judgment and award dated 19.2.2011 is set aside. While allowing this appeal this court would direct respondent - KSRTC to deposit a sum of Rs. 4,00,000/- with interest to the appellant i.e., Rs. 3,00,000/- towards difference in the value of vehicle, the road tax which was paid by claimant, towing charges that is spent by him for recovering the vehicle from the place of accident and another sum of Rs. 1,00,000/- for loss of use of vehicle because of accident, mental agony, trauma and on other counts, within eight weeks from the date of receipt of certified copy of judgment in this proceeding.