(1985) 01 AP CK 0019

In the Andhra Pradesh High Court

United India Fire and General Insurance Co. Ltd. and Others — APPELLANT

Vs

Mowli Bai — RESPONDENT

Date of Decision : 19-01-1985

Acts Referred:

Citation : (1986) 1 ACC 433 : AIR 1985 AP 263

Hon'ble Judges : Ramaswamy, J

Bench : Single Bench

Judgement

Ramaswamy, J.—The dissatisfied defendant-insurance company is the appellant. The respondent laid the suit to recover Rs. 61,000/- comprised of Rs. 40,000/- towards repairs and replacements for the damage caused to the motor vehicle AAT 2545, in an accident which occurred on March 30, 1976 and Rs. 21,000/- towards loss of profits during the interregnum.

2. The trial court decreed the suit for a sum of Rs. 40,000/- towards repairs and replacements but disallowed the rest of the claim.

3. The facts in a nutshell are that the respondent is the owner of the motor vehicle of 1963 model bearing No. AAT 2545. It was purchased by K.K. Swamy from the A.P. State Road Transport Corporation during the year 1973 from whom the respondent purchased for Rs. 35,000/-. It was insured with the appellant for a maximum liability of Rs. 40,000/-. It sustained extensive damage in the accident and the respondent intimated the appellant of the estimated damage under Exh. B-1 and thereafter the appellant''s valuer DW 1 submitted his report Exh. B-11 and ultimately recommended to pay a sum of Rs. 9,242/- in his estimate Exh. B-2 which was offered to be paid to the respondent. Disagreeing with the offer and relying upon the contract Exh. A-1 the respondent laid the suit for the recovery thereof. The appellant repudiated the liability mainly relying upon the report Exh. B-11 and the estimate Exh. B-2 of DW 1. After framing the appropriate issues and adduction of evidence by the parties, the trial court accepted the case of the respondent with respect to the estimate of the damage and awarded the decree impugned.

4. Mr. J.V. Suryanarayana Rao, learned Counsel for the appellant has contended that the lower Court did not keep in view the correct principles to assess damages. In a case of indemnification by the appellant, the burden lies on the respondent to establish conclusively as to what is the value of the vehicle as on the date of accident and what is its value after damage. The estimation thereof has got to be made and the resultant value would be the loss actually suffered and it would be the measure of damages. The respondent made no such attempt entailing with dismissal of the suit in to. Alternatively he contended that the price list Exh. A-9 given by the salesman in Pioneer Automobiles, Guntur does not reflect the actual prevailing prices of parts or accessories. It was given on the date on which PW 1 was being examined viz. July 18, 1977. Therefore even the prices of the articles were not given. The estimate given by PW 1 is highly exorbitant and inflated denuding to place reliance thereon. He also contended that the entire value cannot be taken since as a result of replacement with new articles, the value of the vehicle is being increased and, therefore one-third thereof has be deducted. He also contended that the report. Exh. B-11 and the estimate, Exh. B-2 furnished by DW 1 and the estimate, Exh. B-3 furnished by DW 1, the surveyor are authenticated ones. DW 1 is not only representing the appellant but also other nationalised companies. He is a disinterest witness. His estimate is authentic and correct method to determine the loss. The trial Court did not consider this case from the above perspective

5. My S. Venkateswara Rao learned Counsel for the respondent resisted it contending that after purchasing the vehicle in the year 1973 the respondent made extensive repairs by replacing with new parts and the vehicle has been in use till the date of accident. He insured the vehicle for Rs. 40,000/- and that is the measure of damages which he claims in the event of an accident to recover from the appellant-company. In Exh. B-1 the estimate by PW 1, he mentioned the estimate of the repairs and the articles to be replaced and he did not mention the prices thereof but the prices have been mentioned in the price list Exh. A-9 given by PW 4. A Motor Vehicles Inspector was appointed as Commissioner by the Court at the instance of the respondent. He submitted his report Exh. C-1. He mentioned the extensive damage done to the vehicle and when the valuer DW 1 was confronted with this report he admitted that the report Exh. C-1 of the Commissioner who is examined as PW 7 is in consonance with the report Exh. B-11 so far as the extent of the damage is concerned. DW 1 admitted that he did not ascertain in the market the prevailing prices of the new parts as on the date of the damage. He has also not given any reasons for refusing replacement of certain articles and the amount for effecting repairs and colouring. The documentary evidence Exh. B-l (A-l and A-9) and the disinterested evidence of PWs 1, 2, 4 and 7 coupled with the evidence of PW 3 the husband of the respondent clearly establishes that not only extensive damage has been done to the vehicle but also the sum of Rs. 40,000/- decreed by the trial court is reasonable to effect repairs and replacement of the parts to the vehicle. In Exh. A-1, the insurance policy, under condition No. 4 thereof coupled with the

endorsement No. 23 the appellant is liable to effect repairs and in case of breach thereof the respondent is entitled to indemnification not exceeding Rs. 40,000/- as contracted for. The total amount required for the replacement of parts is Rs. 22,697.60 and the amount required for effecting repairs is Rs. 34,025, totaling to Rs. 56,722.60. The evidence of one of the repairers i.e. PW 2 shows that an amount of Rs. 60,000/- is required to effect repairs. In view of this evidence even eschewing exaggeration and excluding one-third towards the value of the articles to be replaced as contended by the appellant, the respondent is entitled to not less than Rs. 40,000/- and, therefore, the trial court has rightly granted the decree for Rs. 40,000/-.

6. The respective contentions give rise to the question whether the decree of Rs. 40,000/- granted by the trial court towards effecting repairs of the vehicle and replacement of parts is justified in law. This question involves adjudication of an interesting question of law as to what is the method of valuation to be adopted in assessing the damages for a motor vehicle involved in an accident.

7. In the first instance, we have to see what is the intention of the parties when they entered into the contract of indemnity. Words are but servants to convey and express meanings but cannot always be servants of precision and may sometimes be given a dominance which is above their status. If language is the dress of thought, it is the thought that must be understood from the language couched. Therefore, let us first go to the contract itself to find the intention of the parties. This is a contract pursuant to the statutes i.e. Motor Vehicles Act, 1939 and Insurance Act, 1938. Clause 4 of the policy Exh A-1 reads thus:

The company may at its own option repair, reinstate or replace the motor vehicle or part thereof and or its accessories or may pay in cash the amount of the loss or damage and the liability of the company shall not exceed the actual value of the parts damaged or lost plus the reasonable cost of fitting and shall in no case exceed the insured''s estimate of the value of the motor vehicle (including accessories thereon) as specified in the Schedule or the value of the motor vehicle (including accessories thereon) at the time of the loss or damage whichever is less.

8. A reading thereof manifests the animation of the parties. The company has an option to repair, reinstate or replace the motor vehicle or parts thereof or its accessories. When it commits breach thereof, it undertook to pay in cash the amount of the loss or damage. It shall not exceed the actual value of the parts damaged or lost, plus the reasonable cost of fittings. It shall in no case exceed the insured''s estimate of the value of the motor vehicle, at the time of the loss or damage whichever is less. It admits of no doubt that the maximum for which the motor vehicle was insured was Rs. 40,000/-. Admittedly, the appellant committed breach of the contract. Therefore, the question is, what is the damage to which the respondent is entitled to ? Insurance is a contract upon speculation where special facts upon which the contingent chance is to be computed to secure indemnity. Surprisingly so far, there is no decided case of any court in

India as to the method of valuation in assessment of damages to a motor vehicle when it is involved in an accident. Let us, therefore, tread on first principles in this regard. The general principles is restitution in integrum so far as money can do it. The insured person should be put in the same position as he would have been in, if he had not sustained the wrong viz. if the tort has not been committed or the contract has not been infringed. (Vide Halsbury''s Law of England, IV Edition, Volume 12, Para 1129, page 430). In Living Stone v. Rawyards Coal Co. (1880) 5 AC 25 Lord Blackburn held in the realm of tort thus:

The point may be reduced to a small compass when you come to look at it, I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured or who has suffered in the same position as he could have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

9. The measure of damages for a breach of contract under common law, Parke B. in Robinson v. Harman (1848) 1 Ex. 850 at 855 has succinctly laid thus:

Where a party sustains a loss by reason of a breach of contract he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed.

10. This statement of law was approved by the House of Lords in Watts, Watts & Co. Ltd. v. Mitsui and Co. Ltd 1917 ACJ 227. These principles were applied in catena of decisions engrafting exceptions or extensions on diverse facts and for the present, it is needless to undertake survey thereof, but suffice it to state that in the matter of assessment of damages, there is no distinction between tort and contract. (Vide Mayne & Mc Gregor on Damages, 12th Edition, Chapter XIII, page 425).

11. The learned authors stated that the leading formation of the general rule is sufficiently wide to cover contract and tort equally. The same principles were reiterated with precision by Asquith, LJ. in Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd (1949) 1 All ER 997.

12. In Mayne & Mc. Gregor on Damages, 12th Edition at page 566, in para 654, it is stated thus:

The measure of the indemnification is not limited by the terms of any contract but is coextensive with the amount of the damages. The right against the wrong-doer is restitution in integrum, and the restitution he is bound to make without calling upon the party injured to assist him in any way whatsoever...If (the injured) party derives incidentally a greater benefit than mere indemnification, it arises only from the impossibility of otherwise effecting such indemnification without exposing him to some loss or burden which the law will not place on him.

13. In MacGillivary & Parkington on Insurance Law, 6th Edition, in respect of

insurance policy it is stated in paragraph 1962 at page 725 thus:

If there is a total loss, the amount payable to the assured will be the value of thing insured at the time of the loss, but if there has only been a partial loss, the correct measure of indemnity is the difference between the value of the damaged property before and after the loss.

At page 727 in para 1766, the learned authors further stated thus:

Where the property is capable of repair or reinstatement, the damaged value may be estimated by deducting the cost of repair from the repaired value. The amount payable by the insurers is then calculated by taking the difference between the undamaged value and the damaged value.

In para 1767 it is further adumbrated thus:

Every fact and circumstances which would logically tend to the formation of a correct estimate of loss must be taken into account, and in America a valuation has been set aside where replacement value less depreciation was the only factor taken into account.

14. It is further stated that if the property is not in fact repaired, the cost of repair may not be representative of the actual loss. In such a case, the actual saleable value of the damaged property must be taken.

15. In Weshiniste Fire Office v. Glasco Provident Investment Society (1983) 12 ACC 669 the Earl of Selborne held at page 713 thus:

The sum necessary to reinstate is one thing ; the loss, if there be no reinstatement (which is the present case), is another.

16. In "Gazelle" case (1844) 166 ALLER 759 & (1856) 166 ALLER 1079 a deduction by the registrar and merchants of one-third for the full amount of the repairs and of the cost of new articles in consideration of new articles being substituted for old, had been sustained by the court. In the same volume, it is laid by Dr. Lushington at pages 1079-1080 thus:

...The parties are entitled to restitutio in integrum to complete repairs of all the damage done notwithstanding the result may be to render the ship more valuable, than she was prior to collision. If, in consequence of a collision, it is necessary to repair a ship, the effect may be to enhance the value, to render her worth more than she was prior to the collision. In cases of insurance, one-third of the value of the material is deducted, because the new material is more valuable than the old, but it is not so where repairs are done in consequence of collision. The value of the ship before the collision, or the value when she has been repaired after collision, are questions wholly foreign to these enquiries. The best evidence is that of persons who actually inspected the vessel after the damage or of persons competent to say what repairs were necessary in consequence of the damage. With regard to the bills incurred for such expenses they must necessarily, for the purpose of justice, be submitted for examination, and extravagant charges lowered by the opinion of persons conversant with the trade ; but I must say it is a very arduous task for the court to decide when such opinions are conflicting.

17. The principles that emerge from the above discussion are that in measuring damages there is no distinction between tort and contract. The general principle is restitutio in integrum. In determining the sum of money as reparation for a breach of contract as damages, as merely as possible, get at that sum of money which will place the party injured in the same position as he would have been in as if the contract has been performed or in the case of tort as if he had not sustained the wrong for which compensation is being paid for. Appreciation of value to the motor vehicle or greater benefit or advantage due to repair or replacement of part or parts or accessories is only incidental to restitution and an inevitable and inseparable consequence. It is for the plaintiff to establish the factum of actual loss or damage suffered or the amount required or spent for replacement of parts or parts or accessories and reasonable repairing and fitting charges. The liability to indemnify the insured is limited to the contract. In no case it shall exceed the actual loss or damage or charges incurred subject to the maximum liability under the contract whichever is less. One-third is to be deducted from the value of the replaced new parts or accessories. No abstract principle could be laid. On facts and circumstances in given cases, it is open to a party to establish by adduction of evidence as to what is the actual loss suffered due to the accident or the parts involved in the accident and to what extent the insurance company is liable to indemnify the loss so suffered.

18. In this case, as regards the actual damage suffered, we have documentary evidence of Exh. C-1, the reports of PW 7, the Commissioner, and Exh B-11 given by the surveyor DW 1. DW 1 admitted that to the extent of the damage, both the reports concur. Therefore, the conclusion is that extensive damage has been done to the vehicle and it is not disputed. With regard to the amount required to effect repairs and replacement of parts is concerned, there is no conflicting evidence adduced by the parties. The appellant placed implicit reliance on the estimate made by the surveyor DW 1 under Exh. B-2. On the other hand, the respondent is relying on the estimate given in Exh. B-1 by PW 1, the (sic) an to repairer at the earliest point of time and the prevailing prices under Exh. A-9, spoken to by PW 4 the salesman of the authorised company. DW 1 admitted that PW 4 is the authorised dealer and the prices mentioned by him in Exh. A-9 were the correct prices. Therefore, as far as the prices are concerned, there is no dispute. As a matter of fact, there is no cross-examination of PW 4 in that regard. No doubt, PW 3, the husband of the respondent admitted that Exh. A-9 was given by PW 4 at his instance. But it is not implicit therefrom, as attempted to be shown by the counsel for the appellant that it is a fabricated document. It is a price list given by the company and its authenticity has not been disputed. DW 1 did not assign any cogent reasons as to why some parts are not required for replacement or the painting is not required when extensive damage has been done. Though an attempt has been made by the learned Counsel for the

appellant to cast a cloud on the amount of repairs of Rs. 28,500/- from Exh. B-1, stating it to be an interpolation, but its shroud has been cleared when we look to the estimate of DW 1 himself in Exh. B-2 where he admitted that PW 1 has given an estimate of Rs. 28,500/- to effect repairs to the body. PW 1 also stated in Exh. B-l the parts and accessories required to be replaced. That was also mentioned in the report Exh. B-11 by DW 1. But he deleted some items without assigning any cogent reasons. Even in the evidence also he did not give any cogent reasons. Under those circumstances, the necessary conclusion is that the parts mentioned in Exh. B-l are required for replacement and unless they are purchased and fitted, it is not possible for the motor vehicle to be put on the road. The value of new parts admittedly comes to Rs. 22,697.60. As adumbrated, the old damaged parts are to be replaced with new ones. As a result of the replacement the utility and value of the vehicle gets enhanced ; one-third of its value has to be deducted and deducting one-third, it would come to Rs. 15,130/- and odd. With regard to repairs, we have the evidence of PWs 1 and 2 and DW 1. PW 1 has stated that it required an amount of Rs. 28.500/-. PW 2 has stated that a total amount of Rs. 60,000/- is required. With regard to repairs, DW 1 in his report Exh. B-ll itself mentions that Rs. 16,000/- is required for body repairs whereas in his evidence, he did not state any specific amount in his chief-examination, but in his cross-examination he stated thus:

I did not mention clearly of material required for repairs to the body under item 1. Item 11 as was allowed on the contract basis as agreed by the repairer. I did not take the signature of PW 1 accepting the contract.

Item 11 in Exh. B-11 mentions that PW 1 stated that a sum of Rs. 28,500/-was required for effecting repairs to the body. In view of this evidence, the necessary conclusion to be drawn is that nearly a sum of Rs. 28,500/- is required for effecting body repairs. It is true that under the contract Exh. A-1, under condition 4 thereof, it is not mandatory on the part of the appellant to effect repairs. It is only optional. In case the company undertakes to effect repairs, it is open to it. But then it was not done, it is open to the insurer to get the repairs effected and to the extent of the contract undertaken under the insurance, he can seek indemnification from the appellant as part of the damages suffered by her. The contract Exh. A-l provides that the maximum amount contracted by the parties to be reimbursed is Rs. 40,000/-. Therefore, the appellant has undertaken the liability to reimburse to the extent of the actual damage suffered not exceeding Rs. 40,000/-. It is already held that after deducting one-third, the value of the new parts is Rs. 15,130/- and the expenses for effecting repairs to the body are Rs. 28,500/-. Thus, a total sum of Rs. 43,000/- and odd is required but the liability undertaken is only Rs. 40,000/-. So the respondent is entitled to claim only the maximum amount of Rs. 40,000/-. In this view, though for different reasons, I agree with the lower court and hold that the amount of Rs. 40,000/- decreed by the lower court is justified in law and warrant no interference. The appeal is accordingly dismissed with costs.

