



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2024

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

MISCELLANEOUS FIRST APPEAL NO.5788 OF 2013
(MV-DM)

BETWEEN:

SRI. KUMARVEL JANAKIRAM

...APPELLANT

(BY SRI. B.V.KRISHNA., ADVOCATE FOR
SRI. PRASHANTH CHANDRA.S.N., ADVOCATE)

AND:

1. THE NATIONAL INSURANCE COMPANY LTD.,
CHENNAI, D.O.IV, 2ND FLOOR,
169, ANNAI SALAI, CHENNAI-600 002(T.N.).
2. M/S GVR CONSTRUCTIONS PVT. LTD.,
ANDAL KRUPA, NO. 416,
1ST FLOOR, 3RD MAIN,
12TH CROSS, SADASHIVANAGAR,
BANGALORE-560 080.
3. M/S ROYAL SUNDARAM ALLIANCE
INSURANCE COMPANY,
SUNDARAM TOWERS,
46, WHITES ROAD, ROYAPETTAH,
CHENNAI-600 014.

...RESPONDENTS

(BY SRI. A.N.KRISHNA SWAMY., ADVOCATE FOR R1;
R2-SERVED AND UNREPRESENTED;
SRI. RAVI.S.SAMPRATHI., ADVOCATE FOR R3)



THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF THE MOTOR VEHICLES ACT, 1988, ACT AGAINST THE JUDGMENT AND AWARD DATED:01.02.2013 PASSED IN MVC NO.7260/2010 ON THE FILE OF THE XXI ADDITIONAL SMALL CAUSES JUDGE, XIX ACMM, MEMBER, MACT, BANGALORE.

THIS MISCELLANEOUS FIRST APPEAL IS COMING ON FOR DICTATING JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Sri.B.V.Krishna., learned counsel on behalf of Sri.Prashanth Chandra.S.N., for the appellant has appeared through video conferencing.

Sri.A.N.Krishnaswamy., learned counsel for respondent No.1 and Sri.Ravi S.Samprathi., learned counsel for respondent No.3 have appeared in person.

Notice to the respondents was ordered on 31.01.2014. A perusal of the office note depicts that respondent No.2 is served and unrepresented. It has neither engaged the services of an advocate nor conducted the case as party in person.

2. For the sake of convenience, the parties are referred to as per their status and rankings before the Tribunal.



3. The brief facts are these:

The claimant contended that on 12.05.2009 at about 9:30 am., his father was driving a Maruthi Omni Van bearing Registration No.KA-53-N-5346 along with his relative P.Prakash towards Narayana Hrudayalaya for medical check up. When they reached near old Chandapura Circle on Hosur Road, he slowed down the vehicle to take U-turn. At that time, a driver of a Mahindra Maxi Pick-up vehicle bearing Registration No.KA-04-B-9516 came in a rash and negligent manner and hit the Maruthi Omni Van and caused the accident. Due to the impact, the Maruthi Omni Van was damaged which could not be repaired. It is contended that due to the damage of the Maruthi Omni Van he was constrained to purchase a new Car. Contending that he is entitled for compensation for damaged property, the claimant filed a Claim Petition.

In response to the notice, the second respondent remained absent before the Tribunal and hence, it was placed ex-parte. The first and third respondents appeared through their counsel and filed separate written statement denying the petition averments. Among other grounds, they prayed for dismissal of the Claim Petition.



Based on the above pleadings, the Tribunal framed issues, parties led evidence and marked the documents. The Tribunal vide Judgment dated:01.02.2013 dismissed the Claim Petition as not maintainable. The claimant has assailed the Judgment of the Tribunal in this appeal on several grounds as set-out in the Memorandum of appeal.

4. Learned counsel for the respective parties have urged several contentions.

Sri.B.V.Krishna., learned counsel for the claimant submits that the Judgment of the Tribunal is contrary to the evidence on record and law.

Next, he submits that the Tribunal has erred in coming to conclusion that the claim having already been settled with the claimant's insurer, the present claim is duplicated.

A further submission is made that the due to the damage of the Car, the claimant was put to inconvenience and he was forced to use alternate vehicle.



Learned counsel vehemently contended in view of tortuous liability, the Insurance Company is liable to pay the compensation.

Lastly, he submits that viewed from any angle, the Judgment of the Tribunal is untenable. Counsel therefore, submits that the appeal may be allowed.

To substantiate the contention, learned counsel for the claimant placed reliance on the decision in ***R.P.ZUBER VS. BASAVARAJAPPA AND ANOTHER*** reported in ***ILR 2015 KAR 4533***.

Learned counsel Sri.A.N.Krishnaswamy., and Sri.Ravi S.Samprathi., for the Insurance Companies justified the Judgment of the Tribunal. They submits that the appeal is devoid of merits and the same may be dismissed.

To substantiate their contention, they placed reliance on ***HARKHU BAI***'s case.

Heard, the contentions urged on behalf of the respective parties and perused the appeal papers and also the records with utmost care.



5. The point that requires consideration is whether the Tribunal is justified in dismissing the claim petition.

6. The facts are sufficiently stated and do not require reiteration. Suffice it to note that the accident occurred on 12.05.2009. According to the claimant, his vehicle was damaged on account of rash and negligent driving of Mahindra Maxi Pick-up vehicle bearing Registration No.KA-04-B-9516 and his car was damaged. It is not in dispute that the claimant vehicle was insured with Royal Sundaram Alliance Insurance Company and he received a sum of Rs.95,259/- (Rupees Ninety Five Thousand Two Hundred and Fifty Nine only) from the Royal Sundaram Alliance Insurance Company towards damage of the vehicle.

It is relevant to note that the claimant claimed a sum of Rs.1,41,516/- towards property damage from the Insurance Company of the offending vehicle. The claimant was examined as PW1. In the cross examination, he states that he has received the entire amount towards the damage of the property from his Insurance company. Admittedly, damaged vehicle was insured with the Royal Sundaram Alliance Insurance Company



and the claimant has received the full and final settlement of his claim without any reservation or demur. In the absence of any material to show that the claim paid by his Insurance Company represented a part only of the total damage, the Tribunal is justified in rejecting the claim for any further payment. I, therefore, see no merit in the contention of the claimant that the claimant is entitled to compensation for the damaged property.

Furthermore, in **HARKHU BAI's** case, the Division Bench has held that if the claimant has received the amount in full and final settlement of his claim without any reservation or demur, he cannot claim further payment from the Insurance Company of the offending vehicle. As already noted above, in the present case, the claimant has received the amount from his Insurance Company as full and final settlement. Hence, he cannot claim further payment from the Insurance Company of the offending vehicle. Hence, the contention regarding tortuous liability must necessarily fail.

Learned counsel for the claimant placed reliance on the decision referred to supra, but I do not find that the law is in



doubt. Each decision turns on its own facts. The present case is also tested in the light of the aforesaid decision.

For the reasons stated above, the appeal is devoid of merits and it is liable to be rejected.

7. Resultantly, the Miscellaneous First Appeal is ***rejected.***

Sd/-
JUDGE

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List No.: 1 SI No.: 67