®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 3681 OF 2020 (MV-DM)

BETWEEN:

B M VASISHTA
AGED ABOUT 74 YEARS,
S/O LATE DEVAKI NANDAN,
R/AT NO 506, SILICON TOWERS
209/1, 4TH CROSS,
BYARASANDRA,
C V RAMAN NAGAR POST,
BENGALURU 560093.

...APPELLANT

(BY SRI. RAVEENDRAN P., ADVOCATE)

AND:

1. M/S THE ORIENTAL INSURANCE COMPANY LTD
NO 2023, HIG III PHASE,
YELAHANKA NEW TOWN,
BENGALURU 560064,
REP BY ITS BRANCH MANAGER.

2. THE ORIENTAL INSURANCE COMPANY LTD
HAVING ITS BANGALORE REGIONAL OFFICE AT
44/45, LEO SHOPPING COMPLEX,
RESIDENCY CROSS ROAD,
BENGALURU 560025
REP BY ITS REGIONAL MANAGER.

3. R MANJUNATH
MAJOR IN AGE
S/O SRI RAMAPPA,
R/AT CHOKKANAHALLI,
BAGALURU POST,
CHIKJALA HOBLI,
BENGALURU 562149,
MB 9845070364.

4. ULLAS MANDAL
MAJOR IN AGE,
S/O DHUKHAN MANDAL
BHANDARO PO, NAITAND P S,
DUMRIRI DISTRICT,
GIRIDH, JHARKHAND 825106.

...RESPONDENTS

(BY SMT.HARINI SHIVANANDA, ADVOCATE FOR R-1 AND R-2 & R-3 - SERVED, UNREPRESENTED AND NOTICE TO R-4 IS DISPENSED WITH VIDE ORDER DATED 05.04.2023)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 13.01.2020, PASSED IN MVC NO.6917/2017, ON THE FILE OF THE VII ADDITIONAL SCJ AND ACMM, MEMBER, MACT-3, BENGALURU, DISMISSING THE CLAIM PETITION FOR COMPENSATION.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

1. The present appeal seeks to challenge an Award dated 13.01.2020, in MVC.No.6917/2017 [hereinafter referred to as the "Impugned Award"] passed by the learned VII Addl. Judge and Addl. Chief Metropolitan Magistrate, Motor Accident Claims Tribunal, Court of Small Causes, Bengaluru, (hereinafter referred to as "the Tribunal"), By the Impugned Award, the claim petition filed by the appellant under Section 166 of the Motor Vehicles Act, 1988, has been dismissed.

2. The brief relevant facts of the case are that on 22.02.2015, the appellant/claimant was driving his Hyundai Verna car bearing registration No.KA-53-M-4149 along with his wife on National Highway No.7. At that time, a Tipper Lorry bearing registration No.KA-13-5823 was driving ahead of their car. When the driver of the Tipper Lorry reached near a cross road junction, he took a sudden right turn without any signal or indication, which led to the appellant/claimant hitting the rear side of the

Lorry. As a result of the accident, there was damage to the vehicle, as well as injuries caused to the appellant/claimant and his wife. The appellant/claimant got his vehicle repaired at a cost of Rs.2,94,718/- and the Insurance Company, who had insured the vehicle, i.e., Bajaj Insurance Company, has made payment in a sum of Rs.1,67,020/-. Since the balance amount of Rs.1,27,698/- remained unpaid, the appellant filed a claim petition before the Tribunal.

3. Although notices were received by the driver and owner of the Tipper Lorry, none appeared on their behalf. The matter was contested by the Insurance Company of the Tipper Lorry.

4. Based on the pleadings of the parties, the following issues were framed:

> *"1. Whether the petitioner proves that, his vehicle bearing No.KA-53-M-4149 Hyundai car has suffered damages in the accident occurred on 22.02.2015 at about 12.00 noon, on Theelakuntahalli cross, Chikkaballapur Taluk, Chikkaballapura, due to the rash and negligent driving of the driver of Tipper Lorry bearing No.KA-13-5823 as alleged in the petition?*

2. Whether the petitioner is entitled for compensation? If so, from whom and at what quantum?

3. What Order or Award?"

5. The appellant/claimant examined himself as PW-1 and produced 12 documents, which were marked as Ex. P-1 to P-12 and the respondent/Insurance Company also examined two officials as RW-1 and RW-2 and produced two documents, which were marked as Exs.R-1 and R-2.

6. The learned Tribunal after examining the claim of the parties, found that the issue of negligence of the Tipper Lorry stood proved. However, regarding the issue of damages, the learned Tribunal relying on the judgments of Division Bench of this Court in ***Harkhu Bai and others Vs. Jiyaram and others,***[1] and in ***New India Assurance Co. Ltd., Belgaum Divisional Office, through its Regional Office Vs. Mrs. Sharmila Devadas and Others,***[2] gave a finding that the appellant/claimant is estopped from claiming further compensation if full and

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[1] 2003 SCC OnLine Kar 411
[2] ILR 2010 KAR 4062: 2010 SCC OnLine Kar 506

final settlement of his claim has been made. Thus, the claim petition came to be dismissed.

7. The learned counsel for the appellant/claimant has submitted that the learned Tribunal has erred in dismissing the claim petition with a finding that the appellant/claimant has received the amounts as full and final settlement. He submits that, firstly there was no settlement that was entered into by the appellant/claimant and that he received no amounts from the respondent/Insurance Company. The amounts were released to the workshop/motor repair garage directly by the respondent/Insurance Company.

7.1 The learned counsel further submits that there is no estoppel to recovering this amount since the appellant/claimant has paid the amount of Rs.1,27,698/- from his own pocket. The learned counsel has sought to rely upon judgments of the Co-ordinate Benches of this Court in ***Sri Hemanth Raju Vs. Sri Punitha H.J., And***

Another,[3] and ***R.P.Zuber Vs. Basavarajappa and another,***[4] to submit that, in similar circumstances, this Court has permitted payments to be made by the Insurance Company of the offending vehicle of amounts expended in repair of the damage caused to the vehicle.

7.2 The learned counsel for the appellant/claimant also seeks to rely upon the cross-examination of RW-1 undertaken by the appellant/claimant in this behalf.

8. Learned counsel for the respondent/Insurance Company on the other hand contends that, so far as concerns the accident, the same is not in dispute, however, the appellant/claimant has already been paid the amount by the respondent/Insurance Company and the claim has been settled. In addition, it is contended that normally amounts paid are after calculating the depreciation and once the amounts are settled finally,

[3] 2023 SCC OnLine KAR 1543
[4] 2015 SCC OnLine KAR 8570

there can be no further claim payable by the respondent/Insurance Company of the offending vehicle.

9. The question of law that arises before this Court for consideration is:

> *"When compensation has already been received by a claimant based on an insurance policy taken by him for damage caused to his motor vehicle in an accident, can he claim additional amounts from the insurer of the offending vehicle?"*

10. The Coordinate Bench of this Court in ***R.P.Zuber's*** case has while discussing a similar issue held that where the owner of a vehicle seeks compensation for total damage to his vehicle and the policy issued is not comprehensive, he will have no option but to approach the Tribunal seeking damages from the offending vehicle and in such a scenario, the Tribunal would award compensation to cover the damage caused to the vehicle. It was further held that claimant has two options, one to approach the owner and insurer of the offending vehicle or

to approach his insurer, and if he chooses to approach his insurer and takes compensation of whatever is offered to him, the same cannot be construed as full and final settlement of the entire damages if such compensation received falls short. The owner of the offending vehicle cannot object to the same unless the claimant is seeking compensation in excess of the loss caused. The relevant extract of ***R.P.Zuber's*** case is below:

> *"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.***
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> *8. In the instant case, **admittedly the total loss suffered by claimant is to the extent of ₹9,70,000/- towards the value of vehicle and ₹19,000/- towards towing charges and other expenses.** In addition to that in fact 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.*
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> *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 ₹4,00,000/-with interest to the appellant i.e., ₹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 ₹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."*
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> [Emphasis Supplied]

11. A similar view was taken by another Coordinate Bench of this Court in ***Sri Hemanth Raju's*** case relying on the

R.P.Zuber's case and the relevant extract is set out below:

> *"11. Making a submission that when the total amount spent is not paid by the insurer of the aggrieved, the insurer of the offending vehicle is liable to pay the balance, Learned Counsel for the appellant relied upon the decision of this Court in the case between R.P.Zuber v. Basavarajappa [2016 ACJ 2307] , wherein this Court at paragraph No. 7 of the order held as follows:*
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> > *"7. Therefore, the claimant would be having two options; one to approach the owner and insurer of the offending vehicle seeking recovery of total value of goods as compensation in addition to compensation to towards personal damages or approaching his insurer and receiving the same. Assuming for a moment, if he chooses to approach his insurer and takes whatever compensation 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 owner of offending vehicle, the same cannot be construed as dual advantage of 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."

12. In the case on hand, it is clear that, the total loss sustained by the appellant is not compensated by his insurer. It is also clear that for getting his vehicle back on road, the appellant was required to pay the balance amount. It is not in dispute that the accident occurred due to the rash and negligent driving of the driver of respondent No. 1.

13. The claimant cannot claim the same amount which he received from his insurer towards damages to the vehicle again from the insurer of the offending vehicle. However, if total amount is not reimbursed by his insurer, the claimant will have every right to seek the Tribunal to order for payment of the balance amount from the insurer of the offending vehicle.

14. Therefore, this Court is of the view that the second respondent i.e. the insurer of the offending vehicle is at liability to pay the balance."

[Emphasis Supplied]

12. This Court has recently in the case of ***Manager, Shriram General Insurance Company Ltd. Vs. K.A.Uthappa and others***[5] dealt with this issue and has held:

"14. Undisputably, the respondent No.1/claimant has already once challenged the payment made by the insurance company (respondent No. 5) before the learned Consumer Forum. However, since the entire amounts

[5] MFA No.1824/2018 Order dated 23.02.2026: NC:2026:KHC:11021

*were not awarded despite exercising his remedy before the Consumer Forum, the respondent No.1/claimant has chosen to come before this Court and file a claim petition under Section 166 of the Motor Vehicles Act, 1988, before this Court. The respondent No.1/claimant in this behalf has relied on the judgment of the **Swaran Singh,** which is inapplicable to the facts of his case and also of the judgment of the Coordinate Bench in **R.P.Zuber's** case.*

*15. The Coordinate Bench of this Court in **R.P.Zuber's** case has while discussing a similar issue held that where the owner of a vehicle seeks compensation for total damage to his vehicle and the policy issued is not comprehensive, he will have no option but to approach the Tribunal seeking damages from the offending vehicle and in such a scenario, the Tribunal would award compensation to cover the damage caused to the vehicle. It was further held that a claimant has two options either to approach the owner and the insurer of the offending vehicle seeking recovery of the total value of the goods in addition to compensation for personal damages or approaching his insurer for receiving the same. It was held that this full and final settlement with the claimant's own Insurer cannot be construed as final settlement of entire damages with reference to the right of claim to secure compensation and that the respondent No.1/claimant has the option to seek damages in excess of the loss and has the option of seeking additional compensation from the insurer of the offending vehicle. The relevant extract is case is set out below:*

> *"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.*
>
> *[Emphasis Supplied]*

16. The appellant has relied upon the ***New India Assurance Company*** *case to submit that the Division Bench has held that once an amount has been received by the claimant from his Insurer, he is estopped from receiving additional amounts from the Insurance Company. A review of the judgments of the Division Bench however reflect that these have been passed in differing circumstances. The issue in the case of* ***New India Assurance Company*** *case was whether a claimant after having received the entire market value of the vehicle from his Insurer pursuant to a comprehensive policy, is entitled to make a claim against the Insurer of the offending vehicle. The Tribunal held that the claimant is entitled for compensation along with interest from the owner and insurer of the offending vehicle. This award was challenged before the Division Bench of this Court by both claimant and Insurer of the offending vehicle. While the claimant averred that he should have received entire* *value of the damage caused to his vehicle as compensation which was Rs.3,65,000/-, the Insurance Company contended that the claimant is not entitled to any compensation from the Insurer of the offending vehicle after having accepted the market value of the vehicle at Rs.3,65,000/- and also accepted the salvage value of the wreckage. In addition, it was contended by the Insurance Company that the amounts should be paid to the claimant by his own Insurer.*

*16.1. The Division Bench of this Court however found that the undisputed facts are that a comprehensive policy was taken by the claimant and the claimant had already obtained the market value of the vehicle. The damage to the vehicle had been assessed by the Insurance Company and valuer had assessed the salvage value of the wreckage of the vehicle at Rs.1,50,000/- and since the claimant had received the compensation assessed by his valuer after adjusting the salvage value of Rs.3,65,000/-, the claimant is estopped from contending and seeking a higher value from the offending vehicle. The Division Bench relied on the judgment of the Supreme Court in the case of **Union of India Vs. Sarada Mills**[6] and held that the Tribunal ought to have directed the amount to be paid by the insurer of the claimant. The relevant extract of the **New India Assurance Company's** case is below:*

> *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***

[6] AIR 1973 SC 281 : (1972) 2 SCC 877

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 Mill 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."

[Emphasis Supplied]

17. The Supreme Court in the ***Sarada Mills*** *case has clarified this position and held that a contract of insurance is one of subrogation, whereby upon indemnification, the insurer steps into the shoes of the insured and is entitled to enforce the rights and remedies of the insured against the wrongdoer, to the extent of the amount paid, though such right is ordinarily enforceable only in the name of the insured in the absence of a valid assignment. The relevant extract of the* ***Sarada Mills*** *case is set out below:*

"***32. The application of the doctrine of subrogation to policies of marine insurance is based upon the fundamental principle that the contract of insurance contained in a marine policy is a contract of indemnity, and of indemnity only.***

33. The expression "subrogation", in relation to a contract of marine insurance is no more than a convenient way of referring to those terms which are to be implied in the contract between the assured and the insurer to give business efficacy to an agreement whereby the assured, in the case of loss against which the policy has been issued, shall be fully indemnified, and never more than fully indemnified.

34. The right of the insurer against the person responsible for the loss, does not rest upon any relation of contract or of privity between them. *It arises out of the nature of the contract of marine insurance as a contract of indemnity, and is derived from the assured alone, and can be enforced in his right only.*

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38. In King v. Victoria Insurance Co. Ltd. [1896 AC 250, 255-6] Lord Hobhouse, made it quite clear that, under the doctrine of subrogation an insurer was entitled to recover from the

<u>assured only "to the extent of the payment" made to the assured by the insurer under the policy:</u>

> *"As between the insurer and the assured, the insurer is entitled to the advantage of every right of the assured whether such right consists in contract, fulfilled or unfulfilled, or in remedy for tort capable of being insisted on or already insisted. But as stated by the Privy Counsil in King v. Victoria Insurance Co. Ltd.*
>
> *Subrogation by act of law would not give the insurer a right to sue in a court of law in his own name."*
>
> ***<u>Subrogation is concerned solely with the mutual rights and liabilities of the parties to the contract of insurance; it confers no rights and imposes no liabilities upon third parties who are strangers to that contract and, the insurer who has paid a loss gets no direct rights or remedies against anyone other than the assured nor can sue such parties in his own name (see Simpson v. Thomson.)</u>*** *[(1877) 3 App Cas 279 HL] "*

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40. In Indian Trade and General Insurance Co. Ltd. v. Union of India, [AIR 1957 Cal 190] Mitter, J., had occasion to consider the question in detail and, after referring to the English law, he came to the conclusion that, although by sub-sections (2) and (3) of Section 135-A, an insurer is subrogated to all the rights and remedies of the assured in respect of the subject-matter, it has no independent right of action in its own name, but can only sue in the name of the insured. The learned Judge referred to the decision in K.V.P. Marakkayar & Sons v. Banians & Co. [ILR 49 Mad 156] and said that the rule of English law *which never permitted a subrogee to institute a suit in its own name has been followed in India and is a sound rule."*

[Emphasis Supplied]

18. This has also been clarified by the Division Bench of this Court in another judgment passed in the case of ***Harkhu Bai and Others Vs. Jiyaram and Others[7].*** *The Court was also dealing with an issue where a claimant had already received the amounts from the Insurance Company where his vehicle was insured, representing the loss suffered by him. The Division Bench held that it is not disputed that the vehicle owned by the claimant had suffered extensive damage on account of collision but the claimant had already accepted the payment from the Insurance Company in full and final settlement of the claim without any demur. It was further held that in the absence of material to show that claimant was paid only a part of the total damage, the Tribunal was justified in rejecting the claim of the claimant for further payment from the Insurer of the offending vehicle. The relevant extract is below:*

> *"7. That leaves us with the claim in M.V.C. No. 3 of 1990.* ***The Tribunal has rejected the said claim on two grounds. Firstly, because no negligence on the part of the offending vehicle is proved and secondly, because the claimant, owner of the vehicle, has already received from the insurance company with which the vehicle was insured an amount representing the loss suffered by him.*** *While the finding on the first of the said questions has been reversed by us,* ***we see no reason to interfere with the view taken by the Tribunal on the second question. It is not in dispute that the vehicle owned by the claimant in M.V.C. No. 3 of 1990 had suffered extensive damage on account of the collision but it is also admitted that the vehicle being insured with one of the other insurance companies, the damage was assessed and paid. The order passed by the Tribunal further shows that the payment was received by the claimant in full and final settlement of his claim without any***

[7] 2003 SCC OnLine Kar 411

> ***reservation or demur. In the absence of any material to show that the claim paid by the other insurance company represented a part only of the total damage, the Tribunal was justified in rejecting the claim for any further payment.*** *We, therefore, see no merit in the appeal filed by the owner which shall have to be dismissed."*
>
> *[Emphasis Supplied]*

19. In the present case, however, it is undisputed that the damage to the vehicle cost the respondent No.1/ claimant is Rs.5,34,940/- and that he has received a sum of Rs.2,70,199/- from his insurer. It has also not been disputed that the accident was caused on account of the rash and negligent driving of the offending Tipper Lorry. The respondent No.1/claimant has also examined himself as P.W.1 and produced the invoices evidencing the payment of Rs.5,34,940/- made by him. The respondent No.1/claimant has also produced as Exhibit P-12 [Repairs Estimate]; Ex.P-13 [Supplementary Estimate] and Ex.P-14 [VAT Invoice] and Ex.P-15 [Receipt Voucher] as well. These invoices reflect that although the claimant paid Rs.5,34,940/-, he initially received Rs.2,02,000/- and thereafter Rs.68,199/- from his insurer. The total amount as awarded by the Insurance Company was Rs.2,70,199/-. Since the amounts expended by the claimant were Rs.5,34,940/-, the claim petition was filed for the balance amount of Rs.2,29,801/-.

20. The Division Bench in the judgments in ***New India*** Insurance ***Company*** case *as well as in* ***Harkhu Bai*** *case was dealing with a situation where after receiving the entire value of the damage caused, the respondent No.1/claimant had applied for additional amounts. It was in these circumstances that the Division Bench of this Court found that additional amounts could not be paid. In the present case however, undisputedly, the amount that the respondent No.1/claimant has expended in repair work has not been received back by him. He has only received part of the said amount and has filed a claim petition for the balance amount. In these circumstances, it is not as if the claimant is seeking additional amounts or unjustly enriching himself. The learned Trial Court has examined the evidence placed on record by the respondent No.1/claimant and found that in fact he was* *due the amount of Rs.2,29,801/- and hence passed the Impugned Award."*

[Emphasis Supplied]

13. An analysis of the judgments passed shows that the interest of the Division Bench judgments in both ***New India Assurance Company's*** case and the ***Harkhu Bai's*** case is that a party must not receive amounts in excess of the damage suffered and not unjustly enrich himself. In both cases there was an absence of material which shows that the claimant had expended amounts in addition to what was received. In fact, in the ***New India Assurance Company's*** case the claimant had received the amount of Rs.3,65,000/- from the insurer which was the value of what had been expended by him. Thus, it was held that the claimant is estopped from seeking a higher value than what was spent.

14. In the present case, the petition was filed by the appellant/claimant seeking compensation for the damages caused to the claimant's vehicle. Learned Tribunal found that there was no dispute with regard to the fact of

negligence of the offending vehicle and the claim of the claimant was already settled by his Insurance Company. Since the actual cost of repayment was Rs.2,94,718/-, only Rs.1,67,020/- was received and the remaining amount of Rs.1,27,698/- was due. It was explained by the insurer of the offending vehicle that balance amount was the depreciation calculated by the surveyor and that the amount will only be settled after consent of the parties. The learned Tribunal relying on the judgment in the ***New India Assurance Company's*** case and ***Harkhu Bai's*** case, gave a finding that if full and final settlement is done, the owner is estopped from claiming further damages, in the following manner:

> *"**13. The petitioner claimed that the actual cost of the repair is Rs.2,94,718/- but insurance company has settled Rs.1,67,020/ and remaining amount of Rs.1,27.698/- is paid personally and to that amount these respondents are liable to pay as they become third party against these respondents.** In order to prove the actual expenses incurred the petitioner has produced Ex.P9 car paid receipt, Ex.P10-tax invoice and also examined PW2 and further produced Ex.P12 to 14 documents. However the respondents have summoned claims officer of Bajaj Allianz Insurance company i.e., insurance company of petitioner's vehicle and through them elicited that the vehicle bearing No.KA-53-M-4149 belonging to petitioner was insured with them and **OD claim of Rs.2,94,718/- was***

settled at Rs.1,67,021/- and it is directly paid to the work shop through NEFT. He explained that the balance amount was depreciation calculated by the surveyor and it excludes the general service charges. He explained that the amount will be settled after the consent of the parties.

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16. Upon considering the rival contentions and the evidence let out, it can be noticed that there is no dispute that the cost incurred for Rs.2,94,718/- against the repair charges for the damage vehicle of petitioner. The Ex.P10 tax invoice makes it clear. However, the question remains is whether the petitioner can claim again when the settlement was already done by the own insurance company against the same cost. ***In this regard the judgment relied by counsel for petitioner is not acceptable because there is judgment of our own Hon'ble High Court of Karnataka reported in 2005 ACJ 1332 and ILR 2010 KAR 3962 between New India Assurance Co. Ltd., Belgaum Divisional Office through its Regional Office Vs. Mrs.Sharmila Devadas and others wherein it is made clear that the owner of the vehicle is estopped from claiming further compensation if full and final settlement is done. It is clearly held that petitioner cannot claim damages if already received as full and final settlement. The Hon'ble High Court of Karnataka has clearly held once full and final settlement is received, he is deprived of claiming again.***

17. ***Wherein it is clearly held that once full and final settlement is done there is not question of claiming again against any party. Hence, considering this aspect in my opinion, the respondents are not liable to pay the compensation*** *and claim of the petitioner is not sustainable as such,* ***I answered Issue No.2 in the negative****."*

[Emphasis Supplied]

15. The learned Tribunal has however misapplied the judgments of the Division Bench of this Court to deny the appellant/claimant the balance amounts awarded. As long as the claimant is not obtaining amounts in addition to what has been expended, he is not estopped from filing this claim petition. The appellant/claimant has placed on record in Ex.P9 [Cash Paid Receipt] and Ex.P10 [Tax Invoice] and proved the amount of Rs.2,94,718/- expended on the damage caused by the offending vehicle and has received only part thereof. There is no dispute on the aspect of negligence either.

16. Accordingly, the Court proceeds to pass the following directions:

ORDER

(i) The appeal is ***allowed.***

(ii) The Impugned Judgment and Award dated 13.01.2020, in MVC.No.6917/2017 passed by the learned VII Addl. Judge and Addl. Chief Metropolitan Magistrate, Motor Accident Claims

Tribunal, Court of Small Causes, Bengaluru, is set aside and the appellant/claimant is awarded the amount of Rs.1,27,698/- that was paid by him towards the damage along with interest thereon @ 6% per annum.

(iii) The Insurance Company shall deposit the compensation with interest at 6% per annum within a period of **eight weeks** from the date of receipt of the judgment.

(iv) The Registry is directed to draw the modified Award accordingly.

(v) The Registry is directed to transmit a copy of this judgment to the concerned Tribunal, along with its records.

(vi) No order as to costs.

Digitally signed by TARA VITASTA GANJU
Location: HIGH COURT OF KARNTAKA

(TARA VITASTA GANJU)
JUDGE

BK / YN
List No.: 1 Sl No.: 14