IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

MISCELLANEOUS FIRST APPEAL NO. 1824 OF 2018 (MV-DM)

BETWEEN:

1. THE MANAGER
   SHRIRAM GENERAL INSURANCE
   COMPANY LTD.,
   NO.10003- E-8,
   RIICO INDUSTRIAL AREA
   SITIAPURA, JAIPUR
   RAJASTHAN - 303 022.

2. THE BRANCH MANAGER
   SHRIRAM GENERAL INSURANCE
   COMPANY LTD
   NO.1056, KAVITHA VILAS,
   2ND FLOOR,
   VANIVILAS ROAD,
   MYSORE - 570 001.

   NOW REPRESENTED BY
   THE MANAGER
   M/S. SHRIRAM GENERAL
   INSURANCE COMPANY LTD.,
   NO.5/4, 3RD FLOOR
   S.V. ARCADE, BILAKAHALLI MAIN ROAD
   OFF B.G. ROAD, IIM POST
   BANGALORE - 560 076.

...APPELLANTS

(BY SRI. B.C. SHIVANNE GOWDA, ADVOCATE)

AND:

1. K.A. UTHAPPA
S/O K.K. APPACHU
NOW AGED ABOUT 56 YEARS,
S/O KUNJILA VILLAGE,
MADIKERI TALUK
KODAGU DISTRICT - 571 201.

2. D.R. SURENDRA
S/O D.A. RAJU
AGED ABOUT 38 YEARS,
BANAVARA (GADIKALLU)
SOMAWARAPET TALUK,
KODAGU DISTRICT - 571 201.

3. DEVARAJU
S/O NAGENDRA, MAJOR
NO.2954, K.R. PET TOWN
MANDYA DISTRICT - 571 401.

4. GURUPRASAD
S/O THAMMEGOWDA
AGED ABOUT 33 YEARS,
KUDIGE KOPPALU VILLAGE
SOMAWARAPET TALUK
KODAGU DISTRICT.
(GPA HOLDER OF THE REGISTERED OWNER
OF THE TRIPPER LORRY NO. KA.02-D-9444)

5. THE MANAGER
THE NEW INDIA ASSURANCE COMPANY LTD.,
NEAR STATE BANK OF INDIA,
COLLEGE ROAD, MADIKERI - 571 201.

…RESPONDENTS

(BY SRI. CHETHAN C, ADVOCATE FOR

SRI. B.S. PRASAD, ADVOCATE FOR R1;
SRI. K. KISHORE KUMAR REDDY, ADVOCATE FOR R5;
R2 TO R4 ARE SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S 173(1) OF MV ACT AGAINST THE JUDGMENT AND AWARD DATED 27.10.2017 PASSED IN MVC NO.205/2015 ON THE FILE OF THE SENIOR CIVIL JUDGE & MACT, MADIKERI, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

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

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

1. The present appeal has been filed under Section 173(1) of the Motor Vehicles Act, 1988, seeks to challenge Judgment and Award dated 27.10.2017 in MVC No.205/2015, passed by the Senior Civil Judge and MACT at Madikeri [hereinafter referred to as the "Impugned Award"]. By the Impugned Award, a sum of Rs.2,29,801/- has been granted to the respondent No.1/claimant for damage to his vehicle being Eicher Lorry bearing number KA-12-A-1746.

2. None appears for respondents No.2 to 5 despite service. Given the pendency of this matter since the year 2018, this Court finds it apposite to hear and decide the petition today.

3. The facts relevant for adjudication of the present appeal are that on 17.04.2012 at around 04.30 p.m., the respondent No.1/claimant was driving his Eicher Lorry bearing No.KA-12-A-1746, being driven in a rash and negligent manner, entered into Bantwal-Mysore State Highway and collided with the lorry of the appellant/Insurance Company. Due to the accident, the damage was caused to the vehicle of the claimant. The respondent No.1/claimant filed a claim against his insurer New India Assurance Co. Ltd./respondent No.5 seeking compensation for damage caused to his vehicle. In pursuance of this claim and since the appellant/Insurance Company had a package policy and not a comprehensive policy, respondent No.5 paid an amount of Rs.2,02,000/- to the respondent No.1/claimant. Aggrieved by this

payment and since the respondent No.1/claimant had spent Rs.5,34,940/- to repair the vehicle and Rs.5,000/- as additional amount towards towing charges and conveyance, the respondent No.1/claimant filed a petition before the Kodagu District Consumer Disputes Redressal Forum, Madikeri in C.C. No.58/2014 (hereinafter referred to as 'the Consumer Complaint') for recovery of the amount.

4. During the pendency of the Consumer Complaint, respondent No.5 made payment of an additional amount of Rs.68,199/- to the respondent No.1/claimant. The respondent No.1/claimant has thereafter filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for the damage caused to the lorry. The insurance company which had insured the vehicle of the respondent No.1/claimant and others were made parties to the petition.

5. The learned Tribunal based on the pleadings filed by

the parties, framed the following issues:

ISSUES

1. *"Whether the petitioner proves that, on 17.04.2012 at about 4.30 p.m. at Dodda Honnur Farm Gate, B.M. Road, Near Bailukuppe of Periyapatna Taluk when one Vinod who was driven the Petitioner's vehicle i.e., Eicher Heavy Goods Vehicle bearing No.KA-12-A-1746, at that time the Respondent No.1 being the driver of Tipper Lorry bearing No.KA-02-D-9444 driven the said vehicle in a rash and negligent manner and suddenly entered into the Bantwal-Mysore State Highway without giving any signal and dashed to the aforesaid Eicher Lorry and caused damages to the Petitioner's vehicle?*

2. *Whether the Petitioner is entitled for compensation? If so, how much and who has to pay?*

3. *What order or award?"*

6. Based on the evidence placed on record by the parties, the learned Tribunal has held that since the respondent No.1/claimant has already received the sum of Rs.2,02,000/- in the first instance and Rs.68,199/- from the order passed by the District Forum totaling to Rs.2,70,199/-, the respondent No.1/claimant is entitled to the remaining compensation in the sum of Rs.2,29,801/- along with interest at 6% per annum.

7. Learned counsel for the appellant/Insurance Company has contended that the Impugned Order suffers from an infirmity. He submits that the respondent No.1/claimant could not have sought any amount from the appellant/Insurance Company of the offending vehicle. Since the respondent No.1/claimant was aggrieved by the amounts received, he filed the Consumer Complaint and in pursuance of which he has received additional amounts as well. Thus, he submits that the respondent No.1/claimant has already been adequately compensated for the damage caused to his vehicle.

8. Learned counsel for the appellant/Insurance Company seeks to rely upon the judgment of a Division Bench of this Court in ***New India Assurance Co., Ltd., Belgaum D.O. through its Regional Office Vs. Mrs. Sharmila Devadas and Others***[1] to submit that in a similar case the Division Bench of this Court has held that where the Insurer after establishing the value of the

[1] ILR 2010 KAR 3962 : 2010 SCC OnLine Kar 506

wreckage of a vehicle has assessed a certain amount and the respondent No.1/claimant has accepted the same and received those amounts, the respondent No.1/claimant is estopped from seeking a higher value for the damaged vehicle in proceedings before the Court. The learned counsel thus submits that liability could not have been fastened on the appellant/Insurance Company for this payment given the facts in the present case.

9. Learned counsel for the respondent No.1/claimant on the other hand contends that since he had expended Rs.5,34,940/- on the repair of the vehicle and only part amount was paid by his insurance company, the balance amounts were to be paid by the insurer of the offending vehicle being the appellant herein. In support of his contention, reliance is placed on the judgment of ***National Insurance Co., Ltd., Vs. Swaran Singh and Others***[2] as

[2] (2004) 3 SCC 297

well as on the judgment of a Coordinate Bench in ***R.P. Zuber Vs. Basavarajappa and Another***[3].

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

> *"If 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?"*

11. The undisputed facts in the present case are that the respondent No.1/claimant had applied for a policy of insurance of his own vehicle, by making payment of a sum of Rs.18,260/-. The policy dated 11.06.2011 [Ex.P.10] reflects that a premium has been paid by the respondent No.1/claimant at value of the vehicle insured in this policy which has been set out at Rs.4,96,987/- and that the policy that has been obtained is not a

[3] ILR 2015 KAR 4533

comprehensive policy but a package policy for the depreciated value of the vehicle.

12. It is the case of the respondent No.1/claimant that after the accident, he had repaired his vehicle for payment of an amount of Rs.5,34,940/- and that he has produced an invoice (Ex.P.14). A perusal of the order dated 10.09.2015 passed by the Consumer Forum (Ex.P.9) reflects that the respondent No.1/claimant filed a Consumer Complaint agitating that he had paid repair charges of Rs.5,34,940/- for the repair of his vehicle and that he has only received a part thereof.

13. The learned Consumer Forum after examining these contentions, found that there was an inordinate delay on the part of the complainant after the surveyor had submitted his final report and scrutiny report and the assessment of the loss had already been made. The surveyor also found that the vehicle was not dismantled in spite of several calls and that the vehicle was not repaired

for a very long time and a supplementary estimation was not furnished. These occurred on account of the inordinate delay on the part of the complainant. Once the surveyor produced its final and scrutiny report, the net loss was assessed as Rs.2,04,746/- of which a settlement sum of Rs.2,02,000/- was credited. The learned Consumer Forum thus held that as there is an inordinate delay on the part of the complainant leading to a delay in the final survey report and the claimant has accepted the claim as final settlement, the complainant/respondent herein is not entitled to receive the entire repair costs of the vehicle. The relevant extract of the order passed by Consumer forum on 10.09.2015 is set out below:

> *"2. On 17/04/2012 the said vehicle met with an accident and the said matter was reported to the opponent.* ***<u>Accordingly, the estimation and the survey reports have been submitted to the opposite party. The complainant further submits that he has paid the repair charges of Rs.5,34,940/-</u>*** *(Five lakh thirty four thousand nine hundred and forty only) to the Rashica Motors and he further submits that he has paid Rs.5,000/- towards towing charges.*
>
> *xxx xxx xxx*
>
> ***<u>8. ... As the vehicle was not dismantled inspite of several calls, the surveyor conducted the final survey on 03/07/2012, after the vehicle was</u>***

dismantled and as per the estimation dated 21/04/2012, the surveyor assessed the loss of Rs.2,91,306/-.

As the vehicle was not repaired for a long time the supplementary estimation was not furnished. ***Thus on account of inordinate delay on the part of the complainant.*** *The surveyor submits the final survey and scrutiny report on 11/09/2013 and assessed the net loss of Rs.2,04,746/-. As per the settlement a sum of* ***Rs.2,02,000/- is credited to the account of the complainant on 20/12/2013."***

"………..It is admitted that the accident took place on 17/04/2012 and ***the complainant received the sum of Rs.2,02,000/- on 20/12/2013 and subsequently a supplementary estimate prepared in January 2013 is submitted by the complainant after the gap of nine months from the date of accident and six months from the date of dismantle of the vehicle. Hence, the surveyor is also not convinced with the considering the same****.*

xxx xxx xxx

Subsequently on 03/02/2015 an addendum report was submitted by the Surveyor to the OP after considering the age of the vehicle and by deducting 15% and 50% depreciation slab on 'R' parts and following the, terms and conditions of the policy and the I.V value the liability of the insurer is fixed for a sum of Rs.68,198-98 and the same is deposited by the OP and the complainant received the same also.

9. On perusal of the complaint, and the objections of the OP and the documents submitted by both the parties, and their respective affidavits and arguments, we are of the opinion that, there is no deficiency of service from the OP. ***As there is inordinate delay on the part of the complainant to submit the final survey report and also the complainant has accepted the claim as final settlement, the complainant is not entitle to receive the entire repair cost of the vehicle, as prayed for in the complainant."***

[Emphasis Supplied]

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 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***[4] and held that the Tribunal ought to have directed the amount to be paid

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

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 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 not withstanding 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 tort feasor.*** *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."***
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> [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:

*"**<u>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.</u>***

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.

***<u>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.</u>** 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.*

xxx xxx xxx

<u>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 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</u>***

> ***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.)*** *[(1877) 3 App Cas 279 HL] "*
>
> *xxx xxx xxx*
>
> *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[5].*** 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

[5] 2003 SCC OnLine Kar 411

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 damages, 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 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 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.

21. In view of the aforegoing discussions, this Court finds no ground to interfere with the Impugned Judgment and Award. The appeal is accordingly ***dismissed***. All pending applications stand closed.

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

(TARA VITASTA GANJU)
JUDGE

BVK/Yn
List No.: 1 Sl No.: 18