

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 952 OF 2014

Cholamandalam MS General
Insurance Co. Ltd. Through its
Manager Kapil Tower, "C" Wing,
6th Floor, Dr. Ambedkar Road,
Near RTO Office, Pune.

.. Appellant

Versus

1. Shahid Bhagat Singh Krida &
Sanskrutik Mandal, through
its Secretary,
Damodhar Raghunath Mankape,
Age : 55 Years, Occu. : Business,
R/o Shaheed Bhagat Singh
High School, P-61, Balaji Nagar,
MIDC Area, Waluj,
Aurangabad.
 2. Harishbhai Ranchodbhai Ramani,
Age : Major, Occu. : Driver,
R/o Morwad, Buda, District Sundernagar,
Gujrat.
 3. Noormohammad S/o Motibhai Sama,
Age : Major, Occu. Business,
R/o C/o Nandram Gondaliya,
At Umarda Muli S.O. Surendra
Nagar, Gujrat - 362 510.
- .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Appellant.
Shri Rajendra B. Dhakane, Advocate for the Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.

DATE : 14TH OCTOBER, 2015.

ORAL JUDGMENT :-

. The claim petition was filed under Section 166 of the Motor Vehicles Act, for damage caused to the vehicle. The same is partly allowed. Aggrieved thereby the insurance company of the other vehicle involved in the accident has filed the present appeal.

2. Mr. Chapalgaonkar, the learned counsel submits that, while assessing the damage caused the Tribunal has not considered the evidence on record in its correct perspective. The surveyor report is produced, however, no bills are produced to show the payment of the said amount. According to the learned counsel, the surveyor has also not shown the depreciated value of the survey report. According to the learned counsel, when there is no proof of the amount being paid by the respondent No. 1 for the repair of the vehicle, the respondent No. 1 does not have any right to claim the said amount from the appellant. The appellant would not be bound to pay the amount under the head of loss to the property unless and until it is shown that, the respondent No. 1 has sustained the said loss and had to make payment of the said loss. It is only if, the respondent No. 1 has made payment of the said alleged loss, then only present appellant would be liable to make good the said loss. The learned counsel submits that, for

body part also Rs. 1,20,000/- is separately claimed, which is erroneous. The learned counsel further submits that Rs.1,04,130/- is awarded on the ground that, the respondent No. 1 was required to hire another bus for a period of 5 months. According to the learned counsel, the charges paid would not come within the ambit and purview of Section 166 of the M. V. Act. The learned counsel relies on the judgment of the Division Bench of Madhya Pradesh High Court in a case of **Rajkumar V/s. Mahendra sindh and others** reported in **AIR 1985 MP 4**.

3. Mr. Dhakne, the learned counsel for the respondent No. 1 submits that, the tax invoice in respect of the amount paid is produced on record. The General Manager of the said Automotive Ltd. is also examined to prove the same. The tax invoice is issued only after payment of the said amount. The learned counsel submits that, the bills are proved by examination of the witnesses. According to the learned counsel, the amounts spent towards the hire of the bus would also come in consequential losses. The same has been rightly awarded.

4. With the assistance of the learned counsel I have gone through the judgment and the record and proceedings.

5. There is no dispute that, the accident has taken place.

There also can not be any dispute that, the vehicle had sustained damage. The only dispute is in regard to the assessment of the said damage. The tax invoice has been produced, so also, the photocopies from Exh. 57/1 to Exh. 57/4 showing the actual condition of the mini bus after the accident. The surveyor is examined and the assessment is at Exh. 56. The loss was Rs. 4,76,565/-. The said factum is proved by the examination of the witnesses, production of the tax invoice which is certainly after the amount has been paid. Even the amount towards the body repair has been specified and the bill to that extent has been produced. There cannot be any dispute that, the respondent No. 1 had to spend an amount of Rs. 5,98,365/-.

6. As far as, the hire charges of bus are concerned the said bus is hired for 5 months. While awarding general damages even, the concept of remoteness of damages, the theory of mitigating damages is required to be considered, that would be in case when the damages are awarded under the Tort. Perusal of Sections 165 and 166 of the M. V. Act, the application can be filed by the owner of the property for the damages sustained to any property of third party. It does not state about, the claim for the damages sustained by any person on account of the damages other than property. The wordings in the said provisions are amply clear. The phraseology of the said provision lays down the claim with regard to the damages of any property. The literal

interpretation is succinctly clear and does not involve any ambiguity. The literal meaning of the said provision will have to be considered while arriving at the ambit and the purview of the said provision.

7. In the case of **Rajkumar V/s. Mahendra sindh and others** referred to supra the Division Bench of the Madhya Pradesh High Court also had held that, the compensation for loss of business in respect of damaged vehicle remained idle cannot be adjudicated by the claims Tribunal.

8. In light of the above, the claim awarded of Rs. 1,04,136/- towards the rent paid on account of hiring the bus can not be granted and the same is required to be disallowed.

9. In the result I pass the following order.

10. The appeal is partly allowed. The order passed by the Tribunal is modified. The original opponent Nos. 1 to 3 i. e. the present appellant and respondent Nos. 2 and 3 are jointly and severally liable to pay an amount of Rs. 5,98,365/- to the claimant /present respondent No. 1 with interest at the rate of Rs 7% per annum on the compensation amount from the date of petition till realization.

11. The amount deposited in this Court be adjusted towards the payment as on the date the said amount is deposited. The claimant is allowed to withdraw the amount as per the order passed by this Court. The balance amount is allowed to be withdrawn by the appellant/Insurance company. No costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15