

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

MACA.No. 2621 of 2009 ()

AGAINST THE AWARD IN OPMV 3369/2002 of M.A.C.T.,KOZHIKODE
DATED 26-07-2008

APPELLANT(S)/PETITIONER:

M.M.MUHAMMED MUSLIAR, AGED 86 YEARS,
S/O. MARAKKAR KUTTY MUSLIYAR, PALATTUPARAMBIL HOUSE,
P.O.VELLIPARAMBA, CALICUT-673008.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENT(S)/RESPONDENTS:

1. USMANKUTTY, S/O. AHAMED,
THEKKETHODIKA HOUSE, P.O. CHERUVADY, VIA MAVOOR,
CALICUT., (R.C.OWNER OF KL-11-L-4245 LORRY)

2. UNITED INDIA INSURANCE CO. LTD.,
DIVISIONAL OFFICE II FLOOR, CALICUT.

R2 BY ADV.P.V.JYOTHIPRASAD

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 30-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.No.2621 of 2009

Dated this the 30th day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

Inadequacy of the compensation fixed by the Tribunal in respect of the property damage sustained by the appellant, when the building belonging to him was virtually demolished by a tipper lorry bearing No.KL/11-L-4245 belonging to the 1st respondent and insured by the 3rd respondent in an accident occurred on 27.4.2001, granting only a paltry sum of Rs.52,500/- as against the claim of Rs.5,58,424/- as assessed in Ext.P1 surveyor report, is under challenge in this appeal.

2. The case of the appellant is that the building belonging to him situated on the side of the road sustained serious damage when a tipper lorry as

aforesaid dashed against the building on 27.4.2001 at 7 a.m.. The building consists of 5 separate rooms, out of which 3 rooms were situated on the ground floor and 2 rooms on the first floor. The building, in fact, is a tiled one. The Damage sustained to the appellant was got assessed by an approved valuer of the Insurance Company as evident from Ext.A1 wherein the figure given is Rs.5,58,424/- which in turn was claimed by the appellant.

3. The 1st respondent/owner of the tipper lorry did not contest the matter. The Insurance Company admitted the coverage, however, contended that the amount claimed was excessive. The surveyor, who conducted the loss assessment and submitted as Ext.A1 report, was examined as P.W.1 from the part of the claimant, besides marking Exts.A1 to A8. The Tribunal arrived at a finding that the involvement of the vehicle was admitted and hence that the respondents were jointly and severally liable to compensate the claimant.

4. With regard to the quantum of compensation payable, making a reference to the documents issued by the local authority and relevant police records, it was observed by the Tribunal that the building was an old one. Referring to the deposition of P.W.1 and the nature of materials used for construction of the building, the Tribunal observed that, as evident from the photographs, it was revealed that old building materials were used for construction of the building. The desire of the appellant to have the same reconstructed and the subsequent development, effecting the reconstruction setting up an RCC building as on date, were also referred to in the penultimate paragraph. Observing that the damaged building was in existence for more than 50 to 60 years, the Tribunal held that the claim was highly excessive and only a sum of Rs.75,000/- could be fixed as damages. After reckoning depreciation to an extent of 30%, the compensation payable was fixed as Rs.52,500/- which was directed to be satisfied by the

Insurance Company with interest @ 6% per annum. This is under challenge in the appeal preferred by the claimant.

5. The learned counsel appearing for the Insurance Company submits that P.W.1, who performed the alleged loss assessment was only a surveyor empowered by the company for 'Motor surveys' and he was not duly qualified to conduct the loss assessment in respect of damage sustained to any building, which is sought to be rebutted by the learned counsel for the appellant. However, the fact remains that extensive damage was caused to the building belonging to the petitioner and the building requires substantial reconstruction as revealed from the photographs produced.

6. With regard to the assessment of damage, it is not seen properly quantified, but for Ext.A1, authenticity of which is seriously disputed by the Insurance Company. Whether P.W.1 was a duly qualified Engineer/loss assessor, who had competency and

qualification to have assessed the damage caused to the building is not known. The Tribunal has observed that, during the course of examination P.W.1 has deposed that the actual cost of reconstruction was not assessed by him, but gathered on the basis of the information obtained from other sources. A proper and meticulous analysis of the facts and figures requires to be made in this case, so as to quantify the actual loss. No reason or aiding factor is discernible from the award passed by the Tribunal, to have restricted the extent of damage to Rs.75,000/- and to have deducted 30% towards depreciation; thus limiting the same to Rs.52,500/-. This Courts finds that the matter requires to be reconsidered.

7. Accordingly, the impugned award is set aside and the case is remitted for proper consideration with liberty to both the sides to adduce evidence as to the actual damage for fixing the compensation accordingly. The proceedings shall be finalised at the earliest, at any rate, within 'four months' from

today. The parties shall appear before the Tribunal on 26.10.2015. The records obtained from the Tribunal shall be retransmitted to the Tribunal forthwith.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.