



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.34 of 2017

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T.Saradambal,
Wife of Thangappan,
No.52, Kamarajar Road,
Srinivasapuram,
Thanjavur,
Rep. by her power of Attorney,
A.Karthikeyan

... Appellant/Respondent/Plaintiff

Vs.

1.M/s.United India Insurance Company Limited,
Rep. by its Divisional Manager,
South Main Street,
Thanjavur,
Thanjavur District.

2.The Regional Manager,
United India Insurance Company Limited,
No.7A, West Veli Street,
Near Railway Station,
Madurai.

3.The United India Insurance Company Limited,
No.24, Whites Road,
Chennai.

... Respondents/Appellants/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 18.01.2016 passed in A.S.No.03 of 2015, on the file of the II Additional District and Sessions Judge, Thanjavur, reversing the judgment and decree dated 24.07.2014 passed in O.S.No.11 of 2013, on the file of the Principal Subordinate Court, Thanjavur.

For Appellant	: Mr.V.Chandrasekar
For Respondents	: Mr.I.Suthakaran

JUDGMENT

This second appeal has been directed against the Judgment and decree, dated 18.01.2016 passed in A.S.No.03 of 2015, by the II Additional District and Sessions Judge, Thanjavur, wherein, the Judgment and decree, dated 24.07.2014, passed in O.S.No.11 of 2013, by the Principal Subordinate Court, Thanjavur, are reversed.

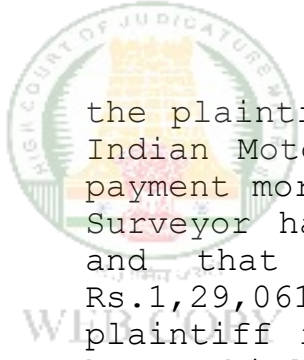


2.The appellant herein as plaintiff has instituted a suit in O.S.No.11 of 2013 on the file of the trial Court for recovery of money for a sum of Rs.4,20,000/- with interest and costs, wherein, the respondents have been shown as defendants.

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3.In the plaint it is averred that the appellant / plaintiff is the owner of the Car bearing Registration No.TN-49-AB-2856. The third defendant-Insurance Company is the insurer of the vehicle, the second defendant is the in-charge of the affairs of the Insurance Company and the first defendant is the Policy Issuing Officer of the Insurance Company. The vehicle owned by the plaintiff met with an accident on 15.05.2010 and a complaint was lodged before Sozhatharam Police Station, Cuddalore District. The vehicle was handed over to Jayaraj Karz for retrieval on 21.05.2010. On 13.07.2010, the Surveyor has sent a communication to the plaintiff stating that the plaintiff has to bear around Rs.50,000/- in respect of depreciation factor and if the plaintiff has agreed to retain the wreck to the value of Rs.1,00,000/-, then the balance amount from the declared value will be settled by the Insurance Company. The plaintiff submits that as per the policy, the insured's declared value of the vehicle is Rs.3,00,000/-. The premium was collected by the Insurance Company is in accordance with the provisions of Indian Motor Tariff. As far as this case is concerned, the repairer has given an estimate to the Insurance Company to the tune of Rs.3,51,061/-, which is over and above the insured declared value of Rs.3,00,000/- and therefore, the loss contemplated in GR.8 of the Indian Motor Tariff. The plaintiff has paid an amount of Rs.15,000/-. But the Surveyor of the Insurance Company has given a report applying the depreciation factor which would be applied only to partial loss claims. Even as per the Surveyor's assumption, the loss comes to Rs.3,51,061/-, which is over and above the insured declared value, but the Surveyor applying the depreciation factor has given a report that the plaintiff is entitled only to an amount of Rs.1,21,061/-. As per the final bill issued by the repairer, the entire amount comes to Rs.3,00,000/-. The plaintiff has paid a sum of Rs.1,15,000/- by way of dismantling charges and advance and the remaining amount was paid by the plaintiff on 29.10.2012 and the vehicle was taken delivery by the plaintiff. Therefore, the plaintiff has filed the suit directing the defendants to pay an amount of Rs.3,20,000/- with subsequent interest towards the amount incurred for repairing the vehicle which was already spent and directing the defendants to pay an amount of Rs.1,00,000/- towards compensation towards pain and mental suffering.

4.In the written statement filed on the side of the defendants, it is averred that the vehicle bearing Registration No.TN-49-AB-2956 was insured with the defendants Company. It was alleged that the plaintiff has reported that her vehicle met with an accident on 15.05.2005 and sent the connected papers for claiming insurance. The



the plaintiff. The interpretation relating to the provisions of the Indian Motor Tariff is not correct. The defendants could not make payment more than the assessed value determined by the Surveyor. The Surveyor has rightly and correctly applied the depreciation factor and that the plaintiff is entitled only to an amount of Rs.1,29,061/-, which cannot be termed as erroneous. At any rate, the plaintiff is not entitled to Rs.4,20,000/- towards the damages for her vehicle and compensation for pain and mental suffering and hence, the defendants prayed for dismissal of the suit.

5. On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both oral and documentary evidence has decreed the suit and stated that the plaintiff is entitled to get Rs.3,00,000/- from the defendants towards the amount incurred for repairing the vehicle and Rs.10,000/- towards the compensation for pain and sufferings of the plaintiff. Against the Judgment and decree passed by the trial Court, the defendants as appellants has preferred an Appeal Suit in A.S.No.03 of 2015 on the file of the first appellate Court.

6. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has allowed the appeal in part and the Judgment and Decree of the trial Court in O.S.No.11 of 2013, dated 24.07.2014 is set aside with regard to the cost of repairing of Rs.3,00,000/- and the plaintiff is entitled to repairing cost of Rs.1,29,515/- with interest at the rate of 12% per annum from the date of 07.04.2011 till the date of disbursement to the plaintiff and confirmed the amount of Rs.10,000/- with regard to the compensation. Against the Judgment and decree passed by the first appellate Court, the present second appeal has been preferred at the instance of the plaintiff as appellant.

7. At the time of admitting the present second appeal, the following substantial questions of law have been framed for consideration:

"a) Whether the first Appellate Court is right in applying G.R.9 of the India Motor Tariff instead of G.R.8 of the India Motor Tariff when the appellant has incurred more than 75% of the Insured Declared Value (IDV) towards cost of retrieval of the vehicle?

b) Whether the interpretation of the first Appellate Court regarding the applicability of the principle of depreciation is in tune with the tenor of the provisions contemplated in the India Motor Tariff whereas the depreciation could be made applicable only in case of partial loss claims only as per G.R.9 of the India Motor Tariff?

c) Whether the approach of the first Appellate Court is perverse in nature due to non-consideration of the D.W.1 about the loss sustained by



the appellant as total constructive loss as per the provisions of India Motor Tariff which amounts to admission as contemplated in the Indian Evidence Act?"

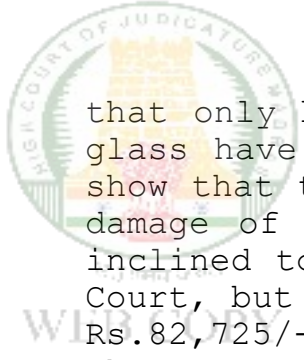
8.The learned counsel appearing for the appellant/plaintiff contended that the first Appellate Court has failed to note that if the aggregate cost of retrieval or repair exceeds 75% of the insured declared value, then it should be construed as a total constructive loss and the insurance company is liable to pay the insured declared value. The first Appellate Court has also failed to note that G.R.8 of the Indian Motor Tariff alone is applicable, because the total cost of retrieval exceeds 75% of the insured declared value and prayed for allowing the Second Appeal.

9.The learned counsel appearing for the respondents/defendants would submit that the first Appellate Court has rightly allowed the first appeal in part and prayed for dismissal of the Second Appeal.

10.Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

11.On going through the documents available on record, it is seen that the spares has been estimated at Rs.2,68,336/-, but the Surveyor has assessed the same by giving value and it comes around Rs.86,015.88/-. Regarding the estimation for labour value, it is Rs.82,725/-, but, the said Surveyor has assessed it totally as Rs.41,000/- and there is no reason stated in the note how he has arrived at the said labour as Rs.41,000/- when estimation is given at Rs.82,725/-. Hence, this Court is of the view that the first Appellate Court is wrong in reversing the trial Court Judgment regarding the labour alone. As it is seen that even though the outer portion of the said Car has been damaged, as the Driver had applied brake and steered to left in order to avoid dashing against a old man, lost control, pulled to the left and rolled down the bridge. The said vehicle sustained damages in the outer parts, namely the glasses, doors and wipers have been damaged. No other damages have been found regarding the seat or engine or inner parts of the said vehicle. The outer part of the said vehicle has been mostly damaged. The value given by the said Surveyor is accepted, but regarding the labour which has been pointed out by the appellant's counsel that the said vehicle has been lying in the garage for more than two years and when there was a communication between the parties to show that when and how the payments could be paid by the Insurance Company to the garage dealer the time taken to repair is substantiated. The calculation made, as per the said India Motor Tarrif by the owner / plaintiff which will apply for totally damaged car only, but the said car has not been totally damaged. Even though the appellant counsel stated that it is totally damaged, the amount

<https://hcservices.mca.gov.in/hcservices/> service records are more than 75% of the vehicle, but in reality when seen



that only bumper, blade and wiper and dent on some parts and other glass have been broken and in the absence of any other material to show that the vehicle cannot be repaired at all it is not the total damage of the vehicle and that being the case, this Court is not inclined to interfere with the Judgment made by the first Appellate Court, but only to an extent that estimated labour value is given as Rs.82,725/-, but assessed as Rs.41,000/-. This Court is of the view that we cannot assess the liability based on the work order issued to the dealer on 07.04.2011 from the Insurer, as the repair work was not completed. The parts which are to be replaced this Court is not having any expertise and it is the Surveyor who has to estimate the loss and expenditure. It is pointed out that the Surveyor could not hold the said file for a long time for want of getting the work completed and has released the final Surveyor report without any basis regarding the labour charges. As this Court already pointed out, labour charges alone has to be paid to the appellant instead of Rs.41,000/- it should be Rs.82,725/- found in the estimate and the amount to be deducted by the Surveyor.

12. Accordingly, the Insurance Company is hereby directed to pay the remaining amount of labour fee, after deducting Rs.41,000/-, which has already been deposited, within a period of two months from the date of receipt of a copy of this order. In all other aspects, the Judgment and Decree passed by the first Appellate Court remains unaltered. The substantial questions of law are ordered accordingly partly in favour of the plaintiff and partly in favour of the defendants.

13. In fine, this second appeal is allowed in part without costs and the judgment and decree, dated 18.01.2016 passed in A.S.No.03 of 2015, on the file of the II Additional District and Sessions Judge, Thanjavur is modified. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant

<https://hcservicesportal.in/hcservices/>



To

1.The III Additional District and Sessions Judge,
Thanjavur.

2.The Principal Subordinate Judge,
Thanjavur.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.I.SUTHAKARAN, Advocate (SR-34405[F] dated 12/11/2021)

+1 CC to M/s.V.CHANDRASEKAR, Advocate (SR-34420[F] dated 15/11/2021)

S.A(MD)No.34 of 2017

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PS(CO)

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