Vinod Kumar Vs. Tata Aig General Insurance Co.Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/976905

Court : Delhi

Decided On : Jul-01-2013

Judge : Suresh Kait

Appellant : Vinod Kumar

Respondent : Tata Aig General Insurance Co.Ltd. and anr.

Judgement :
$~2 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:1st July, 2013 % + MAC.APP. 486/2007 VINOD KUMAR Through: ..... Appellant Mr.J.M.Kalia, Advocate. Versus TATA AIG GENERAL INSURANCE CO.LTD. & ANR. ..... Respondents Through: Mr. Sanjeev Ranjan for Mrs.Shantha Devi Raman, Advocate for Respondent No.1/Insurance Company. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. Vide the instant appeal, the appellant is seeking enhancement of the compensation awarded by the learned Tribunal vide impugned award dated 02.02.2007, whereby the learned Tribunal has granted compensation in favour of the appellant as under: Spare parts Labour Charges etc. Mental suffering Total Compensation 2. : : : Rs. 4,100/Rs. 8,745/Rs.10,000/- : Rs.22,845/- Case of the appellant before the learned Tribunal was that on 06.12.2004 at about 12.30 or so in the night one Santro Car bearing No. DL2CH-7770 parked in the parking lot caught fire accidentally. The local police and Delhi Fire Services were informed. However, till fire was extinguished by the fire officials, Maruti Car of the appellant also caught fire as same was parked in the same parking adjacent to the Santro

Car. As a result of fire, the front and left side of the Maruti Car was completely burnt damaging the left door, bonnet, engine, AC and front door along with respective accessories.

3. Learned counsel appearing on behalf of the appellant submits that the learned Tribunal in para 11 has recorded as under:11. Petitioner has examined PW3 Shri Aftab who has proved two bills bearing Serial No.1699 and 889 which are ExPW3/1 and ExPW3/2. These bills are in respect of repair carried out in the vehicle of petitioner. Bill Ex.PW3/1 is for the sum of Rs.4030/- for the spare parts used and bill ExPW3/2 is for Rs.18,745/- but witness has not brought receipt of the bills which could have shown whether the amount was paid by petitioner or not or whether entire amount was paid by petitioner or not. Petitioner has also appeared in evidence as PW4 and has reiterated the allegations made in the petition. Petitioner has been cross-examined at length by Ld counsel for the insurance company. No evidence has been led by the insurance company in order to rebut the claim of petitioner. In the absence of any evidence in rebuttal by the insurance company I am of the opinion that testimony of petitioner witnesses being uncontroverted and unchallenged is to be accepted. However considering the bill ExPW3/2 wherein the labour charges of Rs15,000/- are mentioned, it appears to be highly excessive and not appropriate. Because as per the case of PW3 itself the spare parts was to the tune of Rs.4030/- and for that spare parts it is not possible to imagine that labour charges of Rs15,000/- would have been charged. Hence I allow Rs.4030/- (rounded figure Rs4100/-) for the amount of spare parts and cost of Rs5,000/- for labour charges. Therefore as per ExPW3/2 petitioner is allowed Rs.8745/-instead of Rs.18745/-. For general damages ie for mental suffering which petitioner might have suffered due to non availability of vehicle and for repairing of vehicle a sum of Rs.10,000/- is awarded to petitioner.

4. Learned counsel submits that Ex.PW4/4 is the duplicate receipt dated 21.08.2006, wherein it is indicated that vide Cheque No.620039 dated 11.03.2005 a payment of Rs.22,500/- has been made in favour of Shalimar Automobiles Pvt. Ltd., C-91/9, Ashok Vihar Crossing, Delhi-110052 by Mr. Vinod Kumar Askaran Das/appellant. Photocopy of the pass book of the appellants bank account bearing No.9183 maintained with Union Bank of India shows that the amount of

Rs.22,500/- has been debited from his account on 14.03.2005.

5. He submits that out of the total amount of Rs.18,745/-, the learned Tribunal has granted only Rs.8,745/- which is less amount as claimed by the appellant.

6. Learned counsel further submits that the battery of the vehicle was also changed vide bill dated 28.03.2005 Ex.PW4/2, however, no amount has been granted by the learned Tribunal for the same.

7. Learned counsel appearing on behalf of the respondent No.1/Insurance Company has drawn the attention of this Court to para 12 of the impugned award wherein the learned Tribunal has recorded as under:12. Petitioner has also placed on record the bill ExPW4/2 for the sum of Rs1650/- which is for the battery of the car. The bill is dated 28.3.05. But the same is not allowed to petitioner as in cross examination PW3 has stated that there was no effect on the engine and its parts. Therefore the battery was not damaged due to the fire. Hence this amount cannot be allowed to petitioner.

8. The learned Tribunal has recorded in para 10 that in evidence the appellant has stated that his Maruti car bearing not DL-3CC-0972 caught fire because of the fire of Santro Car bearing not DL-2CH-7770 which was parked near the vehicle of appellant. The appellant has examined PW1 who has stated that fire could have been caught due to the short circuit. But short circuit could not have been possible in the Santro Car as the same was parked in its ignition off. No cause of fire has been explained or proved by the parties. But it is admitted fact that the Santro Car was completely damaged due to fire which was caught by the car of appellant which was parked near Santro Car as noted above.

9. In view of the above, the learned Tribunal has opined that Maruti car of appellant bearing not DL-3CC-0972 got damaged in the fire due to fire arising in the Santro Car.

10. The learned Tribunal has further recorded that the appellant had examined PW3 Shri Aftab who has proved two bills bearing Serial Nos.1699 and 889 which are Exs.PW3/1 and PW3/2. These bills are in respect of repair carried out in the

vehicle of appellant. Bill Ex.PW3/1 is for Rs.4,030/- for the spare parts used and bill Ex.PW3/2 is for Rs.18,745/- but the witness has not brought receipt of the bills which could have shown whether the amount was paid by the appellant or not or whether entire amount was paid by the appellant or not. The counsel for the appellant has referred receipt of payment made to the Automobile Company, as noted above. Moreover, he has referred the photocopy of the pass book which shows that an amount of Rs.22,500/- has been debited from his account.

11. In view of the above, I am of the opinion that the learned Tribunal has granted a less amount, i.e., Rs.10,000/- from the total amount of Rs.18,745/paid by the appellant to the Automobile Company.

12. As the charges of battery are concerned, the appellant has only made a bald statement but has not produced any proof qua the fact that battery was damaged in the incident in question. When the engine of the car has not been damaged then the battery, an adjoining part thereof cannot be affected. Therefore, the learned Tribunal has rightly opined that it cannot be said that the battery was also got damaged. So, in my view the learned Tribunal has rightly not granted any compensation qua the replacement of the battery.

13. In view of the above discussion, I enhance the compensation amount by Rs.10,000/-, which comes to Rs.22,845/- + Rs.10,000/- = Rs.32,845/-.

14. The appellant is also entitled to interest at the rate of Rs.6 per cent on the enhanced amount of Rs.10,000/- from the date of filing of the petition, i.e., 22.07.2005 till its realization. In addition, the respondent No.1/Insurance Company shall pay Rs.5,000/- as litigation charges to the appellant.

15. Accordingly, the Insurance Company is directed to pay the enhanced amount as directed by this Court in above para within four weeks from today, failing which the appellant shall be entitled to interest at the rate of 12% p.a. on the delayed payment.

16. The instant appeal is allowed on above terms. SURESH KAIT, J.

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