IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 3RD DAY OF JUNE 2022 / 13TH JYAISHTA, 1944

MACA NO. 848 OF 2012

AGAINST THE AWARD DATED 25.10.2011 IN OP(MV)NO.1825/2005

OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR

APPELLANT/PETITIONER :

ANTONY,
S/O.THOMAS,
THEKKEKKARA HOUSE,
VAPPALASSERY, ANGAMALY.

BY ADVS.
SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER
SRI.SAJEN THAMPAN
SRI.CAESAR V PILLA

RESPONDENTS/RESPONDENTS 1 TO 3 & ADDITIONAL 4TH RESPONDENT :

1 **V.K.SURESH,**
VAZHAYIL HOUSE, VAIKARA P.O.,
PERUMBAVOOR-683 545.

2 **THE NEW INDIA ASSURANCE COMPANY LIMITED,**
PERUMBAVOOR-683 545.

3 **THE NEW INDIA ASSURANCE COMPANY LIMITED,**
SM SHOPPING COMPLEX, ALUVA ROAD,
ANGAMALY-686 001.

4 **SREENIVASAN,**
S/O.THEVAN, NEELAMVELI VEETTIL,
MENOTHPARA BHAGAM, VAIKKARA,
ASAMANNOOR-686 001.

BY ADV.SMT.P.K.SANTHAMMA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 03.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R."

A.BADHARUDEEN, J.

MACA No.848 of 2012

Dated this the 3rd day of June, 2022

J U D G M E N T

The appellant, who is the petitioner in O.P.(MV)No.1825 of 2005 on the file of the Motor Accidents Claims Tribunal, Perumbavoor, has preferred this appeal and he assails award dated 25.10.2011 in the above case. Respondents herein are the respondents before the Tribunal.

2. Heard the learned counsel for the appellant/petitioner as well as the learned counsel appearing for the insurance company.

3. The appellant, who sustained damages to his

car bearing registration No.KL-7/AK-5683 and personal injuries in a motor accident occurred on 02.04.2005 at about 1.30 p.m. moved two separate applications before the Tribunal claiming compensation for the same.

4. The specific case put up by the appellant before the Tribunal in this matter is that, while he was driving his car bearing registration No.KL-7/AK-5683 through Aluva-Munnar road, a mini lorry driven by the fourth respondent in a rash and negligent manner hit against the car driven by the appellant and in consequence thereof, the appellant sustained personal injuries and also sustained damages to his car. The specific contention put up by the appellant before the Tribunal is that since he had obtained Rs.3,36,651/- from the second respondent, the insurer of his own car, he is entitled to get the balance amount of Rs.1,84,015/- from the third respondent who is the insurer of

the mini lorry, since he sustained a total loss of Rs.5,20,666/-.

5. The third respondent resisted the contention on the ground that the appellant could not claim the amount already received again and therefore, the claim could not be adjudged in favour of the appellant.

6. The learned Tribunal jointly tried O.P.(MV)No.1825 of 2005 (the case on hand) and connected O.P.(MV)No.1824 of 2005 (personal injury case) relying on Exts.A1 to A7 marked on the side of the petitioner and Ext.B1 placed by the respondents. Ext.X1 also was relied on by the Tribunal.

7. After appraising the evidence, the learned Tribunal dismissed O.P.(MV)No.1825 of 2005 while allowing O.P.(MV)No.1824 of 2005.

8. It is argued by the learned counsel for the

appellant that since the appellant sustained a total loss of Rs.5,20,666/-, adjusting the amount already received, the remaining amount of Rs.1,84,015/- is liable to be paid by the third respondent, who is the insurer of the mini lorry involved in the accident, since the driver of the said lorry contributed the accident.

9. Negativing this contention, the learned counsel for the insurance company, the third respondent would submit that, acting on the policy issued in relation to the vehicle owned by the appellant, covering total damages, the second respondent assessed the total damages to the vehicle to the tune of Rs.3,36,651/- after reducing the depreciation value on the basis of valuators report. Therefore, the appellant is not entitled to get any amount as claimed and the verdict of the Tribunal in this regard is perfectly in order and the same does not require any

interference.

10. While addressing the point in dispute, the relevant question is; can a claimant who was compensated by his own insurer is entitled to get any compensation again for the very same damages from the owner or insurer of the offending vehicle?

11. It is relevant to note that while dismissing the claim put up by the appellant, the learned Tribunal relied on two decisions of this Court. The first decision is one reported in [2005(2) KLT 259], **Jacob Joseph v. Devassy** and another decision reported in [2009 ACJ 326], **National Insurance Company Ltd. v. M.S.Mohan and Others**.

12. In **Jacob Joseph**'s case, this Court considered the claim put up by the claimant, when the elephant belonged to the claimant sustained injuries. In the said case, applying the principles of subrogation, this Court

negatived the contention of the appellant. In this connection, it is relevant to refer five Bench decision of the Apex Court reported in [2002 KHC 127], **New India Assurance Company Ltd. v. Jaya**. In the said decision, the larger Bench considered the liability of the insurance company in tune with Section 95(2) of the Motor Vehicles Act, 1939 and it was held that liability of the insurance company is limited and lesser than the statutory liability under Section 95(2) and in case, an insurance policy will not take any higher liability by accepting a higher premium, such higher liability cannot be given.

13. In the decision reported in [2008(2) KLT 613], **National Insurance Company Ltd. v. M.S.Mohan and Others** relied on by the Tribunal, this Court categorically held that when the claimant was compensated by his own insurer after executing full and final discharge voucher, he is not

entitled to get any compensation again for the very same damages from the owner or insurer of the offending vehicle.

14. In this case, the crucial question of law involved is nothing but law of subrogation. Before discussing the law of subrogation, it is an undisputed fact that though the appellant claimed Rs.5,20,666/- as total compensation for the damages for his car, his own insurer, acting on the policy issued to cover the damages of the car, assessed the same at Rs.3,36,651/- and the said amount was given to the appellant. As per Ext.X1 survey report obtained in the present case, the total amount assessed by the valuator is Rs.2,99,800/-, which is less than the amount already obtained by the appellant from his own insurer. Thus, it appears that the second respondent assessed the total amount entitled by the appellant at Rs.3,36,651/- and as per Ext.X1 report, the assessment was Rs.2,99,800/- which is

less than the amount assessed by the insurer of the appellant.

15. It is, in this context, the principle of subrogation required to be discussed. Subrogation literally means '*the act of substituting of one creditor for another*'.

16. Black's Law Dictionary defines subrogation as under;

> *The substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor. For example, a surety who has paid a debt is, by subrogation, entitled to any security for the debt held by the creditor and the benefit of any judgment the creditor has against the debtor, and may proceed against the debtor as the creditor would. Subrogation most commonly arises in relation to insurance policies. 2. The equitable remedy by which such a substitution takes place. 3. The principle under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy.*

17. P. Ramanatha Aiyar's Major Law Lexicon, defines subrogation as;

> *Substitution of another person in the place of a creditor, so the person in whose favour it is exercised succeeds to the rights of the creditor in relation to the debt. The doctrine is one of equity and benevolence, and like contribution and other similar equitable rights was adopted from the civil law, and its basis is doing complete, essential, and perfect justice between all the parties without regard to form, and its object is the prevention of injustice. The right does not rest on contract or privity, but upon principles of natural equity, and does not depend upon the act of the creditor, but may be independent of him and also of the debtor.*

18. In fact, the principle of subrogation is incorporated under Section 69 of the Indian Contract Act, 1972 and it provides that any person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other person. Section 92 of the Transfer of Property Act also recognises the principle of subrogation. In the constitution

Bench decision reported in [(2010) 4 SCC 114], **Economic Transport Organisation v. Charan Spinning Mills (P) Ltd. and another,** the Apex Court held that law of insurance recognises an equitable corollary of the principle of indemnity that when the insurer had indemnified the assured/insured, the rights and remedies of the assured/insured against the wrong doer stand transferred to and vested in the insurer. To put it otherwise, when the insurer under a policy discharged liability in terms of the contract of indemnity, the insurer who issued policy is subrogated in the place of the insured or stepped into the shoes of the insured and therefore, the insured cannot claim the said amount again from another insurer.

19. In the case on hand, the appellant already received compensation entitled on account of damages sustained to his car and therefore, the appellant could not claim anything more than the amount what has been assessed and given by his own insurer.

20. In view of the matter, the third respondent subrogated into the shoes of the appellant and therefore, the amount, if any, paid by the third respondent can be realised by the second respondent from the third respondent applying the principle of subrogation and therefore, the appellant is not entitled to get anything as claimed.

21. In view of the above discussion, I have no hesitation to hold that the Tribunal rightly dismissed the claim put up by the petitioner and the same is liable to be confirmed.

In the result, the appeal fails and it is accordingly dismissed. Considering the facts and circumstances of the case, both parties are directed to suffer their respective costs.

Sd/-

A.BADHARUDEEN, JUDGE

rkj