2023 INSC 1005

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1544 OF 2023

Bajaj Allianz General Insurance Co.Ltd. … Appellant

Versus

Mukul Aggarwal & Ors. … Respondents

with

CIVIL APPEAL NO.1545 OF 2023

BMW India Private Ltd. … Appellant

versus

Mukul Aggarwal & Ors. … Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. These appeals arise from a claim made by the first respondent, Mr Mukul Aggarwal (the owner), on account of damage caused to his BMW 3 Series 320D car (the car). The damage was caused due to an accident which took place near DLF Square at Gurgaon on 29th July 2012 between 12.30 am and 2 am. The impact of the accident was so much that the car was completely damaged and was beyond repair. The

owner of the car was a Director of Dassault Systems India Pvt. Ltd., Gurgaon (Dassault). As the owner was desirous of acquiring a BMW car for his personal use, he applied to Dassault for a grant of loan. Accordingly, a loan of Rs. 26,92,229/- was granted by a car financing company in the name of Dassault. On 17th May 2012, the owner purchased the car in the name of Dassault from M/s Bird Automotive Pvt. Ltd. (the Dealer), an authorised dealer of BMW India Pvt. Ltd. (BMW). While acquiring the car, the owner took two protections: the first was a motor insurance policy of Bajaj General Insurance Company Ltd. (the insurer), and the second one was the BMW Secure Advance Policy (the BMW Secure) of BMW. The owner paid a premium of Rs.59,158/-for the first policy. He paid a premium of Rs.24,831/- for the second policy. The Insured Declared Value (IDV) of the car was Rs.29,46,278/-. According to the case of the owner, a conjoint reading of the two policies shows that where the car suffers damage of more than 75% of IDV, a new car must be provided to the insured.

2. After the car met with the accident, the spot was immediately visited by the police and officials of the National Highway Authority of India (NHAI). The NHAI recorded the accident in its Daily Accident Report of 29th July 2012. Immediately after the accident, as the car could not be kept on a busy highway, it was shifted to BOSCH Car Workshop. According to the case of the owner, though he attempted to contact the Dealer, he did not get any response, therefore, the

car was shifted to BOSCH Car Workshop. On 30th July 2012, the damaged car was carried to the workshop of the Dealer. On 30th July 2012, according to the owner, he and Dassault filled up a Claim Form in the prescribed format and submitted it to the Dealer, who in turn submitted it to the insurer. While filling up the Claim Form, it was discovered that the Engine and Chassis numbers in the insurance policy issued by the insurer were incorrect. On 30th July 2012, the driver appointed by the owner who was driving the car went to the jurisdictional Police Station and lodged a complaint. The insurer corrected the Engine and Chassis numbers in the policy of insurance on 9th August 2012 and a fresh Claim Form was filed by the owner/ Dassault on 9th August 2012, making a claim under the general motor insurance policy as well as the BMW Secure.

3. The insurer appointed a surveyor who, after a Preliminary Survey, submitted a Report on 17th August 2012 which stated that the accident occurred as a truck proceeding in front of the car suddenly applied brakes, as a result, the car dashed against the truck. He estimated an approximate loss of Rs.25,00,000/-. The Dealer also got the damaged car surveyed and submitted a Repair Estimate Report concluding that the loss was to the extent of Rs.38,34,730/-. The Surveyor appointed by the insurer submitted his Final Survey Report on 7th January 2013, assessing the loss at Rs.25,83,012/- which could be regarded as a total loss.

4. As the claim under the policy was not dealt with, the owner filed a complaint before the State Consumer Disputes Redressal Commission, Delhi (the State Commission). An order was made by the State Commission directing the insurer to take a decision on the claim of the owner within one month and forward a copy of the said decision to BMW.

5. It must be noted here that apart from getting the Final Survey Report from the Surveyor, the insurer, without notice to the owner, appointed SHAPT professional services for the purpose of carrying out the survey. The said agency submitted a report on 3rd January 2013. By a letter dated 9th January 2013, the insurer repudiated the claim on the grounds that (a) there was a delay in submitting the claim, (b) the owner failed to reply to the letters of the insurer, (c) there was a difference in the description of the accident between the Claim Form and the Police Report, and (d) there was suppression of material facts as blood stains were found in the vehicle. However, there were no reasons recorded for coming to the said conclusions. As a result of the repudiation of the claim by the insurer, even BMW did not honour its commitments under the BMW Secure.

6. Therefore, the owner and Dassault filed a fresh complaint before the State Commission at Delhi. The prayer in the complaint was for issuing a direction to the insurer and BMW to either replace the completely damaged car with a new one or to pay the replacement on-road value of the equivalent

model of the car. The value was quantified at Rs.34,10,516/-. Apart from that, there was a prayer made for a grant of compensation of Rs.5 lakhs on account of mental torture, etc. The State Commission held that the insurer was under an obligation to indemnify the insured for the amount of Rs.29,46,278/- by replacement of the car in accordance with the BMW Secure Advance. Therefore, the State Commission directed both the insurer and BMW to indemnify the owner for a total loss of the BMW 3 Series 320D car by replacing the car with a new car of the same make/model. In addition, a direction was issued to the insurer and BMW to pay a sum of Rs.50,000/- towards compensation and Rs.10,000/- for litigation charges.

7. Being aggrieved by the judgment of the State Commission, separate appeals were preferred by the BMW and the insurer before the National Commission. By the impugned judgment, the National Commission rejected the contention that the State Commission at Delhi had no jurisdiction to entertain the complaint. The National Commission dismissed the appeals on merits by the impugned judgment.

8. Civil Appeal No.1544 of 2023 has been preferred by the insurer, and BMW has preferred Civil Appeal No. 1545 of 2023.

SUBMISSIONS

9. The learned counsel appearing for BMW submitted that there was no cause of action available to the owner to file a complaint against BMW. The reason is that the insurer had repudiated the insurance policy by a letter dated 9th January 2013. Unless the insurer was liable, there was no liability of BMW. He submitted that settlement of the claim under the policy issued by the insurer has not happened. He further submitted that neither the State Commission nor the National Commission had come to the conclusion that there was any deficiency in the service rendered by BMW.

10. He submitted that both the Commissions have completely misconstrued the terms of the BMW Secure policy. His submission is that under the BMW Secure Policy, the insurer was entitled to a difference between IDV (Insured Declared Value) and the price of the new vehicle of the same model and in case the new vehicle of the same model was not available, the liability of BMW was restricted to 1% of IDV. He submitted that as there was no documentary evidence to show that the insurer accepted the claim of the owner, there was no question of processing the claim under BMW Secure. His submission is that the policy did not provide for the replacement of the car. Hence, the impugned Judgments are erroneous.

11. The submission of the insurer is that the fact remains that the insured did not immediately inform the insurer about the incident of the accident. He submitted that till 9th August 2012, the insurer had no information about the incident. He pointed out that there was a suppression of material facts by the owner about the nature of the accident. He submitted that in the Forensic Investigation Report, blood stains were found on the dashboard of the car and driver's seat, and there were beer bottles found in the vehicle. He, therefore, submitted that there was every justification for repudiation of the policy on the grounds stated in the letter of repudiation.

12. The learned counsel appearing for the insurer after inviting our attention to the terms of the insurance policy submitted that before removing the damaged car to the garage, the insured ought to have informed the insurer. He pointed out that it is not mandatory for the insurer to replace the vehicle if there is a total loss. Therefore, the direction issued by the State Commission to replace the car is completely contrary to the terms of the policy.

13. The learned counsel appearing for BMW relied upon a decision of this Court in the case of ***National Insurance Company Ltd. v. Chief Electoral Officer and Others***[1] on the interpretation of the policy of the insurance. The learned counsel appearing for the insurer relied upon a decision of

1 2023 SCC Online SC 115

this Court in the case of ***Gurshinder Singh v. Shriram General Insurance Co Ltd.***[2]. The submission is that the failure of the insured to inform the insurer about the accident immediately after the accident can be a ground for repudiating the claim under the policy.

14. The learned counsel appearing for the owner submitted that there are concurrent findings of fact recorded by the State and the National Commissions, and therefore, this Court should not interfere with the findings of fact. The learned counsel supported the reasons recorded by the State Commission for coming to the conclusion that the repudiation of the policy was illegal. He supported the impugned judgments.

ISSUE OF TERRITORIAL JURISDICTION

15. Before the State and National Commissions, an issue was raised of territorial jurisdiction of the State Commission at Delhi to deal with the complaint, especially when the accident had occurred at Gurgaon, which was not within the territorial jurisdiction of the State Commission at Delhi. However, the State as well as the National Commission, have rejected the said contention. By referring to clause (b) of sub-section (2) of Section 17 of the Consumer Protection Act, 1986 (the 1986 Act), the Commissions found as a matter of fact that the insurer as well as the dealer were carrying on business from their offices in Delhi. The National

2 (2020) 11 SCC 612

Commission observed that the State Commission, by entertaining the complaint, granted permission for filing the complaint as contemplated by clause (b) of sub-section (2) of Section 17. Therefore, on that count, we cannot find fault with the impugned judgments.

OUR FINDINGS ON MERITS

16. Now, firstly, we deal with the issue of the liability of the insurer. There is some controversy about whether the owner was the registered owner of the vehicle inasmuch as the car was registered in the name of Dassault, and even the policy of the insurance was issued in the name of Dassault. When the car was purchased, the owner was working as a Director of Dassault, which is a private limited company. There is a finding of fact recorded by both the State and National Commissions that the car was purchased for the benefit of the owner, and in fact, equated monthly instalments of the loan were paid through the salary of the owner. Under sub-clause (i) of Clause (d) of sub-section (1) of Section 2 of the 1986 Act, it is provided that any user of the goods other than the person who buys the goods is also a consumer for the purposes of the 1986 Act. Moreover, there is no dispute between the owner and Dassault about the claim of ownership made by the owner over the said vehicle.

17. As far as the interpretation of an insurance policy is concerned, in the case of ***National Insurance Company Ltd. v. Chief Electoral Officer and others***[1], this Court reiterated

that an insured cannot claim anything more than what is covered by the insurance policy. The terms of the contract have to be construed strictly without altering the nature of the contract. Moreover, the clauses of an insurance policy must be read as they are. The terms of the insurance policy, which determine the liability of the insurance company, must be read strictly. This Court also held that the rule of c*ontra proferentem* is not applicable to a commercial contract like a contract of insurance. The rule of *contra proferentem* contemplates that if any clause in the contract is ambiguous, it must be interpreted against the party that introduced it. For the contract of insurance, the applicability of the said concept is ruled out. The reason is that the insurance contract is bilateral and mutually agreed upon, like any other commercial contract.

18. Now, we turn to the policy of insurance issued by the insurer. The IDV of the car mentioned in the policy was Rs.29,46,278/-. There are various items which are covered by the policy. It also includes general and special exemptions. Clause (4) of the policy provides that, firstly, in case of an accident, the vehicle shall not be left unattended without proper precautions. Secondly, it is provided that a notice in writing shall be immediately given to the insurer upon the occurrence of the accident. Whether such intimation was given is an issue which is dealt with separately. As far as the liability of the insurer is concerned, clause (3) of the policy is important, which reads thus:

> **"The company may at its own option repair reinstate or replace the vehicle or part thereof and/or its accessories or may pay in cash the amount of the loss or damage and the liability of the Company shall not exceed:**
>
> **a) for total loss/constructive total loss of the vehicle – the Insured's Declared Value (IDV) of the vehicle (including accessories thereon) as specified in the Schedule less the value of the wreck.**
>
> b) for partial losses, i.e. losses other than Total Loss/Constructive Total Loss of the vehicle – actual and reasonable costs of repair and/or replacement of parts lost/damaged subject to depreciation as per limits specified."
>
> (emphasis added)

One of the earlier clauses provides that the insured vehicle shall be treated as constructive total loss (CLT) if the aggregate cost of retrieval and/or repair of the vehicle exceeds 75% of the IDV of the vehicle.

19. On a plain reading of clause (3), an option is available to the insurer to repair the vehicle or replace the vehicle. It is further provided that in case of the total loss of the vehicle or the constructive total loss of the vehicle, the insurer is liable to pay IDV less the value of the wreck. Therefore, assuming that the repudiation of the policy was illegal, the entitlement of the insured in case of total loss of the insured vehicle or

constructive total loss of the vehicle is the amount equivalent to IDV of the vehicle (including accessories thereon) as specified in the Schedule less the value of the wreck. In case of total loss/constructive total loss, instead of paying the amount as aforesaid, the insurer has an option available to replace the vehicle with a new one. Thus, it is not the right of the insured under the policy conditions to always claim replacement of the car. It is at the option of the insurer.

20. Now, we come to the policy issued by BMW. Firstly, reliance was placed on what is provided in the BMW Secure Certificate. It reads thus:

> "BMW Secure offers you **the protection in case of total loss within one year of purchase of your vehicle or upon its renewal wherein your car will be replaced with a new one of the same type inclusive of all costs of registration, tax and insurance thereby incurred.** This benefit will also continue for the new replaced vehicle as well."
>
> (emphasis added)

On a plain reading of the said BMW Secure Certificate, it is apparent that what is mentioned therein cannot be taken as the policy condition. The BMW Secure Certificate only gives information about the features of the policy, and lastly, it is specifically mentioned therein that the insured must spare a few minutes to go through the terms and conditions of the

policy. This indicated that the terms and conditions of the policy have been separately provided. Though it is styled as a 'BMW Secure Certificate', it only contains information about BMW Secure and not the terms of policy.

21. Now, we turn to the BMW Secure policy itself. Clause (3) of the policy deals with scope and coverage under BMW Secure. Clause (3) of the policy clarifies that the liability under BMW Secure will arise only in the case of an event giving rise to a motor insurance claim under the motor insurance policy pertaining to the insured vehicle. Section (I) of Clause (3), which lays down entitlements, is important which reads thus:

> "**Section – I**
>
> **a.** Cost of contracting a new Motor Insurance Policy for insurance of the replaced BMW Vehicle identical to the Insured Vehicle in case of Total Loss or theft.
>
> **b.** Cost of Registration and Road Tax for the replaced BMW Vehicle identical to the Insured Vehicle in case of Total Loss or theft.
>
> **c. Actual difference between the IDV of Insured Vehicle and the current ex-showroom price of new vehicle of exactly same make, model, age, features and specifications in case of a Total Loss or theft as per the guidelines of IRDA. Wherever such vehicle is out of production then**

our liability will be restricted to max.1% of IDV."

(emphasis added)

22. No doubt, clauses (a) and (b) do talk about replacing the insured vehicle with a new vehicle identical to the insured vehicle. Even paragraph 10 of the affidavit, by way of evidence of one Stephen Rausch filed by BMW before the State Commission, suggests that there was such a liability to replace the vehicle. However, we find that there is no specific provision in the policy for the replacement of a vehicle in case there is a total loss or constructive total loss or theft of the vehicle. Clauses (a) and (b) will apply when the insurer, under the motor insurance policy, replaces the vehicle. Clause (c) of Section (1) is important, which provides that the liability of BMW under the policy in case of total loss or theft of the vehicle is to pay the actual difference between the IDV of the insured vehicle and the current ex-showroom price of a new vehicle of exactly the same make, model, age, features and specifications. Where a similar vehicle is out of production, the liability of BMW is restricted to a maximum of 1% of IDV. Thus, there is no provision in the BMW Secure which directly provides that the car will be replaced. The provision is that under BMW Secure, BMW will pay the difference between the IDV of the insured vehicle and the current ex-showroom price of the new vehicle of the same make. It is the only liability of BMW in case of the total loss or theft of the vehicle. Thus, in substance, a reasonable

amount is made available to the insured to acquire a new car as the insured gets the IDV minus the cost of the wreck from the insurer, and under the BMW Secure, the insured gets the difference between the value of the new car of the same type and IDV. Hence, we hold that under the BMW Secure, there was no provision for replacement of the vehicle by BMW in the event of complete loss or total constructive loss of the vehicle. The question of liability under the BMW Secure arises only when the liability of the insured under the new motor vehicle policy is established. Therefore, it must be established that the insurer has accepted the case regarding the total loss of the insured vehicle. As per the policy of motor insurance issued by the insurer, in this case, the constructive total loss happens when the aggregate cost of repair of the vehicle exceeds 75% of IDV. Even under the BMW secure, the same is the concept of the total loss. Therefore, BMW can be held liable under the BMW Secure when it is established that the insurer under the motor insurance policy has accepted the case of total loss or constructive total loss of the vehicle.

23. Therefore, we turn to the issue of whether the repudiation of the insurance policy by the insurer was valid. The first ground of repudiation in the letter dated 9th January 2013 is that there has been a considerable delay in providing intimation of the accident to the insurer and that the vehicle was removed from the spot without providing an opportunity to verify the facts relating to the damage of the vehicle and the circumstances leading to loss. This ground is in the context

of the policy condition that a notice shall be immediately given in writing to the Company upon the occurrence of any accident. As far as this ground is concerned, there is material on record to show that the accident occurred near DLF Square in Gurgaon between 12.30 a.m. and 2.00 a.m. on 29th July 2012. There are supporting documents in the form of a record of Daily Accident Reports maintained by the National Highway Authority of India. There is an entry at 01.15 am on 29th July 2012 in the said Reports, which records the accident of the insured vehicle. It records that the accident occurred as it was hit by a truck from the rear side, as a result of which the car driver lost control and was toppled down. It is mentioned that no one was injured. It is also noted that the car was moved aside from the road, and safety cones were placed. Moreover, at 3 p.m. on 29th July 2012, the complaint of the driver of the car was recorded by SHO, DLF Phase-II, Police Station, Gurgaon. So, there is no dispute about the occurrence of the accident. At this stage, we may note that it is not the case of the insurer that the accident occurred due to rash and negligent driving of the driver of the vehicle. It is not the case that the driver was prosecuted for rash and negligent driving.

24. Now, we come to the issue of giving intimation. As per Condition No.4 of the Insurance Policy, it was the duty of the insured to secure the vehicle after the accident so that it did not suffer further damage. The accident took place on National Highway No.8, which is a very busy Highway. The

owner immediately requested the Dealer to shift the vehicle to their garage. As 29th July 2012 was Sunday, the Dealer expressed inability to move the vehicle as it was a holiday for its staff. That is how, at the instance of the owner that the vehicle was shifted to BOSCH Workshop, which was admittedly taken to the garage of the Dealer on 30th July, 2012.

25. There is a finding of fact recorded by the State as well as the National Commission that the Dealer immediately informed the insurer. However, it was found that in the policy of the insurance, the Engine and Chassis numbers of the vehicle were incorrectly mentioned. The National Commission has held that it is an admitted position that the insurer made necessary corrections in the policy, and thereafter, on 9th August 2012, a fresh claim was submitted to the insurer. Thus, the insurer accepted the errors in the policy. We may note here that the first claim form dated 30th July 2012 was placed on record of the State Commission. In the written statement filed by the insurer before the State Commission, it is accepted that the police authorities reached the spot at 1.20 a.m. In fact, in paragraph 5(a), the insurer has referred to the claim form dated 30th July 2012. The accident took place in the wee hours of 29th July 2012, and on 30th July 2012, a claim form was filled in by one Deepak Yadav. This is apart from the case made out by the Dealer that it had informed the insurer about the accident. Moreover, within a few days of the accident, the surveyor

appointed by the insurer surveyed the vehicle, as can be seen from the preliminary survey report dated 17th August 2012. Therefore, the first ground taken for the repudiation cannot be sustained as held by the Commissions.

26. The second ground of repudiation is the failure to reply to the letters dated 23rd August 2012, 3rd September 2012, 27th September 2012, and 7th December 2012. On this, there is a concurrent finding of fact recorded by the Commissions that the insurer failed to place on record the proof of service of letters dated 3rd September 2012, 17th September 2012, and 7th December 2012. In fact, in the Complaint, there was a specific grievance made that the said three letters were not received. The finding is that only one letter dated 23rd August 2012 was received by the insured, and it was immediately replied to by the insured (the owner). Therefore, even the second ground cannot be sustained.

27. The third ground is that in the claim forms and the accident reported to the police, there are discrepancies about the manner in which the accident happened. The fact that the accident happened is not disputed. As mentioned earlier, it is not the case of the insurer that there was any negligence on the part of the driver of the car. Moreover, it is not the case of the insurer that any of the general or specific exceptions in the policy of insurance apply to this case. Hence, the policy could not have been repudiated on account of alleged discrepancies.

28. The last ground is also relating to the alleged discrepancy. After engaging a surveyor, the insurer engaged another Agency, which found blood stains on the steering and dashboard of the vehicle. Again, this fact is irrelevant as the factum of the accident cannot be disputed. It is not the case of the insurer that the damage was caused to the car due to any activity covered by the exceptions incorporated in the policy. Therefore, none of the grounds of repudiation have any substance.

29. A Circular dated 20th September 2011 of the Insurance Regulatory and Development Authority has been placed on record. It is stated that, for the benefit of the non-life insurers, the condition of reporting the occurrence within a specified time should not prevent the settlement of genuine claims, particularly when there is a delay in intimation or submission of documents due to unavoidable circumstances. In fact, in the said Circular, it is mentioned that rejecting genuine claims on purely technical grounds in a mechanical fashion will result in policyholders losing confidence in the insurance industry. This supports the finding that the rejection on the ground of delay in reporting was completely unfounded.

30. Now, coming to the assessment of the damage caused to the vehicle, Mr Avinash Kumar, the surveyor appointed by the insurer, submitted a preliminary report dated 17th August 2012 estimating the extent of loss at Rs.25 lakhs on a

provisional basis. He submitted a final report on 7th January 2013. In the final report, the assessed amount, after making deductions, is Rs.25,83,012.45. Thus, in terms of the policy, the loss exceeded 75% of the IDV of the vehicle. The loss is equivalent to 86% of IDV. Hence, there was a constructive total loss of the vehicle. We must also note here that in the final report, the extensive damage caused to the vehicle has been noted.

31. Therefore, coming back to the policy of insurance of the insurer, the liability of the Insurance Company will be to the extent of the IDV value minus the cost of the wreck. It must be noted here that the cost of the wreck is not brought on record by the insured. By making a reasonable allowance for the cost of the wreck, we can take the cost of repairs of Rs.25,83,012.45 as the amount payable under the motor insurance policy.

32. Now, we come to the liability of the BMW. This was a case of a constructive total loss of the vehicle, and therefore, the liability of BMW under the BMW Secure was to pay the actual difference between the IDV of the insured vehicle and the current ex-showroom price of the new vehicle of exactly the same make. If it was shown that such a vehicle was out of production, then the liability would be restricted to a maximum of 1% of IDV.

33. We have carefully perused the reply of BMW to the complaint. In paragraph 8 of the reply, it is stated thus:

> "Para 8 is denied for want of knowledge. It is specifically denied that the vehicle was damaged to a total loss condition. It is submitted that as per definition given under BMW Secure, total loss condition occurs only where the net liability of the Insurance Provider under the Motor Insurance Policy exceeds 75% of Insured Declared Value as per the report of a surveyor approved by the Insurance Provider. Thus, there must be a surveyor report to establish the total loss, which has not been provided to the answering Opposite Party."

34. In the entire reply, there is no specific contention raised that the production of a similar type of car was stopped on the date of the accident or that when the accident occurred, the vehicle of the exactly same make was not available. We have also perused the affidavit in view of the evidence of Mr Stephan Rausch filed before the State Commission by BMW. The Affidavit-in-lieu of examination-in-chief is the replica of the reply fled by BMW. What is material is paragraph 10 of the evidence, which reads thus:-

> "As stated above, under BMW Secure the Opposite Party No.2 is liable to give a new car only when there is a surveyor's report to confirm the total loss of the vehicle and the Insurance Company reimbursing 75% of the Insured Declared Value (sum incurred) of the insured Vehicle under the Motor

> Insurance Policy. Since this has not been done in the present case, and insurance claim of the complainant has been repudiated by the Opposite Party No.1, the Opposite Party No.2 is not at all liable to give a new car to the Complainant under the terms of BMW Secure."

35. Thus, the only defence was that BMW is not liable under the BMW Secure as the insurer had repudiated the insurance claim.

36. The BMW should have pleaded whether a car of exactly similar make was available on the date of the accident, and if so, what was the price of the vehicle. However, BMW remained completely silent. These facts were within the special knowledge of BMW, which should have been brought on record by BMW. Hence, an adverse inference will have to be drawn against BMW.

37. Hence, for the reasons recorded earlier, there is a deficiency in service rendered by the insurer and BMW within the meaning of clause (g) of Section 2 of the Consumer Protection Act,1986. Therefore, the owner is entitled to compensation from both of them.

38. Now, coming to the final relief, as per clause (3) of the Motor Insurance Policy, it is provided that for the constructive total cost of the vehicle, the liability of the insurer shall not exceed the IDV of the vehicle minus the value of the wreck. As

held earlier, the amount payable by the insurer will have to be quantified at Rs.25,83,012.45.

39. As it is not pleaded by BMW that the vehicle of the same make was not available or, if it was available, what was the cost of the vehicle on that day, a reasonable amount will have to be granted on account of the difference in the value of the vehicle involved in the accident and the value of a new car of the same make. It is brought on record that in terms of the order dated 11th March 2013 of the National Commission, a sum of Rs.7 lakhs has been deposited by BMW with the State Commission. We find that a sum of Rs.7 lakhs can be a reasonable estimate of the amount payable under the BMW Secure in the facts of the case. Therefore, the same amount with interest accrued can be paid to the complainants. The insurer has deposited a sum of Rs.22,09,000/- in this Court in terms of the order dated 28th February 2023. The total liability of the insurer is Rs.25,83,012.45, which is rounded off to Rs.25,83,012/-. Thus, the insurer will have to pay a difference of Rs.3,74,012/-.

40. Interest will be payable on the amounts payable by the insurer and BMW from the date of filing of the complaint before the State Commission. The interest can be quantified at 6% per annum. The interest accrued on the amounts deposited will have to be considered for that purpose.

41. As held earlier, the direction of the State Commission, confirmed by the National Commission, is to replace the car. It cannot be sustained for the reasons already discussed, and the same will have to be substituted by a direction to pay monetary compensation.

42. Therefore, the appeals succeed partly, and we pass the following order:

a. The operative part of the impugned order of the State Commission is set aside;

b. We permit the owner to withdraw a sum of Rs.22,09,000/- deposited by the insurer in this Court on 24th April 2023, together with interest accrued thereon. In addition, the insurer shall pay simple interest on the amount of Rs.22,09,000/-, at the rate of 6% per annum from the date of filing of the complaint before the State Commission till 24th April 2023;

c. The insurer shall pay a sum of Rs. 3,74,012/- to the owner with simple interest thereon at the rate of 6% per annum from the date of filing of the complaint before the State Commission till payment. The amount shall be paid within three months from today;

d. The owner shall be entitled to withdraw the sum of Rs.7 lakhs deposited by BMW with the State Commission, together with interest accrued thereon. In addition, BMW shall pay simple interest at the rate of 6% per

annum on the amount of Rs.7 lakhs to the owner from the date of filing of the complaint before the State Commission till 11th March 2015. The said amount of interest shall be paid within a period of three months from today;

e. The order of costs made by the State Commission is maintained in view of the findings recorded in this judgment; and

f. There will be no order as to costs in these appeals.

43. The appeals are partly allowed on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Rajesh Bindal)

New Delhi;
November 20, 2023.