Lakhmi Chand vs Reliance General Insurance on 7 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 315, 2016 (2) ALJ 120, 2016 (1) ABR 828, 2016 (1) AKR 785, (2016) 2 CURCC 54, (2016) 2 TAC 731, (2016) 3 ANDHLD 53, (2016) 1 RECCIVR 795, (2018) 2 ALLMR 413 (SC), (2016) 1 WLC(SC)CVL 437, (2016) 3 CALLT 40, (2016) 2 PUN LR 174, (2016) 3 UC 1630, (2016) 158 ALLINDCAS 77 (SC), (2016) 1 ACJ 551, (2016) 3 CIVLJ 385, (2016) 121 CUT LT 869, (2016) 2 RAJ LW 1262, 2016 (3) SCC 100, (2016) 1 SCALE 213, (2016) 1 CLR 356 (SC)

Author: V. Gopala Gowda

Bench: T.S. Thakur, V. Gopala Gowda

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.49-50 OF 2016
(Arising Out of SLP (C) Nos.37534-37535 of 2013)

LAKHMI CHAND .....APPELLANT

Vs.

RELIANCE GENERAL INSURANCE .....RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

The present appeals arise out of the impugned judgment and order dated 26.04.2013 in Revision Petition No. 2032 of 2012 and order dated 23.07.2013 in Review Petition No. 253 of 2013 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the

"National Commission"), whereby the petitions challenging the order dated 29.02.2012 passed by the Haryana State Consumer Disputes Redressal Commission were dismissed.

The brief facts of the case which are required to appreciate the rival legal contentions advanced by the learned counsel appearing on behalf of the parties are stated in brief as hereunder:-

> The appellant was the owner of a Tata Motors goods carrying vehicle bearing registration No.HR-67-7492. The vehicle was insured with the respondent- Company vide policy No. 150199233341049 92 with effect from 31.07.2009, valid upto 30.07.2010. The risk covered in this policy was to the tune of Rs.2,21,153/-. The said vehicle met with an accident on 11.02.2010 on account of rash and negligent driving of the offending vehicle bearing registration no. UP-75-J 9860. In this regard, an FIR No.66 of 2010 dated 11.02.2010 was registered with the jurisdictional Police Station, Sadar, Fatehabad, for the offence punishable under Sections 279, 337, 304A and 427 of the Indian Penal Code (hereinafter referred to as "the IPC").

The appellant incurred expenses amounting to Rs.1,64,033/- for the repair of his vehicle and also informed the respondent- Company about the accident and damage caused to his vehicle. In this connection, the respondent- Company appointed one Mr. Atam Prakash Chawla, as the Surveyor to assess the damage caused to the said vehicle. After inspecting the vehicle, the Surveyor assessed the damage caused to the vehicle at Rs.90,000/-, whereas the appellant had preferred a claim for a sum of Rs.1,64,033/- with supporting bills. In addition to above, the respondent-Company appointed M/s Innovation Auto Risk Claim Manager for the purpose of investigation. According to the report of the investigator, five passengers were travelling in the goods-carrying vehicle, though the seating capacity of the vehicle as per the registration certificate was only 1+1. On the basis of findings of the said report, the respondent-Company vide letter dated 26.07.2010 rejected the claim of the appellant for the reason that the loss did not fall within the scope and purview of the insurance policy.

Aggrieved of the letter of rejection of the claim of the appellant by the respondent-Company, he filed Complaint No.517 of 2010 against the respondent-Company dated 17.09.2010 before the District Consumer Disputes Redressal Forum, Sonepat (hereinafter referred to as the "District Forum") under Section 12 of the Consumer Protection Act, 1986 for the claim of Rs.1,64,033/- towards the repair of his vehicle on the ground that the rejection of the claim amounts to deficiency in service on the part of the respondent-Company.

The respondent-Company filed a detailed written statement before the District Forum disputing the claim of the appellant. It took the plea that the complainant had violated the terms and conditions of the policy, as five passengers were travelling in the goods-carrying vehicle at the time of accident, whereas the permitted seating capacity of the motor vehicle of the appellant was only 1+1.

The District Forum on the basis of the pleadings of the parties and the materials on record considered the judgment of the National Commission in the case of National Insurance Co. Ltd. v. Pravinbhai D. Prajapati[1], wherein it was held that if the number of persons travelling in the vehicle

at the time of the accident did not have a bearing on the cause of accident, then the mere factum of the presence of more persons in the vehicle would not disentitle the insured claimant from claiming compensation under the policy towards the repair charges of the vehicle paid by the appellant. The District Forum accordingly directed the respondent-Company to settle the claim of the appellant on non-standard basis upto 75% of the amount spent for effecting repairs to the damaged vehicle after taking into consideration the claim amount of Rs.1,64,033/-. The District Forum further directed the respondent-Company to settle the amount to be paid to the appellant along with interest at the rate of 9% per annum from the date of lodging of the claim by the appellant with the respondent-Company. The respondent-Company was further directed to pay Rs.2,000/- for rendering deficient service, causing mental agony and harassment and towards litigation expenses incurred by the appellant.

Aggrieved of the order of the District Forum, the respondent Company preferred an appeal before the State Commission urging various grounds. The State Commission placed reliance upon the judgment of this Court in the case of Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd. & Anr.[2], wherein it was held as under:

> "Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a contract of insurance. It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance law have to be strictly construed and no exception can be made on the ground of equity.
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> Thus, it needs little emphasis that in construing the terms of a contract of insurance important, and it is not open for the court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risk covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the court should always be to interpret the words in which the contract is expressed by the parties." The State Commission applied the observation made in the above said case by this Court to the case on hand and held that the District Forum has committed a serious error in allowing the complaint filed by the appellant herein against the respondent-Company. The State Commission accepted the appeal filed by the respondent-Company and dismissed the complaint of the appellant, vide its order dated 29.02.2012 by setting aside the judgment and order of the District Forum.
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> The said judgment passed by the State Commission was challenged by the appellant before the National Commission by way of filing Revision Petition No.2032 of 2012 under Section 21(b) of the Consumer Protection Act, 1986 questioning the correctness of the same by urging various tenable grounds.

After examining the material evidence on record, the National Commission has arrived at the conclusion and held that the factum of the vehicle in question carrying six passengers at the time of the occurrence of the accident was an undisputed fact. Thus, there had been a violation of the terms and conditions of the insurance policy covered to the vehicle by the appellant, as he had allowed six passengers to travel in the vehicle when the permitted load was only 1+1. The National Commission upheld the order passed by the State Commission and dismissed the Revision Petition filed by the appellant by recording its reasons. The Review Petition filed against the dismissal of the Revision Petition by the appellant was also dismissed without considering the grounds urged for reviewing its order.

The present appeals have been filed challenging the orders passed by the National Commission in dismissing the Revision and Review petitions. In our considered view, the concurrent findings recorded by the National Commission in the impugned judgment and order are erroneous in law for the following reasons.

It is an admitted fact that the accident of the vehicle of the appellant was caused on account of rash and negligent driving of the offending vehicle bearing registration no. UP-75-J9860. An FIR No. 66 of 2010 dated 11.02.2010 was registered under Sections 279, 337, 338, 304-A and 427 of the Indian Penal Code against the driver of the said vehicle for the offences referred to supra. The vehicle of the appellant was badly damaged in the accident and it is an undisputed fact that the report of Surveyor assessed the loss at Rs.90,000/-, but the actual amount incurred by the appellant on the repair of his vehicle was Rs.1,64,033/-. The said claim was arbitrarily rejected by the respondent-Company on the ground that the damage caused to the vehicle did not fall within the scope and purview of the insurance policy, as there was a contravention of terms and conditions of the policy of the vehicle.

The National Commission upheld the order of dismissal of the complaint of the appellant passed by the State Commission. The National Commission however, did not consider the judgment of this Court in the case of B.V. Nagaraju v. Oriental Insurance Co. Ltd Divisional Officer, Hassan[3]. In that case, the insurance company had taken the defence that the vehicle in question was carrying more passengers than the permitted capacity in terms of the policy at the time of the accident. The said plea of the insurance company was rejected. This Court held that the mere factum of carrying more passengers than the permitted seating capacity in the goods carrying vehicle by the insured does not amount to a fundamental breach of the terms and conditions of the policy so as to allow the insurer to eschew its liability towards the damage caused to the vehicle. This Court in the said case has held as under:-

“It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry six workmen, excluding the driver. If those six workmen when travelling in the vehicle, are assumed not to have increased risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the pose, keeping apart the

load it was carrying. In the present case the driver of the vehicle was not responsible for the accident. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which by themselves, had gone to contribute to the causing of the accident." (emphasis laid by this Court) Further, in the case of National Insurance Company Ltd. v. Swaran Singh & Ors[4]. a three judge bench of this Court has held as under:-

"49. Such a breach on the part of the insured must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.

52. In Narvinva's case (supra) a Division Bench of this Court observed:

"The insurance company complains of breach of a term of contract which would permit it to disown its liability under the contract of insurance. If a breach of a term of contract permits a party to the contract complaints of breach to prove that the breach has been committed by the other party to the contract. The test in such a situation would be who would fail if no evidence is led.

69. The proposition of law is no longer res- integra that the person who alleges breach must prove the same. The insurance company is, thus, required to establish the said breach by cogent evident. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability." (emphasis laid by this Court) The judgment in the case of Swaran Singh (supra) has been followed subsequently in the case of Oriental Insurance Company Ltd. v. Meena Variyal[5], wherein this Court held as under:-

"We shall now examine the decision in Swaran Singh on which practically the whole of the arguments on behalf of the claimants were rested. On examining the facts, it is found that, that was a case which related to a claim by a third party. In claims by a third party, there cannot be much doubt that once the liability of the owner is found, the insurance company is liable to indemnify the owner, subject of course, to any defence that may be available to it under Section 149(2) of the Act. In case where the liability is satisfied by the insurance company in the first instance, it may have recourse to the owner in respect of a claim available in that behalf, it may have recourse to the owner in respect of a claim available that behalf. Swaran Singh was a case where the insurance company raised a defence that the owner had permitted the vehicle to be driven by a driver who really had no licence and the driving licence produced by him was a fake one. There Lordships discussed the position and held ultimately that a defence under Section 149(2)(a)(ii) of the Act was available to an

insurer when a claim is filed either under Section 163-A or under Section 166 of the Act. The breach of a policy condition has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence of or production of fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third party. The insurance company to avoid liability, must not only establish the available defence raised in the proceeding concerned but must also establish breach on the part of the owner of the vehicle for which the burden of proof would rest with the insurance company. Whether such a burden had been discharged, would depend upon the facts breach on the part of the insured concerning a policy condition, the insurer would not be allowed to avoid its liability towards the insured unless the said breach of condition is so fundamental as to be found to have contributed to the cause of the accident." (emphasis laid by this Court) It becomes very clear from a perusal of the above mentioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company. In the instant case, the respondent-Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods carrying vehicle. Further, as has been held in the case of B.V. Nagaraju (supra) that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end. In the instant case, it is undisputed that the accident was infact caused on account of the rash and negligent driving of the offending vehicle by its driver, against whom a criminal case vide FIR no. 66 of 2010 was registered for the offences referred to supra under the provisions of the IPC. These facts have not been taken into consideration by either the State Commission or National Commission while exercising their jurisdiction and setting aside the order of the District Forum. Therefore, the judgment and order of the National Commission dated 26.04.2013 passed in the Revision Petition No. 2032 of 2012 is liable to be set aside, as the said findings recorded in the judgment are erroneous in law.

Accordingly, we allow these appeals and restore the judgment and order of District Forum. Further, we award a sum of Rs.25,000/- towards the cost of the litigation as the respondent-Company has unnecessarily litigated the matter up to this Court despite the clear pronouncement of law laid down by this Court on the question with regard to the violation of terms and conditions of the policy and burden of proof is on the insurer to prove the fact of such alleged breach of terms and conditions by the insured.

Since we have restored the judgment and order of District Forum, we direct the respondent-Company to pay the amount awarded by the District Forum with interest and the cost which we have awarded in these proceedings within six weeks from the date of the receipt of the copy of this judgment.

.....CJI. [T.S. THAKUR]

.....J.
[V. GOPALA GOWDA]
New Delhi,
January 7, 2016

ITEM NO.1B-For Judgment COURT NO.10 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).49-50/2016 arising from SLP(C) Nos. 37534-37535/2013 LAKHMI CHAND Appellant(s) VERSUS RELIANCE GENERAL INSURANCE Respondent(s) Date : 07/01/2016 These appeals were called for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Munawwar Naseem,Adv.

For Respondent(s) Mr. Garvesh Kabra,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising Hon'ble the Chief Justice and His Lordship.

Leave granted.

The appeals are allowed in terms of the signed Non-Reportable Judgment.

(VINOD KUMAR) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER

(Signed Non-Reportable judgment is placed on the file)

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[1] [2] IV 2010 CPJ 315 (NC) [3] [4] (2010) 10 SCC 567 [5] [6] (1996) 4 SCC 647 [7] [8] (2004) 3 SCC 297 [9] [10] (2007) 5 SCC 428