Jaina Construction Company vs Oriental Insurance Company Limited on 11 February, 2022

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Sanjiv Khanna

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1069 OF 2022

JAINA CONSTRUCTION COMPANY .... APPELLANT

VERSUS

THE ORIENTAL INSURANCE COMPANY
LIMITED & ANR. .... RESPONDENTS

JUDGMENT

BELA M. TRIVEDI, J.

1. The present appeal is directed against the impugned order dated 9th September, 2016 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "the NCDRC") in Revision Petition No. 1104 of 2016 whereby the NCDRC while allowing Reason: has set aside the order dated 16th December, 2015 passed by the State Consumer Disputes Redressal, Commission, Haryana at Panchkula and the order dated 26th February, 2015 passed by the District Consumer Disputes Redressal Forum, Gurgaon.

2. Heard Mr. Avinash Lakhanpal, learned counsel appearing on behalf of the appellant. None has entered appearance on behalf of the respondents though duly served.

3. The precise question that falls for consideration before this Court is -

whether the Insurance Company could repudiate the claim in toto, made by the owner of the vehicle, which was duly insured with the insurance company, in case of loss of the vehicle due to theft, merely on the ground that there was a delay in informing the company regarding the theft of vehicle?

4. The undisputed facts transpiring from the record are that the vehicle in question i.e., Tata Aiwa Truck bearing Registration No. RJ-02-098177 was purchased by the appellant on 31.10.2007. The said vehicle was duly insured with Respondent No. 1- Insurance Company. The said vehicle was robbed by some miscreants on 04.11.2007. Consequently, an FIR was registered by the appellant-complainant on 05.11.2007 for the offence under Section 395 IPC at Police Station Nagina, District Mewat (Haryana). The police arrested the accused and also filed the challan against them in the concerned Court, however, the vehicle in question could not be traced and, therefore, the police filed untraceable report on 23.08.2008. Thereafter, the complainant lodged the claim with the Insurance Company with regard to the theft of the vehicle in question. The Insurance Company, however, failed to settle the claim within a reasonable time, and therefore, the appellant-complainant filed a complaint being the Consumer Complaint No. 63 of 2010 before the District Consumer Disputes Redressal Forum, Gurgaon.

5. It may be noted that during the pendency of the complaint before the District Forum, the respondent no.1- Insurance Company repudiated the claim of the complainant vide its letter dated 19.10.2010, stating inter alia that there was a breach of condition no. 1 of the policy which mandated immediate notice to the insurer of the accidental loss/damage, and that the complainant had intimated about the loss on 11.04.2008 i.e. after the lapse of more than five months and, therefore, the Insurance Company had disowned their liability on the claim of the complainant.

6. The District Forum allowed the said claim of the complainant by holding that the complainant was entitled to the insured amount on non-standard basis, i.e., Rs. 12,79,399/- as 75% of the IDV i.e., Rs. 17,05,865/- with interest @ 6% p.a. from the date of filing of the complaint till realization from the Insurance Company. The District Forum also awarded compensation of Rs.10,000/- and litigation expenses of Rs.5,000/- to the complainant. The aggrieved Insurance Company preferred an appeal being Appeal No. 612 of 2015 before the State Consumer Disputes Redressal Commission (Haryana), Panchkula. The complainant also preferred an appeal being Appeal No. 537 of 2015 seeking enhancement of compensation. The State Commission dismissed the appeal filed by the Insurance Company and partly allowed the appeal filed by the complainant by increasing rate of interest awarded by the District Forum from 6% to 9% vide the Judgment and Order dated 16.12.2015. The aggrieved Insurance Company preferred the Revision Petition before the NCDRC which came to be allowed as stated hereinabove.

7. Since the respondent no.1 - Insurance Company has repudiated the claim of the complainant on the ground that the complainant had committed the breach of Condition No. 1 of the Insurance Contract, it would be beneficial to reproduce the said condition, which reads as under:

> "1. Notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage in the event of any claim and thereafter the insured

> shall give all such information and assistance as the company shall require. Every letter, claim, writ, summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution, inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of a major loss, theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of the offender."

8. At the outset, it may be noted that there being a conflict of decisions of the Bench of two Judges of this Court in case of Om Prakash vs. Reliance General Insurance & Another and in case of Oriental Insurance Company Limited vs. Parvesh Chander Chadha, on the question as to whether the delay occurred in informing the Insurance Company about the occurrence of the theft of the vehicle, though the FIR was registered immediately, would disentitle the claimant of the insurance claim, the matter was referred to a three Judge Bench. The three Judge Bench in case of Gurshinder Singh vs. Shriram General Insurance Company Ltd. & Another reported in 2020 (11) SCC 612 in similar case as on hand, interpreted the very condition no. 1 of the Insurance Contract and observed as under:

> "9. We are of the view that much would depend upon the words "cooperate" and "immediate", in Condition 1 of the standard form for commercial vehicles package policy. Before we analyse this case any further, we need to observe the rules of interpretation applicable to a contract of insurance. Generally, an insurance contract is governed by the rules of interpretation applicable to the general contracts. However, due to the specialised nature of contract of insurance, certain rules are tailored to suit insurance contracts. Under the English law, the development of insurance jurisprudence is given credence to Lord Mansfield, who developed the law from its infancy. Without going much into the development of the interpretation rules, we may allude to Neuberger, J. in Arnold v. Britton, which is simplified as under:
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> (1) Reliance placed in some cases on commercial common sense and surrounding circumstances was not to be invoked to undervalue the importance of the language of the provision which is to be construed.
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> (2) The less clear the words used were, the more ready the court could properly be to depart from their natural meaning, but that did not justify departing from the natural meaning.
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> (3) Commercial common sense was not to be invoked retrospectively, so that the mere fact that a contractual arrangement has worked out badly, or even disastrously, for one of the parties was not a reason for departing from the natural language.

(4) A court should be very slow to reject the natural meaning of a provision as correct simply because it appeared to be a very imprudent term for one of the parties to have agreed.

(5) When interpreting a contractual provision, the court could only take into account facts or circumstances which existed at the time that the contract was made and which were known or reasonably available to both parties.

(6) If an event subsequently occurred which was plainly not intended or contemplated by the parties, if it was clear what the parties would have intended, the court would give effect to that intention.

10. A perusal of the aforesaid shows that this contract is to be interpreted according to the context involved in the contract. The contract we are interpreting is a commercial vehicle package policy. There is no gainsaying that in a contract, the bargaining power is usually at equal footing. In this regard, the joint intention of the parties is taken into consideration for interpretation of a contract. However, in most standard form contracts, that is not so. In this regard, the court in such circumstances would consider the application of the rule of contra proferentem, when ambiguity exists and an interpretation of the contract is preferred which favours the party with lesser bargaining power.

11. It is argued on behalf of the respondents and rightly so, that the insurance policy is a contract between the insurer and the insured and the parties would be strictly bound by the terms and conditions as provided in the contract between the parties.

12. In our view, applying the aforesaid principles, Condition 1 of the standard form for commercial vehicles package policy will have to be divided into two parts. The perusal of the first part of Condition 1 would reveal that it provides that “a notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage”. It further provides that in the event of any claim and thereafter, the insured shall give all such information and assistance as the company shall require. It provides that every letter, claim, writ, summons and/or process or copy thereof shall be forwarded to the insurance company immediately on receipt by the insured. It further provides that a notice shall also be given in writing to the company immediately by the insured if he shall have knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence, which may give rise to a claim under this policy.

13. A perusal of the wordings used in this part would reveal that all the things which are required to be done under this part are related to an occurrence of an accident. On occurrence of an accidental loss, the insured is required to immediately give a notice in writing to the company. This appears to be so that the company can assign a surveyor so as to assess the damages suffered by the insured/vehicle. It further provides that any letter, claim, writ, summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. As such, the intention would be clear. The question of receipt of letter, claim, writ, summons and/or process or copy thereof by the insured, would only arise in the event of the criminal proceedings being initiated

with regard to the occurrence of the accident. It further provides that the insured shall also give a notice in writing to the company immediately if the insured shall have the knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. It will again make the intention clear that the immediate action is contemplated in respect of an accident occurring to the vehicle.

14. We find that the second part of Condition 1 deals with the "theft or criminal act other than the accident". It provides that in case of theft or criminal act which may be the subject of a claim under the policy, the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender. The object behind giving immediate notice to the police appears to be that if the police is immediately informed about the theft or any criminal act, the police machinery can be set in motion and steps for recovery of the vehicle could be expedited. In a case of theft, the insurance company or a surveyor would have a limited role. It is the police, who acting on the FIR of the insured, will be required to take immediate steps for tracing and recovering the vehicle. Per contra, the surveyor of the insurance company, at the most, could ascertain the factum regarding the theft of the vehicle.

15. It is further to be noted that, in the event, after the registration of an FIR, the police successfully recovering the vehicle and returning the same to the insured, there would be no occasion to lodge a claim for compensation on account of the policy. It is only when the police are not in a position to trace and recover the vehicle and the final report is lodged by the police after the vehicle is not traced, the insured would be in a position to lodge his claim for compensation.

16. .....

17. That the term "cooperate" as used under the contract needs to be assessed in the facts and circumstances. While assessing the "duty to cooperate" for the insured, inter alia, the court should have regard to those breaches by the insured which are prejudicial to the insurance company. Usually, mere delay in informing the theft to the insurer, when the same was already informed to the law enforcement authorities, cannot amount to a breach of "duty to cooperate" of the insured.

18. .....

19. .....

20. We, therefore, hold that when an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured."

9. In the opinion of the Court the afore-stated ratio of the judgment clinches the issue involved in the case on hand. In the instant case also, the FIR was lodged immediately on the next day of the occurrence of theft of the vehicle by the complainant. The accused were also arrested and charge-

sheeted, however, the vehicle could not be traced out. Of course, it is true that there was a delay of about five months on the part of the complainant in informing and lodging its claim before the Insurance Company, nonetheless, it is pertinent to note that the Insurance Company has not repudiated the claim on the ground that it was not genuine. It has repudiated only on the ground of delay. When the complainant had lodged the FIR immediately after the theft of the vehicle, and when the police after the investigation had arrested the accused and also filed challan before the concerned Court, and when the claim of the insured was not found to be not genuine, the Insurance Company could not have repudiated the claim merely on the ground that there was a delay in intimating the Insurance Company about the occurrence of the theft.

10. In that view of the matter, the Court is of the opinion that the NCDRC should not have set aside the orders of the District Forum and the State Commission by holding that the repudiation of the insurance claim by the insurance company was justified. The impugned order being erroneous and against the settled position of law, deserves to be set aside, and is set aside, accordingly.

11. The appeal is allowed, affirming the order of the State Commission.

.....J. [SANJIV KHANNA] NEW DELHI .....J. 11.02.2022 [BELA M. TRIVEDI]