

Amalendu Sahu vs Oriental Insurance Co.Ltd on 25 March, 2010

Equivalent citations: AIR 2010 SUPREME COURT 2090

Bench: Asok Kumar Ganguly, G.S.Singhvi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2703 OF 2010
(Arising out of SLP(C) No.11227/2009)

Amalendu Sahoo

..Appellant(s)

Versus

Oriental Insurance Co. Ltd.

..Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. This appeal has been filed challenging the judgment and order dated 13.10.2008 of the National Consumer Disputes Redressal Commission (hereinafter, 'National Commission') which upheld the concurrent finding of the District and State Consumer Forums that the car at the time of the accident was being driven on hire and was outside the scope of the insurance policy.

3. The appellant who is the original complainant had taken a comprehensive insurance policy in respect of his private car being No. WB-34C/1919 vide policy No.311701/3/99/7172 of 1999 and the complainant paid the insurance premium duly.

4. As per the complainant, United Bank of India's regional office is his tenant and many of its employees are known to him. One of its employees had approached the complainant to hand over

the aforesaid vehicle for a few hours for urgent use by the employees of the Bank. The complainant handed the aforesaid vehicle by way of a good gesture and did not take any rent from the Bank in this regard. The vehicle met with an accident during the subsistence of the policy.

5. The complainant had lodged a claim before the respondent but it refused to allow the claim *inter alia* on the ground that the vehicle was given on hire and as per the policy terms such use was not permitted and the insured was not entitled to any compensation for such unauthorised use.

6. The District Forum vide its order dated 19.06.2003 dismissed the claim of the complainant after going through the policy. The Forum held that there is a clear condition as to the mode of use of the insured vehicle. The policy was not applicable in case of use of the vehicle for hire, reward or organized racing speed testing and carriage of goods in connection with any trade or business by any third party. Reliance was placed on the report of the office-in-charge of the police station according to which the accident occurred because of the negligence of the driver who had a valid driving licence. Even though no payment was proved, the Forum held that the use of private car without payment of charges could not be imagined. It was coupled with the fact that the Bank Manager of the aforesaid Bank was not examined as a witness by the complainant. The report of the surveyor was that the vehicle was given on a hire basis. However, that report was apparently prepared *ex-parte*.

7. Aggrieved by the aforesaid order, the complainant preferred an appeal to the State Consumer Disputes Redressal Commission which vide its order dated 16.01.2004 dismissed the appeal as devoid of any merits. It was held that from the documents and circumstances it was established that the car was given on a hire. According to the State Commission, the surveyor's report was not challenged by the complainant.

8. Against the order of the State Commission, a revision was preferred before the National Commission and the same was dismissed vide order dated 13.10.2008. According to the National Commission there was concurrent finding on the fact that at the time of the accident the car was used for hire and it was not given as a gesture of goodwill. As such repudiation by the insurance company was upheld.

9. This Court cannot, however, uphold the aforesaid stand taken by the insurance company, which has been affirmed by all the fora below.

10. It is not in dispute that the appellant has taken a comprehensive insurance policy nor is it in dispute that the accident took place during the subsistence of the policy. The policy was, therefore, valid on the date of the accident.

11. What is disputed by the insurance company is that the vehicle was not used for personal use but was used by way of being hired, though no payment for hiring charges was proved. However, according to the insurance company, by using the vehicle on hire, the appellant had violated the terms of the insurance policy and on that basis the insurance company was within its right to repudiate the claim.

12. Reference in this case may be made to the decision of National Commission rendered in the case of United India Insurance Company Limited v. Gian Singh reported in 2006 CTJ 221 (CP) (NCDRC). In that decision of the National Consumer Disputes Redressal Commission (NCDRC) it has been held that in a case of violation of condition of the policy as to the nature of use of the vehicle, the claim ought to be settled on a non-standard basis. The said decision of the National Commission has been referred to by this Court in the case of National Insurance Company Limited v. Nitin Khandelwal reported in 2008 (7) SCALE 351. In paragraph 13 of the judgment, in the case of Nitin Khandelwal (supra) this Court held:-

"..The appellant Insurance Company is liable to indemnify the owner of the vehicle when the insurer has obtained comprehensive policy for the loss caused to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy, the appellant Insurance Company ought to have settled the claim on non- standard basis."

13. In the case of Nitin Khandelwal (supra) the State Commission allowed 75% of the claim of the claimant on non-standard basis. The said order was upheld by the National Commission and this Court refused to interfere with the decision of the National Commission.

14. In this connection reference may be made to a decision of National Commission in the case of New India Assurance Company Limited v. Narayan Prasad Appaprasad Pathak reported in (2006) CPJ 144 (NC). In that case also the question was, whether the insurance company can repudiate the claims in a case where the vehicle carrying passengers and the driver did not have a proper driving licence and met with an accident. While granting claim on non-standard basis the National Commission set out in its judgment the guidelines issued by the insurance company about settling all such non-standard claims. The said guidelines are set out below:-

Sr. No.	Description	Percentage settlement	of
(i)	Under declaration of licensed carrying capacity	Deduct 3 years' difference in premium from the amount of claim or deduct 25% of claim amount, whichever is higher.	
(ii)	Overloading of vehicles beyond licensed carrying capacity	Pay claims not exceeding 75% of admissible claim.	
(iii)	Any other breach of warranty/	Pay upto 75% of admissible claim.	

condition of
policy including
limitation as to
use

15. From a perusal of the aforesaid guidelines it is clear that one of the cases where 75% claim of the admissible claim was settled was where condition of policy including limitation as to use was breached.

16. In the instant case the entire stand of the insurance company is that claimant has used the vehicle for hire and in the course of that there has been an accident. Following the aforesaid guidelines, this Court is of the opinion that the insurance company cannot repudiate the claim in toto.

17. For the reasons stated, we cannot affirm the order of the fora below. We direct the respondent insurance company to pay a consolidated sum of Rs.2,50,000/- even though compensation claimed is Rs.5,00,000/-.

18. In the facts and circumstances of this case, the said sum is to be paid to the appellant by the insurance company without any interest within a period of six weeks from date. However, if the insurance company delays the aforesaid payment beyond six weeks, then this amount will carry an interest of 9% from the date of the expiry of the period of six weeks till the date of actual payment.

19. The appeal is thus allowed to the extent indicated above.

.....J. (G.S.SINGHVI)J. (ASOK KUMAR GANGULY) New Delhi March 25,
2010