

# **Divisional Manager, United India ... vs Samir Chandra Chaudhary on 14 July, 2005**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, S.H. Kapadia**

CASE NO.:

Appeal (civil) 3663 of 2005

PETITIONER:

Divisional Manager, United India Insurance Co. Ltd. and Anr.

RESPONDENT:

Samir Chandra Chaudhary

DATE OF JUDGMENT: 14/07/2005

BENCH:

Arijit Pasayat & S.H. Kapadia

JUDGMENT:

JUDGMENT ARIJIT PASAYAT, J.

Leave granted.

The United Insurance Company Limited (hereinafter referred to as the "insurer") and its Branch Manager, Purulia Branch call in question legality of the order passed by the National Consumer Disputes Redressal Commission (in short the "National Commission") upholding the order of the State Consumer Disputes Redressal Commission (in short the "State Commission"). The revision filed under the Consumer Protection Act, 1986 (in short the "Act") was dismissed. The respondent (hereinafter referred to as the "complainant") had lodged a complaint before the District Consumers Disputes Redressal Forum, Purulia (in short the "District Forum") alleging that the appellants had erroneously repudiated the claim made by him for the damage suffered by him on account of an accident covered by the policy of insurance taken by him.

The factual background in a nutshell is as follows:

The complainant is the owner of an Ambassador Diesel Car which was registered as a taxi and was hired by the Executive Engineer, Agri-Make Division, Purulia for official use. The vehicle was the subject matter of insurance under an insurance policy for the period from 5.2.1992 to 4.2.1993. On 28.4.1992 at about 5.30 p.m. an Eucalyptus tree under which the car was parked fell on the car and extensive damage was caused and without repairing the vehicle could not have been made road worthy. The incident

was reported to the Insurance Company who repudiated the claims on the ground that it was not covered by the policy.

Two claims were made; one related to the loss on account of loss of hiring charges and the other related to the expenses incurred for repairing the damaged vehicle. The Insurance Company resisted the complaint before the District Forum on the ground that the loss was caused due to a storm which resulted in falling of the branch of the Eucalyptus tree on the car. Reference was made to the letter written by the complainant's brother and the claim petition lodged. There was a difference of opinion amongst the members of the District Forum. While the President was of the view that the complainant's plea regarding wrong mention about the storm and the reliance on the letter of Meteorological authority were without substance, the other two members held that the document i.e. letter of the Meteorological authorities clearly established that there was no storm and, therefore, the damage was covered by the terms of the insurance policy. The insurer was directed to pay Rs. 80,000 towards the repairing charges and a sum of Rs. 1,62,000 for loss of hiring charges. The District Forum also directed the payment of interest @18% p.a. from the date of receipt of its order till the realization of the awarded amount in full.

The insurer carried the matter in appeal before the State Commission. The State Commission was of the view that the majority judgment suffers from no infirmity. The letter-certificate issued by the Meteorological authority clearly established that there was no storm. It however held that on the basis of Surveyor's report that the actual damage caused, the amount was to be fixed at Rs.50, 753 and there was no warrant for awarding any amount for the loss of hiring. The rate of interest was also reduced from 18% to 12% p.a. The insurer moved the National Commission in revision. The National Commission in the impugned order held that on hearing learned counsel for the insurer it was clear that damage to the vehicle which occurred on account of falling of Eucalyptus tree was covered under the policy.

Learned counsel for the appellants submitted that the terms of the policy were clear that if any accident occurred to the vehicle which was the subject matter of insurance on account of a storm, the insurer had no liability. The first information about the accident was given by complainant's brother clearly stating that the vehicle was damaged as branch of an Eucalyptus tree fell down on the car due to storm. This letter of the complainant's brother was issued on the next date of the alleged accident i.e. 29.4.1992. Even in the Claim Petition it was clearly stated that the car was standing under a tree and because of heavy storm a road side tree fell down on the car which was badly damaged. Only after repudiation, the complainant cannot take a new plea that in fact there was no storm. For the first time he produced before District Forum the letter- Certificate. The same was not exhibited and no witness was examined to prove its authenticity. Therefore, the finding to the effect that the accident was covered by the terms of the policy cannot be maintained.

Learned counsel for the complainant-respondent submitted that the facts were not known to the complainant's brother and, therefore, the letter was written and the Claim Petition was filed on the basis of wrong information.

In view of the clinching evidence in the shape of the Meteorological Department's letter, the insurer had erroneously rejected the claim.

Certain facts are undisputed. Firstly in the letter dated 29.4.1992 i.e. the next date of the accident it has been categorically noted that the car was damaged because of the falling of a branch of the tree and the branch fell due to storm and in the Claim Petition also it was categorically so stated. The terms of the policy of insurance to which reference has been made by learned counsel for both the parties read as follows:

"Section 1: Loss or damage

1. The Company will indemnify the insured against loss or damage to the Motor Vehicle and/or its accessories whilst thereon

(a) by fire, explosion, self opinion or lighting

(b) by burglary, housebreaking or theft

(c) by riot and strike

(d) by earthquake (fire and shock damage)

(e) by flood, typhoon, tempest, Hurrican, storm, Inundation, Cyclone, Hailstorm, frost.

(f) by accidental external means

(g) by malicious act

(h) by terrorism

(i) whilst in transit by road, rail, inland waterway, lift, elevator, or air

(j) rock slide/land slide.

Xxx xxx xxx xxx xxx IMT.23-Exclusion of Special Perils (Flood Typhoon etc.):

In consideration of an appropriate discount under the policy it is hereby understood and agreed that the words "Flood Typhoon Hurricane Storm Tempest Inundation Cyclone Hailstorm Frost in Section 1(Item `e' of the policy) are hereby deleted and the company shall not be liable for accidental loss or damage caused by or liability directly arising out of the above perils.

In the event of any claim the insured shall prove that the accident loss, damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrence or any consequences thereof and in default of such proof the company shall not be liable to make any payment in respect of such a claim."

The question therefore is whether the exclusion clause of special perils applies. This has to be factually adjudicated. On the one hand the statements made by the complainant's brother and the claim petition and on the other in a letter purported to have been written by the Meteorological authorities were pressed into service by the parties. It was rightly noted by the President of the District Forum in his minority order that the document was not exhibited and it was not clear as to who was the person who had given the certificate, and his authority to issue such a certificate. It is also not clear from the record as to whether the document in question was exhibited before the District Forum and if so, by whom. The complainant's brother had admitted before the District Forum that he had heard about the storm from a Khalasi. The said Khalasi was also not examined. Prima facie therefore, at the first available instance the scenario as projected by the complainant's brother was that the branch had fallen off because of a storm. On the other hand exists the so called letter-certificate purported to have been issued by the Meteorological authorities. It cannot be lost sight of that nobody was examined by the complainant about the subsequent version that there was no storm. Admission is the best piece of evidence against the persons making admission. As was observed by this Court in *Avadh Kishore Das v. Ram Gopal and Ors.*, AIR (1979) SC 861 in the backdrop of Section 31 of Indian Evidence Act, 1872 (in short the 'Evidence Act') it is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong; but they do raise an estoppel and shift the burden of proof placing it on the person making the admission or his representative-in-

interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. As observed by Phipson in his *Law of Evidence* (1963 Edition, Para 678) as the weight of an admission depends on the circumstances under which it was made, these circumstances may always be proved to impeach or enhance its credibility. The effect of admission is that it shifts the onus on the person admitting the fact on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must be taken to be established. An admission is the best evidence that an opposing party can rely upon, and though not conclusive is decisive of matter, unless successfully withdrawn or proved erroneous. (See *Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors.*, AIR (1960) SC 100). Contemporaneous documents clearly show that the complainant right from the beginning had accepted the position that the branch had got knocked off the tree because of storm. If he wanted to explain the admission, the onus was on him to adduce material to show the contrary. Such material has to be of clinching nature so as to outweigh the admission. The National Commission did not consider these aspects. The State Commission's approach was also not in the correct direction. In the aforesaid background it would be in the interest of justice to remit the matter to the National

Commission for hearing the matter afresh. It shall permit the parties to place such evidence in support of their respective stands if they want to adduce such evidence. We make it clear that we have not expressed any opinion on either of the respective stands. The appeal is accordingly disposed of with no order as to costs.