

A BHARAT WATCH COMPANY THROUGH ITS PARTNER

v.

NATIONAL INSURANCE CO. LTD. THROUGH ITS REGIONAL
MANAGER

B (Civil Appeal No.3912 of 2019)

APRIL 12, 2019

[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]

C *Insurance:*

Insurance policy – Exclusionary clause – Non-communication of, to the insured – Effect of – Insurance claim – For theft/burglary of shop – Claim was repudiated by the insurer in view of the terms of exclusion in the policy – Consumer complaint allowed by District Forum as well as by the State Commission in appeal, on the ground that exclusion would not be binding on the insured because the terms and conditions of the exclusion were not communicated to the insured – National Commission, relying on the exclusion clause, rejected the claim of the insured – In appeal, held: Terms and conditions of the exclusionary clause would have been attracted if the same were communicated to the insured – In absence of such communication, the exclusionary clause are not attracted in the present case – Order of National Commission is liable to be set aside – Appeal allowed.

F *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal (2004) 8 SCC 644 : [2004] 4 Suppl. SCR 662 – distinguished.*

Case Law Reference

[2004] 4 Suppl. SCR 662 distinguished Para 6

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3912 of 2019.

From the Judgment and Order dated 16.04.2015 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 3836 of 2010.

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Sudhanshu S. Choudhari, Ms. Surabhi Guleria, Yogesh Kalte, Ms. A
Nandini Singla, Advs. for the Appellant.

Vishnu Mehra, Anant Mehrotra, Ms. Sakshi Mittal, Advs. for the
Respondent.

The Judgment of the Court was delivered by B
DR. DHANANJAYA Y. CHANDRACHUD, J.

1. Leave granted.

2. The National Consumer Disputes Redressal Commission¹ by
its judgment dated 16 April 2015 reversed the concurrent findings arrived
at by the District Consumer Disputes Redressal Forum, Solapur² and C
by the Consumer Disputes Redressal Commission, Maharashtra³.

3. The appellant has a showroom at Solapur in which watches
are sold. The appellant had insured its stock of watches with the
respondent. During the course of the night on 3 August 2001, after the
shop had closed for the day, a theft occurred in the premises. The theft D
was detected at about 9 A.M. on the next day after the shop opened for
business.

4. A First Information Report was lodged with the Police and a
claim under the insurance policy was made. The surveyor submitted a
preliminary report on 4 September 2001 indicating a loss of approximately E
Rs 3,86,395. The surveyor recorded that they were informed by the
partner of the firm that the theft may have taken place by utilising duplicate
keys. The surveyor, however, found empty watch stands on which the
strips of the model numbers were lying behind the counters. There was
no sign of forcible entry. This was followed by a surveyor's report F
dated 30 November 2001.

5. After the claim was repudiated by the insurer, the appellant
filed a consumer complaint. By an order dated 26 April 2007, the District
Forum allowed the claim in the amount of Rs. 3,04,000. The decision of
the District Forum was affirmed, in appeal, by the SCDRC on 19 April G
2010.

6. The NCDRC reversed the above decisions in its revisional order
dated 16 April 2015, relying upon a decision of this Court in United

¹ "NCDRC"

² "District Forum"

³ "SCDRC"

A *India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal*⁴.
 Construing the terms of the exclusion in a policy of insurance against burglary and/or house breaking, this Court had held that where the loss or damage was caused without forcible and violent entry to and/or exit from the premises, the claim could not be maintained. The terms of the policy in the above decision of this Court read as follows:

B “Burglary and/or housebreaking’ shall mean theft involving entry to or exit from the premises stated therein by forcible and violent means or following assault or violence or threat thereof to the insured or to his employees or to the members of his family.”

C 7. Construing the above condition, this Court held:

D “15....we are of the opinion that theft should have been preceded with force or violence as per the terms of insurance policy. In order to substantiate a claim an insurer has to establish that theft or burglary took place preceding with force or violence and if it is not, then the insurance company will be well within their right to repudiate the claim of the insurer.”

8. In the present case, the NCDRC in the course of its decision adverted to “clause 8” of the insurance policy which was in the following terms:-

E “Loss of money and / or other property abstracted from safe following the use of the key to said safe or any duplicate thereof belonging to the insured unless such key has been obtained by assault or any threat”

F 9. This was in any event not applicable, since the loss was not from a safe.

10. Clause (a) of the policy as extracted in the above judgment reads thus:

G “Any loss of or damage to the property or any part thereof whilst contained in the premises described in the schedule hereto due to Burglary or Housebreaking (theft following upon an actual forcible and violent entry to and / or exit from the premises and hold-up”

11. Since clause (a) was *pari materia* with the clause which was construed by this Court in the above decision of this Court in United

H ⁴ (2004) 8 SCC 644

India Insurance (supra), the NCDRC reversed the decisions of the District Forum and the SCDRC. A

12. The basic issue which has been canvassed on behalf of the appellant before this Court is that the conditions of exclusion under the policy document were not handed over to the appellant by the insurer and in the absence of the appellant being made aware of the terms of the exclusion, it is not open to the insurer to rely upon the exclusionary clauses. Hence, it was urged that the decision in Harchand Rai (supra) will have no application since there was no dispute in that case that the policy document was issued to the insured. B

13. This submission is sought to be answered by the learned counsel appearing on behalf of the insurer by adverting to the fact that the SCDRC construed the terms of the exclusion. The SCDRC, however, did not notice the decision of this Court, and hence, the NCDRC was (it was urged) justified in correcting the error having regard to the law laid down by this Court. Learned counsel urged that the appellant has been insuring its goods for nearly ten years and it is improbable that the appellant was not aware of the exclusion. C D

14. We find from the judgment of the District Forum that it was the specific contention of the appellant that the exclusionary conditions in the policy document had not been communicated by the insurer as a result of which the terms and conditions of the exclusion were never communicated. The fact that there was a contract of insurance is not in dispute and has never been in dispute. The only issue is whether the exclusionary conditions were communicated to the appellant. The District Forum came to a specific finding of fact that the insurer did not furnish the terms and conditions of the exclusion and special conditions to the appellant and hence, they were not binding. When the case travelled to the SCDRC, there was a finding of fact again that the conditions of exclusion were not supplied to the complainant. E F

15. Having held this, the SCDRC also came to the conclusion that the exclusion would in any event not be attracted. The finding of the SCDRC in regard to the interpretation of such an exclusionary clause is evidently contrary to the law laid down by this Court in Harchand Rai (supra). However, the relevance of that interpretation would have arisen provided the conditions of exclusion were provided to the insured. The NCDRC missed the concurrent findings of both the District Forum and G

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A the SCDRC that the terms of exclusion were not made known to the insured. If those conditions were not made known to the insured, as is the concurrent finding, there was no occasion for the NCDRC to render a decision on the effect of such an exclusion.

B 16. In the circumstances, the NCDRC was in error in reversing the decisions of the District Forum and the SCDRC which were grounded on a pure finding of fact that the terms of exclusion were not made known to the insured.

C 17. We clarify that in a situation where the terms of exclusion as noted earlier apply, the law laid down by this Court in Harchand Rai (supra) would undoubtedly stand attracted. This case is, however, distinguishable on facts, since the terms of exclusion were not communicated.

D 18. We accordingly, allow the appeal and set aside the impugned judgment and order of the NCDRC. The order passed by the District Forum shall accordingly, stand restored. There shall be no order as to costs.

19. Pending application(s), if any, shall stand disposed of.