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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11807-2021

Date of Decision : 10.09.2024

Rajnish Kumar

...Petitioner

Versus

Insurance Ombudsman Chandigarh
and another

....Respondents

BEFORE: HON'BLE MR. JUSTICE VINOD S. BHARDWAJPresent: Mr. Suresh Kumar Sharma, Advocate for
Mr. Dharamvir Sharma, Advocate for the petitioner.

Mr. Vishal Aggarwal, Advocate for respondent No.2.

VINOD S. BHARDWAJ, J. (ORAL)

1. Challenge in the present petition is to order dated 17.07.2020 (Annexure P-6) passed by the Insurance Ombudsman whereby the application submitted by the petitioner was dismissed on conjectures and surmises.

2. Learned counsel for the petitioner contends that the petitioner had purchased a used Skoda Rapid Car bearing registration No.UK-06AH-5199 on 07.11.2017. Since the Insurance Policy of the said car was about to expire, he got it renewed from respondent No.2-Bajaj Allianz General Insurance Company Limited valid from 23.01.2018 to 22.01.2019. The Registration Certificate of the vehicle was transferred in favour of the petitioner from the erstwhile owner Surbhi Khatri. The vehicle was being used by the petitioner. On the day of the incident, the petitioner had gone to his sister's house at Indra Colony Narela, Delhi on 29.12.2018 and had parked his car near her house at about 9.00 pm. On the next day i.e. 30.12.2018, when the petitioner came out at around 7.00 am, he found that the car was missing. He made enquiries from the nearby



locals, and on not finding the same he submitted a complaint to the police about it. A General Diary No.011A dated 30.12.2018 was immediately registered at Police Station Narela (Rohini) which was eventually converted into FIR No.23 dated 01.01.2019 under Section 379 IPC at Police Station Narela. Since the whereabouts of the vehicle could not be traced, an untraced report was submitted by the Investigating Agency which was also accepted by the Court of Ms. Jasjeet Kaur, Additional Chief Metropolitan Magistrate-01, North District, Rohini Courts, Delhi on 07.02.2019. The petitioner had also submitted the information regarding theft of his car to the Registering Authority, Udham Singh Nagar (Uttarakhand), on 27.02.2019 and prayed that the computer file of his car be closed so that no one could take advantage of seeking the transfer of registration certificate of the vehicle. A claim was also lodged by the petitioner with the respondent-Insurance Company. All the documents as demanded by the Company were submitted by the petitioner, however, the respondent-Insurance Company repudiated the claim filed by the petitioner with an observation that the same were not tenable. Aggrieved thereof, a complaint was filed by the petitioner before the Insurance Ombudsman which was also declined. The operative part of order passed by the Insurance Ombudsman dated 17.07.2020 reads thus:

“21) Result of Personal hearing with both parties (Observations & Conclusion)

On perusal of all documents in the complaint file, SCN submitted by the insurance company and submissions made by the both parties during whatsapp video conferencing, it is seen that insurance company vide dated 01-08-2019 has asked for compliance of certain documents. These documents included previous insurance policy, vehicle purchase bill from the dealer with duly stamped from dealer, PUC certificate of the vehicle,



proper existence proof of vehicle before incident, court accepted untraced report and address proof of Uttarakhand place of registration. Complainant stated that this compliance has been done but still insurance company is not giving his claim. On going through compliance requirements, it is seen that complainant has given untraced report from North District, Rohini Court, Delhi, order dated 07-12-2019. Hence, there is no dispute with regard to theft of the vehicle under the insurance policy. Address proof of Uttarakhand is asked by insurance company since place of registration of vehicle is from ARTO Udham Singh Nagar. From the certificate of registration it is seen that vehicle is transferred in the name of complainant on 03-11-2017. Complainant has not disclosed this fact to this forum or in his complaint which also hints about misrepresentation of facts. But at the same time Admissibility of the claim depends upon as to whether the company has rightly investigated the case or there is a misrepresentation on the part of complainant. On going through documents in the file, it is seen that insurance company main plea is that complainant had suppressed previous policy details along with actual purchase value of vehicle at the time of taking the policy from us through online portal. It is observed that theft of vehicle occurred on 30-12-2018. Company pointed that the insured has misrepresented and concealed many material facts with regard to IDV of vehicle, sale deed of vehicle and key of the vehicle. On other hand, as per statement of complainant during whatsapp video conferencing, he purchased the policy online through portal of insurance company. He has purchased vehicle on cash payment and doesn't have any sale deed document with him. He had given the key of vehicle which he had with him to the insurance company. On going through the documents and submissions made by both the parties, it is seen that there is no dispute with regard to purchase of policy online through company portal. Complainant can't be made scapegoat of higher IDV at the time of claim payment when their own online mechanism is at fault. Further, after purchase of



insurance policy, insurance company should have brought this discrepancy to complainant. Insurance Company pointed that there is misrepresentation of facts with regards to Insured declared Value on the part of complainants in order to grab the claim amount from the insurance company. Insurance Company cannot take the shelter with regard to age of vehicle and IDV too after due acceptance of proposal and underwriting the policy by their office at the time of claim. But certain other factors also contribute in respect of IDV.

Self video-inspection report is carried out by complainant himself on 21-01-2018 at 12.23 pm. It is evident that there is no enhancement/appreciation of vehicle in anyway. There is no comment with regard to extra fitting for accessories or improved version/ modification by complainant which have been carried out in the vehicle. Further, there is also a dispute with regard to purchase price of the vehicle by complainant since he has not given any details with regard to previous insurance. During whatsapp video conferencing, complainant accepted that he has purchased the vehicle for Rs 8,80,000/- (Eight Lacs Eighty thousand rupees) in cash. He was told to show some documentary evidence which could justify his purchase of vehicle. But complainant failed to produce any document like sale and purchase deed, proper cash receipt for his vehicle. As such absence of these indispensable documents clearly hints about the misrepresentation of facts before insurance company. The alleged vehicle previously met with an accident when the same was insured with Tata AIG insurance company and the owner of the same was Mrs Surbhi Khatri. Insurance period with Tata AIG was 10-11-2016 to 09-11-2017. The Tata AIG had settled the claim of the Surbhi Khatri and the vehicle was sold to Shriram Automall by Tata AIG. Thereafter, the damaged vehicle was sold by Shriram Automall to Randhawa Motors with RC for 2,40,000/- and thereafter Randhawa motors had sold the vehicle to Vijay Motors Karnal in 2,65,000/- and from Vijay Motors the complainant had



bought the alleged stolen vehicle bearing no. UK-06-AH-5199. Further, it is seen from certificate of registration of vehicle bearing no.UK-06-AH-5199 is transferred in the name of complainant on 03-11-2017 and the earlier owner of the vehicle was Mrs Surbhi Khatri. But complainant has not produced any document to show as to when he had purchased the vehicle. Since, the principle of indemnity is a defining aspect of insurance, and it states that an insurance policy shall not provide compensation to the policyholder that exceeds their economic loss. This limits the benefit to an amount that restores the policyholder to the same financial state they were in prior to the loss. Complainant cannot also be made to take advantage or make profit for misdeeds of insurance company from public fund pool. In the instant case, complainant has miserably failed to produce any document with regard to purchase of his vehicle, any enhancement done in the vehicle and also non-disclosure of facts with regard to transfer of vehicle in his name to forum also. Hence, the decision of the insurance company is in order and no interference is required in their decision. Keeping in view the above facts, the said complaint is hereby dismissed and no relief is granted.

AWARD

Taking into account the facts & circumstances of the case and the submissions made by both the parties during the course of whatsapp video conferencing, the said complaint is hereby dismissed on merits.

Hence, the complaint is treated as closed.”

3. Aggrieved against the award passed by the Insurance Ombudsman, the present petition has been preferred.
4. Written statement on behalf of respondent No.2, by way of affidavit of Saurav Khullar, Senior Executive Legal, Bajaj Allianz General



Insurance Company Limited has been filed, wherein the order passed by the respondent-Insurance Ombudsman was stated to be correct and it was further submitted that there is a material concealment of facts and that the Insurance Company had repeatedly sought documents vide letters dated 03.01.2019, 06.04.2019, 02.05.2019, 10.05.2019, 25.06.2019 and 01.08.2019 pertaining to the previous insurance policy, vehicle purchase bill from the dealer duly stamped, PUC certificate amongst others. It has been further averred that most of the said documents demanded had not been furnished and as such, there was no deficiency on the part of the Insurance Company in not entertaining the claim application. It has been further averred that there was delay of two days in lodging of the FIR which aggravated the loss caused to the Insurance Company and thus, the Insurance Company was not liable to honour the claim. It has also been averred that earlier IDV of the vehicle, as per the previous policy, was Rs.7,30,000/- wherein the vehicle was insured with TATA AIG Insurance Company. The said vehicle, which was make of the year 2015, met with an accident and being a total loss vehicle was sold by its owner Surbhi Khatri to Shri Ram Auto Mall by way of settlement with TATA AIG. The said vehicle was thereafter sold to Randhawa Motors by Shri Ram Auto Mall for Rs.2,40,000/- and subsequently, to Vijay Motors Karnal for Rs.2,65,000/-. The vehicle in question was purchased by the petitioner from Vijay Motors and that the original sale price, for which the vehicle was purchased, had not been conveyed. The copy of the earlier Insurance Policy, communication from TATA AIG showing sale of vehicle @ Rs.2,25,000/- and certificate issued by Randhawa Motors had also been led in evidence. It was also averred that the petitioner played a fraud by declaring the IDV @ Rs.8,61,884/- by concealing the abovesaid facts. It was further submitted that second original key had not



been submitted by the petitioner with the Insurance Company and that the second key submitted was a duplicate key. Consequently, the Insurance Company is not liable to pay the claim and that the Company has been rightly exonerated by the Insurance Ombudsman.

5. Learned counsel appearing on behalf of the petitioner has argued that the petitioner had disclosed all material information that was asked for by the respondent-Company during issuance of the policy. There was no concealment/ misrepresentation on the part of the petitioner. The registered owner prior to the date when the car was sold in his favour was Surbhi Khatri and the ownership was transferred in his name in November, 2017 from the said registered owner. The respondent accepted premium on the IDV of Rs.8,61,884/- and never made it mandatory to give details of the earlier Insurance Policy and status of the vehicle prior to its purchase. Thus, the said information was not material and crucial for a decision relating to underwriting the risk. The respondents cannot now be permitted to dispute the declared value of the vehicle, at the time of settling the insurance claim, after having accepted the premium. He further argues that the conclusions drawn by the respondent-Insurance Ombudsman were conjectural and based upon circumstances that were irrelevant and immaterial for entertaining the claim of the petitioner for loss of the vehicle. It is also argued that there was no delay in reporting the matter to the police. As a matter of fact, the incident of theft was reported by the petitioner on 30.12.2018 itself i.e. on the same very day and immediately on coming to know about theft and the General Diary was also recorded. The police converted the said General Diary into an FIR on 01.01.2019. Thus, it is not a case of delay by the petitioner in approaching the police. Delay on the part of the police in registration of the FIR cannot be read as a reason to deny



the claim to the petitioner. It was further submitted that a cancellation report has already been filed and there is no suspicion or attribution of a foul play of any nature whatsoever. Hence, the loss of the vehicle by way of theft cannot be disputed. It was also not the case of the Investigating Agency or the Investigator of the Insurance Company at any point of time that the petitioner may have conspired for a clandestine removal of the vehicle. In the absence of any such evidence, the conclusion becomes conjectural and is liable to be declined.

6. Learned counsel for the respondent, on the other hand, submits that the discrepancies noticed were crucial for ascertaining the theft and loss caused to the petitioner. He contends that the vehicle, initially having been sold for Rs.2,40,000/-, could not have the IDV of the vehicle as Rs.8,61,884/-. The petitioner was called upon to submit the evidence/proof of the payment of the sale consideration, however, the specific stand of the petitioner was that the entire consideration money had been paid in cash, which is highly improbable. He contends that to assess the loss, if any, it is necessary to know the actual value, at which the vehicle had been purchased, and that due to failure of the petitioner to furnish those documents, the claim was rightly declined. It is reiterated that the petitioner has also not submitted both the duplicate keys, which is unnatural, and the said lapse cannot be ignored outrightly and that the Insurance Ombudsman has drawn the probability of second original key of the car having been left in the dashboard of the car which facilitated the removal of the car at the time of incident. Thus, there is no illegality or perversity in the order passed by the Insurance Ombudsman.

7. I have heard learned counsel for the parties and have gone through the relevant material available on record.



8. Insofar as the aspect of the non disclosure of the earlier Insurance Policy as well as the non-submission of the receipt of payment for which the second hand vehicle was purchased is concerned, it is not disputed by the counsel for the Insurance Company that the declaration/furnishing of such an information was not a mandatory pre-requisite for issuance of an Insurance Policy. If an information was immaterial at the time of issuance of a Policy, the same cannot be pressed as an essential information, at the time of processing the claim lodged by the insured. Once the insurance company feels it commercially prudent not to verify the value or insurance track record of the vehicle, when the Policy is being issued, the said aspect cannot be given undue prominence when the claim is to be paid.

9. Further, the production of a receipt of the subsequent sale price may even otherwise be irrelevant for determining the value of the property. The sufficiency of sale consideration is not the pre-requisite of entering into a valid and enforceable contract. Besides, the vehicle was a total loss vehicle when its value was settled and hence, had more of a scrap value. Undisputedly, the vehicle was repaired and made roadworthy. It may not be necessary for a person to get the damaged vehicle repaired from the authorized workshop. Hence, there can be numerous possibilities due to which the sale consideration may not be the indicator of the correct value of the vehicle, in the instant case. Hence, irrespective of the consideration of value of vehicle for which it was purchased, the Insurance Policy was not issued on the purchase value but for the declared value as accepted by the respondents. It is well accepted position in law that a property may be sold for different considerations/or out of love and affection and sufficiency of consideration may not be a pre-requisite for entering into an enforceable contract.



10. Furthermore, it is also well established from the record that the respondent-Insurance Ombudsman has drawn a conjectural conclusion with respect to the probability of second original key having been left in the glove box which is the case set up by no one. No person of ordinary prudence keeps the second original key in the glove box. A presumption of fact, if any, can be drawn only on an ordinary conduct of a reasonable person. An exceptional conduct of a reasonable person is not to be accepted unless such claim is established, stepping into the shoes of the person buying a total loss vehicle and getting it repaired for his use, it would rather be a situation where the second original key has been kept in such safety where it becomes non-traceable and not in the glove box of the car. The law in this regard is further well settled to the effect that a suspicion cannot partake the requirement of proof. Conjectural conclusions drawn on distant probabilities to repudiate the claim would not be generally approved by the Court for dishonouring the claim of an insured. The Insurance Policies are meant for safeguarding the interest of the person who was insured and for declining the liability, an Insurance Company must bring its case within the fold where the claim for insurance can be validly repudiated/declined.

11. I find that the entire claim of the respondent and its defences are based upon remote conjectural conclusions and hypothesis which is not probable on test of ordinary prudence. Since the burden to justify repudiation of claim was to be discharged by the respondent-Insurance Company and no cogent evidence has been led by them, I find that the conclusions drawn by the Insurance Ombudsman are erroneous. There has been no delay on the part of the petitioner in reporting the matter to the police and a General Diary was registered on the day of the incident itself and the same was converted into an



FIR. An untrace report was submitted by the police and at no point did the Investigating Agency suspect the petitioner of having indulged in any foul play. The respondent-Insurance Company also did not express any suspicion with respect to clandestine removal of the vehicle at the instance or /with the petitioner being in collusion.

12. Even though ordinarily a person aggrieved (other than the Insurance Company) has the liberty to approach the Consumer Courts against an order passed by the respondent-Insurance Ombudsman, however, this matter is being decided since the same has already remained pending for 7 years out of which for about 4 years before this Court. Hence, the merits of the present case, notwithstanding existence of an alternative remedy, have been gone into in larger interest of substantial justice.

13. The present writ petition is accordingly allowed. Order dated 17.07.2020 passed by the Insurance Ombudsman is set aside. The respondent-Insurance Company is directed to release the dues admissible to the petitioner, in relation to Insurance Policy No. OG-18-9906-1801-00110422, as per law and within a period of two months from the date of receipt of certified copy of this order alongwith interest @ 6% per annum from the date of filing of the present writ petition till its release.

(VINOD S. BHARDWAJ)
JUDGE

September 10, 2024
ps

Whether speaking/ reasoned : *Yes/No*
Whether reportable : *Yes/No*