In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 24672 of 2015 (O&M)
Date of Decision: December 14, 2015

Magma HDI General Insurance Co. Ltd.

... Petitioner

Versus

Kuldeep Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) *Whether Reporters of the local papers may be allowed to see the judgment?*
2) *To be referred to the Reporters or not?*
3) *Whether the judgment should be reported in the Digest?*

Present: Ms. Vandanaa Malhotra, Advocate,
for the petitioner.

Paramjeet Singh, J. ***(Oral)***

CM-16066-CWP-2015

Civil Misc. application is allowed subject to all just exceptions. Affidavit of Ved Vyas Tripathi Manager (Legal), Legal Department, Magmi HDI General Insurance Company Ltd. is taken on record.

CWP No. 24672 of 2015

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the impugned order dated 15.07.2015 (Annexure P/1) passed by respondent no.2 – Insurance Ombudsman, Chandigarh, whereby direction has been issued to the petitioner to pay an additional amount of Rs.2,70,000/- to the insured and restricting the deduction to the extent of 5% of the insured amount only.

Brief facts of the case are that respondent no.1 – Kuldeep Singh got insured his vehicle bearing registration No. HR-46-C-6518 with the petitioner – Insurance Company vide insurance policy No. 14100017/41103/186867, which was valid upto 18.08.2014. The total insured amount for the said vehicle was Rs.18 lacs. On 17.10.2013, the vehicle in question was stolen. However, during investigation, police found that it was not stolen, rather it was forcibly taken away / snatched from the driver. The claim of respondent no.1 was repudiated partly on account of non-supply of second key. The alleged original R.C., permit, fitness certificate etc. have gone with the vehicle in question. Vide order dated 15.07.2015 (Annexure P/1), the Insurance Ombudsman, after considering the submissions of the parties, directed the petitioner to pay an additional amount of Rs.2,70,000/- to the insured and restricted the deduction to the extent of 5% of the insured amount only. The relevant part of award (Annexure P/1) reads as under:-

"6. After going through the written submissions and verbal pleadings, I am of a view that Company's decision to deduct a sizeable amount on the ground of absence of second key is not justified because as per Police Report the vehicle was not stolen and it was snatched from the driver. Thus, a fact of a misplacement of one key is not relevant. Under the circumstances, it will be in order to deduct a notional amount, equivalent to 5% of payable amount. Accordingly, an award is passed with a direction to the Insurance Company to pay an additional amount of Rs.2,70,000/- to the insured."

Hence, this writ petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner vehemently argued that case was settled for only 75% of the sum assured and respondent no.1 gave a consent for this vide consent letter (Annexure P/4).

The Insurance Ombudsman which is appointed under the provisions of the Insurance Act, has passed the reasonable award and came to the conclusion that company's decision to deduct a sizeable amount on the ground of absence of second key is not justified because as per police report the vehicle was not stolen, rather snatched from the driver and other documents are stated to have gone with the vehicle. So, a fact of a misplacement of one key is not relevant. Under these circumstances, the Insurance Ombudsman came to the conclusion that deduction should be only of a notional amount, equivalent to 5% of the payable amount. Accordingly, ordered that the Insurance Company to pay an additional amount of Rs.2,70,000/- to the insured.

So far as the contention with regard to consent given by respondent no.1 for deduction of 25% is concerned, same cannot be accepted. Many a time, when the claims are unnecessarily delayed, person give the consent with a purpose to get at least some amount. Consent must be given voluntarily and not under any form of duress or undue influence. Mere signature on a consent document does not itself prove that consent is voluntarily given. Otherwise also, as per law once the vehicle is insured then the Insurance Company is only required to settle the claim as per the provisions. The Insurance Ombudsman has rightly observed that merely non-production of second key, 25% cut cannot be imposed on the sum assured.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed in limine.

December 14, 2015 **[Paramjeet Singh]**
vkd **Judge**