



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2016

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P (MD) .No.6846 of 2015

D.Balamurugan

... Petitioner

Vs

Sriram General Insurance Co. Limited,
No.30, HAK Road,
Near ICICI Bank,
Chinna Chokkikulam,
Madurai.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of mandamus directing the respondent herein to settle the petitioner's claim for own damages in respect of lorry bearing Regn.No.TN 21 P 3330 insured with the respondent under policy No.421030/31/ 13/005647 by following the due process of law on total loss basis within a reasonable time.

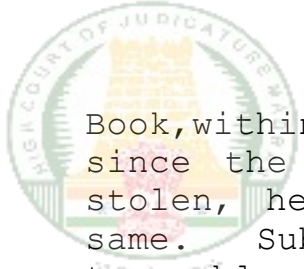
For petitioner : Mr.Muthu Geethaiyan for
Mr.N.Mohan

For Respondents : Mr.S.Anwar Sameem

ORDER

The petitioner has filed this writ petition, for a direction, directing the respondent herein to settle the petitioner's claim for own damages in respect of lorry bearing Regn.No.TN 21 P 3330 insured with the respondent under policy No.421030/31/13/005647 by following the due process of law on total loss basis.

2. According to the petitioner, he is the owner of the lorry bearing Regn.No.TN 21 P 3330, which was insured with the respondent/Insurance Company. The above vehicle was stolen by an unknown person at Theni on 26.01.2013 and on the very same day, he lodged a complaint before the Theni Police Station. On receipt of the complaint, the Police also registered a case under Crime No.10000/31/13/C/059023. Thereafter, after two days i.e on 28.01.2013, he made a claim before the respondent along with a copy of the Police Report (P.I.R), seeking damages on the total loss basis. Subsequently, on 13.07.2013, the respondent directed the petitioner to produce all the required documents including the RC



Book, within a period of 30 days. According to the petitioner, since the Original R.C book, was kept in the lorry, which was stolen, he is not in a position to submit the original of the same. Subsequently, he pleaded before the respondent for non-traceable certificate and the Police also issued a non-traceable certificate of the petitioner's lorry. Hence, the petitioner made a representation before the respondent along with the non-traceable certificate, issued by the Police. Since the respondent did not consider the same, the present writ petition has been filed.

3. The respondent filed a counter affidavit stating that even though the claim was registered on 28.01.2013, the petitioner did not produce the documents, as required by the respondent to consider his claim. In the above circumstances, repudiation notice, dated 13.07.2013, has been issued to the petitioner, directing him to produce all the documents within a period of 30 days and the petitioner did not send any reply to the above said repudiation notice and the respondent also did not receive any representations dated 11.11.2014, 09.01.2015 and 16.02.2015. The respondent also contended that the claim of the petitioner regarding the original document is not genuine, it is only an after-thought. Since the petitioner did not intimate the theft of the vehicle immediately and also not produced required documents, his claim has been repudiated. Apart from that, the respondent also contended that the writ petition is not maintainable and it is a time-barred one.

4. Heard the learned counsel on either side and perused the material documents carefully.

5. The learned counsel for the petitioner would submit that the petitioner had already produced all the required documents, before the respondent, except the original R.C Book, since the same was stolen along with the lorry. In this regard, he relied upon an order passed by this Court, in W.P.(MD).No.11688 of 2008, dated 29.04.2013, wherein, this Court has held as follows:

"When the petitioner is entitled for benefit under the policy, subject to terms and conditions, the question of filing civil suit or payment of court fee does not arise."

and the learned counsel for the petitioner would submit that since the petitioner is entitled for claim, he need not file a civil suit, regarding repudiation of his claim, the learned counsel for the petitioner would submit that there is no condition in the policy that merely because there was a delay in intimation, the policy get automatically repudiated.



6.Countering the above arguments, the learned counsel for the respondent submits that since the respondent issued several notices requiring the petitioner to produce all the documents enabling him to process the claim petition, the petitioner did not come forward to produce all the required documents. Therefore, the petitioner loses his right to ask for consideration of his claim petition.

7.The learned counsel for the petitioner would further submit that delay is not because of the loss of the document. He approached the concerned police and filed a claim petition within two days of the claim. There was only delay in producing the document and it is only due to the bonafide reason. After approaching the concerned Joint Commissioner, the petitioner approached the Police and sent all the documents by registered Post and he also produced acknowledgment for the production of the documents.

8.Admittedly, the claim petition was filed within two days of the claim and there was a delay only in submitting the documents. Since the claim petition has already been made within two days and the claim was registered within the reasonable time, the delay in filing claim petition cannot be held as genuine. So far as the delay in submitting the non-traceable certificate is concerned, it is due to a bonafide reason that the petitioner approached the police and got a non-traceable certificate and thereafter, he submitted the same before the respondent.

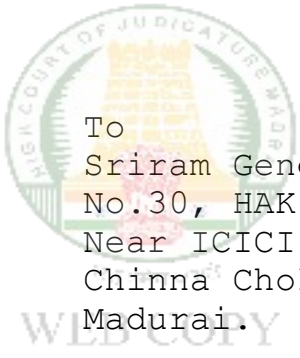
9.In the above circumstances, the petitioner is directed to file the documents required by the respondent/Insurance Company within a period of two weeks from the date of receipt of a copy of this order. On receipt of the above said documents, the respondent is directed to consider the petitioner's claim petition and pass suitable orders within a period of six weeks thereafter in accordance with law.

10.The learned counsel for the petitioner submits that since the original RC book is not available, the petitioner is ready and willing to submit the xerox copy of the RC book. In such circumstances, the respondent is directed to consider the above RC Book, if it is permissible.

11.With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(co)

/True copy/



To
Sriram General Insurance Co. Limited,
No.30, HAK Road,
Near ICICI Bank,
Chinna Chokkikulam,
Madurai.

+1cc to Mr.N.Mohan, Advocate Sr.No.67870

+2cc to Mr.T.Antony Arul Raj, Advocate SR.No.67704, 68538

vs

sm:sk-skn:14/12/2016:4P/5C

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