IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.02.2018

Delivered on : 22.02.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.28548 of 2011

N.D.Vijayakumar .. Petitioner

versus

1. The United India Insurance Company Ltd.,
   Rep. by its Branch Manager,
   Branch Office,
   Guindy,
   Chennai-600 032.

2. The Assistant Registering Authority,
   R.T.O. (North),
   Chennai-600 039.

3. Mr.Manisekaran
   The Regional Manager,
   United India Insurance Company Ltd.,
   Sillingi Building, No.134, Greams Road,
   Chennai-600 006.

4. Mr.Bakthavachalam,
   The Regional Manager,
   United India Insurance Company Ltd.,
   Sillingi Building, No.134, Greams Road,
   Chennai-600 006. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the concerned records relating to the order No. Nil dated 21.10.2011 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to accept the claim submitted by the petitioner on 14.02.2011 in respect of his vehicle No.TN-05-V-6606, Toyota Innova Diesel Car covered by Policy No.011801/31/10/01/60003711 for the period from 21.07.2010 to 20.07.2011 issued by the 1st respondent.

For Petitioner : Mr.M.Gnanasekar

For Respondents: Mr.N.Vijayaraghavan
for M/s.M.B.Gopalan for R1, 3 & 4

Mr.T.M.Pappiah
Spl. Govt. Pleader for R2

ORDER

The writ petition has been filed by the Petitioner, praying the following:

> "To issue Writ of Certiorarified Mandamus, to call for the concerned records relating to the order No. Nil dated 21.10.2011 passed by the 1st respondent, quash the same and consequently direct the 1st respondent to accept the claim submitted by the petitioner on 14.02.2011 in respect of his vehicle No.TN-05-V-6606, Toyota Innova Diesel Car covered by Policy No.011801/31/10/01/ 60003711 for the period from 21.07.2010 to 20.07.2011 issued by the 1st respondent."

2. According to the petitioner, he is a registered owner of the Toyota Innova Car, bearing Registration No. TN-05-V6606 which was insured with the 1st Respondent Insurance Company for the period 21.07.2010 to 20.07.2011. The Petitioner's car met with an accident on 13.02.2011 near Pazhanjur Village, Bangalore Bye Pass road. A claim was lodged with the 1st Respondent for damages caused to the insured car. It is stated that originally, the Petitioner has given an estimate for Rs.5,50,000/- and because of delay of nine months in settling the claim by the 1st Respondent, estimate has been revised and claimed at Rs.6,20,000/- apart from additional charges of Rs.1,75,000/-. However, the 1st Respondent by letter dated 21.10.2011, has repudiated the claim of Petitioner on the ground that Petitioner has availed Private Car Policy but the car has been registered as maxi cab used for commercial purpose in violation of policy terms. It is the case of the petitioner that the repudiation is bad in law as the subject vehicle, at the time of accident, was used only for private purpose of Petitioner. The Petitioner has also filed additional typed set of papers detailing bills and expenses incurred for the repairing the insured vehicle which is stated to be Rs.5,69,471/-.

3. A counter affidavit has been filed by the 1st Respondent, intere alia, contending that the writ petition is not maintainable as the petitioner seeks to enforce contractual

right under policy terms. It is also contended that the claim involves factual disputes and cannot be summarily decided without trial and evidence. Hence the Petitioner is not entitled to invoke writ jurisdiction and his remedy is before civil or consumer forum. Without prejudice to the above, 1st Respondent stated that policy issued to the Petitioner is a private car policy which clearly stipulates Insured car cannot be used for Commercial purpose and on verification of claim papers, it was found RC of Insured vehicle, registered as maxi cab for commercial purpose. Thus, the claim was found fit for repudiation for violation of policy condition, by letter dated 21.10.2011.

4. Heard the learned counsels appearing for both parties and perused the pleadings and documents placed on record.

5. At the outset, it is necessary to examine whether the writ petition is maintainable in the facts and circumstances of the case. The 1st Respondent contends that the claim is for enforcing a contractual right under an insurance policy which ought not to be entertained in a Writ Petition, especially when it involves disputed facts including quantum of loss which cannot be decided summarily by invoking writ jurisdiction.

6. Although the Writ Petition, will not be normally entertained, there is no bar to such proceeding when the Respondent is a Government undertaking. [Refer "Asha Goel vs LIC of India" (2001) 2 SCC 160]. Further, considering that the rejection of claim by the first respondent on merits, is found to be without substance and the Writ Petition is of the year 2011, pending before this Court for the past 7 years, it would not be appropriate and reasonable to direct the Petitioner to approach another forum, at this point of time.

7. In fact, this Court is not embarking upon an exercise of minute assessment of quantum. It is basing the relief on the Surveyor's assessment finding that the decision on the admissibility of the claim is unsustainable in law. The accident and damage are proved to be genuine without any denial of the same from the 1st Respondent. In such circumstances, this Court has no hesitation in rejecting the objection of the Respondent regarding the maintainability of the writ petition.

8. On merits, there is dispute that the Petitioner's car was insured by the 1st Respondent taking a premium of Rs.11,926/- as reflected in the Policy. The 1st Respondent has thus enjoyed the benefit of premium paid by the Petitioner. Yet they contend that they have no liability in view of the car being registered as a commercial vehicle but insured under a private car policy. The Respondent also contended that the vehicle was being used for

commercial purpose at the time of accident.

9. On careful consideration of the plea, this Courts finds no merit in the same. As pointed out above, the 1st Respondent has issued a Private Car Policy accepting huge amount of premium. The Policy covers accidental damage which the vehicle has suffered. That being so, after a claim is made, the 1st Respondent cannot be permitted to wash their hands off and disown the insurance/liability as if the Policy itself is of no effect. The Respondent has not avoided the contract, nor has specifically pointed out that there was any violation of Policy at the time of accident. Although the vehicle may be registered as commercial vehicle, there is no evidence of such use at the time of accident. On the other hand, the Petitioner has averred that he himself was driving the vehicle while travelling along with his family at the time of accident. If so, there was no commercial use at the time of accident. Any past usage is irrelevant. The question is whether there was breach/violation at the time of accident. When there was no evidence of commercial use at the time of accident, the Respondent cannot plead that there was breach of condition of the policy.

10. It is pertinent to note here that there is no satisfactory explanation as to how the Policy came to be issued as a Private Car Policy in the first place. Though the Respondent has alleged that the Petitioner had represented intention to convert the commercial vehicle to a private car and produced some RTO challan for the same, this Court is unable to draw such inferences. The Respondent is legally obliged to take a proposal (especially at the time of fresh insurance). No such proposal is available. If the Petitioner had misrepresented in the proposal that would have perhaps enabled the Respondent to treat the contract itself as invalid on the ground of misrepresentation. But the Respondent has apparently not taken any such proposal. If so, they cannot accuse the Petitioner of any misrepresentation. Rather they have not shown prudence in properly verifying the actual nature of the vehicle on the date of insurance which is obvious from the fact that they have issued a Private Car Policy for a commercial vehicle. They have also collected premium for the insurance. It would be inequitable to allow the Respondent to escape on a technicality when they were equally responsible by their own lapse of not taking a proposal. The Respondent cannot question the validity of the Policy or the coverage, at least in respect of the vehicle. The damage having been caused due to accident which is an insured risk, the Respondent is liable to pay the claim.

11. Yet another aspect is that the Insurer has not specifically stated as to what is the premium, if any, they have lost by insuring the commercial vehicle as a private car. No details of premium are submitted to demonstrate that they have

suffered any deprivation in this regard. Rather, from their silence it is inferred that they have only benefited by a higher premium. If so, it would be unjust to deny liability, especially when there is no material to prove misrepresentation by the petitioner.

12. Under the Policy, the Respondent has not proved any violation of the terms and conditions. The car was not used for any commercial purpose at the time of accident. At the time of accident as per FIR, the vehicle was used for private purpose of the Petitioner. It is found that the family members of the Petitioner were travelling to Tirupati when the accident occurred. Thus, it is seen that the insured car was used only for private purpose as per the policy terms. Thus, the Respondent cannot even claim breach of policy condition at the time of accident.

13. Hence this Court holds that the insurer in absence of substantial evidence to prove the breach of policy terms, is liable to compensate the Petitioner for the damages caused to the insured car.

14. The next question is in regard to the amount payable to the Petitioner as per policy terms. The Petitioner has filed an additional typed set, containing Bill for Towing and an Estimate for Rs.5,69,471/- issued by Lanson Toyota dated 17.02.2011. It mentions that the vehicle would be delivered by 28.03.2011. It is not a exact proof of actual expenses incurred. It is merely an Estimate. There is no record to show whether the Petitioner repaired the vehicle at Lanson Toyota or how much he has incurred. These are not matters which can be investigated or decided in the present Writ Petition.

15. The 1st Respondent's Surveyor has assessed the damage vide Survey Report dated 18.8.2011. Examination of the Survey Report reveals that the Surveyor has given assessment on various modes of settlement - Repair Basis, Total Loss basis. While assessment on repair basis is Rs.3,19,014/-, on Total Loss less salvage basis, the Surveyor has assessed for Rs.1,90,000/-.

16. Inasmuch as it is not clear whether the Petitioner has repaired the vehicle or how much he has incurred, it would only be appropriate to direct the Respondent in the present proceeding to pay Rs.1,90,000/- besides reasonable interest from the date of filing the Writ Petition. Since the Respondent had enjoyed the benefit of the amount till date, it would only be fair that they pay reasonable interest at 9% per annum.

17. For the reasons stated above, the impugned order dated 21.10.2011 of the 1st Respondent repudiating the claim of the Petitioner is hereby quashed and the 1st Respondent is directed

to pay to the Petitioner, a sum of Rs.1,90,000/- (Rupees one lakh and ninety thousand only) with interest at 9% per annum from the date of writ petition within a period of four weeks from the date of receipt of a copy of this order.

18. With the above direction, this Writ Petition stands allowed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To
1. The United India Insurance Company Ltd.,
Rep. by its Branch Manager,
Branch Office,
Guindy,
Chennai-600 032.

2. The Assistant Registering Authority,
R.T.O. (North),
Chennai-600 039.

+ 1 cc to Mr.M.Gnanasekar Advocate,SR.13811

W.P.No.28548 of 2011

NR 03/04/2018