IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4132 OF 2015 (O&M)
Date of Decision:25.11.2019

HDFC Ergo General Insurance Company Limited ... Petitioner

Versus

Vinay Kumar and another ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sandeep Suri, Advocate and
Ms. Kirti Avasthi, Advocate for the petitioner

Mr.Sanjay Verma, Advocate for the respondents

RAJIV NARAIN RAINA, J.

1. The short question involved in this case identified by Mr. Suri is whether the Insurance Company is liable to pay compensation for theft of vehicle in the light of the policy when it was left unattended briefly by the driver of the vehicle to answer the call of nature?

2. The facts giving rise to the case are interesting. The vehicle insured was a Tata Tipper. The owner had an insurance policy valid at the time of occurrence of theft. The driver of the vehicle was an employee of the owner. He had parked the vehicle by the side of a street outside AIIMS Hospital, New Delhi. The owner had another vehicle driven by another driver. The other driver was his friend Rajesh Sharma of the same village and both of them were on work together and had parked their vehicles close by. The driver of one of the Tippers got down from the vehicle to answer the call of nature by the boundary wall of the hospital. During the time it took him to make water, an unknown person

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slid into the vehicle and went off with it. When he turned back, the vehicle was gone, stolen by unknown person who got inside and drove off. The alarm raised by the distraught driver chasing the Tipper came to nothing.

3. The Insurance Company repudiated the claim for theft of vehicle on the ground that the driver did not exercise due care and caution. He should not have left the key inside the vehicle which helped the thief steal the Tipper. The day was 18th October, 2012 which was within the validity period of the insurance policy. The policy was bought on 8th October, 2012, 10 days short of the theft and it was valid till the 7st of October, 2013.

4. A DDR was recorded and an FIR was registered in South Delhi, P.S. Hauz Khas bearing FIR No.301 dated 19th October, 2012. The owner lodged an insurance claim with the petitioner. An Investigating Officer was appointed and he found in his report to the petitioner company that the key of the vehicle was left in the vehicle and it was the second key which was provided by the owner to the representative of the Insurance Company.

5. On repudiation of claim, an application under Section 22-C of the Legal Services Authority Act, 1987 was filed by the insured *inter alia* claiming that the claim application may be first got settled and the Insurance Company directed to pay Rs.7.00 lakhs to satisfy the claim. The Permanent Lok Adalat has allowed the claim vide award dated 2nd September, 2013 against which the Insurance Company has approached this Court contending that the order is erroneous and deserves to be set aside.

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6. I have heard learned counsel for the parties and gone through the paper-book.

7. The driver Sandeep Kumar in his statement explained that he and his friend Rajesh Sharma driving the second tipper after offloading the goods parked their respective vehicles on the service lane along the boundary wall of the hospital. Both alighted from the Tippers Sandeep saw his friend Rajesh calling up the supplier. He went close to the wall of the AIIMS Hospital to ease himself when suddenly turning around saw some unknown person driving away the vehicle after climbing into the Tipper from the driver-side and because of vehicle key having been left in the vehicle, the thief drove off with the vehicle. He raised an alarm and ran, but it was too late. He rang up the police on 100 from his mobile. The police reached the spot. He went to the police station. He called up the owner to inform him of the incident.

8 Learned counsel for the petitioner-Insurance Company submits that the insured did not take all reasonable steps to safeguard the vehicle insured. The question raised by him is whether the action of a professional driver, leaving the vehicle unattended with the key inside, would fall within the ambit of negligence to protect and safeguard the insured property and if this conduct would be taken by a reasonably prudent man.

9. Learned counsel for the petitioner referred to Clause 5 of the Standard Form for Commercial Vehicles Package Policy which reads as under:-

> "5.The isured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and the company shall have at

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> all times free and full access to examine the vehicle insured or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown, the vehicle insured shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle insured be driven before the necessary repairs are effected, any extension of the damage or any further damage to the vehicle shall be entirely at the insured's own risk."

10. This is the only provision involved in the determination of the question whether the petitioner-Company is liable to pay the claim or can reasonably expect to avoid and repudiate it. What a reasonable prudent man in charge of a vehicle might do in the situation Sandeep Kumar was in to ease himself for which he would have to leave the Tipper, is a question which depends for its answer on the facts and circumstances of each case. Vehicles are stolen with or without the keys in the ignition. In this case, Sandeep Kumar was not alone. He was accompanied by his friend working in tandem in another Tipper belonging to the same owner parked on same the service lane close to each other when the incident occurred. He could have been no more than a few yards away from the vehicle when he went to ease himself and could never have reasonably expected the vehicle to be stolen in broad daylight in a blink of an eye. What would have been the position if the key was with Sandeep Kumar and the vehicle was still stolen, would the Insurance Company have repudiated the claim covering theft of the vehicle comprehensively? Assuming that Sandeep Kumar had left the vehicle unattended outside and out if sight, it may have been different.

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11. A close look at the moot clause in fine print in the contract of Insurance reveals it is hardly worded to cover all the situations which the Company must have faced in its business of insurance including a warning on keys left in unattended vehicles. They could have easily specified that the vehicle should not be left parked or unattended with the key inside and driver absent. The stipulation in condition no.5 that the insured shall take all reasonable steps to safeguard the vehicle insured to prevent further damage and loss does not speak about owner/driver leaving the key in the ignition switch inside in a parked motor vehicle does not fall in the ambit of "safeguards of all reasonable steps" against theft. The condition talks only duty of safeguarding loss or damage or to maintain it in efficient condition.

12. In the event of any motor accident or break down, Condition no.5 recites that the vehicle insured should not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle insured be driven before the necessary repairs are effected, any extension of the damage or any further damage to the vehicle shall be entirely at the insured's own risk.

13. Mr. Suri for the petitioner relies on an order of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No.650 of 2014 (Paramjit Kaur vs. M/s Oriental Insurance Co. Ltd. decided on 29th May, 2014) which is also a case of a driver leaving vehicle unattended to answer natures call. I admire Mr. Suri for his research of at least finding a case close to the facts of the present case to bail him out, but as I go through the order, I find the facts are distinguishable. Paragraph 7 of the order is reproduced:-

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> "7.Perusal of investigation report prepared by Royal Associates reveals that Tarsem Singh improved his statement before the Surveyor and submitted that other person also took meals with him at Sukhdev Dhaba. Later on, he locked the vehicle, got keys with him and went to bathroom and then another person fled away with scorpio. In FIR it has nowhere been mentioned that Tarsem Singh locked the vehicle and kept keys with him, but perusal of FIR reveals that either he left the keys in the vehicle or vehicle was not locked and unknown person was sitting in the vehicle when Tarsem Singh went for attending nature's call. Had he been in possession of key, he should have mentioned in FIR and should also have handed over to Police alongwith FIR."

14. In the aforesaid case, theft took place in a well known restaurant known as Sukhdev Dhaba on the National Highway 1. The factual situation on the spot in that case is entirely different from that in this case. The order reveals that the driver of the Scorpio vehicle had improved his statement made before the Surveyor of the Company. The driver admitted that he left the Scorpio to ease himself in the bathroom of the Dhaba. This means that the vehicle was in the parking lot with innumerable vehicles and milling crowd of travellers stopping by for a meal. This act of the driver to leave the Scorpio out of sight was testing providence and susceptible to theft, and therefore, it could be argued that reasonable care was not taken. Driver Tarsem Singh did not mention in the FIR that he had possession of the key which he would have mentioned in the FIR and handed over to the police.

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15. In the present case, the Permanent Lok Adalat has returned findings of fact that the vehicle could not be recovered by the police and an untraced report was submitted; there was no delay in lodging an FIR with the police which was lodged and registered the following day; there was no delay on the part of the owner in intimating the Company of the theft. That apart, the Permanent Lok Adalat has examined the issue from another facet. In the FIR recorded at the statement of Sandeep Kumar, it was not mentioned that the key was left in the ignition switch by him and neither factum of making water was mentioned. However, in the statement of Sandeep Kumar recorded on 31.10.2012 it is mentioned that the key was left in the vehicle. The Permanent Lok Adalat observed that it is not revealed before whom he made such statement. If Insurance Company or its representative makes an attempt to win over the employee/driver of the claimant, insured/owner cannot be non-suited. Owner is not bound by the statement of his employee who may have been under pressure to save his job after the occurrence. However, the factum of theft is proved. The Permanent Lok Adalat came to the conclusion that the vehicle was not left unattended and there is no justification for rejection of the claim as in violation of the terms and conditions of the insurance policy which is not proved. The order dated 2nd September, 2012 passed by the Permanent Lok Adalat is a quasi judicial one and it is not an administrative order where the reasoning alone would be reviewed. Interfering with the order in writ proceedings on the slender defence of leaving the Tipper key in the ignition switch to deny the claim would be an invitation to injustice. The defence of the petitioner is not that theft of vehicle was not insured against or covered by the policy.

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16. The Insurance Company would be well advised to re-frame the clause such as condition no.5 is with its inadequacies to meet the situation as confronted in this case before it can expect a court to uphold repudiation of claim of theft of vehicle based on where the key was. No prudent person or a man of ordinary of intelligence in the street could have even imagined that while answering a call of nature nearby in the midst of one of the busiest places in New Delhi amounts to leaving a vehicle unattended for the purpose of an insurance policy and repudiation of the claim in the light of clause 5 of the terms and conditions which are restricted to the words employed therein. The terms of an insurance contract are to be construed and read strictly. Substantial justice has been done by the Permanent Lok Adalat though its line of reasoning may be a shade different.

17. Accordingly, the question posed is answered against the Insurance Company and in favour of the claimant. No ground other than the question which was framed by Mr. Suri for an answer was pressed.

18. In view of the above, I find no merit in this petition which is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned *Yes*

Whether Reportable *Yes/No*

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