IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.115 of 2017

Lalatendu Samanta	....	***Appellant***
		Mr. U.K. Samal, Advocate

-versus-

The Manager, Bajaj Allianz General Insurance Company Limited, Bhubaneswar and another	....	***Respondents***
		None

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

ORDER
19.10.2022

Order No.

Misc. Case No.190 of 2017

02. 1. For the reasons stated therein, the delay in filing the present writ appeal is hereby condoned.

2. The application of condonation of delay is allowed.

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3. The Appellant is aggrieved by an order dated 28th March 2017, passed by the learned Single Judge, allowing the W.P.(C) No.15067 of 2016 filed by the present Respondent- Insurance Company, whereby it had questioned an award dated 30th June, 2016 of the Permanent Lok Adalat (PLA) directing the Insurance Company to pay 3/4th of Rs.11,25,162/- as compensation to the present

Appellant for the loss of his vehicle which was under the insurance cover of the Respondent-Insurance Company.

4. The Appellant owned a TATA TIPPER Truck, which was insured with the Respondent-Insurance Company for a period from 29th March, 2014 to 28th March, 2015 mid night. It appears that the said vehicle got stolen on the night of 26th January, 2015. The Appellant is stated to have lodged an FIR with the B.N. Pur Police Station (PS) in Ganjam District on 28th January, 2015. Intimation was given to the Respondent-Insurance Company of the said theft on 11th February, 2015. However, the Insurance Company was of the view that there was violation of the conditions of the insurance policy and, in particular, Condition No.5. Aggrieved by the non-processing of his claim, the Appellant then approached the PLA by filing PLA Case No.8 of 2015, functioning in terms of the Legal Services Authorities Act, 1987.

5. The said PLA Case No.8 of 2015 was allowed by the PLA, directing the company to pay the Appellant 3/4th of the value of the TATA TIPPER Truck as indicated in the insurance policy. If the amount was not paid within two months, the Appellant was held to be entitled to get interest @ 9% per annum from the date of filing of the application till the date of the payment.

6. As already noticed the Insurance Company filed W.P.(C) No.15067 of 2016 in this Court, aggrieved by the said award of the PLA in PLA Case No.8 of 2015. The learned Single Judge in the impugned order has noted that two conditions of the insurance

policy were violated. One was Condition No.1, which required the policy holder to promptly inform the Insurance Company of the theft. In the present case, there was a delay of well over 10 days in giving such intimation to the Insurance Company. In Condition No.5 the insurance policy specifically indicated that all reasonable steps had to be taken by the policy holder to safeguard the vehicle from loss or damage. It was specifically indicated "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".

7. In the present case, the TATA TIPPER Truck was left unattended with a key in the ignition switch without anyone being in the vehicle. This was viewed negatively by the learned Single Judge and correctly held to be in violation of Condition No.5 of the insurance policy.

8. Learned counsel appearing for the Appellant placed considerable reliance on the Regulation 10(3) of the regulations framed by the Insurance Regulatory Authority which provides that if there is a breach of warranty/conditions of the policy including limitation then compensation payable would be upto 75% of the admissible compensation. It is submitted that the above Clause was not taken note of by the learned Single Judge.

9. In the present case, the Condition No.5 appears to have been clearly violated. The facts revealed that the driver was sleeping in a cabin nearby leaving the vehicle unattended with a key in the

ignition switch. This is not a mere breach of condition but obvious negligence leading to the theft of the vehicle.

10. Consequently, the Court is not satisfied that Regulation 10(3) would apply in the facts and circumstances of the case. The view taken by the learned Single Judge does not call for any interference. The writ appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera