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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15282 of 2013

Ranjan Kumar Jena .... *Petitioner*

Mr. B.K. Sharma, Advocate

-versus-

General Insurance Company Ltd., Bhubaneswar .... *Opposite Party*

Mr. G.P. Dutta, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE B. P. ROUTRAY

ORDER
16.05.2022

Order No.	
	Dr. S. Muralidhar, CJ.
08.	1. The short question that arises for consideration in the present petition is whether the Ombudsman was justified in rejecting the Petitioner's complaint against the Opposite Party-General Insurance Company Ltd. which repudiated the claim of the Petitioner regarding the theft of his Chevrolet-make Tavera vehicle.

2. The background facts are that the said vehicle was insured with under a policy issued by the Opposite Party-Insurance Company for the period from 19th April, 2009 to 18th April, 2010. The Petitioner was running a travel agency at Bhubaneswar providing motor services to intending users on payment of hire charges.

3. The insured vehicle was sent to a hotel at Bhubaneswar on 28th January, 2010 for the purpose of taking passengers to a place in Sambalpur. One of the passengers then told the driver that his

wife had taken ill and that they should be dropped at Chandrapur in the State of Chhatisgarh. On reaching the said place, they all halted at a 'Dharmasala' for the night with the driver and one of the passengers sharing a room together. Unaware that the food consumed was intoxicated, the driver went into a deep sleep and on waking up found that his mobile phone, cash and keys of the vehicle had been stolen and his room had been locked from outside. The driver then informed the Petitioner about the entire incident. The theft took place at the night on 31st January, 2010.

4. The case of the Petitioner is that he immediately proceeded to Chhatisgarh to make efforts to trace out the vehicle and when he was unsuccessful, sent an intimation to the Commissioner of Police, Bhubaneswar on 5th February, 2010. He simultaneously intimated the Insurance Company of the loss of vehicle. In the meanwhile, the Police initiated a criminal case against Rabi Kumar Singh, who had hired the vehicle.

5. The Insurance Company-Opposite Party stated to have repudiated the Petitioner's claim on the ground that the vehicle was valid for Odisha only, whereas the incident occurred in Chhatisgarh a place beyond the permit limit.

6. The Petitioner thereafter filed his complaint under Rule 12(1)(e) of the Redressal of Public Grievance Rules, 1998 before the Insurance Ombudsman on 1st May, 2012. By the impugned order dated 10th April, 2013 the Ombudsman dismissed the complaint on the ground that the Petitioner gave an intimation of theft not 'immediately' as required under the policy but five days

after the incident. Significantly, the claim was not rejected on the ground that the theft took place in Chhatisgarh.

7. Pursuant to the notice issued, a counter affidavit has been filed by the Insurance Company pointing out that the FIR was ultimately lodged in the Kharvelnagar Police Station in Bhubaneswar only on 22nd February, 2010. It is not disputed that intimation of the theft was given to the Insurance Company on 5th February, 2010 but this is stated to be five days after the occurrence.

8. The exact wording of Condition No.1 in the Insurance Policy reads as under:

> "Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution Inquest for Fatal Inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and cooperative with the company in securing the conviction of the offender."

9. The word used is 'immediately'. In the other words, the condition does not state that unless the FIR is registered on the same day of the incident, the claim cannot be entertained.

10. Reference made by the counsel for the Insurance Company to the decision of the Supreme Court in the case of ***Gurshinder Singh v. Shriram General Insurance Co. Ltd. AIR 2020 SC 1395*** to urge that although the delay in intimating the fact of theft to the Insurance Company may not be 'immediate', the lodging of FIR has to be 'immediate', i.e. either on the same day or soon thereafter.

11. Having carefully read the aforementioned decision, the Court notes that the main concern as far as the Insurance Company is concerned is that the claim of theft must be a genuine claim. In the present case there is nothing to indicate that the claim itself was found by the insurance company to be not genuine.

12. While the delay in lodging an FIR may give rise to a doubt over the genuineness of the claim, that by itself would not be determinative of that fact. The line of decisions including the decision in ***Gurshinder Singh*** (*supra*) emphasizes the fact that a mere delay in informing the Insurance Company of the theft would not be a justification to the Insurance Company to repudiate the claim.

13. In the present case admittedly the intimation was given to the Insurance Company on 5^{th} February, 2010 i.e. about the six days after the incident of theft of the vehicle, i.e. 31^{st} January, 2010. This delay cannot be considered to be inordinate so as to justify the repudiation of the Petitioner's claim.

14. The Court has today been seen the copy of the order passed by the S.D.J.M., Bhubaneswar on 15th December, 2011 in G.R. Case No.549/2010 accepting the final report submitted by the Police under Section 173, Cr.P.C. in relation to the FIR No.50, dated 22nd February, 2010 concerning the very incident. The conclusion in the said report of the Police is that the Investigating Officer "could not find any clue regarding the culprits as well as stolen vehicle". In other words, the report of the Police is not that the FIR itself is not a genuine one or that the complaint was false.

15. It must be noted that an averment to this effect has been made in para 2(vi) of the writ petition. For some reason however a copy of the final form was not be available to the Ombudsman before passing of the impugned order dated 10th April, 2013.

16. Be that as it may, it appears that the circumstances under which the vehicle as missing as pointed by the Petitioner appears to be a genuine one and there was no justification for the Insurance Company to have repudiated the claim only on the ground that delay of six days of information of the same to the Insurance Company.

17. Although the FIR may not have lodged 'immediately', the final form shows that the complaint was not a collusive or a false one.

18. In the circumstances, the impugned order dated 10th April, 2013 passed by the Insurance Ombudsman, Bhubaneswar in Complaint No.14-009-0969 is hereby set aside. The Insurance

Company is directed to process the claim of the Petitioner now and settle it in accordance with the policy not later than six weeks from today. For this purpose, the Insurance Company is directed to act on a downloaded copy of this order.

19. The petition is disposed of in the above terms.

20. An urgent certified copy of this order be granted as per rules.

(S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge

HIGH COURT ORISSA

B.K. Barik