IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21804 of 2017

K.Amutha ... Petitioner

Vs

1.Insurance Ombudsman,
Rep by its Authorize Signatory,
Office of the Insurance Ombudsman,
No.453, 4th Floor, Fathima Akthar Court,
Anna Salai, Teynampet,
Chennai – 600 018.

2.The Manager,
Magma HDI General Insurance Company Limited,
Sakthi Bharath Claims Department,
Aminjikarai, Chennai – 600 029.

3.The Manager,
Magma HDI General Insurance Company Limited,
Magma House,
No.24, Park Street,
Kolkatta – 700 016. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in Award No.IO/CHN/A/GI/0185/2016-2017 dated 31.03.2017 on the file of the 1st respondent herein and quash the same and direct the 2nd respondent to pay the insurance amount of Rs.5,23,700/- as per the terms of Policy No.P0014300003/4103/172851 for the period from 23.07.2013 to 22.07.2014 together with interest at 9% per annum on Rs.5,23,700/- to the petitioner.

For Petitioner	: Mr.S.Sadasharam
For Respondents	: No Appearance for R1 Mr.G.Murugavel for R2 & R3

ORDER

The petitioner has been filed this petition for a writ of certiorarified mandamus, to call for the records in Award No.IO/CHN/A/GI/0185/2016-2017 dated 31.03.2017 on the file of the 1st respondent herein and quash the same and direct the 2nd respondent to pay the insurance amount of Rs.5,23,700/- as per the terms of Policy No.P0014300003/4103/172851 for the period from 23.07.2013 to 22.07.2014 together with interest at 9% per annum on Rs.5,23,700/- to the petitioner.

2.The case of the petitioner is that the petitioner had insured the vehicle namely TATA Sumo bearing Registration No.TN 20 BF 2289 for a sum of Rs.5,23,700/-. It is the specific case of the petitioner that the vehicle which was insured for the period between 23.07.2013 to 22.07.2014 was stolen on 16.07.2014 and that a complaint was filed before the Inspector of Police, P-6, Kodungaiyur Police Station and that an FIR came to be registered in Crime Noo.1488 of 2014.

3.It is submitted that respondents being insurer of the vehicle was duty bound to settle the claim, as the petitioner had lost the insured vehicle and that a non-traceable certificate was also obtained by her on 11.03.2015. It is further submitted that by the impugned order, first respondent is directing the petitioner to take steps to recover the stolen vehicle in the light of the fact that the second and third respondents have made investigation and have informed that the petitioner, the insured vehicle came for servicing for being serviced at M/s.Concord Motors, Chennai on 17.03.2016 and therefore the petitioner can very well take steps to recover the alleged stolen vehicle.

4.The writ petition is opposed by the learned counsel for the second and third respondents on the ground that the petitioner had also lodged a claim only on 22.07.2014. It is submitted that the petitioner was directed to furnish the following documents and materials which is hereunder:-

(i)Original Policy,

(ii)Original RC, C.F, Permit and Tax,

(iii)Claim form duly filled and signed by insured,

(iv)Both the keys of vehicle,

(v)Current Loan A/c Status and Non reposition letter from Financier,

(vi)Current Recovery Status of IV obtained from NCRB,

(vii)Clarification required for violation of policy condition 5 concerning reasonable steps to safeguard the insured vehicle at the material time,

(viii)Clarification required for delay in intimation for violation of policy condition 1 as intimation to

(a)insurer after 6 days of loss

(ix)Invoice,

(x)D/L of driver last had driven the vehicle.

5.It is submitted that the petitioner however did not furnish the required documents to process the claim. It is further submitted that the second respondent by another reminder dated 08.01.2015 and 13.03.2015 requested the petitioner to submit the documents. However, the petitioner failed to respond and thus the claim of the petitioner was closed on 31.03.2015. It is therefore submitted that long after the closure of the claim, the petitioner once again approached the respondent on 14.07.2016 and requested the second respondent to reopen the claim and to re-submit the documents on 20.07.2016 to process the claim of the required documents.

6.It is submitted that the respondents on investigation came to know that the said vehicle came for service with M/s.Concord Motors, Ambatur, Chennai on 17.03.2016 which was confirmed by their e-mail dated 24.10.2016. It is therefore submitted that the vehicle was not lost and it was traceable. It is further submitted that second respondent has also given a complaint to the police station on 10.03.2017. It is therefore submitted that there is no evidence to substantiate that the vehicle was stolen and therefore the order of the first respondent/Ombudsman does not require any interference. It is submitted that the order of the first respondent/Ombudsman is well reasoned and requires no interference.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

8.The private respondents are insurer and are duty bound to settle the claim, if documents establish that the insured vehicle was stolen on account of theft. If the petitioner was able to establish that the vehicle was indeed stolen, a claim statement is to be filed with necessary documents. The petitioner has produced only a non-traceable certificate on 11.03.2015. However, the petitioner failed to respond the furnish documents required and therefore the claim was closed on 31.03.2015. Thereafter, in 2016, it appears that the stolen vehicle was serviced by M/s.Concord Motors, Chennai and therefore it is the case of the private respondents that the vehicle was traceable and was not a stolen vehicle.

9.The Insurance company has the luxury of private investigators. It is not enough to state that the said vehicle was not stolen. It is long after the alleged theft of the vehicle on 16.07.2014. It is quite possible that the vehicle may have came for being serviced by a person who has stolen the vehicle. In case, the details were available which was available with the private respondents, it was incumbent on their part to inform the petitioner about the vehicles and the person who was in possession of the vehicle.

10.Under these circumstances, I am inclined to quash the impugned order and consequently direct the respondents namely the Insurer to reconsider claim for compensation of the petitioner and pay the compensation to the petitioner together with bank rate of interest within a period of three months from the date of receipt of a copy of this order. If the complaint dated 10.03.2017 filed by the insurance company has not been pursued or has been abandoned.

11.Accordingly, this writ petition stands allowed with the above observations. No costs.

04.11.2022

Index: Yes/ No
Internet : Yes/No
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To

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C. SARAVANAN, J.

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