



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18th DECEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 11147/2023**

MANJEET SINGH

..... Petitioner

Through: Mr. Anurag Kulharia and Mr. Sumit
Kumar Sharma, Advs.

versus

TATA AIG GENERAL INSURANCE CO. LTD. & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court under Article 227 of the Constitution of India challenging an Order dated 12.05.2023 passed by the National Consumer Disputes Redressal Commission (NCDRC) in First Appeal No.1197/2017.
2. The brief facts leading to the present writ petition are as follows:-
 - i. The Petitioner states that he purchased a second hand Mercedes Benz, GL-350 car bearing registration No.HR-CH01AG 3456 from its erstwhile owner, one Sindar Pal, through a broker/middleman, one Jatin Dahiya, in the year 2014 for the sum of Rs.65,51,000/-
 - ii. It is stated that the vehicle was insured with the Tata AIG General Insurance Company Limited vide Insurance Policy



bearing No. 0100941049 dated 22.03.2014. The Insured Declared Value (IDV) of the car was Rs.65 lakhs. It is pertinent to mention that the Petitioner was paying insurance premium of Rs.1,63,570/-.

- iii. It is stated that in the year 2014, the car suffered an accident and there was a damage and the Petitioner received Rs.32,340/- as claim amount from the insurance company as the insurance company was having facility of cashless repair.
- iv. It is stated that on 16.08.2014 at about 10:00 PM, when the Petitioner was driving the car on the Sher Shah Marg, G T Road and when the vehicle reached near Murthal, 51 Mile Stone, the vehicle met with an accident as a stray animal suddenly appeared and when the driver tried to save it, the car stepped up the divider of the road, turned turtle and stuck with a trolley.
- v. The intimation regarding the accident was given to the insurance company and the Police on the next day and the vehicle was taken to Patel Auto Service Pvt. Limited, Gurgaon (Respondent No.2 herein) with the help of a crane by obtaining services of Anand Crane Service.
- vi. It is stated that a tentative estimate was given on 28.08.2014 by Respondent No.2 amounting to Rs.83,51,608/-, which was sent to the surveyor of the insurance company and on 04.09.2014, the Petitioner was informed that the cost of repair is more than the insured value and in view of that, the insurance company had decided to declare the vehicle be treated as total loss vehicle. The damaged car was shifted from the premises of



Respondent No.2. It is stated that the Petitioner was asked to submit certain documents so that the case of total loss can be processed.

- vii. It is stated that on 13.10.2014, the Petitioner received an e-mail from Respondent No.1 to submit attested copies of the documents and also to shift the vehicle to T&T Motors for technical inspection.
- viii. The vehicle was received by Respondent No.1. However, vide letter dated 16.01.2015, the claim of the Petitioner was repudiated by Respondent No.1 on the ground that it could not be established that the accident took place in a manner as claimed by the Petitioner. It was also stated that the vehicle is a 2010-model, Mercedes GL-350 insured for Rs.65 lakhs which is on a much higher side component to the market value.
- ix. Aggrieved by the repudiation, the Petitioner approached the State Consumer Dispute Redressal Commission, Haryana, Panchkula by filing Consumer Complaint No.112/2015.
- x. Respondent No.1 herein apart from taking the technical objection of jurisdiction on the ground that the Petitioner was not a consumer and also on the ground that the complaint was barred by limitation, took a plea that the market value of the vehicle was Rs.35-38 lakhs but the same was insured at Rs.65 lakhs and thereby a fraud was committed on Respondent No.1 by disproportionately misleading the insurance company.
- xi. It was mentioned by Respondent No.1 that the erstwhile owner registered the vehicle only for a sum of Rs.40 lakhs and the



vehicle was involved in an accident and in that case also it was reported that it was a case of total loss and an amount of Rs.21 lakhs was paid to the registered owner by the erstwhile insurance company, i.e., M/s HDFC Ergo GIC Limited. It was the case of the insurance company that during the spot investigation, it was found that no accident as stated by the Petitioner took place and the Petitioner did not cooperate during the investigation.

- xii. The insurance company also placed reliance on the report of the investigator of the insurance company, who had given a report (filed before the State Commission) which states that none of the persons in the area could remember or recall any such incident and further the report also stated that no damage has been done on the under carriage. It was also stated that the said car was a second hand car and the value of the new car of same model was Rs.73 lakhs. It was stated that the old car has already been repaired once and, therefore, insurance of Rs.65 lakhs was on higher side. It was also stated that the value of the new car was Rs.73 lakhs and the estimates as prepared by Respondent No.2 for Rs.83,51,608/- was not believable.
- xiii. After the evidence was taken, the State Commission vide Order dated 20.02.2017 after analyzing the material on record allowed the complaint by directing that the Petitioner could get a vehicle repaired from an authorized repair agency of Mercedes within a period of three months and the insurance company was directed to pay the amount for the repairs.



- xiv. Litigation costs of Rs.10,000/- and further costs for the sum of Rs.25,000/- was also imposed on Respondent No.1 towards harassment. Respondent No.1 challenged the said order before the National Consumer Disputes Redressal Commission by filing an First Appeal No.1197/2017.
- xv. The National Commission upon perusal of the material on record observed that the manufacturing date of the car was 7/2010 and the vehicle was registered on 28.03.2011 with validity upto 17.01.2026. The car was insured with the Respondent No.1 herein on 22.03.2014 and the car had completed three years from the date of the manufacture as on date of insurance.
- xvi. The car whose market price of the new of the same model was Rs.73 lakhs, was at insured at Rs. 65 lakhs which was about 89% of the value of new car. The National Commission was of the opinion that the General Regulations 8 of Indian Motor Tariff contain guidelines for fixing the insured declared value and as per the schedule of depreciation for arriving at insured declared value if the age of the car exceeds three years, the depreciated price value for fixing insured declared value is 40% and, therefore, the insured value of the car could not be more than 45 lakhs.
- xvii. The National Commission held that the action of insuring the car for Rs.65 lakhs is not in accordance with the General Regulations contained in Indian Motor Tariff. However, the National Commission held that after having accepted a



premium of Rs.1,63,570/- for having an insured value of Rs.65 lakhs which was not open for the insurance company to turnaround and challenge the insured value.

- xviii. The National Commission also found that the insurance company had not placed on record the previous insurance policy and there was negligence on their part that they ought to have found that the car had earlier met with an accident and insured at Rs.40 lakhs and earlier claim was Rs.21 lakhs wherein the damage was assessed as one of total loss and as Rs.21 lakhs has already been paid on the car then the insurance company ought not to have insured the car at Rs.65 lakhs and taken premium at Rs.1,63,570/-. The insurance company was found to be negligent on this aspect in not ascertaining the correct value of the car while accepting the premium.
- xix. The National Commission was also quite surprised of the fact that the Petitioner herein, a Government District Attorney making the entire payment of Rs.65 lakhs in cash for purchasing the car and the amount had not been paid to the previous registered owner but an authorized representative. The National Commission was also surprised that no evidence has been placed on record regarding the cash payment of Rs.65 lakhs except for a cash receipt dated 16.03.2014 for the sum of Rs.65,51,000/-, which is without any bank entry to show the payment of the car.
- xx. The National Commission was also surprised that the entire cash payment was made to a person who happened to be a



salvage purchaser of the vehicle arising out of previous claim by the previous registered owner who the Petitioner stated to be the authorized representative of the previous registered owner.

- xxi. The National Commission, therefore, found that the case of cash receipt of Rs.65,51,000/- was not believable and held that the report of the surveyor raises serious doubts on the costs of the accident as narrated by the Petitioner and is not consistent with the extent and nature and damage noted by them.
- xxii. The National Commission observed that the damage as sustained by the vehicle did not co-relate with the cause of accident as mentioned in the claim form and the Petitioner herein had failed to reply to the discrepancies that the investigator's report also casts a serious doubt on the nature and manner of the accident.
- xxiii. Since the National Commission had serious doubts on the nature and manner in which the accident took place as the Petitioner herein had not been able to establish that the transaction was genuine, the National Commission set aside the order of the State Commission and as a rough and ready measure, directed the insurance company to pay a compensation of Rs.10 lakhs to the Petitioner herein along with simple interest @ 9% per annum from 16.02.2015 till the date of payment. It is this order passed by the National Commission which is being challenged by the Petitioner in the instant writ petition.



3. Learned Counsel for the Petitioner contends that the National Commission erred in placing reliance on the surveyor report and the investigator's report which were only self-serving in nature as they had been engaged by Respondent No.1/insurance company.

4. Learned Counsel for the Petitioner states that an FIR has also been registered regarding the accident and, therefore, it could not be said that no accident took place. He contends that the balance sheet of the Petitioner discloses that a car has been purchased for Rs.65,51,000/- and a cash receipt of Rs.65,51,000/- has also been issued by one Jatin Dahiya. He further draws the attention of this Court to the estimate made by Respondent No.2 which indicates that a sum of Rs.83,51,608/- would be required to repair the car and, therefore, states that the order of the National Commission is contrary to the material on record.

5. The scope and jurisdiction of Article 227 of the Constitution of India has been explained by the Apex Court in a number of judgments. The Apex Court has held that the jurisdiction under Article 227 of the Constitution of India is neither an original jurisdiction nor an appellate jurisdiction but is one of judicial superintendence and it is expected that the High Court do not substitute its conclusion to the one arrived at by the subordinate courts or tribunals just because another view as possible.

6. It is also explained that the purpose of Article 227 of the Constitution of India is to keep the courts and tribunals subordinate to it 'within the bounds of their authority' and to ensure that the tribunals and the courts subordinate to the High Court exercise jurisdiction vested in them and do not exercise jurisdiction which is not vested in them. The power under



Article 227 of the Constitution of India is discretionary and ought not to be exercised with the drop of a hat.

7. The Apex Court in Shalini Shyam Shetty & Anr. v. Rejendra Shankar Patil, (2010) 8 SCC 329, has observed as under:-

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam



Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.



(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance.



Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.”

8. A perusal of the material on record discloses that the independent investigator though deployed by the insurance company has opined that the Petitioner has not cooperated during the investigation primarily to ascertain as to whether the accident took place in the manner as described by the Petitioner. The investigator has categorically stated that since the Petitioner was not cooperating with the investigation, the investigator, therefore, conducted the investigation independently. The photographs of the damaged vehicle were shown to the people in the vicinity and nobody was able to recall the accident just three months after the accident took place, which is sufficient to raise suspicion on the mind of any prudent person. The report also shows that even the crane provider did not provide the office copy of the bill and when the investigator went to the Police Station and enquired about the accident from the duty officer along with the DD entry, the duty officer informed the investigator that the DD entry had been lodged to the Police Station to inform about the accident of the car and in such cases, no Police action is taken. There was no information regarding trailer with which the accident took place.

9. The accident as claimed was a very serious one. As stated in the writ petition that on that night, an animal came in way and in order to avoid the car, the car hit the pavement and hit the divider of the road, turned turtle and stuck with a stationary trolley. It is surprising that nobody in the vicinity



remembered about the accident which has taken place on a very busy area near Murthal which is a township. The grounds, therefore, which had been entertained by the National Commission cannot be said to be so perverse which would warrant interference under Article 227 of the Constitution of India. At this juncture, it is apposite to reproduce the relevant portion of the investigator's report, which reads as under:-

"Ongoing through the photographs of the damaged vehicle arranged by the present underwriters surveyor following observations were made:

The insured in the claim form had stated that while he was coming from Samalkha to Sonipat by driving the car in question and has reached 51th Milestone, Murthal, suddenly a stray animal came in front of the car. In order to save the animal the insured steered the vehicle towards his right but lost control over the vehicle and it stuck with the road divider and then overturned, jumped the verge, crossed over to the another carriage way and then collided with a stationary trailer. If we go by the word of the insured then the car initially collided with the verge which should damage the suspension. The vehicle was found to be on its tyres. As per Manjit Singh the car overturned, he has not written the side. Manjit Singh has also stated that the car got dragged and then collided with a stationary trailer which means that the car collided with the trailer in overturned position which should have further damage the undercarriage, roof, front pillars, door frames, roof lining and other parts. But no such damages were found on the top of the vehicle. The front hood, right hand fender, right hand apron were found pressed from outwards side towards inward, such damages can only occur if a moving car collides behind another car which had



abruptly slapped. Left hand rear portion of the car was also found bent. These damages are also not relating to the cause of accident stated by the insured. The insured is not at all agreeing to accompany us to the spot of accident.

The insured produced to us a cash receipt for an amount of Rs. 65,51,000/-. for the second hand purchase of the car in question on 16/03/2014. The cost of car as disclosed in the cash receipt in on the very higher side for a four year old total loss repaired vehicle. Mr. Manjit Singh is claiming to be a Govt. Servant, working on a very high post. The underwriters are requested to kindly call for his comment about the money involved in the purchase of the vehicle."

10. Similarly, the surveyor has also opined that the damage sustained by the vehicle does not co-relate with the cause of the accident as mentioned by the Petitioner in the claim. The relevant portion of the report of the independent Surveyor reads as under:-

"1. On going through the cause of accident, as mentioned by the Insured in the claim form "A stray animal suddenly came in front of the insured vehicle and to avoid the hit, the insured steered the vehicle towards right side and went over the central verge, dis-balanced and got turn-turtled and finally dashed against a stationary trailer from the front portion". On going through the damages, as sustained by the said vehicle, we have observed no damages caused to steering & Suspension Units, wheel alloys and no rubbing marks of the road on the entire body shell, Front Glass Pillars, confirming that the said vehicle went over the central verge and thereafter got turn-turtled.



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3. The damages as sustained by the said vehicle do not correlate with the cause of accident as mentioned by the insured in the claim form submitted."

11. The National Commission was also not impressed regarding the cash transaction as put forward by the Petitioner. The National Commission held that the car had been insured at a much higher value and did not go further in the issue but that was definitely one of the points which was kept in mind by the National Commission while maintaining the costs at Rs.10 lakhs along with 9% interest from 16.02.2015 till the date of payment.

12. In view of the above, this Court is not inclined to substitute its own conclusion with the one that has been arrived by the Consumer Forum on facts, more so when this Court is of the opinion that the National Commission in its Appellate jurisdiction has applied its mind and has taken into account all the factors. It cannot be said that the National Commission has not exercised jurisdiction vested into it. The decision of the National Commission cannot be said to be perverse or void of any reasoning.

13. With these observations, this Court is not inclined to entertain the writ petition under Article 227 of the Constitution of India. The writ petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 18, 2023

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