**IN THE HIGH COURT AT CALCUTTA**
**CONSTITUTIONAL WRIT JURISDICTION**
**(APPELLATE SIDE)**

Present:
**The Hon'ble Justice Rai Chattopadhyay**

**W.P.A No. 13502 of 2021**

**Cholamandalam Investment and Finance Company & Anr.**
**Vs.**
**The New India Assurance Company Ltd. & Ors.**

**For the Petitioners** : Ms. Soni Ojha.

**For the Respondent no. 1 & 2** : Mr. Soumalya Ganguli,
: Ms. Ishita Ghos.

**Heard on**: **16/04/2024**
**Judgment on: 16/04/2024**

**<u>Rai Chattopadhyay, J.</u>**

**1.** The writ petitioner no. 1 is the financer company of the respondent no. 3/purchaser, who has purchased a vehicle bearing registration no. WB57A 8564, upon entering into a hire-purchase agreement with the respondent no. 1/Insurance Company. According to the contracted terms and conditions and as per the mandatory requirement of the said agreement, the vehicle was insured with the respondent no. 1/Insurance Company.

**2.** The writ petitioners are aggrieved that its claim due to theft of the vehicle as above, has not been reimbursed by the respondent no. 1/insurance company. Hence, this writ petition.

**3.** Ms. Soni Ojha, is representing the writ petitioners. She has indicated regarding certain relevant facts necessary to be dealt with in this case. She says that the respondent no.3/purchaser had moved before the Consumer Forum ("District Consumer Disputes Redressal Forum, Berhampur, Murshidabad"), to recover the insurance claim. It is stated that the vehicle as above was informed to have been stolen on 19th March, 2015. At the relevant point of time the same was hypothecated to the present writ petitioners, they being the financer for purchase of the vehicle. Ms. Ojha further stated that the respondent no. 3 was not successful before the Consumer Forum and by dint of an order dated 5th December, 2019, his case being Case No. C.C 37 of 2017 was dismissed by the Forum.

**4.** Ms. Ojha has further submitted that after dismissal of the said case on 5th December, 2019, the respondent no. 1/insurance company approached the Consumer Forum with an account payee cheque no. 000900 dated 3rd February, 2020, of an amount of Rs. 7,98,500/-, that is the claim amount. She says that the cheque was meant to be paid to the writ petitioners as the claim amount due to theft of that vehicle, the writ petitioner no. 1, being the financer of the purchase by the respondent no. 3 and not being reimbursed with the amount of loan by him. However, since the Forum had become *functus officio* by that time, so far as the case of the respondent no. 3 as above is concerned and the Forum having no quorum, the said cheque was not allowed to be submitted and was returned vide order dated 5th February, 2020.

**5.** She has further relied on a document annexed in the supplementary affidavit submitted in Court on behalf of the writ petitioners, that is, a letter of respondent no. 1/insurance company dated 7th March, 2017, to the writ petitioners. She says that the letter as above would speak about settlement of theft claim by the said respondent no. 3/purchaser for an amount to the tune of Rs. 7,98,500/-. That the writ petitioners were asked to submit RTO Form no. 35 along with PAN, for release of the payment. However, ultimately the respondent no. 1/insurance company had retracted and the money was not reimbursed in favour of the petitioners.

**6.** Allegedly the said respondent has taken a contrary stand subsequently vide learned advocate's letter dated 1st March, 2021, that the writ petitioners shall not have any claim regarding the theft of the concerned vehicle.

**7.** According to Ms. Ojha such change of stance by the respondent no.1, who earlier had accepted, quantified and prepared for payment to the claim amount to the tune of Rs. 7,98,500/- to the writ petitioner, is only jeopardising the right of the writ petitioners as the financer of the respondent no. 3 and a party to the hypothecation agreement. She says that once the claim of the writ petitioner having been crystallised in the form of the letter issued to her clients by the respondent no. 1 on 7th March, 2017, the said respondent could not have legally and validly taken a contrary stand, at a subsequent date. Such action of the respondent no. 1/insurance company would be untenable in the eyes of law and liable to be set aside. She has sought for appropriate relief for the writ petitioners.

**8.** Mr. Ganguli is appearing for the respondent no. 1 & 2. He has submitted that after the verdict of the Consumer Forum the writ petitioner cannot have a recoverable claim as against the respondent no. 1, in view of the said verdict. It is submitted that the Consumer Forum, upon due appreciation of evidence, has come to a finding of fact the alleged incident of theft of vehicle is not proved. Accordingly in terms of the agreement entered into between the parties the writ petitioners shall not be entitled to any claim amount to be reimbursed in their favour.

**9.** Mr. Ganguli has further submitted that so far as the theft of the vehicle, its possession and other incidental issues are concerned, the same would require determination by the Court as regards various factual aspects, for the same to come to a finding regarding if any claim of the writ petitioners exists at all. According to him, the Court of equity like this Court would not be an appropriate forum to determine as regards the factual issues involved in the case. He says that even if the writ petitioners would have any claim, the same is determinable by an appropriate Court upon determination of the facts in issue of the case and on the basis of evidence on record. He says that this writ petition is liable to be dismissed in limine.

**10.** Ms. Ojha submitted in reply that firstly the order of the Consumer Forum may not be considered to have any effect so far as the right of the present writ petitioners, as a financer of the vehicle, is concerned, that too under a specific agreement. It is submitted that the writ petitioners' right have not been dealt with or decided by the Consumer Forum. Therefore, according to her the respondent no. 1/company, cannot have acted on the basis of the said order of the Consumer Forum dated 5th December, 2019, in C.C No. 37 of 2017, so far as the rights of compensation of the present writ petitioners are concerned.

**11.** Fact remains that pursuant to hire purchase agreement the respondent no. 3 purchased vehicle as mentioned above after being financed by the present writ petitioners. The vehicle was insured with the respondent no. 1. It was reported stolen on 19th March, 2015. However, the Consumer Forum has come to a finding vide order dated 5th December, 2019, that the fact of theft of the vehicle was not proved by producing sufficient evidence. It had dismissed a claim case of the respondent no. 3 by the said order, on the ground as above.

**12.** Before that however, twice the respondent no. 1 had approached the petitioners to indicate that their claim as a financer of the vehicle which is reportedly theft, was accepted by the respondent no. 1/Insurance Company. Firstly, vide letter dated 7th March, 2017, it has stated about settlement of the theft claim and invited the manager of respondent no. 1 to undertake the procedure for reimbursement of the settlement amount. Secondly, after dismissal of the above case by the Consumer Forum it had approached the Forum with the claim amount to be disbursed to the writ petitioners by issuance of the cheque, as against the theft claim.

**13.** The respondent no. 1 has finally disallowed claim of the present writ petitioner as the financer of the vehicle due to theft of the said vehicle on the ground that there was no privity of contract between the respondent no. 1 and the present writ petitioners. They say that no agreement was entered between these two. They also dispute the *bona fide* of the writ petitioner in claiming an alleged frivolous amount, as according to the respondent no. 1, the insured amount is much less than the amount claimed as compensation, by the writ petitioners.

**14.** The basis of the claim by the parties in this case is the alleged theft of the vehicle. The fact finding District Consumer Forum upon the consideration of evidence on record has come to the conclusion that so far as the fact of theft of a vehicle is concerned the same is not proved in that case. The fact of theft being the basis of the claim neither the owner of the vehicle nor the financer could have claimed reimbursement of compensation on the ground of such theft. The terms and conditions of insurance would provide incidents specifically, as to when can a claim be reimbursed, as against an insured vehicle, and non-fulfilment of such terms and conditions would result into disentitlement of any claim for compensation. So far as the owner of the vehicle is concerned, the Consumer Forum has taken care of his prayer and on the basis of the records, has dismissed his case upon finding that the alleged incident of theft of the vehicle, has not been proved. So far as the present petitioner is concerned, it is submitted that as a financer of the owner of the vehicle/respondent no. 3, there has not been any finding with regard to the said writ petitioners and that its rights have not been determined. This submission is however not inspiring confidence in the mind of the Court. That is for the reason that the basis on which a claim for compensation might have entertained by the respondent no. 1, that is, the fact of theft of the vehicle, is not proved in this case. The said verdict of the Consumer Forum would equally apply to the owner of the vehicle as well as the financer, in so far as, to claim compensation for theft of the vehicle under the hire purchase agreement and hypothecation clause thereof, the writ petitioners would also be required to prove the fact of theft of the vehicle or rely on the same. The theft having not been proved, the financer also shall not be entitled to any amount of compensation under the contract of insurance. The fact of theft of the vehicle being *sine qua non* for the purpose of execution of any of the provision of the said contract in order to liquidate compensation claim of the claimant and the same having not found to be proved in this case, this Court finds that the writ petitioners are not entitled to any relief what so ever as prayed for, against the respondent no. 1/insurance company.

**15.** Instead due to non-fulfilment of the requisite conditions of the contract to justify a due incident stipulated in the contract for a valid claim as enumerated therein, the writ petition should fail.

**16.** Hence, the writ petition no. 13502 of 2021 is dismissed.

**17.** Urgent phostat certified copy of this judgment duly downloaded from the official website of this Court upon compliance all legal formalities.

(**Rai Chattopadhyay, J.**)

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