IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5475 OF 2024

1. United India Insurance Company Ltd. }
Through its Manager, }
Branch Office at Dayawan Complex, }
2nd Floor, Station Road, Parbhani. }

2. United India Insurance Company Ltd. }
Through its authorized signatory, }
Head Office : 24, Whites Road, Chennai, }
Through its Authorized Officer, }
Manoj Bhaskarrao Pendharkar, }
Age : 38 years,
Occu. : Service as Divisional Manager, }
Having Office at – Divisional Office, }
Osmanpura Circle, Osmanpura, }
Aurangabad. } **... Petitioners**
(Orig. Respondents)

Versus

M/s. Shri Ganesh Agro Industries,
Through its Partner,
Omprakash Jagannath Daga,
Age : Major, Occu. : Business,
R/o. Plot No. C/52, M.I.D.C. Area,
Parbhani, Tq. & Dist. Parbhani – 431 401. **... Respondent**
(Orig. Appellant)

...
Mr. Swapnil S. Rathi, Advocate for Petitioners.
Mr. Amit A. Yadkikar, Advocate for Respondent.
...

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 24th JULY, 2024
PRONOUNCED ON : 9th AUGUST, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of parties, heard finally at admission stage.

2. Petitioners, who are original respondents, in proceedings initiated by present respondent before Hon'ble The National Consumer Disputes Redressal Commission (NCDRC), vide First Appeal No.407 of 2020, has set up following prayers :-

> *"A] The present writ petition may kindly be allowed;*
>
> *B] Record and Proceedings may kindly be called for;*
>
> *C] By issuing appropriate writ, order or direction in the nature of writ, the Judgment and Award dated 20.03.2024 passed by Hon'ble National Consumer Dispute Redressal Commission at New Delhi in First Appeal No. 407 of 2020, may kindly be quashed and set aside and Consumer Complaint No.36 of 2017 filed by present Respondent before the Hon'ble State Consumer Dispute Redressal Commission of Maharashtra State, Bench at Aurangabad, may kindly be ordered to be dismissed;*
>
> *D] Pending hearing and final disposal of this Writ Petition, the effect operation and implementation of Judgment and Award dated 20.03.2024 passed by Hon'ble National Consumer Disputes Redressal Commission at New Delhi in First Appeal No. 407 of 2020, may kindly be stayed."*
>
> *E] Ad interim relief in terms of prayer Clause "D" may kindly be granted in favour of present petitioners.*
>
> *F] Any other just and equitable relief may kindly be passed in favour of present petitioner."*

BACKGROUND OF THE CASE

3. Present petitioners are the insurer, whereas present respondent is the insured. Present respondent purchased money insurance policy from the petitioners covering a period commencing from 20.12.2012 to 19.12.2013. The total risk

covered for money in transit was Rs.15,00,00,000/- and for one instance it was Rs.25,00,000/-.

4. On 18.05.2013, employee of respondent during routine business course withdrew Rs.25,00,000/- from State Bank of Hyderabad. The amount was split and kept in two bags i.e. amount of Rs.24,00,000/- was kept in one bag and remaining Rs.1,00,000/- in another bag. Said employee was also carrying distinct Rs.2,50,000/- in a vehicle. The amount of Rs.26,47,000/- came to be stolen by unknown person, of which crime was registered at Nava Mondha Police Station, Parbhani by the said employee Janardan Ghatul on same day.

5. Being insured respondent lodged reimbursement claim with the insurer - present petitioners to the tune of Rs.25,00,000/-. Petitioners engaged Surveyor / Loss Assessor to conduct the survey of the alleged loss and for assessment of the claim. The Surveyor tendered the report recommending repudiation of the claim, more particularly, in view of condition no.3 of the terms and conditions of the policy. On the strength of the said report, petitioners conveyed respondent about repudiation of the claim.

6. Respondent knocked the door of State Consumer

Disputes Redressal Commission of Maharashtra, Bench at Aurangabad by filing Consumer Complaint No.36 of 2017 seeking indemnification of loss to the tune of Rs.24,00,000/- and claimed interest as well as cost.

The claim was contested by present petitioners principally on the ground that insurance policy prescribed limit of insurance coverage in respect of specified loss only under the policy at relevant time and it was specifically asserted that employee of the respondent was carrying cash to the tune of Rs.26,47,000/- which was beyond the scope of the coverage of the policy and that estimated total amount of money in transit during the policy period was Rs.15,00,00,000/-, however actual amount in transit was found to be Rs.18,07,65,000/- for which there was no coverage under the policy and that complainant had already exhausted the sum insured and exceeded cash transaction beyond Rs.15,00,00,000/-.

7. The Hon'ble Maharashtra State Consumer Disputes Redressal Commission, Bench at Aurangabad, on appreciating the case each of the side, passed Judgment and Award on 06.02.2020 thereby dismissing the claim of present respondent.

8. The above Judgment and Award of Hon’ble State

Consumer Disputes Redressal Commission was further taken up before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi, by filing First Appeal No.407 of 2020 by present respondent. Present writ petitioners participated there also and supported findings reached at by Hon'ble State Consumer Disputes Redressal Commission and prayed to dismiss the first appeal.

9. The Hon'ble National Consumer Disputes Redressal Commission by its Judgment and Award dated 20.03.2024 allowed the appeal directing present petitioners to settle the claim of Rs.24,00,000/- along with interest and cost.

Feeling aggrieved by the above Judgment and Award of Hon'ble National Commission, original respondents have preferred instant writ petition by invoking Article 226 and 227 enshrined in the Constitution of India and prayed to set aside the impugned judgment.

10. Heard both sides at length. (For the sake of brevity, the Hon'ble National Consumer Disputes Redressal Commission is addressed as "NCDRC"; whereas the Hon'ble State Consumer Disputes Redressal Commission is addressed as "SCDRC").

The fundamental grounds of challenge raised by learned counsel Shri Rathi for the petitioners could be summarized as under :-

Firstly, Hon'ble NCDRC failed to consider and appreciate available evidence, affidavits and survey report in its proper perspective.

Secondly, Hon'ble NCDRC did not consider the terms, conditions, special conditions and stipulations incorporated in the policy.

Thirdly, it ought to have been appreciated that by virtue of condition no.3, it was revealed that, actual money in transit had exceeded sum insured and as such no liability gets attract under the policy.

Fourthly, it ought to have been appreciated by NCDRC that insured had already exhausted the sum insured on the date of alleged loss and therefore, respondents were not entitled for asserting any claim.

Fifthly, it ought to have been appreciated that respondents were carrying cash more than Rs.25,00,000/- which was not in view of terms and conditions and coverage, and as such limit having exceeded, beyond the scope of policy, the claim was rightly turned down by the Hon'ble SCDRC.

Sixthly, that timeline for supply of requisite information to the Surveyor, of which the respondent was aware, was not adhered to and as such respondent was to be solely blamed for the so called delay. However, such crucial aspect has been lost sight of by the Hon'ble NCDRC and instead petitioners are erroneously held responsible.

Lastly, the rulings relied by the petitioners were also not considered, appreciated or discussed in the impugned Judgment.

In support of above submissions, learned counsel seeks reliance on the following rulings :-

1) *H.V.P.N.L. v. Mahavir, AIR 2000 SC 3586(1)*
2) *National Insurance Company Limited v. Chief Electoral Officer and Ors., (2023) 6 SCC 441*
3) *M/s. New India Assurance Co. Ltd. and Anr. v. Shashikala J. Ayachi, AIR 2022 SC 3330.*

11. Per contra, learned counsel for respondent Shri Yadkikar, who canvassed in favour of NCDRC supported the Award and Judgment passed by Hon'ble NCDRC. He took this court through the policy at Exhibit-'A' and would point out that, it is explicit from the very policy that, estimated total amount of coverage was well within Rs.25,00,000/-. Claim asserted and set up

was of Rs.24,00,000/-. He pointed out that, by virtue of policy insurer had undertaken the responsibility to indemnify the insured. Premium has been accepted, and therefore, insurer is liable to honour terms and conditions of policy. According to him, there was improper assessment by Surveyor. There was no personal consultation by the so called Surveyor with the respondent. Said Surveyor misinterpreted the terms and conditions of the policy and also failed to appreciate the liability of the insurer having accepted the premium. Surveyor also delayed the process of survey. Learned counsel pointed out to the dates reflected in the Surveyor's report and would submit that respondents are not to be blamed for any delay.

12. According to learned counsel for respondent, the claim asserted was well within the means and scope of the policy. Hon'ble SCDRC had failed to consider and appreciate the liability of the insurer, and therefore, appeal was preferred before Hon'ble NCDRC, which has correctly assessed the available evidence, appreciated the cases of each of the side and also correctly interpreted the terms and conditions of the policy and committed no error in declaring liability of petitioners - insurer. Consequently, he prays to dismiss the writ petition for want of merits.

13. After considering the submissions, in the considered opinion of this court, only two aspects need to be studied and ascertained i.e. whether terms and conditions of the policy are breached and whether Surveyor's report is in alignment with the policy.

Admittedly, present petitioners are dissatisfied by the Judgment and Award of Hon'ble NCDRC, which has accepted the present respondent's version regarding their entitlement to be indemnified for the loss incurred by them. There is no dispute that money policy was drawn by present respondent on paying requisite premium and policy was in force at the time of loss incurred by respondent. In such situation, it is only to be got satisfied whether respondent was entitled to be indemnified and whether Hon'ble NCDRC erred while allowing their claim.

14. For proper comprehension of the issues and dispute, it is necessary to reiterate some factual aspects. Present respondent, namely M/s Shri Ganesh Agro Industries, which are based in Parbhani M.I.D.C. had drawn 'Money Insurance Policy' from present petitioners, copy of which is annexed herewith at Exhibit-'A'. The policy period as is reflected from 20.12.2012 to 19.12.2013. The schedule of the policy also reflects that by virtue

of Section IA, limit of any one loss is shown to be Rs.25,00,000/- (i.e. Rupees Twenty Five Lacks). There is also provision for estimated total amount of money in transit showing limit to the tune of Rs.15,00,00,000/-. There is also a column under the head of total amount of money help per annum as Rs.25,00,000/-.

The policy shows that insurer company had agreed, subject to the terms and conditions to ***"indemnify the insured against loss of, (a) money in transit, by the insured or insured's authorized employee(s), occasion by robbery, theft or any other fortuitous cause as detailed in section 1".***

The policy cover also provides special conditions and relevant are condition nos.2 and 3, which read as under :-

> ***"2. Sum Insured -***
> *The sum insured should represent the estimated annual turnover, which should not be lesser than the previous years' turnover of money in transit plus 15%.*
>
> ***The insured has the option of increasing the sum insured as and when required during the currency of the policy.***
>
> ***3. Liability of the Insurer -***
> *If at the time of loss, it is found that the actual money in transit has exceeded the sum insured under the policy, no liability shall attract. However, this does not apply to the case in the premises during business hours."*

There is also no dispute regarding the above stipulations, conditions and features of the policy. Equally there is no dispute that present respondent set up claim by tendering requisite documents. Insurer after engaging and procuring services of Surveyor by invoking clause 3 of special condition, conveyed to the respondent that based on Surveyor's report and its recommendation that actual transaction having exceeded the sum insured, the claim is liable to be repudiated.

15. It is the above communication of repudiation of claim triggered filing proceedings by invoking section 12 of Consumer Protection Act and being unsuccessful before such fora, doors of Hon'ble NCDRC were knocked, where claim has been granted.

16. After hearing both sides and on perusing the record, and more particularly, the policy cover, it is palpable and evident from the Schedule under section IA that, sum insured was to the tune of Rs.25,00,000/-. On visiting Surveyor's report at Exhibit-'D', it is noticed that, even said Surveyor has noted that the insured were covered for a sum of Rs.25,00,000/- for a period from 20.12.2012 to 19.12.2013.

On studying the findings and conclusions reproduced in the report under the head of occurrence also, it is evident that, on relevant day, employee of claimant - respondent herein had withdrawn cash worth Rs.25,00,000/- from State Bank of Hyderabad. The employee had split up amount in two bags which also included another distinct sum of Rs.2,50,000/-, which was handed over by claimant before going to the bank for withdrawal of Rs.25,00,000/-. Even it is observed by the Surveyor "the total cash in white bag was Rs.26,47,000/- (Rs.2,47,000/- belonging to M/s. Maheshwari Oil Industries and **Rs.24,00,000/-** belonging to M/s. Shri Ganesh Agro Industries). Therefore, it is explicit that, amount stolen included Rs.24,00,000/- belonging to M/s. Shri Ganesh Agro Industries, who is the policy holder in the case in hand. Obviously and apparently, the said amount is lesser than Rs.25,00,000/- and by no means can be said to be exceeded.

17. Approach of Surveyor seems to be that, he has considered distinct amount which were not covered in the policy and were under different head and entity. It is also evident that, in the title cash laying in large white bag, cash belonging to M/s. Shri Ganesh Agro Industries is noted as Rs.24,00,000/-. Even in the heading to the report titled as loss, the amount of loss is quantified to the tune of Rs.24,00,000/-. With such findings and conclusion on survey, it is clear that present respondent was required to be indemnified for the cover taken to the tune of Rs.25,00,000/-.

18. The second limb of argument raised by learned counsel for petitioners is that, timeline prescribed by IRDA has not been adhered to by claimant – respondent and as such according to him they are to be blamed at. Learned counsel for respondent invited attention of this court to the documents at Exhibit-'C', which are communications *interse* between Surveyor and claimant – respondent. It is also evident from the same that, first communication by the Surveyor is since May 2015 onwards i.e. regarding occurrence of loss having taken place on 18.05.2013. Surveyor's report under the head of extent and loss confirms that Surveyor was appointed on 22.05.2013. Telephonic conversation is shown to be established on 24.05.2015 and personal visit is shown to be paid on 04.06.2013. Even as pointed by learned counsel for respondent, claim papers have been sent by the insured to the insurer on 15.08.2013, 18.11.2015 and 09.03.2016 and it is so reflected in the footnote clause 3(iv). Taking such dates into consideration, in the considered opinion of this court, the timeline prescribed by IRDA, which is a nodal body, has not been adhered to. Even this aspect of the matter has been dealt and discussed by the Hon'ble NCDRC in paragraph no.9 of the Judgment and Award. Consequently, even this court of the considered opinion that, claimant cannot be blamed.

19. Learned counsel for the petitioners also made a faint attempt to point out that, some observations in paragraph no. 7 of the Judgment and Award are out of context. Though there is text regarding cash limit under section 1 to be Rs. 30,00,000/- for payment of wages, salaries etc., it seems to be due to inadvertence and cannot be used to hold that there is complete improper appreciation of cases advanced by each of the side.

20. Perused citations. With due respect fact therein being distinguishable cannot be taken aid of.

21. Resultantly, there is no illegality or error in the impugned Judgment and Award so as to interfere in the same. Consequently, petitioners fail.

22. The writ petition stands dismissed.

23. Rule stands discharged.

(ABHAY S. WAGHWASE, J.)

24. After pronouncement of judgment, the learned counsel Shri Swapnil Rathi for the petitioners prays for extension of interim relief. Learned counsel Mr. Amit Yadkikar for respondent strongly opposes.

25. Interim relief granted by this court vide order dated 14.06.2024 to continue for a period of six (6) weeks from today.

(ABHAY S. WAGHWASE, J.)

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