

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Reserved on 2<sup>nd</sup> of May, 2024  
Pronounced on 30<sup>th</sup> May, 2024**

**RSA No.2210 of 1992**

Kewal Krishan

....Appellant

Versus

The Oriental Fire and General Insurance and others

....Respondent

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Arav Gupta, Advocate  
for the appellant.

Mr. Punit Jain, Advocate  
for the respondents.

**PANKAJ JAIN, J.**

Plaintiff is in appeal.

2. For convenience, the parties herein are referred to their original status in the suit i.e. the appellant as plaintiff and the respondents as the defendants.

3. Plaintiff filed suit for recovery of Rs.65,000/- as an insurance claim for loss of his car which was being plied as commercial taxi which was lost by way of theft. As per the case of the plaintiff, he was owner of a Padmini car bearing No.PNY-1765. The same was fully insured with the defendant-Insurance Company. The same was being plied through driver namely Jit Singh son of Jangir Singh who was incharge of the vehicle. FIR No.23/302 was lodged on 6<sup>th</sup> of December, 1983 to the effect that the vehicle

was stolen while parked in Gagan Hotel, Railway Road, Muktsar. Necessary claim was lodged with the defendant-Insurance Company on 7<sup>th</sup> December, 1983. The defendant-Insurance Company repudiated the claim of the plaintiff *in toto* on the pretext that the driver was not holding a valid licence on 6<sup>th</sup> of December, 1983. Plaintiff approached the Civil Court claiming that the repudiation was bad. The driver Jit Singh was holding a valid licence on the date of theft and was competent to drive the vehicle. There was clerical mistake in the issuance of duplicate licence by the office of District Transport Officer, Faridkot on account of which the defendant illegally rejected the claim of the plaintiff. The said error was rectified by the DTO Office, Faridkot itself and thus the plaintiff was entitled for claim of Rs.65,000/-.

4. Defendants resisted the suit filed by the plaintiff claiming that the car was transferred by owner Kewal Krishan to Janak Raj. There was no privity of contract between Janak Raj and the defendant-Insurance Company. Thus, Insurance Company had no liability to indemnify the loss of Janak Raj. It was further claimed that the vehicle was not stolen but was in fact mis-appropriated as is evident from the fact that the FIR was registered under Section 406 IPC and not under Section 382 of the IPC. However, the insurance of the vehicle on the relevant date was admitted. It was also admitted that the policy in question was a comprehensive one.

5. Trial Court after analyzing the evidence threadbare came to the conclusion that repudiation of the claim of the plaintiff at the hands of the

defendant was bad. Trial Court decreed the suit of the plaintiff for recovery of Rs.65,000/- along with interest @ 12% per annum to be paid from the period commencing from the date of institution of the suit till realization of the decretal amount.

6. The judgment and decree were assailed by the defendants in appeal. Appellate Court dismissed the suit holding that it was a case of misappropriation of car and not that of theft and was thus not covered under the policy.

7. The plaintiff is in appeal against the judgment and decree passed by the lower Appellate Court dismissing the suit.

8. Counsel for the plaintiff while assailing the impugned judgment and decree passed by the Courts below submits that it is evident from Ex.D3 that the policy against the loss was the comprehensive policy. It has been proved that the insured suffered loss of the vehicle. The insurer was thus liable to indemnify the insured. The ground on which the lower Appellate Court dismissed the suit was not the ground on which the claim was repudiated by the defendants and thus the Appellate Court erred in making out a case for the defendants beyond the reason assigned while repudiating the claim of the plaintiff.

9. Counsel for the defendants submits that the lower Appellate Court has rightly held the defendants not liable for any indemnification in view of the fact that the loss of the vehicle was on account of misappropriation of the same and not theft. He thus submits that well

reasoned findings have been returned by the lower Appellate Court which need to be maintained. He further submits that as per settled law owner is required to exercise due care and caution which is missing in the present case. Reliance is being placed upon law laid down by the Apex Court in the case of **Kanwarjit Singh Kang vs. M/s ICICI Lombard General Insurance Co. Ltd. & Anr., (2024) 1 SCC 375** to submit that where there is lack of reasonable care on part of the owner or his employee, repudiation of the claim of the plaintiff cannot be faulted.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. Before coming on to the disputed issues, it will be apt to notice that it is admitted that the vehicle on the day of loss was fully insured by comprehensive policy for which the plaintiff paid premium. The FIR was registered on the same day. The defendants repudiated the claim of the plaintiff on the ground that the driver was not holding valid licence on the said date. The Trial Court framed the following issues :

- “1. Whether the plaintiff is entitled to recover Rs.65000/- on account of insurance claim of theft of taxi PNY-1765? OPP.
2. If issue No.1 is proved, whether the plaintiff is entitled to claim interest from the date of filing of the suit till realisation? If so at what rate? OPP.
3. Whether the suit is within limitation? OPD.
4. Whether the car taxi PNY-1765 has been transferred by its owner Kewal Krishan to one Janak Raj a commission agent Giddarbaha? If so to what effect? OPD.

5. Whether there was breach of terms and conditions of the policy on the part of the plaintiff? If so, to what effect? OPD.
6. Whether the alleged risk is not covered by the insurance policy? If so, its effect? OPD.
7. Relief.”

12. Appellate Court decided issue No.1 against the plaintiff holding that since the FIR was registered *qua* offence punishable under Section 406 IPC and not for offence of theft as defined under Section 378 IPC, the claim of the plaintiff was not covered under the policy.

13. The incident as narrated in the FIR reads as under :

“In FIR Ex.D-1 it was stated by Jit Singh son of Jangir Singh that he was driver for the last three years and was then working as driver on taxi car PNY-1765 (Fiat). On this taxi car PNY-1765 (Fiat), he had been kept as driver by Janak Raj son of Des Raj. He was getting Rs.450/- per mensem. At about 4 P.M., on 06-12-83 some one aged 30/35 years, wheatish complexion, clean shaven, 5’-8” tall, came to him at taxi stand, Gidderbaha, and requested him to let this taxi car on hire upto Muktsar. Rs.110/- was settled as the taxi fare for Muktsar. He was seated in this taxi car. At new bus stand, Muktsar, five litres of petrol was got for the car from a petrol pump nearby. He had not known that man earlier. When they reached new grain market, Muktsar, he asked him to stop that car. There he requested him that he would be coming soon after getting Rs.8000/- from some one who was owing him Rs.8000/- and he should lend him car for half-an-hour. He was accordingly seated in that car and came to Gaggan Hotel, Muktsar, which is situated at railway road, Muktsar, at about 6 P.M. He had booked that room in Gaggan Hotel, Muktsar. Car was parked in the street adjoining that hotel. Car was locked and they went to the hotel room. He purchased one bottle of whisky on the way. He and Jit Singh both enjoyed that liquor and took meals. At 7-15

P.M. he asked for the keys of the car and told him that he was to go some where as he was to collect Rs.8000/- from some one who was owing him that amount. Jit Singh accordingly handed over the keys of the car to him. He drove that car but did not turn up.”

14. Theft has been defined under Section 378 IPC which reads as under :

**378. Theft.**—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

*Explanation 1.*—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2.*—A moving effected by the same act which effects the severance may be a theft.

*Explanation 3.*—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.*—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5.*—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

15. On the given moment Jit Singh was incharge of the vehicle. He consented for the vehicle to be taken with the condition that the same shall be returned back. Under Section 90 of the Penal Code a consent given on

the misrepresentation of facts or misconception of facts, is no valid consent and thus taking of the property in such a case has to be held without consent and will amount to theft. The lower Appellate Court thus erred in ignoring Section 90 of the Indian Penal Code and thus ought not have dismissed the suit filed by the plaintiff merely for the reason that the FIR was registered under Section 406 IPC and not 382 IPC. Another fact that needs to be noticed is that the policy was comprehensive and the vehicle was insured on the date the same was stolen.

16. So far as the argument raised by counsel for the defendant w.r.t. the lack of due care and caution exercised by the incharge of the vehicle Jit Singh is concerned, due care and caution cannot be gazed from an absolute rule. What is reasonable care, depends on the circumstances of the case. In the present case, the incharge of the vehicle i.e. Jit Singh was conned by the passenger and consented to hand-over the vehicle to him under misconception. Thus, in the absence of there being any allegation that Jit Singh was involved in the crime, it cannot be said that he contributed to the theft or was not taking due care. After all the standard is ordinary prudence. Apart from that there is no evidence that there is any breach of the condition. Resultantly, the argument raised sans merit and cannot be accepted.

17. As a sequel of the aforesaid discussion, this Court finds that the judgment and decree passed by the lower Appellate Court cannot be sustained and is hereby set aside. Trial Court rightly decreed the suit of the plaintiff. Judgment and decree passed by the Trial Court are restored. Suit

filed by the plaintiff is ordered to be decreed in terms thereof with the modification that the rate of interest awarded is reduced to 6% from 12%.

18. Accordingly, the instant second appeal is allowed.

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| <b>May 30<sup>th</sup>, 2024</b> |                           |   | <b>(Pankaj Jain)</b> |
| <b>Dpr</b>                       |                           |   | <b>Judge</b>         |
|                                  | Whether speaking/reasoned | : | Yes                  |
|                                  | Whether reportable        | : | Yes                  |