IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-17476-2024 (O&M)
Date of decision: 29.07.2024

Royal Sundaram Alliance Insurance Co. Ltd., Chennai ...Petitioner

VERSUS

Ishwar Singh Mehra and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. D.K. Prajapati, Advocate for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 20.05.2024 passed by the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) in Revision Petition No.1150 of 2017 titled as 'Royal Sundaram General Insurance Company Ltd. Vs. Ishwar Singh Mehra and another'.

2. Briefly summarized, the facts of the present case are that respondent No.1-complainant was the registered owner of a Tavera Car B-3 (Chevrolet) bearing registration No.HR-10P-5499 and the same was financed by the HDFC Bank Ltd., Sonepat. The said car was insured with the petitioner-Insurance Company, through respondent No.2 being authorized agent, vide Cover Note No.3948448 dated 29.05.2013 for the period commencing from 29.05.2013 to 28.05.2014 for a sum (ID Value) of Rs.4,98,717/-. The vehicle in question, unfortunately met with an accident and an intimation in this regard was sent to the petitioner-Insurance Company. The vehicle was taken to respondent No.2 work-shop which

estimated total damage to the vehicle since repair expenses were to the tune of Rs.7 lakhs, which exceeded the Insured Declared Value (IDV) as mentioned in the insurance policy. The petitioner-Insurance Company however did not agree to reimburse the above said amount whereupon a complaint No. 459 of 2015 was preferred by respondent No.1-complainant before District Consumer Disputes Redressal Forum, Sonepat. Respondent No.2-authorised service centre filed its written statement wherein it was averred that the Surveyor was appointed by it to inspect the vehicle in question and the same is still lying parked in their premises. Neither the Insurance Company nor respondent No.1-complainant asked respondent No.2 to repair the vehicle. The estimates of repair were intimated to respondent No.1-complainant/consumer. It was stated that the authorized service centre is not liable to make the payment, as claimed, since it was not liable for any such deficiency.

3. The petitioner-Insurance Company entered appearance before the Consumer Form and admitted the factum of vehicle being insured with it but contended that the Surveyor deputed by it to assess the damages, assessed the total liability to be around Rs.1,54,559/-, after making appropriate deductions for depreciation and policy excess clause. The Surveyor was also stated to have observed the damages in the chassis frame and body shell and was of the opinion that the vehicle was in a repairable condition. It was averred that respondent No.1-complainant was bound to produce the vehicle for re-inspection along with the original bills and receipts for payment to be made and for settlement of claim, after repair, but

despite several reminder, no repair bills were submitted by respondent No.1-complainant/consumer, hence, the claim could not be paid under the Policy.

4. The parties adduced their respective evidence and documents before the District Consumer Disputes Redressal Forum, Sonepat and upon consideration of the respective submissions and documents brought on record, the Forum recorded a finding that the vehicle was insured for a sum of Rs.4,98,717/- whereas the Surveyor appointed by the Insurance Company has assessed the net payable amount to the tune of Rs.1,54,559/-, hence, respondent No.1-complainant was held entitled only to the amount as determined by the Surveyor holding he is the best person to assess the loss and his report cannot be brushed aside. Directions were issued to the petitioner-Insurance Company to make the aforesaid payment.

5. Aggrieved of the said award, the respondent No.1-complainant/consumer filed an Appeal No.829 of 2016 before the State Consumer Disputes Redressal Commission, Haryana.

6. On consideration of the arguments advanced by the respective parties, the Commission allowed the Appeal and directed modification of the order passed by the District Consumer Disputes Redressal Forum, Sonepat to the extent that the petitioner-Insurance Company was held liable to pay the Insured Declared Value (IDV), after statutory deductions, since there was a total damage to the vehicle. Reliance was also placed on the report dated 30.05.2014 submitted by the repair centre which specifically certified that the body shell and engine of the vehicle were not in a repairable condition and both are replaceable with new one alongwith the AC. The

operative part of the judgment reads thus:

> "*3. **Learned counsel for the complainant has urged that the car was taken to Malwa Auto Sales, Sonepat-opposite party No. 1 (authorized dealer of the car). Malwa Auto Sales assessed the loss at Rs.9.00 lakh whereas Insured Declared Value of the car was Rs.4,98,717/- For ready reference, the report dated May 30th, 2014 submitted by Malwa Auto Sales is reproduced as under:-***
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> > ***"It is certified that a vehicle number HR-10P-5499 met with accident on dated 18th May, 2014 and this vehicle is lying in our workshop for repair. And after inspection of above said vehicle our engineer/foreman prepared estimate cost of its repair which is approximately Rs. Nine Lacs which is excess of IDV, because body shell and engine are not in repairable condition both are replaceable with new one as well as AC of the vehicle also replaceable with new one and other parts of the vehicle like chassis also replaceable with new one. Thus this vehicle is not in repairable condition."***
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> ***4. A reading of the report shows that the car was totally damaged. The photographs of the damaged car also depicts that the car was totally damaged. In view of this, this Commission is of the opinion that the Insured Declared Value of the car should have been awarded by the District Forum instead of directing to pay Rs. 1,54,559/- to the complainant.***

This being so, the impugned order is modified to the extent that the Insurance Company shall pay Rs.4,98,717/- (Insured Declared Value of the car) to the complainant within a period of sixty days from the date passing of this order. The car is still lying in the garage of Malwa Motors. The salvage of the car would be retained by the Insurance Company. The complainant is directed to execute the letter of subrogation, to hand over the keys of the car, transfer the Registration Certificate in the name of the Insurance Company and execute all other necessary documents required for the purpose. The appeal stands disposed of in the manner indicated above."

7. The State Consumer Disputes Redressal Commission, Haryana, also examined the photographs of the damaged car and satisfied itself with respect to the damage caused to the vehicle in question.

8. Aggrieved of the said order dated 03.02.2017 passed by the State Consumer Disputes Redressal Commission, Haryana, the petitioner preferred a Revision Petition No.1150 of 2017 before the National Consumer Disputes Redressal Commission. Vide order dated 20.05.2024, the National Consumer Disputes Redressal Commission dismissed the said Revision Petition, after considering the arguments advanced by the respective parties, and also taking in to consideration as to whether the Surveyor's report is the final with respect to the assessment of the loss. The operative part of the same reads thus:-

"***10. Based on the arguments advanced on behalf of both the parties, it appears that there was a discrepancy in the assessment of the vehicle's damage and repair cost following an accident. The breakdown of the key issues is as follows:***

i. Total Damage and Repair Estimation: The vehicle in question was reported as totally damaged in the accident, as brought out in the report from Malwa Auto Sales, Sonepat (Respondent No.2/OP-1), the authorized car dealer. The repair estimate provided by Respondent No.2/OP-1 amounted to Rs.9 lakh, while the Insured Declared Value (IDV) of the car itself was Rs.4,98,717/-, according to their report dated 30.05.2014.

ii. Surveyor Report and Loss Assessment: A surveyor's report dated 15.07.2014 assessed the loss to the vehicle to be as Rs.1,54,559/-, after deducting depreciation and excess value.

iii. Discrepancy in Compensation: There was a discrepancy between the repair estimate of the authorized dealer (OP-1/ Respondent No.2) and the assessment of the surveyor. Clearly, OP-1, as authorised dealer is more in sync with the damages and repair costs. Therefore, to that extent the report of surveyor limiting the loss to Rs.1,54,559/- is untenable.

There is total loss and the estimated repair cost is more than IDV. Therefore, compensation to the extent of IDV is applicable in this case.

11. Hon'ble Supreme Court where importance to assessment made by Surveyor is given. The importance of taking into account the Surveyor's Report has been dealt in the case of **New India Assurance Co.Ltd. Vs. Pradeep Kumar (2009) 7 SCC 787*****, decided on 9.4.2009, the relevant para is reproduced below:-***

> ***"21. Section 64-UM (2) of the Act, 1938 reads:***
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> ***64-UM (2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereinafter referred to as "approved surveyor or loss assessor"):***

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor."

In the above said case, it was further held as under:

"In the said decision, it is no doubt held that though the assessment of loss by an approved surveyor is a prerequisite for payment or settlement of the claim, the surveyor report is not the last and final word. It is not that sacrosanct that it cannot be departed from and it is not conclusive. The approved surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured. On the said proposition, we are certain that there can be no quarrel. <u>The surveyor's report certainly can be taken note as a piece of evidence until more reliable evidence is brought on record to rebut the contents of the surveyor's report.</u>

12. In ***<u>Sri Venkateshwara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr</u>***., decided on 24.8.2009, the Hon'ble Supreme Court has observed as under :

> ***"22. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provision of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them."***

13. In the case in question, the Complainant had taken the car to Malwa Auto Sales, Sonepat (OP-1), who is the authorized dealer of the cars of OP-2. It was the Malwa Auto Sales which had caused the detailed inspection of damages to the car by its qualified engineer/ foremen and determined the costs for repairs as Rs.9,00,000/-. OP-1 had provided details of the repairs involved and the costs vide report dated 30.05.2014. Thus, it is a matter of record that the car was totally damaged and the costs of repair were well beyond the Insured Declared Value (IDV) of the car, which was only Rs.4,98,717/-. Even the surveyor was to have based his

assessment of damage to the car based on the inputs from the repair agency. Thus, the report of the Surveyor limiting the loss to Rs.1,54,559/- is untenable.

14. Based on the above, in my considered view, the learned State Commission rightly overlooked the surveyor report and directed the OP to pay the Complainant Rs.4,98,717/-, which is the Insured Declared Value of the car. Therefore, the impugned order of the State Commission dated 03.02.2017 does not suffer any illegality or material irregularity and the same is upheld. Consequently, the Revision Petition No.1150 of 2017 is dismissed. ".

9. Aggrieved thereof, the instant writ petition has been preferred.

10. Learned counsel for the petitioner-Insurance Company contends that the Consumer Courts have not taken into consideration the report of the Surveyor and have only relied upon the paper note prepared by the authorized service centre. He contends that such self-serving paper estimate could not have been accepted to dispel the damages assessed by the Surveyor. He places reliance on the judgment of the Hon'ble Supreme Court in the matter of **United India Insurance Co. Ltd. and others Vs. Roshan Lal Oil Mills Ltd. and others** reported as **2000(10) SCC 19**. The said judgment was followed up by this Court in the matter of **Punjab Small Industries & Export Corporation Limited Vs. The Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi and others** reported as **2016 (4) RCR (Civil) 111** in relation to

compensation under the Railways Act, 1929.

11. I have heard the learned counsel appearing on behalf of the petitioner and have gone through the documents appended with the present writ petition.

12. Even though much emphasis has been laid by the learned counsel for the petitioner-Insurance Company on the report of the Surveyor, however, a perusal of the order passed by the National Consumer Disputes Redressal Commission shows that the said argument has been duly considered and it was specifically noticed by placing reliance on the judgment in the matter of **Sri Venkateshwara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr**., decided on 24.8.2009 by the Hon'ble Supreme Court, that the Surveyor's report is not the final document although it may be a relevant document for assessment. The above judgment has been passed later in point of time i.e. in the year 2009 whereas the judgment relied upon by the learned counsel for the petitioner is of the year 2000. The judgment relied upon by the petitioner is not applicable to the facts of the present case. As per averments noticed in the Paragraph 7 of the said judgment, the Surveyor's report had not been considered at all by the Consumer Courts whereas in the present case, the Surveyor's report was taken into consideration not only by the National Consumer Disputes Redressal Commission but also by the State Consumer Disputes Redressal Commission, Haryana but they did not find the same to override the specific averment on an affidavit, submitted by the authorized service centre, as per which the vehicle was not in a repairable condition. Thus there was a

discrepancy with respect to the claim made by the Surveyor about the vehicle being repairable as against the response filed by the service-cum-repair centre that the vehicle was not in a repairable condition. Indeed, an authorized service-cum-repair workshop can be held as better equipped to inform whether the chassis, engine and other parts are repairable or not. By repairable, it must be understood as the condition in which it can be said to be in a reliable working condition and the chassis strength is not compromised.

13. The State Consumer Disputes Redressal Commission, Haryana as the Appellate Authority as well as the National Consumer Disputes Redressal Commission have preferred to accept the specific reply filed by respondent-authorized service centre with respect to the status of the vehicle not being repairable. It was hence not the said ground that the report of the Surveyor has not been accepted but where it has not been given preference.

14. The petitioner-Insurance Co. has not been able to dispel the report/estimate of the service centre being misplaced. A specific response on an affidavit had been filed by the repair workshop. It was only thereafter that the order was passed in the Appeal directing the petitioner-Insurance Company to pay the IDV, since the cost of repair far exceeded the IDV of the vehicle.

15. The contention of the learned counsel for the petitioner that no bills were submitted for it to reimburse the claim is misconceived. Since the cost of repair already far exceeded the IDV, the vehicle in question was never got repaired at all by the respondent-consumer. Hence, there was no

occasion for producing the repair bills. No prudent person would spend an amount twice the value of the vehicle, for its repair. It was only for the said reason that the case was filed. The argument thus is illogical and irrational and deserves a rejection for the said reason alone.

16. Further, the petitioner-Insurance Company has already been granted a right to collect the salvage of the vehicle.

17. The High Court, in exercise of its powers under Article 226 of the Constitution of India does not sit as a Court of appeal on the judgments passed by the Consumer Courts especially when the parties have had recourse to the remedies not only before the District Consumer Disputes Redressal Forum but also in the form of the First Appeal before the State Consumer Disputes Redressal Commission and having tested the legality of the order before the National Consumer Disputes Redressal Commission. It is only in the event of a gross impropriety, illegality or perversity or gross mis-appreciation of the evidence adduced before the Court that the High Court, in exercise of powers in writ jurisdiction, may exercise a judicial review of the order so passed. When exercise of discretion is based upon objective consideration of all the relevant factors and evidence, a discretion so exercised would not ordinarily be interfered with, in case there is no such illegality, impropriety or perversity in the award so passed. I find that no such circumstances exist in the present case.

18. **The present writ petition is accordingly dismissed in limine.**

(VINOD S. BHARDWAJ)
JUDGE

29.07.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No