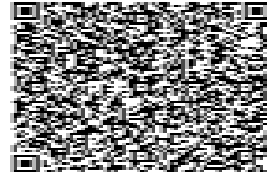


2024:PHHC:109291-DB



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

**LPA-1989-2024 (O&M)
Decided on: 23.08.2024**

Royal Sunderam Alliance Insurance Company Ltd.

.....Appellant (s)

Versus

Ishwar Singh Mehra & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr.Dinesh Kumar Prajapati, Advocate for the appellant (s).

G.S. Sandhawalia, J. (Oral) :

1. Consideration in the present appeal is to the judgment dated 29.07.2024 of the Learned Single Judge passed in CWP-17476-2024 whereby the writ petition filed by the appellant-Company was dismissed in limine.

2. The learned Single Judge upheld the order passed by the National Disputes Redressal Commission, New Delhi (NCDRC) dated 20.05.2024 (Annexure P-8) in Revision Petition No.1150 of 2017, which was filed by the appellant-Company against the respondents herein. The reasoning which prevailed with the learned Single Judge while dismissing the writ petition was that the NCDRC had held the surveyor's report is not a final document although it may be a relevant document for assessment. It was noticed that the State Consumer Disputes Redressal Commission, Haryana and the NCDRC had relied upon a finding that the vehicle was

not in a repairable condition and therefore, since specific response had been taken on affidavit filed by the respondent-authorized service centre, they had directed to pay the insured total value as the cost of repair.

3. It was noticed that the repair value was coming to twice the value of the vehicle and therefore, the relief which had been granted by the said Commission duly upheld by the National Commission, was not interfered with, by noting that right to claim salvage value of the vehicle vests with the appellant-Insurance Company. The factum that under Article 226 of the Constitution of India, the Writ Court was not sitting as a Court of Appeal but it is only to test the illegality, impropriety or perversity in the award so passed, while noticing the limits of the extraordinary Writ jurisdiction under Article 226 of the Constitution of India, the learned Single Judge did not exercise his jurisdiction.

4. Counsel for the appellant has laid much stress upon the fact that the surveyor's report was the ultimate proof and the State Commissioner having given beyond the value as assessed in the surveyor's report, has erred.

5. A perusal of the paperbook would go on to show that the vehicle which was Tavera car (manufactured by Chevrolet) had been insured for a sum of Rs.4,98,717/- for the period commencing from 29.05.2013 to 28.05.2014. On account of the accident which took place with a dumper, the vehicle was stated to be totally damaged as specifically averred in para no.2 of the complaint. There is no denial to this aspect in the reply filed by the Insurance Company in para no.2 apart from the fact that the complainant be put to strict proof of each and every allegation for

the said period. In such circumstances, on account of the insured value not being paid, the complaint had been filed.

6. The stance was that as per the report of the surveyor, the liability was assessed at Rs.1,54,559/- after making appropriate deduction for depreciation and policy excess thereby holding out that the damage of chassis frame and the body shell of the vehicle were in a repairable condition as per the averments made in para no.5. The District Forum had only granted the amount as assessed by the surveyor. The Learned State Commission noticed that the value of the vehicle was Rs.9 lakhs and that there was a report dated 30.05.2014 on record by the agency where the vehicle was bought which showed that the body shell and engine were not in repairable condition and both are replaceable with new one as well as the AC of the vehicle also replaceable with new one and thus the vehicle was not in repairable condition. In such circumstances, the insured value was directed to be paid and right to claim salvage was given to the Insurance Company. The vehicle is stated to be still lying in the garage of the agency. The revision petition was then dismissed by rejecting the contention of the Insurance Company that the surveyor's report should be given preference, as such.

7. Reliance was placed upon **New India Assurance Company Ltd. Vs. Pradeep Kumar, 2009 (7) SCC 787** by the NCDRC wherein while referring to Section 64UM(2) of the Insurance Act, 1938, it was held that surveyor's report is not the last and final word and it was not sacrosanct that it cannot be departed from and not conclusive and can be basis of foundation of the suit but would not be binding upon the insurer or the insured.

8. Similarly, reliance was also placed upon **Sri Venkateshwara Syndicate Vs. Oriental Insurance Company Ltd. & another, 2009 (8) SCC 507** wherein also similar view had been taken that the report depend upon various factors and the surveyors are the link between the insurer and the insured when the question of settlement of loss or damage arises. The surveyor's reports had to be given due importance and there should be sufficient ground not to agree with the assessment made by them. However, a caveat was also put that the Insurance Company cannot again appoint a surveyor and while doing so, there has to be satisfactory reasons for not accepting the findings of the surveyor.

9. It has specifically been noticed that the cost of repair and also of the vehicle was Rs.7 lakhs whereas the Insured Declared Value (IDV) was Rs.4,98,707/- and resultantly, the finding was recorded that there is no illegality or material irregularity in the order of the State Commission by directing the said IDV. Accordingly, we are of the considered opinion that having taken premium for the said amount, the consumer was rightly not satisfied with the paltry amount being doled out as assessed by the surveyor of Rs.1,54,559/-. In such circumstances, the State Commission rightly stepped in while noting the condition of the vehicle. Specific averments were made in the complaint regarding the total loss of the vehicle which had come on record.

10. There is limited scope for interference by the Writ Court while exercising over the statutory orders of the judicial authorities, which was rightly kept in mind by the learned Single Judge who is not sitting in appeal and thus, the said judgment does not suffer from any illegality or infirmity which can convince us to interfere in the same.

10. Resultantly, in view of the above-said observations, the present appeal is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

23.08.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No