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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 16622/2023 & CM APPLs. 66954/2023, 2236/2024

THE ORIENTAL INSURANCE CO. LTD. Petitioner

Through: Mr. Abhishek Gola, Advocate.

versus

RAVINDER SINGH KANG Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
12.02.2024

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1. The Petitioner has approached this Court challenging the Order dated 29.09.2023 passed by the Ld. National Consumer Disputes Redressal Commission (NCDRC) (*hereinafter referred to as "National Commission"*) disposing of the First Appeal bearing No.341/2019. The State Commission by Order dated 25.10.2018 had directed the Petitioner to pay interest @ 9% per annum on the amount of Insurance Declared Value (IDV) of the car i.e., Rs.65,00,000/- from 11.04.2018. The National Commission by the Impugned Order has directed the Petitioner to pay compensation in the form of interest @ 9% per annum on the repair cost of the vehicle i.e., 28,50,000/- from the date of offer of repair on 21.07.2018 till the realization of the amount and apart from this, the Petitioner has been directed to repair the car in question.

2. Learned Counsel appearing for the Petitioner draws attention of this



Court to Re-inspection/Assessment of Loss report dated 30.04.2023 given by a surveyor A. S Kapoor who had inspected the vehicle. The conclusion of the said report reads as under:

CONCLUSION:

In light of the above observations We arrive at following Conclusion:

1. The Insurance Policy does not cover normal wear in the car parts. It covers natural accident loss by external means and not the General wear & tear.

2. The Authorized dealer's price of Engine is around 4500,000/- Plus labor & consumables which amount to the tune of Rs 60 Lacs approximately. But here in this case The Insured has to shell out total amount due to loss to engine being due to wear and tear the claim was not tenable. That is why the Insured ignored the advice of the insurer and took the car from the Authorized Workshop on 14.12.2017 and then lodged a claim on 24.12.2017 (through a local retailer) i.e. just 10 days after ignoring the guidelines of the Authorized Dealer in which they had clearly mentioned that due to scratches the inner surface of cylinder liners the Complete Engine needed replacement. This clearly points out towards the manipulation of a fictitious loss.

In view of the same the total observations took a complete turn of the case and the claim being attributed to be cooked /fabricated, leading to mis-representation & concealment of the facts, the CLAIM DOES NOT STAND PAYABLE AS PER OUR OPINION. Hence Does not need any Re-Assessment of loss.

ISSUED WITHOUT PREJUDICE FOR THE FINAL CONSIDERATION OF THE COMPETENT AUTHORITY.

Sd/-,

- 1 Re-Inspection/Re-Survey Report.
- 2 Photographs
- 3 Copies of mails addressed to the Insured
- 4 History of maintenance/repair record of the car in Mercedes Benz.
- 5 Line diagram of the Protection Shields
- 6 Professional Charges Bill

for KAPOOR & CO.

(Signature)
A.S. KAPOOR
FLLLSA
(CHIEF EXECUTIVE))

3. Learned Counsel appearing for the Petitioner, therefore, states that the aforesaid document, which strikes at the root of the calculation of compensation, had been filed before the National Commission with an application for permission to file additional documents, however, the same has not been considered by the National Commission.

4. When this Court suggested to the learned Counsel appearing for the Petitioner that it would be appropriate for the Petitioner to approach the National Commission again by filing a review petition pointing out the error apparent on the face of record inasmuch as the aforesaid document has not been considered by the National Commission, the learned Counsel



appearing for the Petitioner seeks permission to withdraw the present writ petition with liberty to approach the National Commission by filing a review petition pointing out the aforesaid document which is bearing the material regarding the calculation of compensation.

5. Permission and liberty, as sought for, are granted.

6. It is stated by the learned Counsel for the Petitioner that the execution petition is listed before the State Commission today. It is open for the Petitioner to bring to the knowledge of the State Commission about the present Order passed by this Court today and get appropriate Orders.

7. The writ petition is disposed of as withdrawn, along with pending application(s), if any. It is made clear that this Court has not made any observations on the merits of the case.

SUBRAMONIUM PRASAD, J

FEBRUARY 12, 2024

S. Zakir