

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

226

CWP-7033-2020

Date of Decision : **January 07, 2025**

National Insurance Company Limited

.....Petitioner

VERSUS

Sanjeev Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.C.Gupta, Advocate for the petitioner.
Mr. Rahul Deswal, Advocate for respondent No.1.

KULDEEP TIWARI, J.

1. The petitioner herein is the Insurance Company, has made challenge to the award dated 10.12.2019 (Annexure P-1) passed by the learned Permanent Lok Adalat, Public Utility Services, Camp at Jind by filing the instant petition, as cast under Articles 226/227 of the Constitution of India.
2. Through the impugned award (supra), the application of respondent No.1 was allowed with costs, and the petitioner was directed to pay the insured amount to respondent No.1 i.e. Rs.25 lacs on account of theft of truck bearing registration No. HR-56A/6846, alongwith compensation of Rs.10,000/- and the litigation expenses were also assessed at Rs.3,000/-. The petitioner was further directed to pay the interest @ 9% per annum on the aforesaid amount from the date of filing of the application till the realization of the amount, within 2 months from the date of the award, and failing which the applicant was entitled to recover the total amount alongwith interest @ 12% per annum from the date of filing of the application till the realization of the amount from the respondent.

3. Learned counsel for the petitioner in an attempt to throw challenge to the impugned award (supra) has made the following submissions:-

- i) *That the claim of respondent No.1 was rightly repudiated in view of violation of condition No.5 of the insurance policy;*
- ii) *That respondent No.1 has failed to immediately intimate the Insurance Company about the theft of the vehicle and the FIR in question was got registered after 2 days of the occurrence i.e. on 2.1.2016, whereas the theft was committed in the intervening night of 30/31.12.20215;*
- iii) *That one ignition key was admittedly stolen 3-4 months back for which no police complaint was made and one ignition key of the stolen truck was hidden in the cabin of the truck itself, which amounts to negligence and violation of condition No.5 of the insurance policy, which specifically stated that the insured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and since respondent No.1 himself was negligent, therefore, no responsibility can be fastened upon the Insurance Company. He has placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Kanwarjit Singh Kang Vs. M/s ICICI Lombard General Insurance Co. Ltd. & Anr., 2022(3) PLR 475**, wherein it was held that leaving a vehicle unattended on the roadside with ignition keys therein is sufficient ground to repudiate of the claim by the insurer. The relevant part of the same extracted hereinafter:-*

“12. Moreover, the other pertinent part of the matter, that there had been want of reasonable care on the part of the petitioner or his employees in taking reasonable care of the insured vehicle, operates heavily against the petitioner. It is specifically found that the truck in question was left unattended on the roadside with ignition keys therein. Though learned counsel for the petitioner has referred to the assertions made by the driver in his affidavit that they had parked the vehicle on the

road side 'after properly locking the same', but such a statement is incompatible with the statement given by the petitioner himself that the vehicle was stolen with the ignition keys. That being the position, repudiation of the claim of the petitioner cannot be faulted at."

SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR RESPONDENT No.1.

4. Learned counsel for respondent No.1 submits that respondent No.1 has taken all due care to prevent any theft and damage to the insured truck and after coming to know about the theft of the truck on 31.12.2015, he immediately informed the police on telephone No.100, which clearly evident from the report through RTA Ex.P5. Moreover, the FIR was subsequently registered by the police on 2.1.2016 and after investigation, the police submitted an untraced report before the learned Illaqa Magistrate concerned, which was subsequently accepted. He further submits that the untraced report, as submitted by the police is the best piece of evidence establishing that the truck was stolen. He also submits that on the fateful day, i.e. on 30.12.2015 after uploading the paddy in the rice mill, the truck was parked in a hotel at about 7 pm near Babu Ram Seller, Narwana, District Jind, after locking the truck, while following all the safety measures and thereafter respondent No.1 alongwith the Cleaner went to their houses and on the very next day, when they came back to the truck, it was found to be stolen. He in addition submits that all the requisite documents, as desired by the Surveyor/Investigator were supplied and all the formalities were also fulfilled. He over and above submits that the ignition key was kept concealed in a truck cabin and it is no where the case of the Insurance Company (petitioner), that

the stolen key or ignition key was used in the commission of the theft of the truck in question. While placing reliance upon the judgment of the Hon'ble Supreme Court passed in **Lakhmi Chand Vs. Reliance General Insurance, 2016(3) SCC 100**, he submits that for the insurance to avoid his liability, it is required to establish that the breach of the policy must be so fundamental in nature that it brings the contract to an end but in the instant case, respondent No.1 has taken all adequate due safety measures warranted by a prudent man.

ANALYSIS

5. This Court has considered the rival submissions made by the learned counsel for the parties concerned and has perused the entire case file.

6. It is not under dispute that respondent No.1 was a registered owner of the truck bearing registration No. HR-56A/6846 and it was insured with the present petitioner and the policy was very much in operation. The vehicle was purchased by respondent No.1 after getting loan amount of Rs.21 lacs, from the IndusInd Bank. It is not under dispute that the instant insured truck was stolen during intervening night of 30/31.12.2015 and thereupon respondent No.1 got registered a complaint by making call on telephone No.100 and subsequently a VT message was flashed by the police after receiving information and on 31.12.2015 a DDR No.37 was recorded at Police Station City Narwana and thereafter an FIR in this regard was also registered on 2.1.2016 under Section 379 IPC.

7. Now the issue which arises for consideration, is whether, respondent No.1 has violated the terms and conditions of the policy in question. The case, as set up by the Insurance Company is that condition No.5

of the policy has been violated, therefore, it is apt to extract hereinafter the condition No.5 of the policy:-

"The Insured shall take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition and the company shall have at all times free and full access to examine the vehicle insured or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown, the vehicle insured shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle insured be driven before the necessary repairs are effected, any extension of the damage or any further damage to the vehicle shall be entirely at the insured's own risk".

8. A perusal of the above reflects that obligation is cast upon the insured to take all reasonable steps to safeguard the vehicle insured from loss or damage and to maintain it in efficient condition. Now the issue requires adjudication, whether the act and conduct of respondent No.1 is such, which could be considered as breach of policy is so fundamental in nature that it brings the contract to an end.

9. Respondent No.1 after uploading the paddy rice, has parked his vehicle in the hotel premises and also closed the truck cabin. The ignition key as per respondent No.1, was kept concealed in the cabin itself. It is a matter of common knowledge that the Driver and the Cleaner of the truck keep their daily use articles including the articles required to cook food in their truck cabin, in lock and key condition. The truck was parked in the hotel premises, therefore, it cannot be considered from a prudent man that no requisite care was taken to safeguard the vehicle insured from loss or damage. It is not the case of the Insurance Company that the vehicle in question was stolen by

using the stolen key or the ignition key lying in the cabin. Respondent No.1 promptly lodged a complaint after coming to know about the theft of the vehicle i.e. on 31.12.2015 and the DDR was also registered on the same day and thereupon on 2.1.2016, an FIR was registered. Therefore, all due care, which is required as a prudent man has been taken by respondent No.1 and his act cannot be considered as so fundamental in nature that it brings the contract to an end. This Court finds support to the above observation from the ratio of law laid down by the Hon'ble Supreme Court in Lakhmi Chand's case (supra). The relevant para is extracted hereinafter:-

“18. It becomes very clear from a perusal of the above mentioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company. In the instant case, the respondent-Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods carrying vehicle. Further, as has been held in the case of B.V. Nagaraju (supra) that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end. In the instant case, it is undisputed that the accident was in fact caused on account of the rash and negligent driving of the offending vehicle by its driver, against whom a criminal case vide FIR No. 66 of 2010 was registered for the offences referred to supra under the provisions of the IPC. These facts have not been taken into consideration by either the State Commission or National Commission while exercising their jurisdiction and setting aside the order of the District Forum. Therefore, the judgment and order of the National Commission dated 26.04.2013 passed in the Revision Petition No. 2032 of

2012 is liable to be set aside, as the said findings recorded in the judgment are erroneous in law.”

10. A co-ordinate Bench of this Court in **Reliance General Insurance Company Ltd., Vs. M/s Deep Chem International Pvt. Ltd. And another, CWP No.5109 of 2015, decided on 20.3.2015** has held that mere delay in lodging the complaint is not sufficient for the insurer to reject the claim, rather the decision should be based upon sound logic and valid ground and it will be not in an isolation or an absolute right on the part of the insurance company. The relevant extract reads as under”-

“As per the Insurance Regulatory and Development Authority vide circular dated 20.09.2011, the insurance company cannot repudiate the policy merely on the ground of delay in intimation with regard to the occurrence of an event. It is not disputed that the delay in intimation had a fatal effect which could deny the insurance company of its right, with regard to the plea taken by respondent No.1. The insurers decision to reject the claim should be based upon sound logic and valid ground and it will be not in an isolation or an absolute right on the part of the insurance company. Merely because there is delay on the part of intimation of the insured cannot be a ground in itself for repudiating insurance policy.”

11. Reliance can also be placed upon the judgment passed by the Hon’ble Supreme Court in **Jaina Construction Company Vs. Oriental Insurance Company Limited & Anr., Civil Appeal No.1069 of 2022, decided on 11.2.2022**, wherein the delay in lodging the FIR and not informing the insurance company was not considered as a relevant reasons for

repudiation of claim by the Insurance Company. The relevant extract reads as under:-

“As per the Insurance Regulatory and Development Authority vide circular dated 20.09.2011, the insurance company cannot repudiate the policy merely on the ground of delay in intimation with regard to the occurrence of an event. It is not disputed that the delay in intimation had a fatal effect which could deny the insurance company of its right, with regard to the plea taken by respondent No.1. The insurers decision to reject the claim should be based upon sound logic and valid ground and it will be not in an isolation or an absolute right on the part of the insurance company. Merely because there is delay on the part of intimation of the insured cannot be a ground in itself for repudiating insurance policy.”

12. Further reliance can be placed upon the decision rendered by the Hon'ble Division Bench of this Court in **Iffco Tokio General Insurance Co. Ltd. Vs. Rajbir Singh and another, LPA No.2530 of 2016, decided on 9.1.2017**, wherein the similar issue was considered and it was held that the parking of a truck in a locked condition in the Transport Nagar was found to be sufficient adequate safety measures taken on the part of the insured. In that case also, the ignition key was also lying in the truck in a hidden place. The relevant extract of the same reads as under:-

“To our persistent question as to whether such a clause existed in the policy, learned counsel for the appellant, even though replied in affirmative, failed to show anything from the record or from the policy that a condition was cast upon the insured to safeguard the vehicle against theft by taking steps more than what is expected of a prudent person and in the event of not doing so, the entire claim would stand repudiated. In any eventuality, the argument of learned counsel for the appellant, even if accepted, would not be a ground to repudiate the entire claim of the insured. The fact that the truck was in a locked condition and parked in Transport Nagar is sufficient to conclude that adequate safety measures were

indeed in place, assuming that this was the requirement of the policy, which in any case, is not borne out from the material on record. We find the whole plea of the insurance company suffers from dishonesty, which is further fortified by the fact that even though the vehicle was insured for a sum of Rs.19,50,000/- and the claim of only Rs. 14,62,500/- was awarded.”.

13. At this stage, the learned counsel for the petitioner submits that the interest, which is awarded by the Lok Adalat concerned i.e. 9% per annum is on the higher side and infact, the interest should be awarded not more than 6% per annum.

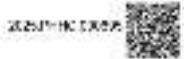
14. This Court finds force in the submission made by the learned counsel for the petitioner, therefore, the impugned award is modified only to the extent that the petitioner is directed to pay interest @ 6% per annum on the awarded amount from the date of filing of the application till the realization of the said amount within two months from today, failing which respondent No.1 is entitled to recover the total amount alongwith interest @ 9% per annum from the date of filing of the application till the realization of the said amount.

15. In view of the above, this Court finds no error or illegality in the impugned award passed by the learned Permanent Lok Adalat concerned, therefore, the impugned award is **upheld**, subject to the modification in the interest calculated, as mentioned hereinabove.

16. **Disposed** of accordingly.

January 07, 2025
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(KULDEEP TIWARI)
JUDGE



Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No