IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Rai Chattopadhyay

WPA 2035 of 2019

HMR Constructions Private Limited
Vs.
The Oriental Insurance Company Limited

For the Petitioner	: Mr. Partha Bhattacharya, ld. Sr. Counsel
	: Mr. Aryak Dutt
For the Insurance Corporation	: Ms. Sucharita Paul

Judgment on : 08.04.2026

Rai Chattopadhyay, J. :-

1. The alleged arbitrary and illegal repudiation of claim of the petitioner said to have been lodged in pursuance to the valid insurance policy, by the respondent/insurance company, is challenged in the instant writ petition. Legality and validity of the two letters of the said respondent dated October 18, 2017 and March 7, 2018 are under challenge here, amongst which the letter dated March 7, 2018 is the letter impugned that is the letter of repudiation, sought to be set aside in this writ petition.

2. The petitioner's case in a nutshell is that on February 11, 2014, within the period of coverage under the insurance policy number 311200/31/2012/1755, the vehicle of the petitioner, which is a Volvo excavator, purchased from Volvo India Private Limited Bangalore [vide bill no. VCE/BLR/0368/2011-12 Dated September 23, 2011], met with an accident, while being used in works at Borghat site [Meghalaya], where the petitioner has been engaged in construction of a bridge, for the

Meghalaya Public Works Department. Coverage of the vehicle on the particular date of incident has not been disputed in this case.

3. According to the writ petitioner, since the place of incident was remotely situated, the information of accident and loss and damage of the vehicle could only be sent to the respondent on February 27, 2014. The said respondent was informed about the accident, by an email dated same, followed by a letter dated February 28, 2014. As per request made to the respondent by the petitioner a surveyor was appointed namely Mr. Nabendu Das. Mr. Das inspected the machine on March 1, 2014 and submitted his report to the respondent.

4. An engineer appointed by the vendor of the writ petitioner has also inspected the vehicle and submitted his report as to the damage caused to the vehicle and estimated cost of repair. On the basis of the same the writ petitioner has filed its claim on March 4, 2014, along with the estimate of cost of repair as provided by the vendor of the vehicle.

5. Upon receipt of the claim of the writ petitioner the respondent/insurance company appointed on March 7, 2014 a surveyor and loss assessor from Guwahati namely Mr. Sobhan Malla Buzar Baruah BE. Mr. Baruah sends letter and reminder to the writ petitioner dated March 17, 2014 and May 2, 2014, ascertaining the fact of damage of the vehicle to be true. He has also informed in the said letter that since the preliminary inspection work has been concluded by him, the damaged vehicle can now be dismantled under supervision of the technical experts of the vendor, so that he can finally complete his report. Mr. Baruah further writes vide letter dated July 5, 2014, that physical inspection of the vehicle has been done by him along with the technical expert of the manufacturer on two days that is, June 29, 2014 and July 2, 2014 and the damage occurred to the same is ascertained and confirmed. The petitioner was advised to undertake the repairing works and to submit documents as required in connection with the claim. Later, on January 5, 2015, he however submits an addendum report to the respondent correcting the date of validity of the driving licence and name of the place of occurrence, mentioned in his earlier report.

6. On October 8, 2014, the petitioner sent the repair advice and requisition received by it from the authorised Volvo vendor to the respondent/insurance company with the request to approve the estimate with information to the vendor so that repair works may be undertaken by the same, with a copy of estimate forwarded to Mr. Baruah the surveyor and loss assessor, appointed by the said respondent.

7. Upon completion of the repair of the vehicle the writ petitioner has forwarded to Mr. Baruah, the surveyor and loss accessor appointed by the respondent, all the original invoices of repair cost of the vehicle provided by M/s Suchita Earthmoving Solutions Guwahati, authorised distributor of Volvo India Limited with its letter dated May 23, 2015, for the purpose of aiding and expediting realisation of the claim amount.

8. The respondent's first objection as to the claim of the writ petitioner was raised by dint of its letter dated April 8, 2016, in which the respondent pointed out certain discrepancies, in the spot survey report and the final survey report submitted by the two surveyors respectively, that date of accident has been mentioned differently in the said two documents as if there were separate incidents of accident. The petitioner says to have duly replied by justifying the alleged discrepancies, vide letter dated May 3, 2016.

9. This was followed by letters of Mr. Baruah dated May 25 and 30, and June 10, 2016, informing about presence of typographical error in his report, as regards the date of accident. He corrected the error by mentioning the actual date of accident and clarified the cause of damage occurred to the said vehicle.

10. Thereafter repeated letters of the petitioner followed requesting the respondent/insurance company to disburse the claim amount but to no avail. Ultimately the petitioner received the impugned letter dated October 18, 2017, which it replied vide latter dated November 9, 2017. Even in spite thereof, the respondents send its letter dated March 7, 2018, finally repudiating the claim of the writ petitioner, on the grounds mentioned therein. Those shall be discussed at a proper place. Being aggrieved with the same the petitioner has filed the instant writ petition.

11. The writ petitioner has been represented by Mr. Partha Bhattacharya, learned senior counsel. He says that on the date of accident the petitioner's vehicle has been duly covered by the insurance policy undertaken by the petitioner for the same. Therefore, in accordance with the conditions thereof any loss suffered by the vehicle due to accident is bound to be covered by the insurance company by disbursing the claim amount in favour of the writ petitioner. He further says that the respondent has appointed two surveyors for inspection of the vehicle and assessment of loss. That, both of them have reported about damage suffered by the said vehicle due to accident.

12. Mr. Bhattacharya, learned senior counsel has submitted that the respondent has arbitrarily not considered the explanation of the respondent's queries in its letter dated October 18, 2017, which the petitioner has satisfied vide its letter dated November 9, 2017. That, similar grounds have been pleaded by the respondent while finally repudiating the claim of the writ petitioner in the order dated March 7, 2018. That, it clearly indicates high handed, unlawful and arbitrary conduct by the respondent insurance company. It is submitted that the complete ignorance by the said respondent of both the survey reports as well as the clarification and explanation submitted by the writ petitioner in its letter dated November 9, 2017, without any apparent and justifiable reason, renders the final decision of the respondent to repudiate the claim of the petitioner as baseless, irrational, arbitrary and illegal. Therefore, he says that the said order is liable to be set aside in this writ petition.

13. Mr. Partha Bhattacharya, learned senior counsel for the petitioner has referred to the judgment in ***Saurashtra Chemicals Limited (presently known as Saurashtra Chemicals Division of Nirma Limited) Vs. National Insurance Company Limited*** reported in ***(2019) 19 SCC 70*** to buttress the proposition of law argued by him that the respondent/insurance company cannot bolster its case subsequently with additional grounds than it has been mentioned in the letter of repudiation itself. According to Mr. Bhattacharya, the grounds of delay in lodging the claim by the petitioner is afterthought and was never pleaded in the impugned letters as mentioned above.

14. The respondent insurance company is represented by Ms. Sucharita Paul, learned advocate in this case. The respondent's first contention is as regards maintainability of the instant writ petition. It is submitted that the plea of the petitioner is to recover the insurance claim amount in contrast to the decision of the respondent to repudiate such claim of the petitioner. Therefore, the same is not maintainable in the plenary and extraordinary writ jurisdiction of this Court. Instead, the claim of the petitioner being comprised with the disputed questions of fact, should be subject to efficacious alternative remedy available in law, before the appropriate civil Court by filing a money suit therefor. It has been submitted further that the insurer is lawfully entitled to repudiate claim, due to non-fulfilment of the terms of policy. That, since the petitioner has not been able to satisfy the specific terms of the policy, the respondent is justified in repudiating its claim. In this regard it has further been submitted that report of the surveyor is not the conclusive proof of the claim made and it is the discretion of the respondent to consider it or its part, if at all.

15. The respondent has further stated that the claim of the petitioner has been repudiated on the ground of violation of the policy condition. That, merely on the basis of surveyor's report, the insurance company is not obliged to release the claim without being satisfied about other factual and legal aspects in consonance with the terms and conditions in the policy. The respondent says that the petitioner's claim is not tenable under Section 1 of the Commercial Vehicle Package Policy issued to the petitioner. Such claim is also barred under Exception 4(a) of the "General Exceptions" of the Commercial Vehicle Package Policy. That the claim of the petitioner is also untenable as per condition No. 5 of the "Conditions" provided in the Commercial Vehicle Package Policy. The respondent specifically emphasizes that a claim can only be reimbursed which duly complies with and is as per the terms and conditions of the insurance policy and not otherwise.

16. It is the further contention of the said respondent that, the report of the surveyor on which the petitioner has placed sufficient reliance on, is not a conclusive document to prove the factum of the loss suffered by the petitioner. In a way, the respondent/insurance company has disputed and denied the allegation of the petitioner of suffering huge loss due to alleged arbitrary and illegal action of the said respondent by not disbursing the amount of claim to the same. Per contra, it is the contention of the respondent that, having not proved the accident as well as loss suffered and having not complied with the above-stated provisions under the insurance policy, the petitioner would not be eligible to seek any claim or reimbursement thereof. The respondent relies on the following judgments which principally discusses and decides about non-maintainability of a writ petition due to involvement of disputed questions of fact, requirement of factual enquiry, delay in lodging the claim and on the ground of availability of alternative efficacious remedy to the petitioner. Those are as follows:-

i) ***Life Insurance Corp^{n}. Of India & Ors. Vs. Asha Goel (Smt) & Anr.*** reported in ***(2001) 2 SCC 160.***

ii) ***Life Insurance Corporation of India & Ors. Vs. Smt. Kiran Sinha*** reported in (1986) 2 SCC 553

iii) ***Poonawalla Fincorp Limited & Anr. Vs. The National Insurance Company Limited & Anr. [APOT No. 297 of 2021 with WPO No. 494 of 2021, IA No.: G.A. 1 of 2021*** dated ***March 29, 2022]***

iv) ***Bhaskar Ghosh Vs. The Oriental Insurance Company Limited & Anr. [WPO 1366 of 2021*** dated ***December 20, 2021]***

v) ***Swapan Ghosh Vs. The Oriental Insurance Company Limited & Ors. [W.P. 4159 (w) of 2018*** dated ***June 15, 2018]***

vi) ***Poonawalla Fincorp Ltd. (Formerly Known as Magma Fincorp Limited) & Anr. Vs. The National Insurance Company Limited & Anr.*** dated ***September 16, 2021)***

17. On perusal of the letters of the respondent impugned in this case dated October 18, 2017 and March 07, 2018, it appears that the said respondent has taken up grounds of coming into operation of (i) Section 1, (ii) Exception 4 (a) and (iii) Condition No. 5 of the Commercial Vehicles Package Policy, to hold the claim of the petitioner as unsustainable and to repudiate the same. The issue, therefore, arises whether the said respondent could have lawfully and justifiably repudiate the insurance claim of the petitioner for the reason of coming into operation of the specified provisions of the Commercial Vehicles Package Policy; also that whether the writ petition itself is maintainable or not.

18. Before discussing on merits with reference to the points of dispute as mentioned above, the said relevant provisions may be quoted as hereinbelow : -

> ***"SECTION I - LOSS OF OR DAMAGE TO THE VEHICLE INSURED***
> ***1. The Company will indemnify the insured against loss or damage to the vehicle insured hereunder and/or its accessories whilst thereon:***
> ***i. by fire, explosion, self ignition or lightning;***
> ***ii. by burglary housebreaking or theft;***
> ***iii. by riot and strike;***
> ***iv. by earthquake (fire and shock damage);***
> ***v. by flood, typhoon, hurricane, storm, tempest, inundation, cyclone, hailstorm, frost;***
> ***vi. by accidental external means;***
> ***vii. by malicious act;***
> ***viii. by terrorist activity;***
> ***ix. whilst in transit by road, rail, inland waterway, lift, elevator or air;***
> ***x. by landslide rockslide."***

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> ***"(4) (a) any accidental loss or damage to any property whatsoever or any loss or expense whatsoever resulting or arising there from or any consequential loss."***

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> ***"5. 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."***

19. The petitioner has stated that on the date of incident, the excavator vehicle was working at Borghat Site, Meghalaya which is 58 kilometers away from Latrambai in East Jayantiya Hills of Meghalaya that is a remote place in the hills of Meghalaya. During excavation of sand and gravel near the Coffer dam the bucket of the vehicle got entangled between huge boulders and got stuck. Repeated attempts for over a week to disentangle the bucket of the vehicle, did not succeed. In this process, the vehicle was so damaged that, it became unusable any further. Damage was spotted on the bucket, arms, stick, pins and allied areas of the vehicle due to such accident during working of the vehicle. The water cooler was also damaged.

20. The Spot Surveyor, Mr. Das has noted the date of accident to be February 11, 2014. The surveyor and assessor appointed subsequently, though initially noted the date of accident erroneously, subsequently vide his letter dated May 25, 2016, has corrected the said error and mentioned the date of the accident to be February 11, 2014. Both the surveyors have duly endorsed the nature of accident that while working, a part of the vehicle was stuck between the boulders in the hills and got damaged extensively while being recovered from there.

21. Section 1 of the Commercial Vehicles Package Policy has provided the incidents, (10 of those), a damage occurred due to any of which, shall make the respondent liable to indemnify the insured/petitioner. Those are quoted above. Clause (vi) thereof is worth noting "by accidental external means". Clause 4(a) of General Exception states that, any accidental loss or damage to the vehicle or expense resulting or arising therefrom or any consequential loss should be considered to be exempted from the list of liabilities of the respondent under the said policy. Clause 5 of the conditions emphasizes that the insured should take all reasonable steps for safeguard of the vehicle.

22. No materials is forthcoming in this case to suggest remotely that while using the same for work, necessary protection, care and safeguard has not been maintained. The vehicle is of specific nature to discharge specific kind of job that is, for excavation. In hilly areas, the job of excavation is always involved with the risk and danger of grapple with boulders. In view of the fact that the concerned vehicle have been entangled with the boulders while in work the same specifically comes within the bounds of Section 1 clause (vi) that is, "damage by accidental external means".

23. The two surveyors' reports have never been considered by the respondent/insurance company to come to its decision in the impugned order. The reason thereof has been stated in the affidavit-in-opposition that, report of the surveyor being not a conclusive proof of the facts stated therein, may not compulsorily be taken into consideration. The Court finds that the respondent's decision should have been based on some cogent grounds or else that should be termed as an arbitrary decision according to its own whims. So far as the nature of loss suffered by the vehicle, the surveyors' reports are the only materials available. The respondent could have merrily not relied on the same, had it got some other sufficient and cogent material in contrast to the claim of the petitioner. Unfortunately, the same is not available in this case the respondent's decision in the impugned letters is based on no grounds at all as to why the said specific provisions of the Commercial Vehicle Package Policy should be made applicable in case of the present petitioner's claim. On the other hand, the purpose of appointing a surveyor is only to ascertain justifiability of the claim on the basis of collected evidence. Let it be mentioned that the contents of reports of the surveyors have never been denied or disputed as untrue or improbable.

Therefore those must be found to be good foundational grounds in support of the claim of the petitioner. Also against the petitioner or the surveyors, so to say, there is no allegation levelled for suppression of any material foundational fact. Obviously, in such situation the reports of the surveyors are acceptable and those should not have been discarded without showing any reason, as it has been done in the instant case.

24. The time gap between the date of incident (February 11, 2014) and report being made to the respondent/insurance company (dated February 27, 2014) is not fatal for the petitioner in view of the remote situation of the place of incidence and lack of due communication facilities. Furthermore, the Court is in concurrence with the argument advanced on behalf of the petitioner that the ground of delay being not part of the impugned letter of repudiation dated March 07, 2018 cannot subsequently be put in. Or else, that would have an effect of strengthening its case further by the respondent authority which is prohibited in the eye of law. In this regard, the ratio of the judgment relied on by Mr. Bhattacharya in ***Saurashtra Chemicals Limited (supra)*** squarely applies in this case.

25. Hence, the impugned orders as mentioned above, appeared to be unreasoned and unsubstantiated with any cogent and sufficient material. In such event, the said order stands neither on the anvil of tests of arbitrariness nor that of legality or validity.

26. Having said so, it is also necessary that the Court discusses futility of the preliminary point of objection raised on maintainability of this writ petition. The objection proceeds on two principal planks, firstly, that the dispute pertains to enforcement of a contractual right involving disputed questions of fact; and secondly, that the petitioner has an efficacious alternative remedy by way of a civil suit. This Court is unable to accept the said contention in the facts and circumstances of the present case. It is now well-settled that the jurisdiction under Article 226 of the Constitution is not barred merely because the dispute arises out of a contractual relationship, particularly where the respondent is a State or an instrumentality thereof and its action is impugned on the ground of arbitrariness, unreasonableness or violation of Article 14 of the Constitution. The doctrinal foundation for exercise of writ jurisdiction in such cases rests on the public law element embedded in the action of the State, even in contractual matters.

27. The distinction between a pure private law dispute and a dispute involving public law character must be borne in mind. Where the challenge is not simpliciter for recovery of money but is directed against an arbitrary, irrational or mala fide decision-making process of a public authority, the writ court would be justified in exercising jurisdiction. In the present case, the petitioner has not merely sought enforcement of a claim amount, but has assailed the decision-making process culminating in the repudiation of the claim as being arbitrary, unreasoned and violative of settled principles of fairness. The doctrine of arbitrariness, as a facet of Article 14, pervades all State actions, including those arising out of contractual dealings. An insurance company, being a State instrumentality within the meaning of Article 12, is bound to act fairly, reasonably and in a non-arbitrary manner. The impugned repudiation, if found to be devoid of reasons or based on irrelevant considerations, would clearly invite judicial review.

28. The Supreme Court in ***United India Insurance Company Limited versus Manubhai Dharmasinhbhai Gajera [at (2008) 10 SCC 404]*** has clearly held that although the state should be free to negotiate its terms in the field of contract qua contract, its actions however cannot be arbitrary. The Court held that the insurance company having acted arbitrarily cannot be allowed to say that the writ Court should not interfere. Therefore, in such a case a writ would be maintainable even if it arises within a contractual obligation.

29. The contention of the respondent that the writ petition involves disputed questions of fact also does not commend acceptance. It is trite law that the mere existence of disputed facts does not ipso facto oust the writ jurisdiction. The Court must examine whether such disputes are of such a complex nature that they necessitate oral evidence and detailed trial. In the present case, the foundational facts, including existence of policy, occurrence of incident, appointment of surveyors and submission of reports, are largely undisputed. The controversy essentially revolves around the interpretation of policy conditions and the legality of the respondent's decision in disregarding the survey reports. In this context, it is pertinent to note that the respondent itself had appointed surveyors for assessment of loss, and their reports constitute the primary material on record. The respondent has neither produced any contra material nor demonstrated that the issues require elaborate evidentiary adjudication. Therefore, the dispute falls within the realm of judicial review rather than adjudication of complex factual controversies.

30. The objection as to availability of an alternative remedy is equally untenable. The rule of alternative remedy is a rule of discretion and not one of compulsion. It is well-recognised that in cases where the impugned action is arbitrary, violative of principles of natural justice, or where the order is wholly without jurisdiction, the writ court would not decline to exercise jurisdiction merely on the ground of availability of an alternative remedy. In the present case, the impugned letters of repudiation, as already discussed hereinabove, are bereft of cogent reasoning and fail to disclose proper application of mind. The respondent has neither adequately dealt with the survey reports nor assigned sustainable reasons for invoking the exclusion clauses of the policy. Such action, ex facie arbitrary, falls squarely within the exceptions carved out to the rule of alternative remedy. Further, relegating the petitioner to a civil suit in the facts of the present case would not be efficacious. The dispute pertains to the legality of the decision-making process of a state instrumentality, which can be more appropriately examined in exercise of writ jurisdiction. The delay and multiplicity of proceedings inherent in a civil suit would defeat the ends of justice, particularly when the material necessary for adjudication is already available on record.

31. The judgments relied upon by the respondent are distinguishable on facts. In those cases, the disputes involved either complex factual adjudication or purely private law claims devoid of any public law element. In the present case, however, the challenge is directed against an arbitrary exercise of power by a state instrumentality, thereby attracting the writ jurisdiction of this Court. This Court also draws sustenance from the doctrinal principle that where a statutory or public authority exercises discretion, such discretion must be informed by reason, guided by relevant considerations and free from arbitrariness. The absence of reasons in the impugned repudiation letters strikes at the very root of administrative fairness and renders the decision susceptible to judicial review.

32. In view of the aforesaid discussion, this Court holds that the writ petition is maintainable. The preliminary objections raised by the respondent, being devoid of merit, stand rejected.

33. In view of the discussions made hereinabove, this Court is of the considered opinion that the impugned letters dated October 18, 2017 and March 7, 2018, issued by the respondent insurance company, are arbitrary, unreasoned and unsustainable in law. The said decisions having been arrived at without proper application of mind and in disregard of the materials on record, including the survey reports, cannot be sustained.

34. Hence, the instant writ petition No. **WPA 2035 of 2019** is allowed with the following directions:

a. The impugned letter of repudiation dated March 7, 2018, are hereby set aside and quashed;

b. The respondent/insurance company is directed to immediately release the claim amount in favour of the writ petitioner, within a period of 3 weeks from the date of communication of this judgment. In default the claim amount shall bear simple interest at the rate of 10% per annum, from the following day after expiry of 3 weeks till the date of actual payment.

35. The writ petition No. WPA 2035 of 2019 is allowed and disposed of along with applications pending, if any.

36. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)