(2022) 07 OHC CK 0127

In the Orissa High Court

Case No : Writ Petition (C) No.23823 Of 2014

Binod Ku. Choudhury APPELLANT

Vs

State Of Orissa And Others RESPONDENT

Date of Decision : 21-07-2022

Acts Referred:
Indian Penal Code, 1860 — Section 34, 379, 407

Citation : (2022) 07 OHC CK 0127

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : A.K. Dash, S.N. Das, Adam Ali Khan

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. The writ petition was moved before this Bench on 5th July, 2022. Mr. Dash, learned advocate appears on behalf of petitioner and had submitted, the insurance company illegally repudiated his client's claim on the truck, along with the goods, having been stolen. He submits with reference to complaint dated 23rd April, 2010 made by the transporter to Inspector-in-Charge Hirakud P.S., the truck commenced the journey from Remed Chowk at about 10:00am on 10th April, 2010 but till the date of writing had not reached its destination. There was private search made but it could not be traced.

2. He submitted, F.I.R. was drawn up by the police station but under wrong sections 407/34 IPC. However, the police subsequently filed final report dated 31st March, 2013 on the case under sections 379/34 IPC. On query from Court Mr. Dash submitted, at instance of co-ordinate Bench names of opposite parties 1 and 2 (State) were deleted on order dated 10th December, 2014.

3. In this connection paragraph-3 from order of that day (5th July, 2022) is reproduced below.

3. From the final report it is not clear as to the reason given for the report. Direction made in order dated 10th December, 2014 regarding deletion of opposite party nos.1 and 2, is recalled. The amendment be reversed and countersigned by Court Master. Mr. Dash is requested to forthwith serve copy of the petition upon State. State is required to issue instructions for being heard on content of the final report, disclosed at page 16 of the writ petition. Mr. Khan, learned advocate appears on behalf of the insurance company. He too shall be heard on adjourned date."

Mr. Das, learned advocate, Additional Standing Counsel appears on behalf of State and submits, he has neither received copy nor instruction. Mr. Das hands up copy of receipt dated 6th July, 2022 confirming service made on State.

4. Mr. Khan, learned advocate appears on behalf of the insurance company (opposite party no.4). He draws attention to condition no.1 in the policy. The condition is reproduced below.

"1.Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impeding prosecution Inquest or Fatal Inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of the offender."

(emphasis supplied)

5. He submits, complaint was lodged with the police station on 23rd April, 2010 inspite of the truck having left for its destination on 9th April, 2010. The complaint was lodged after 13 days. He points out from the complaint that prayer therein was to register case against the driver. Accordingly, the case was started under section 407 IPC.

He then points out that the claim intimation was made on 4th May, 2010. In the circumstances, his client duly repudiated the claim since the policy did not cover breach of trust. Petitioner then caused the police authority to register fresh F.I.R. under section 379 IPC. The police did so and thereafter filed final report dated 31st March, 2013.

6. He submits further, notwithstanding theft case urged by petitioner, the requirement under condition no.1 was not fulfilled. There should not be interference with the repudiation.

7. In facts and circumstances stated above, it is not necessary for Court to require assistance from State. Its conduct in the matter of not being able to

properly investigate and omission to render assistance to Court is recorded.

8. It appears from the complaint dated 23rd April, 2010 that particulars regarding the truck, its driver and load were given by the transporter to the police. According to the complaint, the truck commenced its journey from near branch office of the transporter for its destination in Kolkata on 10th April, 2010 at about 10 a.m. The truck was required to travel in excess of 500 kilometers of road on negotiating traffic restrictions and states border between Odisha and West Bengal. In the circumstances, statements made in the complaint regarding private search and thereafter lodging of it are found to be reliable.

9. The insurance company repudiated the claim by letter dated 21st March 2012. The repudiation text of the letter is reproduced below.

“With reference to the above claim, we would like to inform you that the Competent Authority has repudiated the claim since the FIR is registered u/s.407 of IPC i.e. Criminal Breach of Trust and not u/s.379 of IPC i.e. theft. Motor Policy is a named policy which covers “Theft” only and not criminal breach of trust.

The inconvenience is regretted.”

There is in the repudiation omission to mention breach of condition no.1. On the contrary, it was asserted that breach of trust was not covered by the policy. Nevertheless, looking at condition no.1 and the claim lodged on 5th May, 2010, there must be adjudication whether there was compliance with that clause, inspite of waiver apparent in the face of the repudiation.

10. The complaint bears, in addition to particulars, prayer for registration of case against the driver and investigation. This at best can be said to have been on suspicion. The police had particulars of the driver. They were the investigating agency. They not only could not find out anything from the driver, they have nothing to show regarding disappearance of the truck and its load of 15950 kgs. of aluminum. The complaint, by no stretch of imagination, can lead to inference that there was breach of trust. Disappearance of the truck itself with its load leads to inescapable conclusion that it was stolen. The occurrence was covered by the policy. Condition no.1 required that in case of, inter alia, theft there must be immediate notice to the police and cooperation with the company in securing conviction of the offender. There is nothing on record to show any laches in this regard, on part of petitioner.

11. The writ petition is allowed. Impugned repudiation is set aside and quashed. The claim must be paid by the insurance company along with interest thereon at 5% per annum simple commencing from 22nd March, 2012 (date of repudiation) till payment. The interest component is imposed as costs on opposite party no.4.

12. The writ petition is disposed of.

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