

(2022) 05 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6412 Of 2021

Dipak Kuamr @ Deepak Kumar

APPELLANT

Vs

Chairman-Cum-Managing Director

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Citation : (2022) 05 PAT CK 0017

Hon'ble Judges : Chakradhari Sharan Singh, J;Madhuresh Prasad, J

Bench : Division Bench

Advocate : Arjun Pd. Keshri, Durgesh Kumar Singh

Final Decision : Allowed

Judgement

1. The petitioner seeks a direction to the respondent-Insurance Company to pay the insured amount as per award of the Insurance Ombudsman, Patna, dated 13-09-2019 bearing No. IO/PAT/GI/0031/2019-2020 in respect of the petitioner's claim under Insurance Policy No. 332402/31/2017/2061 arising on account of accident of the insured vehicle (truck).

2. Shorn of unnecessary details, the brief facts are that the petitioner is owner of the truck bearing Registration No. JH10 AL/2281, Engine No-B5918032B1G63335816, Chassis No. MAT 466388D2G08191. The truck is a Tata LPT 3118 TC. Vehicle insured under Policy No. 332402/31/2017/2061. The truck met with an accident. The petitioner submitted a claim for full damage of the truck. The respondent- Insurance Company wrote to the petitioner alleging that since one Srikant Kumar was travelling in the truck, at the time of accident, even though it was a goods carriage truck, therefore, the petitioner was asked as to why not his claim be not repudiated due to violation of Policy terms in respect of "Limitation as to use".

3. The petitioner, on the other hand, asserted that the person, who was travelling in the vehicle, at the time of accident, was a gratuitous passenger travelling in the goods carrying vehicle, as he requested for a ride because on the date of

accident, no public service vehicle was plying and the person, who was a Central Reserve Police Force ('CRPF' for short) personnel was eager to return to his home and had forced himself in the vehicle in question. Being dissatisfied with the petitioner's response, the petitioner's claim was repudiated by the Branch Manager vide communication dated 21.12.2018.

4. The petitioner, in the circumstances, moved the Office of the Insurance Ombudsman, Patna, being aggrieved by repudiation of his claim. The Insurance Ombudsman allowed the claim of the petitioner vide order dated 13.09.2019 (Annexure-7 to the writ petition) in the following terms:-

"22) Result of hearing with both parties (observations @ Conclusion);- The complainant Mr. Deepak Kumar had insured his truck with the respondent. The insured vehicle met with an accident on 05.02.2017. The claim lodged by the complainant was however declined by the respondent on the ground of the violation of the police conditions relation to "Limitations as to use" as one Cobra battalion person was travelling in the vehicle at the relevant time. The complainant submitted that the vehicle was carrying goods at the material time and no fare was collected from the Cobra battalion person. On the humanitarian ground the driver allowed him to enter the vehicle. The respondent is not able to prove that the Cobra battalion person was a fare paying passenger. The cause of loss is bursting of the tyre and the Cobra battalion person has not contributed in any way to the cause of loss. Therefore, Respondent decision of repudiating the claim is set aside and they are ordered to settle the claim of Rs. 14,70,500/- [(18,22,000 (IDV)- 3,50,000/- (less salvage)-1.500 (less policy excess)]"

5. The respondent-Insurance Company has not assailed the order of the Insurance Ombudsman, but has issued one communication dated 19.12.2019, asking the petitioner to submit the Certificate of Registration (RC) cancellation Certificate in respect of Registration No. JH 10AL2281 of the truck in- question from the concerned District Transport Authority.

6. The petitioner's counsel submits that the terms of settlement of the Insurance Ombudsman are binding inter parties. The petitioner's claim for 'Total Loss' (TL) of the vehicle was repudiated whereafter the Ombudsman has directed the Insurance Company to settle the claim in terms of the order, taken note of hereinabove. The orders of the Insurance Ombudsman is a settlement and not a normal case of 'Total Loss', as the claim for 'Total Loss' had, admittedly, been rejected by the respondent-Company. The petitioner, in the circumstance, cannot be made to get the Certificate of Registration (RC) cancelled for the truck in question. If the petitioner is capable of plying the truck after getting the same repaired and on the same being found fit by the concerned Transport Authority, the respondent Insurance Company cannot limit his discretion to do so. Otherwise, he submits that the respondent Insurance Company may take the damaged truck and give him the amount of salvage, as per quantification in the order of the Insurance Ombudsman.

7. Mr. Durgesh Kumar Singh, learned counsel for the respondent Insurance Company, on the other hand, submits that cancellation of the Certificate of Registration (RC) is required as the award has been passed in the light of 'Total Loss'. It is, under these circumstances, that the Court, in its earlier order, had framed specific question whether the settlement of the Insurance Ombudsman for payment of the amounts therein is upon acceptance of the petitioner's claim for 'Total Loss', or not. Another question, which this Court has framed is as to what amount; and on what terms, an insured is normally entitled to in case of settlement of a claim as a 'Total Loss'.

8. In this background, a counter affidavit has been filed on behalf of the respondent-Insurance Company attempting to sustain the stand of the respondent Insurance Company insisting upon cancellation of Certificate of Registration (RC) of the insured truck. Three documents have been annexed. The first one is a communication dated 25-07-2019 to all general insurers regarding "Misuse of Total Loss Accident Vehicle Documents over Stolen Vehicles". From perusal of the same, it is apparent that the same has been issued in view of the fact that the Certificates of Registration of total loss vehicles, which were damaged beyond repair and which were sold to scrap dealers, were being abused for giving identity to other stolen vehicles by forging Engine No. and Chassis No. of the destroyed vehicles under the total loss claim. The said communication dated 25.07.2019 has been issued on a different concern altogether, which has no application, in the facts and circumstances of the instant case.

9. Annexure- B is the extract of Claim Manual, issued by General Insurance Public Sector Association ('GIPSA' for short) and is enclosed as Annexure-B to the counter affidavit. Mr. Durgesh Singh has drawn attention of the Court towards Clause 6 of the extract of the Claim Manual. Clause 6 reads as follows:-

"6. TOTAL LOSS CLAIMS

6.1 In case of settlement of claim on 'Total Loss' basis other than by theft, all the documents stated in para 4 are required to be collected. After finalization of claim, the damaged vehicle should be taken into possession and kept in a safe place, as best as can be arranged to prevent it from further loss or damage. Immediate arrangements should be made for its disposal as per Company's guidelines for disposal of salvage. R.T.O. should be informed by Registered A/D Post.

6.2 Total Loss claims can be finalized on Net of Salvage basis also. In such cases, a second opinion on salvage value should be taken from another independent surveyor. In all such Total Loss claims, policy shall be cancelled w.e.f. date of loss without giving refund of premium."

10. The same ex facie applies in case of claim settlement as 'Total Loss' (TL), unlike the instant case where the claims of 'Total Loss' (TL) was repudiated and not accepted by the Insurance Company. Clause 6.1 mandates taking into possession of the damaged vehicle for its disposal, as per the Company's

guidelines for disposal of salvage. Clause 6.2 contemplates cancellation of the Policy w.e.f. the date of loss without giving refund of premium. The Clause, in the extract of the Claim Manual, annexed to the counter affidavit, does not support the submission of the learned counsel for the respondent Insurance Company that Cancellation of Certificate of Registration was required in the instant case where the payments are being made under the settlement based on the awards of the Insurance Ombudsman. It is also obvious from perusal of the Clause-6, relied upon by the respondent- Insurance Company that the same governs a circumstance where the damaged vehicle is taken into possession by the Insurance Company for disposal as salvage according to the Company's guidelines. It is under this circumstance, that the Claim Manual relied upon by the respondent Company mandates intimation to the Regional Transport Office ('RTO' for short). Neither clause 6.1 nor Clause 6.2 of the Claims Manual contemplates Cancellation of Certificate of Registration (RC).

11. The third document relied upon by the respondent-Insurance Company is the guidelines issued by the Insurance Company in case of 'Total Loss' (TL) claims which is applicable as per their own averments in para 22 of the counter affidavit to a case where the insurer refuses to retain the salvage. Clause 2.6 of the guidelines (Annexure- 'C') is relied upon by the learned counsel representing the respondent-Company, which reads as follows:-

"2.6 TOTAL LOSS:

a] Where the vehicle is totally damaged or when the net cost of repairs is almost close to the Market Value or the IEV the claim could be considered to a total loss. Such total loss claims should be encouraged on net of salvage basis i.e. salvage being retained by the Insured and an appropriate amount towards salvage value as determined by the surveyor in consultation with the company be deducted from the Total Loss amount.

b] However, if the insured refuses to retain the salvage, arrangements should be made for the safe custody of the damaged vehicle to prevent further loss or damage. The R.T.O. should be informed by Registered A.D. Post. An inventory of the major parts should be taken before taking possession of the vehicle. Immediate steps thereafter should also be taken for its disposal as per the Company's guidelines for disposal of salvage."

12. This document also does not support the stand of the respondent Insurance Company. This clearly gives an option to the insured, in case of 'Total Loss' claims of retaining the salvage and allowing the Insurance Company to deduct the amount of salvage value from the 'Total Loss' amount. It does not mandate any cancellation of the Certificate of Registration (RC). The other option under 2.6: b] is available only when the insured refuses to retain the salvage. In this circumstance, the guidelines mandates that the Insurance Company make arrangement for safe custody of the damaged vehicle under due intimation to the R.T.O. before taking steps for its disposal as per Company's guidelines.

13. From the three documents relied upon by the respondent-Insurance Company, it is clear that the communication dated 25.07.2019 (Annexure-A), extract of the Claim Manual (Annexure- B) as also the guidelines issued by the Insurance Company (Annexure-C), when read together provides two options to the insured in case of 'Total Loss' (TL). The first being retention of the damaged vehicle subject to deduction of salvage value from the 'Total Loss' amount by the insurance Company; and in case of refusal to retain the salvage by the insured, its disposal as per company's guidelines, under due intimation to the RTO. In the instant proceedings, the petitioner also claims his right to exercise such option which is being unfortunately resisted by the respondent Insurance Company, having suffered an order by the Insurance Ombudsman in the proceedings.

14. This Court would find that the respondent Insurance Company had repudiated the petitioner's claim for total loss. They did not accept such claim. It is, under this circumstance, that the Ombudsman directed a settlement, which has been taken note of above. Neither in terms of settlement, nor in a case of 'Total Loss' (TL), based on the documents enclosed along with the counter affidavit, the Insurance Company can claim to insist on cancellation of the Certificate of Registration (RC), when the petitioner opts to retain his salvage. For this retention, the Insurance Ombudsman in the settlement has allowed the respondent-Insurance Company to deduct the salvage value being Rs. 3,50,000/-. The insistence of the respondent-Insurance Company, in the instant proceedings, for cancellation of the Certificate of Registration(RC) of the truck in question, in excess of the terms of settlement under the order of the Insurance Ombudsman, is clearly unsustainable.

15. This Court, therefore, has no hesitation in directing the respondent Insurance Company to forthwith make payment of the undisputed claims of settlement amount as per the order dated 13.09.2011 passed by the Insurance Ombudsman. The manner, in which, the respondent Insurance Company, in spite of an undisputed settlement with the petitioner, has deprived him of his legitimate and due amount under the settlement for the last more than 2 and half years, is deprecated by this Court. The Court would have considered imposing certain costs for having driven the petitioner to Court by creating an illegally unsustainable demand, leading to generation of this unwarranted litigation. However, to put the matter to rest, so that the petitioner may be able to pursue benefits of the terms of settlement, the writ petition is allowed without any order as to costs, in terms of the direction above.