

(2009) 02 DEL CK 0318
In the Delhi High Court
Case No : Writ Petition (C) 3382 of 2005

Laj Krishan Mehra

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 02 DEL CK 0318

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; Vishnu Mehra and Anand Vardhan Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner seeks an order against the respondent, (hereafter called the "insurer") to pay an amount of Rs. 43,000/- with interest at 12% per annum, with effect from 14.05.2001.

2. The petitioner had purchased a Tata Indica vehicle for a consideration of Rs. 2,93,125/-; he paid a premium of Rs. 10,743/- towards an insurance policy, purchased at the time. It is claimed that the policy was renewed for the period upto October 2001; the insurer had evaluated the vehicle at Rs. 2,60,000/- and charged premium on that basis. The vehicle met with an accident on the Jaipur-Delhi Highway on 14.05.2001. It is contended that after a survey was conducted by the insurer, the vehicle was declared as "total loss" on 28.08.2001. Accordingly, the insurer paid the petitioner a sum of Rs. 2,07,000/-.

3. The petitioner contends that the respondent was reminded time and again that the total insured value of the vehicle was Rs. 2,60,000/- and was, therefore, obliged to pay the balance amount. He refers to several letters and representations. On 12.11.2002, the insurer sent a reply stating that according to the terms of the policy, the indemnity was on the basis of evaluation at the

time of policy, or market value on the date of loss which ever was less. The petitioner further refers to other representations, including one dated 02.05.2003 referring to a decision of the Division Bench of this Court in Vishan Narain v. The Oriental Insurance Co. Limited 2002 (V) AD (Delhi) 392, but without avail.

4. The petitioner argued the case himself; reiterated the submissions made in the pleadings and contended that being a public agency, the insurer could not have resiled from the terms of the policy. He contended that having valued the vehicle at Rs. 2,60,000/- and even charged premium on that basis, when the vehicle was declared as a total loss, the full value had to be reimbursed. The petitioner drew strength from the decision in Vishan Narain (supra), particularly following observations:

5. The question for consideration is; whether value of the Maruti Van, the vehicle in question is to be taken as the insured value or the market value? It is an admitted case that the vehicle in question was stolen, thus it is a case of total loss. Hence, the question of assessing market value of the vehicle in question did not arise as it was a total loss case. Therefore, we are left with only the contractual value i.e. Rs. 1,00,000/- for which amount the vehicle was insured. On this amount the respondent No. 1 charged the premium. Now the respondent No. 1 cannot be allowed to say that the appellant would be paid on the basis of market value of the vehicle, particularly when the vehicle was not available for assessment. If at all the market value was to be assessed, it was at the time of insurance of the vehicle. Insurance Company must have noted that the vehicle was 7 years 7 months old and was of 1989 model still insured it for rupees one lakh. In spite of this information when the Insurance Company insured the vehicle for Rs. 1,00,000/- it means the Insurance Company knew that in case of total loss it would have to reimburse the amount for which vehicle was insured. Take for example if there had been an accident and the vehicle got damaged then of- course the market value could have been assessed and compensation paid accordingly. But that is not the case in hand.

6. Now since it is a case of total loss the question of depreciation or of assessing the market value does not arise. Therefore, we feel that the learned Trial Court did not appreciate the difference between two set of cases i.e. of total loss and another of damage and allowed the compensation on the erroneous belief as if the vehicle was available and its market value got assessed.

5. The respondent insurer in its counter affidavit denies any arbitrariness. It objects to the maintainability of these proceedings stating that alternative remedies were available to the petitioner since the dispute is a contractual one. It is contended that terms of insurance policies are to be interpreted in the manner agreed upon by the parties. Reliance is placed upon a judgment of the Supreme Court in General Assurance Society Ltd. Vs. Chandumull Jain and Another,

6. It is contended by the insurer that one of the conditions in the policy was that

the insurer's liability would not exceed actual value of the damage or else and in any case exceed insured estimate of the value as specified in the schedule or the value of the motor vehicle at the time of loss or damage whichever was less. The said condition reads as follows:

3. The Company may at its own option repair, reinstate or replace the Motor Vehicle or part thereof and/or its accessories or may pay in cash the amount of loss or damage and the liability of the Company shall not exceed the actual value of the part damaged or loss less depreciation plus the reasonable cost of fitting and shall in no case exceed the insured estimate of the value of the Motor Vehicle (including accessories thereon) as specified in the schedule or the value of the Motor Vehicle (including accessories thereon) at the time of loss or damage whichever is the less.

7. It can be seen from the above discussion that the controversy is a short one; there are no disputed facts. The insured vehicle met with an accident on 14.05.2001 and was declared as a total loss. It had been insured for Rs. 2.6 lakhs and the insurance premium recovered on that basis. The question is whether the petitioner's claim for reimbursement of the balance sum of Rs. 43,000/- with interest is well founded.

8. The petitioner places reliance on the judgment in Vishan Narain case (supra). What is immediately apparent in that decision is that the Division Bench was not shown the Insurance Policy; the insurer merely asserted that the market value of the vehicle as on the date of loss was the determinant amount. Moreover, this Court cannot be unmindful of the fact that the Division Bench dealt with an appeal from the decree of Civil Judge. The Trial Court had considered the relevant facts and after adducing evidence drawn its conclusions. Most importantly, the Division Bench did not refer to any previous decisions of the Supreme Court, regarding the contractual nature of relation between parties. After all, what the petitioner seeks enforcement of is not a public law or duty of the respondent insurer. That the latter is a public agency is only a coincidence. Otherwise, the dispute has all the characteristics of a breach of contract action, which this Court should desist from adjudicating under Article 226 of the Constitution.

9. Since the arguments were made on the merits by the parties, this Court is of the opinion that the merits too should be gone into. Here the petitioner made an attempt to distance himself from the condition referred to by the insurer. However, he did not deny that it was part of the contract. In General Insurance Co. Limited v. Chand Mal case (supra), it was held as follows:

In interpreting documents relating to a contract of insurance, the duty of the Court as to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however, reasonable, if the parties have not made it themselves.

10. In a later judgment, i.e. Oriental Insurance Co. Ltd. Vs. Sony Cheriyan, the

Supreme Court held that the insurance policy represents a contract between the parties and that since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what it has covered by the insurance policy. That being so, the insured too should act strictly in accordance with the limitations or terms of the policy expressly set out therein.

11. In this case, on an interpretation of Clause 3 relied upon by the insurer, at first glance it may appear that total loss is not covered by the condition. However, a careful reflection would show that the negative mandate "shall not exceed the actual value of the part damaged or loss less depreciation" refers to a situation, i.e. damage of certain parts or loss. There is nothing in the condition to cut down its ambit and not cover total loss situation as in the present case. This interpretation has to be necessarily adopted by the Court in view of rulings of the Supreme Court that such contracts being commercial in character have to be strictly construed. Therefore, the further mandate in the stipulation that the lesser value of the vehicle having reference to the point of time would prevail, has to be respected.

12. In view of above discussion, this Court is of the opinion that there is nothing wrong or unlawful in the respondent's position denying the petitioner's claim for Rs. 43,000/- with interest. For the reasons explained above, the writ petition cannot be entertained; it is accordingly dismissed without any order as to costs.