
(2014) 01 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12208 of 2011

Mohit Pratap Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Citation : (2014) 01 P&H CK 0028

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Sanjiv Bansal, for the Appellant; Atul Gaur, Advocate for Mr. Sumeet Goel, Advocate for Respondent No. 2 and Mr. Vinod Chaudhary, Advocate for Respondent Nos. 3 to 6, for the Respondent

Final Decision : Disposed Off

Judgement

Ritu Bahri, J.—This petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of mandamus directing respondent Nos. 1 and 2 to formulate regulations to ensure that the Insurance Companies are not able to adopt unfair practices while refusing to honour the Insurance policies and quashing of the order dated 18.05.2011 (Annexure P-25), by which the Insurance Ombudsman has not entertained the complaint made by the petitioner on the ground that it was outside its jurisdiction. The petitioner placed an order for two cars make Pajero BSIII DSL SFX Graphite to Hindustan Motors Ltd-respondent No. 7 in May 2009 against full payment. After receiving the full payment of Rs. 34,00,584/-, the manufacturer was to dispatch the said vehicles. The aforesaid two Pajero cars were dispatched by respondent No. 7 vide two separate invoices bearing No. 20900124 and 20900128 dated 12.05.2009 (Annexure P-1). These cars were insured under the Marine Insurance (New Policy) with the Oriental Insurance Company Ltd.-respondent No. 3 vide policy bearing No. 414600/21/2010/13 (Annexure P-2). The transit invoice bearing consignment No. 130 dated 12.05.2009 is annexed as Annexure P-3. Thereafter,

on 22.05.2009, the petitioner was informed through email (Annexure P-4) that these two Pajero cars met with an accident at Rohtak and respondent Nos. 4 and 7 were requested to depute a Surveyor for evaluating the loss suffered by the cars. Vide communication dated 25.05.2009 (Annexure P-6), the petitioner was informed that the truck, which was carrying the aforesaid Pajero cars was being repaired and thereafter, it would reach Chandigarh and assessment of the damage caused to the Pajero cars would be worked out by the Surveyor. After unloading of the damaged vehicles, an acknowledgment receipt dated 28.05.2009 was prepared by the petitioner and forwarded to respondent Nos. 4 and 7. The cars were received in the presence of the Surveyor, appointed by respondent No. 4, as is evidence from acknowledgement receipt dated 28.05.2009 (Annexure P-8).

2. The petitioner submitted a claim form and estimate for repair of the damaged cars to respondent No. 4 on 20.06.2009 (Annexure P-9). The claim was not released on one pretext or the other and the Surveyor, appointed by respondent No. 4, was pressurizing the petitioner to release Form Nos. 21 and 22 of the damaged vehicles, so that the same could be sold in the market. The petitioner gave a cheque bearing No. 454127 dated 26.10.2009 (Annexure P-13) for an amount of Rs. 42,338/- as fees/charges of the Surveyor, appointed by respondent No. 4.

3. Aggrieved by the act and conduct of respondents in not processing the insurance claim of the petitioner, he approached the State Consumer Disputes Redressal Commission, Chandigarh, which was dismissed vide order dated 09.03.2010 (Annexure P-15) on the ground that it had no territorial jurisdiction to entertain the complaint. Thereafter, his appeal before the National Consumer Dispute Redressal Commission, New Delhi, was also dismissed vide order dated 06.10.2010 (Annexure P-16). Subsequently, vide communication dated 18.03.2010 (Annexure P-19), the Insurance Company conveyed the petitioner that they had sent discharge voucher of Rs. 5,63,813/- towards full and final settlement of the above said claims. The petitioner, thereafter, filed CWP No. 6599 of 2011 before this Court, which was withdrawn on 19.04.2011 (Annexure P-23) with liberty to approach the Insurance Ombudsman. However, the Insurance Ombudsman, Chandigarh, vide order dated 18.05.2011 (Annexure P-25) refused to entertain his application on the ground that the complaint falls outside its jurisdiction, as the policy has been issued in the name of a firm and not an individual.

4. Mr. Vinod Chaudhary, learned counsel for the Insurance Company states that there are disputed questions of facts arising in the claim. The insurance policy was availed by Hindustan Motors Ltd., Tamil Nadu-respondent No. 7. The petitioner was beneficiary under the Marine Contract of Insurance. After insurance of both the vehicles by respondent No. 7, those were transported from Tamil Nadu and on route, the truck in which both the cars were being carried, met with an accident. As per report of the Surveyor, the vehicles could not be

sold as new after repair. The petitioner was given two options for settlement. He could retain the wrecks of the cars or sell the wrecks, as is where in condition to any identified salvage buyer or putting it to permissible use. The petitioner was directed to give Form Nos. 21 and 22 for compliance of the procedural formalities, but the petitioner has declined to do so, therefore, his claim could not be disposed of. Learned counsel for the Insurance Company has further stated that the settlement of the claim has been delayed due to non-cooperative attitude of the petitioner. The invoice value of one Pajero car was Rs. 17,00,292/-. The salvage value of two Pajero cars was fixed at Rs. 23,20,000/- (without VAT) in accordance with the highest quote/offer received from the salvage buyer. The claim eventually worked out to Rs. 5,63,813/- as admissible. Since the petitioner was not agreeing to give Form Nos. 21 and 22, therefore, his claim from the Insurance Company, after deleting the salvage value of each car as Rs. 11,16,000/-, comes to Rs. 5,63,813/-.

5. Learned counsel for the Insurance Company further states that in similar circumstances in case of damaged vehicle, Form Nos. 21 and 22 were taken for final settlement in past from all the dealers/owners of the damaged vehicle.

6. In response to the stand taken by the Insurance Company, the petitioner has submitted a short affidavit dated 12.09.2012, wherein he has stated that the respondent-Insurance Company should take possession of the damaged vehicles and release the insurance claim i.e. total value of both the insured vehicles, in favour of the petitioner, as more than 3? years have elapsed.

7. At this stage, after hearing learned counsel for the parties, it transpires that the issue in the present case would require leading of evidence by both the parties, as the Insurance Company has taken a definite stand that in the past with regard to settling the claim of damaged vehicles, Form Nos. 21 and 22 were taken from the dealers/owners of the damaged vehicles. The petitioner has refused to give these forms.

8. The Insurance Ombudsman has dismissed the complaint of the petitioner on the technical ground that the insured person would mean an individual by whom or on whose behalf the insurance policy has been taken. The complaint regarding insurance policy, taken by a company, would not be maintainable before it.

9. In the above background, the order dated 18.05.2011 (Annexure P-25) passed by the Insurance Ombudsman, Chandigarh, is set aside and both the parties are relegated to appear before the Insurance Ombudsman, Chandigarh, who shall give due opportunities to both the parties to lead their respective evidence and thereafter, decide their claim in accordance with law. Disposed of accordingly.