(1994) 03 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

Oriental Insurance Co. Ltd. APPELLANT

Vs

Rachpal Singh RESPONDENT

Date of Decision : 02-03-1994

Acts Referred:

Citation : 1994 2 CPJ 282 : 1994 2 CPR 218

Hon'ble Judges : S.S.Sandhawalia , S.Kulwant Singh J.

Final Decision : Appeal dismissed with costs

Judgement

1. WHETHER loss or damage by accidental external means occasioned by a mechanical failure or defect in a Motor Vehicle is covered by a Comprehensive Insurance Policy, therefore? This is the somewhat significant issue raised in the present appeal.

2. THE respondent-consumer had got his Motor Car insured under the comprehensive policy and the same met with an accident during the period of the insurance cover on the 23rd of June, 1992 whilst the vehicle was being driven to Delhi. THE steering wheel thereof got free and the driver having lost control, the vehicle hit a big heap of stones causing serious damage thereto including the engine block thereof itself. Inevitably, the respondent-consumer filed a claim for Rs. 22,000/- and completed the required formalities including the submission of regular bills etc. However, the appellant insurers rejected the claim on the ground that the damage to the vehicle had been occasioned due to a mechanical fault or break down therein. Unable to get redress, the respondent knocked at the door of the District Forum. The appellant-insurers contested the claim, whilst admitting the broad matrix of facts as regards the insurance cover and also the happening of the accident. The plea however, was that the claim of the complainant was examined by a qualified and a competent surveyor, who opined that the accident & loss was occasioned by a mechanical break down in the vehicle and was therefore, not payable under the terms and conditions of the policy.

The parties led evidence in support of their respective cases. The appellant rested themselves on the report of Shri Shamsher Chand, Surveyor dated the 21st of July, 1992. On the other hand, the respondent filed a survey report dated 29th of September, 1993 of an equally reputed insurance surveyor Shri M.L. Banerjee, opining that the damage was due to external accident and not due to internal break down of the engine. He also explained that Shri Shamsher Chand, surveyor had left some material questions, unanswered in his report.

3. THE District Forum on a consideration of the evidence and the law cited before it came to the conclusion that the surveyor''s report appointed by the Company had left many blanks and considering every factor came to a firm conclusion on facts that the respondent''s story about the damage done to vehicle was due to an accident and within the coverage of loss or damage by accidental external means. THE complaint was consequently allowed and compensation of Rs. 22,000/- being got seriously challenged as costs of repairs was directed to be paid. Mr. R.K. Chhibbar, learned Senior Counsel for the appellant with his usual vehemence had first sought to assail the order of the District Forum on the ground of its reliance on the report of the insurance surveyor Shri M.L. Banerjee rendered at the instance of the respondents. It was contended that the said report was rendered behind the back of the appellant-Insurance Company and in any case was not binding upon the appellant and could not over-ride the report of their surveyor Shri Shamsher Chand. The further submission was that in the event of the conflicting reports of the surveyor, the District Forum should have relegated the respondent to his ordinary remedy by way of a civil suit because there was no deficiency in the insurance service, when the appellants had bona fide acted upon the report of the surveyor appointed by them.

4. WE deem it unnecessary to adjudicate on the aforesaid submission. This is so because assuming the case of the appellants at the highest and taking into consideration only the report of Shri Shamsher Chand, surveyor only, the rejection of the respondent''s claim is patently arbitrary and contrary to the true interpretation of the insurance policy. WE would, therefore, at the earnest behest of the learned Counsel for the appellant excluded, the report of M.L. Banerjee entirely out of consideration and examine the issue on the foundational base of the appellant''s own surveyor. In the aforesaid context, the primal reliance of Mr. Chhibbar has been on the purported exclusion clause in Section 1 of the insurance policy. It was the stand that the relevant clause ''a'' therein excluded the company''s liability in respect of consequential loss depreciation, wear and tear, mechanical or electrical break down etc. The pointed submission herein was that since the accident has been occasioned by the fact of the steering wheel having got free, the heavy damage from the resultant accident was also excluded from the insurance cover. Learned Counsel had sought to place reliance on a host of cases, (to which reference follows) primarily on the scope of negligence within the Law of Torts. To truly appraise the submission of Mr. Chhibbar, it is inevitably necessary to examine it in the light of the relevant stipulations of the admitted terms of the insurance policy, as also in the context of the survey report rendered by Shri Shamsher Chand. The relevant part of the policy in Section 1

''Loss or Damage'' is in the following terms : "The Company will indemnify the insured against loss or damage to the Motor Car and /or its accessories whilst thereon. (a) by fire explosion self ignition or lightning; (b) by burglary housebreaking or theft; (c) by Riot and Strike (d) by Earthquake (Fire and Shock Damage) (e) by Flood Typhoon Hurricane Storm Tempest Inundation Cyclone Hailstorm Frost (f) by accidental external means (g) by malicious act (h) by terrorist activity (i) whilst in transit by road rail inland waterway lift elevator or air xx xx xx xx xx xx xx xx The Company shall not be liable to make any payment in respect of : (a) consequential loss, depreciation, wear and tear mechanical or electrical breakdowns, failures or breakages and;"

5. NOW a plain reading of the aforesaid terms of the policy, would make it manifest that the relevant clause of Section 1 applicable here for insurance cover is clause (g) which obliges the Company to indemnify the insured against any loss or damage to the Motor Car by ''accidental external means''. Herein the happening of accident and extensive damage to the vehicle is the admitted position of the parties. The solitary question is whether this can possibly come within the exclusionary clause (a). A reading of the same as a whole leaves no manner of doubt that this exclusion is confined to matters other than loss by accidental external means. The said clause has to be read ejusdem-generis. All that it excludes from the purview of the insurance cover provided by the comprehensive clauses (a) to (i) is that any consequential loss, depreciation, wear and tear, is not covered under insurance risk. In particular where any mechanical or electrical break down takes place within the Motor Vehicle, the insurers have excluded their liability. For instance, if the crank shaft within the engine breaks down and causes damage or even virtually destroys the engine block, the insurers may be entitled to invoke exclusion under this head. Equally if the battery or the dynamo or starter or other electrical equipment breaks down within the vehicle, the exclusion may well be attracted. However, where damage has arisen by virtue of a serious road accident, within the parameters of the clause ''by accidental external means'', the insurer cannot wriggle out of their basic liability under Section 1 on any specious ground. To our mind, once extensive damage has been caused on road by accidental external means the alleged individual links of the chain of causation which may have remotely led to the loss or damage becomes individually irrelevant to the issue. For instance if the vehicle suffers serious external damage owing to an accident resulting from a sudden and unanticipated failure of the braking mechanism, it would not be open to the insurers to turn round and say that they were exempted because of such mechanical failure. Equally if the insured vehicle crashes because of the sudden breaking of the tie-rod ends or the steering mechanism getting free the insurers cannot possibly invoke the exemption clause by labeling the accident as due to such failure. Similarly clause (b) excludes damage to tyres etc. But where a major accident takes place by the bursting of a tyre the insurers cannot turn round and wriggle out of the liability on such specious grounds. In our confirmed view where extensive damage on the road is suffered by the vehicle by external

accidental means it is squarely within Section (1) of the Insurance Policy and the exclusion clause is strictly confined to mechanical or electrical breakdowns, within the car & in the contest of the total absence of any road accident or loss or damage by the accidental external means.

6. IT remains to advert to the precedent on which Mr. Chhibbar had ingenuously attempted to place reliance. Reference may first be made to 1958-65 ACJ 63, Parmeshwari Das and Others v. Soman Devi and Another. In the said case the death of the deceased had been occasioned by an accident resulting from the tie-rod connecting the steering wheel with the wheels of the car becoming free and vehicle fell into a Khud. However the solitary legal issue before the High Court was the liability of the owners of the vehicle to the deceased. IT was not even remotely a question of a contractual insurance cover provided or the limitation and exclusion arising under the terms of the policy. As is manifest from the report no insurer was at all a party to the proceedings therein. The said case is therefore wholly off the mark. Yet again the learned Counsel''s reliance on 1986 ACJ 713, Sabira Begum and Others v. Raipur Transport Co. Pvt. Ltd., Raipur and Another is equally misplaced. Therein the accident had been occasioned by a tyre burst. However any question of the liability of the insurance or any exclusionary clause did not at all fall for consideration and the point is conspicuous by its absence in the somewhat exhaustive report. The said case does not in any way aid or advance the appellant''s stand. This is equally true with regard to 1986 A.C.J. 909, Chief Engineer, . Electricity-cum-Electrical Project, Bhubaneshiwar and Another v. Bhanumati Mishra and Others. Therein also no reference whatsoever appear to the scope of the insurance cover by accidental external means or applicability of any exclusionary clause thereto. Lastly 1986 A.C.J. 943, Jarao Kaur v. Mangtoo Ram and Others is wholly distinguishable, in so far as the same was a classic illustration of the maxim res-ipsa-loquitur which is not even remotely attracted in the present case.

What deserves to be highlighted in the context of the aforesaid reliance on precedent is the fact that herein we are not even remotely concerned with the finar nuances of the concept of negligence in the Law of Tort. Equally the doctrine res-ipsa-loauitor is of little relevance to the issue. Within the consumer jurisdiction the core question is first the scope of the service of insurance extended out by the appellant-Company, and a patent deficiency therein by way of an arbitrary rejection of a claim which is plainly within the insurance cover. This core issue has to be decided on the terms of the insurance Policy and what is either admitted or the established fact situation usually evidenced by the insurance surveyor''s report. In all fairness we must also say that the reliance of the learned Counsel for the respondent Mr. S.C. Jaiswal 1993 C.P.C. 692, United India Insurance Co. Ltd. v. Shri Ram Prasad Agarwal is also wholly off the mark.

7. IN the light of the somewhat exhaustive aforesaid discussion the answer to the question posed at the outset is rendered in the affirmative. It is held that the loss or damage by accidental external means even though occasioned by a

mechanical failure or defect in the Motor Vehicle is fully covered by the Comprehensive INsurance Policy herein. Once it is held as above, the respondent has an easy sailing to success. Shri Shamsher Chand, the surveyor appointed by the appellants themselves found the nature and cause of accident as under : "As reported to me and also mentioned in the claim form that the vehicle was being driven from Karnal to Yamuna Nagar and when it reached near the spot of accident, its steering got freed and in a bid to save a oncoming roadways bus he tried to steer the vehicle towards left, where its front side struck with stones and thus damaged. xx xx xx xx xx When the steering got free, driver cannot save the vehicle from oncoming traffic. He can only apply the brakes, to stop the vehicle. But in this accident he had not applied any brakes, but can struck, with stones, support rod broken, when the support rod had broken."

8. YET again the surveyor himself found the following damage sustained by the vehicle : "1. Engine block broken. 2. Connecting rod 3rd number bent. 3. Crank Shaft No. 90 AB 293 bent and heavily scratched. 4. Mains and Big ends bearing damages alongwith other damages."

Despite the aforesaid damage, the surveyor summarily closed the case as ''no claim'' on the following concluding remarks of his report. "Keeping in view all above mentioned facts, I am of the opinion that the accident had took place by the hit of connecting from inside the Engine block i.e. due to mechanical breakdown inside the Engine. The risk is covered for accident by external means hence no liability lies on the Insurers and the claim may be treated as NO CLAIM."

It is somewhat manifest that in the view, we have taken on the legal aspect, the afore-quoted rejection of the claim, becomes patently arbitrary and in terms contrary to the Insurance Policy itself. The surveyor wholly misconstrued the nature of the exclusion clause. Once extensive damage had been actually found to have been caused by accidental external means loss would come plainly within the insurance cover. It cannot be wriggled out on the specious ground as to how such damage had been occasioned by a previous long chain of causation. In the said context the repudiation and the labelling of the claim as "NO CLAIM" was arbitrary and unwarranted and being obviously contrary to the stipulation of the policy deed, the case comes squarely within the scope of a deficiency in the insurance services extended out by the appellants.

9. IN view of the aforesaid detailed discussion, the orders of the District Forum has to necessarily be upheld for added reasons. The appeal is without merit and is hereby dismissed with costs, which are assessed at a sum of Rs. 500/-only. Appeal dismissed with costs.

