(2015) 07 MEG CK 0004

In the Meghalaya High Court

Case No : Writ Petition (C) No. 205 and 206 of 2014

Say Siangshai APPELLANT

Vs

New India Assurance Co. Ltd. and Others RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Constitution of India, 1950 — Article 12
Consumer Protection Act, 1986 — Section 2(d), 2(g)

Citation : (2015) 07 MEG CK 0004

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : S.M. Suna, for the Appellant; V.K. Jindal, and B. Majaw, Advocates for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—These two writ petitions involving a similar question of fact and law, praying for similar relief are jointly heard for being disposed by a common judgment and order.

2. Heard Mr. S.M. Suna, learned counsel appearing for the petitioner, Mr. V.K. Jindal, learned Sr. counsel, assisted by Ms. B. Majaw, learned counsel appearing for the Insurance Company i.e. the respondents No. 1 to 3, and also Mr. K.P. Bhattacharjee, learned GA, appearing for the respondent No. 4.

3. The only prayer sought for in the present writ petitions is for a direction to the respondents No. 1 to decide the claim of the petitioner regarding the theft of the two vehicles i.e. (1) 4/4 Tata Truck bearing Registration No. ML-04-A-5673, Engine No. 90L62808473, and Chassis No. MAT42411292N19209 and (2) 4/4 Tata Truck bearing Registration No. ML-04-A-5683, Engine No. 90L62808470 and Chassis No. MAT424112 92N19366, which were insured with the respondents No. 1 to 3. The respondent No. 1, i.e. New India Assurance Co. Ltd. is a Public Sector undertaking wholly owned by the Government of India having its Registered and Head Office at 87-Mahatma Gandhi, Fort, Mumbai - 400 001, India and one of its

Regional Office/Branch Office is situated at, 2nd Floor, R.P.G. Complex, Keating Road, Shillong - 1 and is engaged in the business of providing insurance coverage of various types of Schemes and the Respondent No. 2, and 3 are its officers.

4. The concise fact of the case leading to the filing of the present writ petitions is briefly noted. In the writ petition No. 205/2014, it is stated that in the year 2009 the petitioner in order to promote his business purchased one 4/4 Tata Truck bearing Registration No. ML-04-A-5673, Engine No. 90L62808473, and Chassis No. MAT42411292N19209 which was financed by the Proforma Respondent No. 5 and the same was registered on 10-01-2009 with the office of the District Transport Officer, Jaintia Hills District, Jowai as a Private Carrier Service vehicle, and the said vehicle was insured with the respondent No. 1 for Premium Coverage Scheme of the said vehicle/truck, initially having a Policy No. 53040131100100004638 and thereafter the policy was renewed by the petitioner vide Policy No. 53040131110100004518 dated 15-11-2011 and a Certificate of Insurance was issued in favour of the petitioner in accordance with the Provisions of Chapter X and XI of the Motor Vehicles Acts, 1988.

5. In the writ petition No. 206/2014, it is stated that in the year 2010 the petitioner in order to promote his business purchased one 4/4 Tata Truck bearing Registration No. ML-04-A-5683, Engine No. 90L62808470 and Chassis No. MAT424112 92N19366 which was financed by the Proforma Respondent No. 5 and the same was registered on 13-01-2010 with the office of the District Transport Officer, Jaintia Hills District, Jowai as a Private Carrier Service vehicle, and the said vehicle was insured with the respondent No. 1 for Premium Coverage Scheme having the Policy No. 53040131100100004637 dated 25-11-2010 and a Certificate of Insurance was issued in favour of the petitioner in accordance with the Provisions of Chapter X and XI of the Motor Vehicles Acts, 1988.

6. It is also stated that the said two vehicles were stolen and for that incident, the petitioner had filed two separate reports and the Police also had registered two separate FIRs. It is the further case of the petitioner that the petitioner had approached the respondent No. 1 for indemnifying the loss of the said two vehicles which were insured with the respondent No. 1. It is also alleged in the writ petitions that for different reasons, the respondent No. 1 has not yet decided the claim of the petitioner for indemnifying the loss of the said two vehicles insured with respondent. No. 1.

7. Mr. S.M. Suna, learned counsel appearing for the petitioner contended that the respondent No. 1 is an instrumentality and/or agency of the Central Government and is a State? within the meaning of Article 12 of the Constitution of India and its officers are per se amendable to the writ jurisdiction of the High Court. In support of his contention, Mr. S.M. Suna, learned counsel appearing for the petitioner placed heavy reliance in the decision of the Calcutta High Court in the case of Mohit Kumar Saha vrs New India Assurance Co. Ltd. and Ors: (1997) ACJ

1170, wherein the Calcutta High Court had decided the maintainability of the writ petition after coming to the conclusion that the Insurance company is ?State? within the meaning of Article 12 of the Constitution of India. It is also his further submission that the present writ petition cannot be rejected on the ground that alternative remedy is available. In support of his such contention, he relied on the decision of the Apex Court in L. Hirday Narain Vs. Income Tax Officer, Bareilly, AIR 1971 SC 33 : (1970) 78 ITR 26 : (1970) 2 SCC 355 : (1971) 1 SCR 683 .

8. Mr. V.K. Jindal, learned Sr. counsel appearing for the respondent No. 1 is not disputing that respondent No. 1 is a ?State? within the meaning of Article 12 of the Constitution of India. The submission of Mr. V.K. Jindal, learned Sr. counsel appearing for the respondent No. 1 is that the petitioner could seek appropriate remedy under the Consumer Protection Act, 1986. The meaning of the terms "Consumer" and "Deficiency" are defined under Section 2(d) and 2(g) of the Consumer Protection Act, 1986 which are reproduced hereunder:

"2(d) "consumer" means any person who,--

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];

[Explanation.--For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment ;]

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(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"

9. In the present writ petitions, it is the case of the petitioner that the

respondent No. 1 has not yet decided the claim of the petitioner for indemnifying the loss of the said two Tata Trucks insured with the respondent No. 1.

10. Mr. V.K. Jindal, learned Sr. counsel appearing for the respondent No. 1 contended that as per the instruction received from the respondent No. 1, the claim of the petitioner for indemnifying the loss of the said two Tata Trucks had already been settled. But on careful perusal of the affidavit-in-opposition filed by respondent No. 1, it is not clear as to whether the claim of the petitioner for indemnifying the loss of the two Tata Trucks had already been decided or not by the respondent No. 1.

11. In the above factual backdrop, these writ petitions are disposed of by directing the respondent No. 1 to decide the claim of the writ petitioner for indemnifying the loss of the two Tata Trucks insured with the respondent No. 1 within a period of two months from the date of receipt of the certified copy of the judgment and order. It goes without saying that if the petitioner is aggrieved by the decision of the respondent No. 1, the petitioner may seek appropriate remedy under the Consumer Protection Act, 1986. It is also reiterated here that the respondent No. 1 is the service provider as provided under the provision of the Consumer Protection Act, 1986.

12. Writ petitions are allowed with the above directions.

