

Gurshinder Singh Vs. Shriram General Insurance Company. Ltd. & Anr.

Civil Appeal No. 653 of 2020 arising out of SLP (C) No. 24370 of 2015
2020-01-24 | N.V. Ramana · R. Subhash Reddy · B.R. Gavai
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Full judgment text

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B.R. Gavai, J.

1. Leave granted.

2. Noticing that there is a conflict between the decisions of the Bench of the two Judges of this Court in *Om Prakash vs. Reliance General Insurance & Anr.*¹ and in the case of *Oriental Insurance Co. Ltd. vs. Parvesh Chander Chadha*², on the question, as to whether delay in informing the occurrence of the theft of the vehicle to the insurance company, though the FIR was registered immediately, would disentitle the claimant of the insurance claim. The Bench of two Judges of this Court vide Order dated 09.01.2018 has referred the matter to a threeJudge Bench.

3. The appellant had got his tractor insured with the respondent(s) on 19.06.2010. On 28.10.2010, the tractor was stolen and an FIR was lodged on the same day. However, the claim was submitted to the respondent(s) on 15.12.2010. It was rejected on the ground that intimation was given belatedly after 52 days. The appellant herein, therefore, approached the District Consumer Disputes Redressal Forum, Jalandhar, Punjab, (hereinafter referred to as the "District Forum") vide Complaint No. 380 of 2011.

The District Forum, relying on the decisions of the National Consumer Disputes Redressal Commission (hereinafter referred to as the 'National Commission') in the case of *Parvesh Chander Chadha (supra)* and *T.D.P. Gram Sewa Sahakari Samiti Ltd. & Ors. vs. Charanjit Kaur and Ors.*³, allowed the complaint and directed the respondents to pay a sum of Rs.4,70,000/being the declared insured value of the vehicle to the complainant within one month from the date of receipt of copy of the order, failing which, the respondents were made liable to pay interest at the rate of 12% per annum from the date of order till payment.

4. Being aggrieved thereby, the respondents preferred an appeal before the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the "State Commission"). The State Commission dismissed the appeal vide order dated 26.03.2013.

5. Being aggrieved by the dismissal of the appeal by the State Commission, the respondents preferred a Revision Petition before the National Commission. The National Commission relying on its earlier judgment in the case of *New India Assurance Co. Ltd. vs. Trilochan Jane*⁴ allowed the revision petition thereby setting aside the orders of the District Forum as well as the State Commission and dismissed the complaint. Being aggrieved thereby, the appellant is before this Court.

6. When the matter was heard by the twoJudge bench of this Court, it noticed that though in the case of *Om Prakash (supra)*, the theft of the vehicle was reported to the police on the day after the theft occurred, the intimation was sent to the insurance company much later.

This Court took the view that delay in informing the insurance company would not debar the insured to get the insurance claim. Per contra, it noticed that in the case of *Parvesh Chander Chadha (supra)*, this Court accepted the contention of the insurance company that on account of delay in intimating the insurance company about the theft, though the FIR was lodged immediately, the insurance company was entitled to repudiate the claim of the claimant. Hence, the present appeal.

7. It will be relevant to refer to Condition No.1 of the Standard Form for Commercial Vehicles Package Policy, which reads as follows:

"1. Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and

assistance as the Company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured.

Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender."

8. The condition which falls for consideration in the present case is identical with the condition that fell for consideration in both the cases, namely, Om Prakash (supra) and Parvesh Chander Chadha (supra). In the case of Parvesh Chander Chadha (supra), the vehicle was stolen between 18.01.1995 and 20.01.1995. The FIR for the alleged theft of car was registered on 20.01.1995. However, the intimation was given to the insurer on 22.05.1995. On account of the delay, the claim for compensation was repudiated by the insurance company for breach of policy.

In the said case, the District Forum had allowed the complaint of the claimant, which order was maintained by the State Commission as well as the National Commission. However, reversing the concurrent orders, this Court held that though the theft had occurred between 18.01.1995 and 20.01.1995, the intimation to the insurance company was given only on 22.05.1995. It observed that no explanation for such an unusual delay in informing the insurer was given by the claimant.

This Court found that in terms of the policy issued by the insurer (appellant therein), the respondent was duty bound to inform it about the theft of the vehicle immediately after the incident. It further observed, that on account of delay in intimation, the insurer was deprived of its legitimate right to get an inquiry conducted into the alleged theft of the vehicle and make an endeavour to recover the same.

9. Per contra, in the case of Om Prakash (supra), the vehicle was stolen on 23.03.2010 at around 9.00 p.m. The claimant lodged an FIR immediately on 24.03.2010. He lodged the insurance claim on 31.03.2010. Since the claim of the claimant was repudiated, he filed complaint before the District Forum which was allowed. The State Commission also maintained the order of the District Forum. However, in the revision, the National Commission reversed the same.

In an appeal, this Court found that the claimant (the appellant therein) had assigned cogent reasons for the delay of 8 days in lodging the complaint. It further found that the word "immediately" cannot be construed narrowly so as to deprive claimant the benefit of the settlement of genuine claim, particularly when the delay was explained. It further held, that rejection of the claim on purely technical grounds and in a mechanical manner will result in loss of confidence of policy holders in the insurance industry.

It further held, that if the reasons for delay in making a claim is satisfactorily explained, such a claim cannot be rejected on the ground of delay. This Court also held that it would not be fair and reasonable to reject the genuine claims which have already been verified and found to be correct by the investigator. It further held, that the condition regarding the delay shall not be a shelter to repudiate the insurance claims which have been otherwise proved to be genuine. This Court observed that the Consumer Protection Act aims at providing better protection of the interest of the consumers. It is a beneficial legislation that deserves a liberal construction.

10. We are of the view that much would depend upon the words 'cooperate' and 'immediate', in condition No. 1 of the Standard Form for Commercial Vehicles Package Policy. Before we analyze this case any further, we need to observe the rules of interpretation applicable to a contract of insurance. Generally, an insurance contract is governed by the rules of interpretation applicable to the general contracts.

However, due to the specialized nature of contract of insurance, certain rules are tailored to suit insurance contracts. Under the English law, the development of insurance jurisprudence is given credence to Lord Mansfield, who developed the law from its infancy. Without going much into the development of the interpretation rules, we may allude to Justice Neuberger in *Arnold v. Britton*⁵, which is simplified as under:

(1) reliance placed in some cases on commercial common sense and surrounding circumstances was not to be invoked to undervalue the importance of the language of the provision which is to be construed.

(2) the less clear the words used were, the more ready the court could properly be to depart from their natural meaning, but that did not justify departing from the natural meaning.

(3) commercial common sense was not to be invoked retrospectively, so that the mere fact that a contractual arrangement has worked out badly, or even disastrously, for one of the parties was not a reason for departing from the natural language.

(4) a court should be very slow to reject the natural meaning of a provision as correct simply because it appeared to be a very imprudent term for one of the parties to have agreed.

(5) when interpreting a contractual provision, the court could only take into account facts or circumstances which existed at the time that the contract was made and which were known or reasonably available to both parties.

(6) if an event subsequently occurred which was plainly not intended or contemplated by the parties, if it was clear what the parties would have intended, the court would give effect to that intention.⁶

11. A perusal of the aforesaid shows that this contract is to be interpreted according to the context involved in the contract. The contract we are interpreting is a Commercial Vehicle Package Policy. There is no gainsaying that in a contract, the bargaining power is usually at equal footing. In this regard, the joint intention of the parties is taken into consideration for interpretation of a contract.

However, in most standard form contracts, that is not so. In this regard, the Court in such circumstances would consider the application of the rule of *contra preferatam*, when ambiguity exists and an interpretation of the contract is preferred which favors the party with lesser bargaining power.

12. It is argued on behalf of the respondents and rightly so, that the insurance policy is a contract between the insurer and the insured and the parties would be strictly bound by the terms and conditions as provided in the contract between the parties.

13. In our view, applying the aforesaid principles, Condition No. 1 of the Standard Form for Commercial Vehicles Package Policy will have to be divided into two parts. The perusal of the first part of Condition No. 1 would reveal, that it provides that 'a notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage'.

It further provides, that in the event of any claim and thereafter, the insured shall give all such information and assistance as the company shall require. It provides, that every letter claim writ summons and/or process or copy thereof shall be forwarded to the insurance company immediately on receipt by the insured. It further provides, that a notice shall also be given in writing to the company immediately by the insured if he shall have knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence, which may give rise to a claim under this policy.

14. A perusal of the wordings used in this part would reveal, that all the things which are required to be done under this part are related to an occurrence of an accident. On occurrence of an accidental loss, the insured is required to immediately give a notice in writing to the company. This appears to be so that the company can assign a surveyor so as to assess the damages suffered by the insured/vehicle.

It further provides, that any letter claim writ summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. As such, the intention would be clear. The question of receipt of letter claim writ summons and/or process or copy thereof by the insured, would only arise in the event of the criminal proceedings being initiated with regard to the occurrence of the accident.

It further provides, that the insured shall also give a notice in writing to the company immediately if the insured shall have the knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. It will again make the intention clear that the immediate action is contemplated in respect of an accident occurring to the vehicle.

15. We find, that the second part of Condition No. 1 deals with the 'theft or criminal act other than the accident'. It provides, that in case of theft or criminal act which may be the subject of a claim under the policy, the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender.

The object behind giving immediate notice to the police appears to be that if the police is immediately informed about the theft or any criminal act, the police machinery can be set in motion and steps for recovery of the vehicle could be expedited. In a case of theft, the insurance company or a surveyor would have a limited role. It is the police, who acting on the FIR of the insured, will be required to take immediate

steps for tracing and recovering the vehicle. Per contra, the surveyor of the insurance company, at the most, could ascertain the factum regarding the theft of the vehicle.

16. It is further to be noted that, in the event, after the registration of an FIR, the police successfully recovering the vehicle and returning the same to the insured, there would be no occasion to lodge a claim for compensation on account of the policy. It is only when the police are not in a position to trace and recover the vehicle and the final report is lodged by the police after the vehicle is not traced, the insured would be in a position to lodge his claim for compensation.

As observed by the bench of two learned Judges in the case of Om Prakash (supra), after the vehicle is stolen, a person, who lost his vehicle, would immediately lodge an FIR and the immediate conduct that would be expected of such a person would be to assist the police in search of the vehicle.

The registration of the FIR regarding the theft of the vehicle and the final report of the police after the vehicle is not traced would substantiate the claim of the claimant that the vehicle is stolen. Not only that, but the surveyors appointed by the insurance company are also required to enquire whether the claim of the claimant regarding the theft is genuine or not. If the surveyor appointed by the insurance company, upon inquiry, finds that the claim of theft is genuine then coupled with the immediate registration of the FIR, in our view, would be conclusive proof of the vehicle being stolen.

17. That the term 'cooperate' as used under the contract needs to be assessed in facts and circumstances. While assessing the 'duty to cooperate' for the insured, inter alia the Court should have regards to those breaches by the insured which are prejudicial to the insurance company.

Usually, mere delay in informing the theft to the insurer, when the same was already informed to the law enforcement authorities, cannot amount to a breach of 'duty to cooperate' of the insured. 18. We concur with the view taken in the case of Om Prakash (supra), that in such a situation if the claimant is denied the claim merely on the ground that there is some delay in intimating the insurance company about the occurrence of the theft, it would be taking a hyper technical view.

We find, that this Court in Om Prakash (supra) has rightly held that it would not be fair and reasonable to reject genuine claims which had already been verified and found to be correct by the investigator.

19. We find, that this Court in Om Prakash (supra) has rightly held that the Consumer Protection Act aims at protecting the interest of the consumers and it being a beneficial legislation deserves pragmatic construction. We find, that in Om Prakash (supra) this Court has rightly held that mere delay in intimating the insurance company about the theft of the vehicle should not be a shelter to repudiate the insurance claim which has been otherwise proved to be genuine.

20. We, therefore, hold that when an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured.

21. We, therefore, answer the reference accordingly.

22. In the present case, the facts are undisputed. The theft had occurred on 28.10.2010. The FIR was lodged at P.S. Nakodar, Jalandhar, Punjab on the same day i.e. 28.10.2010. The police have admittedly lodged the final report. The investigators appointed by the insurance company have submitted their investigation report on 25.02.2011, finding the claim of the appellant to be genuine.

In this background, the National Commission was not justified in reversing the concurrent orders of the District Forum and the State Commission. The appeal is, therefore, allowed. The impugned Judgment and order dated 17.03.2015 passed by the National Commission is quashed and set aside. The order of the District Forum dated 09.05.2012 as maintained by the State Commission vide order dated 26.03.2013 is maintained.

23. The amount, i.e., 75% of the claim amount deposited by the respondents, pursuant to the orders of this Court dated 09.01.2018, in this Registry shall be permitted to be withdrawn by the appellant herein along with interest accrued thereon. The remainder shall be paid by the respondents within a period of six weeks from today along with interest at the rate of 12% per annum on the entire amount of Rs.4,70,000/from the date of the order of the District Forum till its realisation.

1. Civil Appeal No.15611/ 2017 decided on 04.10.2017
2. Civil Appeal No.6739/ 2010 decided on 17.08.2010; 2009 (1) CLT 552]
3. 2011(3) CPC 422
4. (2012) CPJ 441 (NC)
5. [2015] UKSC 36
6. Robert Merkin QC et el., Colinviaux's Law of Insurance (11th Eds.), p. 159.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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