

in which it was passed is not to be tinkered with on hindsight or foresight and this Court should not alter that discretion for the sake of interference.

5. Accordingly, there is nothing in this appeal which deserves to be dismissed. The substantial question of law proposed in the admission order does not arise. In any case, if it has to be answered, it is answered in favour of the plaintiff-respondent and against the defendants-State.

6. Interest on the principal amount @ 12% shall be computed as per decree till the date of the stay order and @ 6% from the date of the stay order adjusting the amount paid accordingly. The total amount so determined shall be paid to the plaintiff-respondent within a period of two months from the date of receipt of certified copy of this order. In case of default, the amount in default will carry interest at the rate of 15% till payment.

Appeal dismissed.

SUPREME COURT OF INDIA

Before: Madan B. Lokur & Deepak Gupta, JJ.

Civil Appeal No(s). 21552 of 2017

Decided on: 08.12.2017

(@S.L.P. (C) No. 34605 of 2015)

Manjeet Singh

Appellant

Versus

National Insurance Company Ltd. & anr.

Respondents

A. Consumer Protection Act, 1986 (68 of 1986), Section 12, 15 -- Fundamental breach of Insurance policy -- Carrying passengers -- Violation of the condition should be such a fundamental breach so that the claimant cannot claim any amount -- Carrying passengers is not a fundamental breach.

(Para 5)

B. Consumer Protection Act, 1986 (68 of 1986), Section 12 -- Fundamental breach of Insurance policy -- Carrying passengers -- Non-standard insurance claim -- Driver gave lift to some passengers -- Carrying such passengers may be a breach of the policy, but it cannot be said to be such a fundamental breach -- No doubt, these passengers turned against the driver and stole the truck, but this, the driver could not have foreseen -- Where there is breach of policy, have been treated to be non-standard claims and have been directed to be settled at 75% -- Insurance directed to company to pay 75% of the insured amount of Rs.7,28,000/- along with interest at the rate of 9% per annum from the date of filing the claim petition till the deposit of the amount -- In addition, the insurance company shall also pay another sum of Rs.1,00,000/- as compensation

(Para 7-9)

C. Consumer Protection Act, 1986 (68 of 1986), Section 12 -- Insurance claim -- Arbitration proceedings -- Arbitration proceedings between the financier and the insurer, relating to recovery of the loan

amount, cannot, negate the rights of the insured against the insurance company.

(Para 8)

Cases referred:

1. National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297.
2. National Insurance Co. Ltd. v. Nitin Khandelwal, (2008) 11 SCC 259.
3. Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100.
4. B.V. Nagaraju v. Oriental Insurance Co. Ltd., (1996) 4 SCC 647.

JUDGMENT

DEEPAK GUPTA, J. --

Leave granted.

2. None has put in appearance on behalf of the respondent no. 2 despite service. Hence, the matter has been heard in the absence of the learned counsel for the respondent no. 2.

3. Briefly stated the facts of the case are that the appellant Manjeet Singh purchased a second-hand Tata open truck under a Hire Purchase agreement dated 13.10.2003 for a sum of Rs. 8,57,000/- from Respondent No.2. The vehicle was hypothecated in favour of Respondent No.2. It was insured for a value of Rs.7,28,000/- and the insurance policy was valid from 25.09.2004 to 24.09.2005. On 12.12.2004, the vehicle was being driven by Sanjay Kumar on the National Highway near Karnal. Some persons gave a signal to the driver to stop the vehicle. After he stopped, they requested the driver to give them lift up to Yamuna Nagar since no other mode of transport was available. Since it was a cold wintery night, the driver gave a lift to these persons. After a little while, one of the passengers requested the driver to stop the truck on the pretext that he had to answer the call of nature. When the truck driver stopped the truck, the three passengers assaulted the driver, tied his hands and legs with a rope and threw him in a nearby field and fled away with the vehicle.

4. An FIR was lodged at Police Station, Ladwa on 13.12.2004 and the respondent no. 2, finance company was intimated about the theft. The complainant had also given a letter of authority to the finance company to negotiate and settle the claim with the insurance company. However, no settlement was arrived at and the claim was not settled and repudiated vide letter dated 11.11.2005 on the ground of breach of terms of the policy. The owner-complainant filed a claim petition before the District Consumer Disputes Redressal Forum (for short 'the District Forum') alleging that the insurance company was liable to compensate him for the loss caused to him by the theft of the truck. The main defence taken by the respondent no. 2, insurance company was that the driver of the vehicle, by giving a lift to the passengers, had violated the terms of the policy and, as such, there was breach of policy and the insurance company was not liable. This ground found favour with the District Forum. The appeal filed by the claimant before the State Consumer Disputes Redressal Commission (for short 'the State Commission') was rejected and so was the revision filed before the National Consumer Disputes Redressal Commission (for short 'the National Commission'). The District

Forum also rejected the claim on the ground that the arbitration proceedings had been initiated by the Respondent No. 2, finance company against the complainant and they were at the final stage.

5. As far as the first ground is concerned, we are of the considered opinion, that the District Forum had not properly appreciated the scope and ambit of the policy. The violation of the condition should be such a fundamental breach so that the claimant cannot claim any amount whatsoever. As far as the violation in carrying passengers is concerned, this has consistently been held not to be a fundamental breach and, in this behalf, we may make reference to the judgments of this Court in the case of **National Insurance Co. Ltd. v. Swaran Singh**, (2004) 3 SCC 297, **National Insurance Co. Ltd. v. Nitin Khandelwal**, (2008) 11 SCC 259, **Lakhmi Chand v. Reliance General Insurance**, (2016) 3 SCC 100 and **B.V. Nagaraju v. Oriental Insurance Co. Ltd.**, (1996) 4 SCC 647.

6. In **Lakhmi Chand** case (supra), this Court held that to avoid its liability, the insurance company must not only establish the defence that the policy has been breached, but must also show that the breach of the policy is so fundamental in nature that it brings the contract to an end.

7. In the present case, the appellant who is the owner, was not at fault. His driver gave a lift to some passengers. Carrying such passengers may be a breach of the policy, but it cannot be said to be such a fundamental breach as to bring the insurance policy to an end and to terminate the insurance policy. The driver, on a cold wintery night, gave lift to some persons standing on the road. It was a humanitarian gesture. It cannot be said to be such a breach that it nullifies the policy. No doubt, these passengers turned against the driver and stole the truck, but this, the driver could not have foreseen. In the cases cited above, such claims where there is breach of policy, have been treated to be non-standard claims and have been directed to be settled at 75%.

8. As far as the second ground is concerned, we fail to understand how the arbitration proceedings between the financier and the insurer, relating to recovery of the loan amount, can in any way, negate the rights of the insured against the insurance company.

9. In view of the above discussion, we allow the appeal, set aside the orders of the courts below and direct the respondent no.1-insurance company to pay 75% of the insured amount of Rs.7,28,000/- along with interest at the rate of 9% per annum from the date of filing the claim petition till the deposit of the amount. In addition, the insurance company shall also pay another sum of Rs.1,00,000/- as compensation. Since the financier is also a party to the petition, the amount shall be deposited before the District Forum, and in case the claim of the financier has not been settled in terms of the arbitration award, then the deposited amount shall first be used to pay the awarded amount and the balance, if any, shall be paid to the appellant. The appeal is disposed of in the aforesaid terms. Pending application(s), if any, also stand(s) disposed of.

Appeal allowed.

-----The End-----