

AFR / NAFR

CHHATTISGARH STATE
CONSUMER DISPUTES REDRESSAL COMMISSION
PANDRI, RAIPUR

Date of Institution: 03/11/2023
Date of Final Hearing: 22/03/2024
Date of Pronouncement: 09/04/2024

APPEAL No.- FA/23/248

IN THE MATTER OF :

The Oriental Insurance Company Limited,
Through Branch Manager,
The Oriental Insurance Co. Ltd., Ambikapur,
Near Ambedkar Chowk, M.G. Road, Ambikapur,
Dist. SURGUJA (C.G.)

... Appellant

Through: Shri R.N. Pusty, Advocate

Vs.

Sheikh Mojeeb Alam, S/o. Sheikh Mansoor,
R/o. Shrigarh, Schoolpara, Mohalla Navagarh, P.S. & Tah. Ambikapur,
Dist. SURGUJA (CG)

... Respondent

Through: Shri R.K. Bhawnani, Advocate

CORAM: -

HON'BLE SHRI JUSTICE GAUTAM CHOURDIYA, PRESIDENT
HON'BLE SHRI PRAMOD KUMAR VARMA, MEMBER

PRESENT: -

Shri R.N. Pusty, Advocate for the appellant.

Shri R.K. Bhawnani, Advocate for the respondent.

JUDGEMENT

PER: - JUSTICE GAUTAM CHOURDIYA, PRESIDENT

This appeal, filed under Section 41 of the Consumer Protection Act 2019 (hereinafter called "the Act" for short) is directed against order dated 28/07/2023 passed by District Consumer Disputes Redressal Commission, Ambikapur Surguja (C.G.) (hereinafter called the "District Commission" for short) in Complaint Case No.CC/2020/33, whereby the complaint was partly allowed and the opposite party / appellant herein insurance company was directed to pay the complainant / respondent within sixty days compensation of Rs.8,28,516/- (Eight Lacs Twenty Eight Thousand Five Hundred Sixteen) with simple interest @ 6% p.a. from the date of filing complaint 22.05.2022, along with compensation for mental agony Rs.5,000/- (Five Thousand) and cost of litigation and advocate fees

Rs.6,000/- (Six Thousand), failing which the interest was directed to be paid @ 8% p.a. Feeling aggrieved the opposite party insurance company has come up before us.

2. Briefly stated the facts of the case are that the complainant/ respondent is the registered owner of a truck bearing registration No.CG-15-AC-4641 for which comprehensive insurance was obtained from the opposite party / appellant for the period between 15.02.2018 to 14.02.2019. During subsistence of the policy on 24.10.2018 the insured vehicle was dashed by another vehicle from back side causing damages to it. Intimation was given to the insurance company on toll free number and the vehicle brought to the Ambikapur by towing on 26.10.2018. Surveyor was appointed, who assessed the loss. The complainant/ appellant submitted claim along with all the relevant documents and estimate of Rs.13,63,196/-. Later on due to misplacement of documents bills and voucher of Rs.11,41,503/- only was provided on which assurance was given to decide the claim very soon, but the claim was repudiated vide letter dated 10.02.2020 on the ground that the vehicle was overloaded on the date of incident. Hence, complaint was filed seeking compensation of Rs.11,41,503/- as settlement of insurance claim, Rs.1,00,000/- as compensation for mental and physical agony etc. As per averments made in the complaint on 21.10.2018 the said vehicle was being driven by its previous driver Bhajan Singh, got the vehicle loaded with coal and negligently left the vehicle at Ambedkar Chowk, Visrampur, Dist. Surujpur (C.G.) without any intimation and switched off his phone. Having knowledge of the fact on 22.10.2018 the complainant / appellant appointed another driver Haider Ali and sent the vehicle to its destination.

3. The opposite party / appellant insurance company in its written version except specifically admitted facts denied all the adverse allegations leveled against them and averred that the complainant / respondent breached the policy conditions by overloading the insured vehicle than its mentioned load in the insurance policy. It was alleged that the entire incident was false and planted by the insured as the truck was loaded on 21.10.2018 and it remained parked at Ambedkar Chowk Vishrampur till 24.10.2018 and at 3:30 hours the incident occurred. When the vehicle was loaded for its destination on 21.10.2018 vide bilty/challan No.24510, it was loaded with 31.890 MT coal but at the destination total 32.15 MT coal was receipt. It is not possible that during transportation or loading/loading to another vehicle the quantity of the coal could have increased rather it could decrease only. Enhancement of GVW of the insured vehicle was endorsed on 24.10.2018 at 2:47 minutes but in fact the incident had occurred before making such endorsement and intentionally the GVW of the vehicle was managed for getting benefit of insurance and endorsement was got done after the incident of loss and false information was given. The opposite party / appellant insurance company lawfully repudiated the claim and in doing so the insurance company neither committed any deficiency in service nor unfair trade practice with the complainant/ respondent. Hence it was prayed that the complaint be dismissed with cost.

4. Learned District Commission in the impugned order observed that before the incident the GVW of the insured vehicle was increased by the Transport Department and for doing so as per the rule prescribed by the Government tax was paid on 23.10.2018. Thus at the time of incident the enhanced GVW of the vehicle was 45500 Kgs, hence repudiation of claim

on this ground is not found admissible being against the law. The complaint was partly allowed with directions as mentioned hereinabove in paragraph No.1.

5. We have heard final arguments of all parties and perused the record. We have also gone through the written arguments submitted by both parties.

6. Learned counsel for the appellant in his written arguments as well as during oral arguments before us reiterating the defence taken by the insurance company in its written version before the District Commission has argued that on 21.10.2018 coal was load in the vehicle and it met with an accident on 24.10.2018 merely about 70 Kms away from the source station, which could easily be travelled within 3-4 hours but learned District Commission has failed to appreciate this fact and believed the unsubstantiated and unsupported story narrated by the respondent/complainant. He has further argued that notification regarding revision of GVW was issued on 16.07.2018 as amended by 06.08.2018, but the respondent /complainant obtained tax receipt for change in GVW on 23.10.2018, Exhibit C-8 and immediately on the next date i.e. on 24.10.2018 at 2:47 hours sought endorsement in the insurance policy regarding GVW, OP Exhibit-9 and within next 43 minutes the alleged accident in a hurried manner occurred. These all facts clearly show that the insured has taken recourse to creating evidence whereas there exists nothing to cover up the breach of policy conditions. He prayed that the insured vehicle was overloaded and the claim suffers from non-disclosure of material facts, hence the insurance company may be exonerated from liability to pay compensation by allowing this appeal. In support of his arguments learned counsel for the appellant has placed reliance upon judgement of

Hon'ble Apex Court in Amalendoo Sahoo Vs. Oriental Insurance Company Limited, (2010) 4 SCC 536.

7. Learned counsel for the respondent / complainant has also reiterated the averments made in the complaint and has supported the impugned order. He prayed that this appeal be dismissed.

8. We have considered the above arguments advanced by both parties and perused the record. In the record of the District Commission copy of repudiation letter of claim dated 10.02.2020 has been brought on record by both parties, i.e. as Exhibit C-7 by the respondent/ complainant and as OP Exhibit-6 by the appellant / opposite party. In the letter of repudiation of claim the grounds for repudiation of claim is mentioned as under : -

"Due to non disclosure of material facts in connection of overloading, Loading and unloading and mislead to our organization that is breach of policy terms and conditions".

As per settled principle of law by the Hon'ble Apex Court in Saurashtra Chemicals Ltd. Vs. National Insurance Co. Ltd., Civil Appeal No.2059 of 2015, order dated 13.12.2019 and JSK Industries Pvt. Ltd. Vs. Oriental Insurance Co. Ltd., Civil Appeal No.7630 of 2022, order dated 18.07.2023 the insurance company cannot go beyond the grounds taken in repudiation letter. In Saurashtra Chemical Ltd. (supra) judgement the Hon'ble Apex Court in paragraph No.23 has held as under : -

"23. Hence, we are of the considered opinion that the law, as laid down in Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161; (2017) 2 SCC (Civ) 765] on Issue (2), still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC."

The above ratio of the decision was regarded by the Hon'ble Apex Court in its judgement in JSK Industries Pvt. Ltd. (supra) and in paragraph No.14 it was held that : -

14. ----- . Thus, following the ratio of the decision of the Coordinate Bench in the case of **Saurashtra Chemicals Ltd.** (*supra*), the National Commission ought not to have gone beyond the grounds of repudiation and into the nature of coverage, which according to the National Commission had effectively changed from "anywhere in India to anywhere in India" to a sales turnover policy, limiting the policy coverage of the subject-goods from the points of departure at the two locations at Silvassa. These are all terms of art applicable to the insurance trade but we do not consider it necessary to dilate on this aspect of the dispute having regard to the decision of this Court in the case of **Saurashtra Chemicals Ltd.** (*supra*).

The above law laid down by the Hon'ble Apex Court clearly envisages that neither the insurance company nor the Consumer Commissions can go beyond the grounds of repudiation and if the insurer has not taken any issue as a specific ground in the letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before a Consumer Commission.

9. In this situation the only issue which seeks determination of this Commission is overloading of the insured vehicle at the relevant time of accident. But as per the documents available on record, which are not contradicted by the appellant/ opposite party insurance company, indisputably on 23.10.2018 tax was deposited by the respondent/ complainant to revise the GVW of the insured vehicle and which might have done on the same day because on 24.10.2018 the endorsement regarding change in GVW was done in the insurance policy from 14:47 on 24.10.2018. The accident occurred on 24.10.2018 at 03:30 i.e. after making endorsement in the policy regarding change in GVW. Thus, as at the relevant time already the GVW of the vehicle was revised and endorsed in the policy document also, hence it cannot be said the insured vehicle was overloaded at the time of accident, as has rightly been held by the learned District Commission in the impugned order in paragraph No.09. The judgement of Hon'ble Apex Court in **Amalendu Sahoo** (*supra*) is regarding breach of policy conditions and is not applicable in the facts of

the present as in the present case no breach of any policy conditions is proved. So far as the defence of difference between weight of loaded and unloaded coal is concerned, when once it has been proved that at the time of accident the GVW was already changed and the GVW of the vehicle was within the permissible limit, this ground is not tenable at all.

10. So far as quantum of compensation against damages to the insured vehicle is concerned, in this regard learned District Commission has relied upon report of the Surveyor, OP Exhibit-7 who assessed the loss to the insured vehicle at Rs.8,28,516/- which has been awarded in which we not find any reason to interfere with, hence the same is affirmed. As far as compensation for mental agony and cost of litigation is concerned, they also appear to be justified in the facts and circumstances of the case.

11. With the foregoing discussion we do not find any substance in this appeal, hence the same is dismissed. The impugned order is affirmed. Parties are left to bear their own cost of this appeal.

(Justice Gautam Chourdiya)
President
/04/2024

(Pramod Kumar Varma)
Member
/04/2024

Pronounced on: 09th April 2024