

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 13.07.2023
Pronounced on 14.08.2023**

MA No.32/2016

Inder Jeet SinghPetitioner(s)

Through: Mr. Virender Bhat, Advocate
Versus

ICICI Lombard and another Respondent(s)

Through: Mr. Rajesh Kumar, Advocate.
Ms Himani, Advocate

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

Tashi Rabstan – J

1. This appeal is directed against the judgment dated 01.09.2015 delivered by the J&K State Consumer Disputes Redressal Commission, Jammu in Complaint No.3165 of 2010, whereby the learned Commission dismissed the complaint of complainant for want of a valid and actionable policy on the date of accident to claim indemnity for the damaged excavator.

2. The facts as gathered from the appeal file are that the Hydraulic Excavator of appellant-Inderjeet Singh suffered accident at Jhajjar Kotli on 28.01.2009 when a rock fell on it as a result of which the excavator got damaged. At the time of accident the excavator was insured with National Insurance Company, i.e., respondent No.2 herein, and the policy cover was

with effect from 30.03.2008 to 29.03.2009. Before that, the excavator was insured with ICICI Lombard with effect from 30.03.2007 to 29.03.2008. Claimant-Inderjeet Singh raised an indemnity claim with National Insurance Company. However, the National Insurance Company-respondent No.2 herein declined the claim on the ground that the engine and chassis numbers of the Hydraulic Excavator did not match with the numbers mentioned in the insurance policy. Feeling aggrieved, claimant-Inderjeet Singh filed a complaint before the J&K State Consumer Disputes Redressal Commission, Jammu. However, the learned Consumer Commission vide vide judgment/order dated 01.09.2015 dismissed the complaint of claimant-Inderjeet Singh for want of a valid and actionable policy on the date of accident to claim indemnity for the damaged excavator. Hence, the present appeal.

3. Heard learned counsel appearing for the parties, considered their rival contentions, perused the appeal file as well as the record so produced.

4. Admittedly, the insurer-National Insurance Company did not dispute the Hydraulic Excavator getting damaged on 28.01.2009 at Jhajjar Kotli when a rock fell on it. National Insurance Company also did not dispute with respect to the fact that when the accident occurred on 28.01.2009, the insurance policy bearing No.411800/31/07/6300005133 was very much alive and subsisting; it was in the name of one Inderjeet Singh, H.No.164, Tangewali Gali, Kachi Chawani, Jammu, and, the effective date of commencement of insurance was 30.03.2008 to midnight of 29.03.2009. While filing objections to the complaint filed by complainant-Inderjeet Singh before the J&K State Consumer Disputes Redressal Commission, the National Insurance Company has specifically

averred in paragraph-5 of the parawise reply that the surveyor deputed by it physically inspected the damaged vehicle; the loss was assessed at Rs.13,60,000/- and complainant-Inderjeet Singh also signed the consent letter for the said amount; meaning thereby the National Insurance Company has itself admitted that the loss caused to the Hydraulic Excavator due to the said accident was at Rs.13,60,000/-.

5. Now the only dispute is with regard to the authenticity of Hydraulic Excavator, i.e., the Hydraulic Excavator which got damaged on 28.01.2009 at Jhajjar Kotli, Jammu was the same covered under insurance policy No.421800/31/07/6300005133 or it was some other Hydraulic Excavator.

6. The stand of National Insurance Company is that the Hydraulic Excavator which got damaged in the accident on 28.01.2009 at Jhajjar Kotli, Jammu is not the one against which the insurance cover was made vide insurance policy No.421800/31/07/6300005133 on 30.03.2008 in view of different chassis number and engine number mentioned in the insurance cover. It is claimed that in the insurance cover chassis number has been mentioned as CZN 489362 and engine number as CZN 489362, whereas the Hydraulic Excavator which got damaged in the accident on 28.01.2009 is having different chassis number as K0909 and engine number as CPEM 070602. Thus, one can easily construe that the Hydraulic Excavator which got damaged on 28.01.2009 is not the one covered under insurance policy No.421800/31/07/6300005133. Therefore, the National Insurance Company had no option but to repudiate the claim of claimant-Inderjeet Singh.

7. Whereas, the stand of claimant-Inderjeet Singh is that when he purchased the Hydraulic Excavator from Larsen and Turbo Limited against Invoice No.910603864 dated 31.03.2007 it was not allowed to leave the premises nor gate passed was issued unless it was not insured. As such he got it insured from ICICI Lombard with effect from 30.03.2007 to 29.03.2008. After the expiry of said insurance cover, he again got it insured from National Insurance Company with effect from 30.03.2008 to 29.03.2009. The stand of claimant-Inderjeet Singh is that the ICICI Lombard had entered wrong chassis number and engine number when he purchased the Hydraulic Excavator from Larsen and Turbo Limited and the same was copied by the insurance agent of National Insurance Company when he got the insurance cover with effect from 30.03.2008 to 29.03.2009. Therefore, though the insurance agent of National Insurance Company had copied the wrong chassis number and engine number, yet the Hydraulic Excavator which got damaged in the accident on 28.01.2009 at Jhajjar Kotli, Jammu is the same against which insurance cover was made vide insurance policy No.421800/31/07/6300005133 on 30.03.2008.

8. Now the question arises for determination is who was the insured, i.e., who paid the premium against insurance policy No.421800/31/07/6300005133, and the said policy was meant for which vehicle, i.e., against which vehicle the said certificate of insurance was made with effect from 30.03.2008 to 29.03.2009.

9. National Insurance Company has not denied issuance of Certificate of Insurance vide insurance policy No.421800/31/07/6300005133. The name of insured in the said policy is one Mr. Inderjeet Singh, resident of H.No.164,

Tangewali Gali, Kachi Chawani, Jammu. Under the 'Make' column it has been written as L&T Komatsu Limited and under the 'Year of Manufacturing' column it has been written as 2007.

10. Here also the name of claimant is Mr. Inderjeet Singh, resident of H.No.164, Tangewali Gali, Kachi Chawani, Jammu, who purchased the Hydraulic Excavator from L&T Komatsu Limited in the year 2007 against Invoice No.910603864 dated 31.03.2007; meaning thereby the name of insured of policy No.421800/31/07/6300005133 as well as the claimant herein is the same with same residential address.

11. In the objections filed by the National Insurance Company before the J&K State Consumer Commission, it was averred that the policy-in-question was in continuation of the previous policy with the ICICI Lombard; meaning thereby the National Insurance Company made the insurance cover without physically verifying the Hydraulic Excavator and took the engine number as CZN 489362 and chassis number as CZN 489362 from the previous policy with the ICICI Lombard.

12. Further, in the policy certificate of ICICI Lombard the total value of Hydraulic Excavator has been shown to be Rs.30,40,000/- being a new vehicle and the year of manufacturing has been shown to be 2007. Interestingly, the net invoice value of the Hydraulic Excavator, which the claimant-Inderjeet Singh had purchased against Invoice No.910603864 dated 31.03.2007, has also been shown to be the same as Rs.30,40,000/- and the year of manufacturing as 2007 with serial number or chassis number as K0909; meaning thereby the Hydraulic Excavator which the claimant-Inderjeet Singh had purchased was having Chassis number as K0909. Interestingly, the National Insurance

Company has also claimed that the Hydraulic Excavator against which the insurance policy bearing No.421800/31/07/6300005133 was made on 30.03.2008 by one insured Inderjeet Singh, was also having the same Chassis number as K0909.

13. Not only this, when the National Insurance Company disputed the authenticity of Hydraulic Excavator on account of different chassis number and engine number and did not settle the claim of claimant-Inderjeet Singh, the claimant lodged a report with the police of Police Station Jhajar Kotli and also made a complaint to the Crime Branch, Jammu. Accordingly, the ICICI Lombard issued endorsement on 04.06.2009 thereby correcting the chassis number and engine number and the effective date of endorsement was 30.03.2007 and a communication to this effect was also sent to the Sr. Superintendent of Police, Crime Branch, Jammu. It would be appropriate to reproduce the relevant portion of said endorsement hereunder:

“Endorsement wording: It is hereby understood and agreed that as from 30/03/2007 the vehicle bearing Eng No.CZN489362 and Chassis No.CZN489362 is deemed to be deleted from the Schedule of the Policy and the vehicle with details specified hereunder is deemed to be included therein – Engine No.CPEM070602, Chassis No. –K0909.”

14. Thus, once the ICICI Lombard included the correct engine number and chassis number in the insurance policy vide endorsement dated 04.06.2009, the same shall be deemed to be included in the policy certificate of National Insurance Company, because as per the own stand of National Insurance Company the policy-in-question was in continuation of the previous policy with the ICICI Lombard. Therefore, after the issuance of said endorsement, there was no reason to deny the claim of claimant-Inderjeet Singh.

15. Further, the ICICI Lombard in its affidavit filed before the J&K State Consumer Disputes Redressal Commission has specifically deposed that mentioning of wrong chassis number and engine number was due to typographical mistake and that is why the learned Commission in its judgment/order has specifically mentioned that the first respondent, i.e., ICICI Lombard was admittedly guilty of wrongly mentioning of engine and chassis numbers in the policy for the year 2007-08. Thus, once it is the admitted position that the mentioning of wrong chassis number and engine number was on the part of ICICI Lombard, then how the claimant-Inderjeet Singh herein could be held accountable for the said mistake and has been made to suffer for the last so many years. Further, one can be expected to remember the registration number of his vehicle, but he cannot be expected to also remember the chassis number and engine number of his vehicle which is embossed on the chassis and engine of the vehicle, verification of which is the part of insurance agent and not the insured.

16. Not only this, even the Larsen and Turbo Limited has issued the certificate dated 22.04.2009 in favour of claimant-Inderjeet Singh, relevant portion of which is reproduced hereunder:

“It is certified that Mr. Inder Jeet Singh S/O Sh. Prem Singh resident of H.No.164, Tangewali Gali, Kachi Chowni, Jammu (J&K) has purchased one hydraulic excavator Sr. No.K0909 and Engine Sr. No.CPEM 070602 of Ashok Leyland, under our invoice No.910603864 Dt.31.03.2007.”

He has purchased only one hydraulic excavator with Sr. no. as mentioned above from us.”

17. Thus, from the above certificate too it is clear that the Hydraulic Excavator which got damaged in the accident on 28.01.2009 is the same

against which Policy No.421800/31/07/6300005133 has been made by the National Insurance Company.

18. Further, every insured buy insurance only for one reason, i.e., protection. An insured pay premium in exchange for the promise that the insurance company will protect him. In the present case the National Insurance Company has refused to pay claim to the claimant-Inderjeet Singh without conducting a reasonable investigation. Further, insurance agents represent insurance companies and they are liable for errors and omissions. These are the insurance agents who are responsible for complying with legal and contractual duties. An insurance agent must meet the standard expectations and must have full knowledge of the process. Every insurance agent is expected to act with care and diligence and to assist customers in properly completing insurance applications in order to act as an intermediary between the customer and the insurance company. Therefore, we do not find any force in the argument of learned counsel for National Insurance Company that it was claimant-Inderjeet Singh who had wrongly written the chassis number and engine number in the proposal form, that too when the name of insurance agent has been mentioned as Shagun Vaid in the insurance policy of National Insurance Company. Thus, it is the National Insurance Company who has failed to acknowledge and act reasonably with respect to the claim of claimant-Inderjeet Singh when the liability has become reasonably clear. It is nothing but an unfair insurance practice. It seems the National Insurance Company is escaping from its liability to indemnify the insured-Inderjeet Singh least bothering that he has been hankering for getting his claim for the last more than fourteen years, which is being denied by the National Insurance Company only on lame

excuses when everything leads to one conclusion that the Hydraulic Excavator which got damaged in the accident is the same against which policy No.421800/31/07/6300005133 has been made by the National Insurance Company on 30.03.2008. This Court also cannot lose sight of the fact that the National Insurance Company in the year 2009 itself assessed the damage caused to the Hydraulic Excavator to the tune of Rs.13,60,000/- and till now more than fourteen years have elapsed and during this period the value of rupee has raised many folds.

19. Viewed thus, we deem it proper to allow the appeal. Accordingly, the appeal is allowed and the judgment/order dated 01.09.2015 of learned J&K State Consumer Disputes Redressal Commission, Jammu is set aside and quashed. National Insurance Company is directed to pay an amount of Rs.13,60,000/- to the claimant-Inderjeet Singh as the loss assessed by it caused due to the accident of Hydraulic Excavator along with interest at the rate of seven percent (7%) from the date of filing of the complaint before the learned Commission till its actual realization. Let the amount be released in favour of claimant-Inderjeet Singh within a period of two months from today after proper verification and identification. Connected IA/CM, if any, accordingly, stands disposed of.

20. Registry to return the record against proper receipt.

Jammu
14.08.2023
(Anil Sanhotra)

(Wasim Sadiq Nargal)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No