

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.10398 /2011****NEW INDIA ASSURANCE CO.LTD. & ORS.****Appellant(s)****VERSUS****PARESH MOHANLAL PARMAR****Respondent(s)****O R D E R**

This appeal has been filed against the judgment of National Consumer Disputes Redressal Commission dated 19.07.2011 in First Appeal No.45/2007 by which the First Appeal of the respondent was allowed and National Commission allowed the complaint and directed to pay an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the respondent with interest @ 6% p.a. from the date of repudiation till filing of the complaint and 9% from the date of filing of compliant till the date of realization of the entire amount.

The respondent obtained a burglary and house breaking Insurance Policy for the period from 5.06.2003 to 4.06.2004 from the appellant Insurance Company to insure his property for a total sum insured of Rs.20 Lakhs. During the night of 11.01.2004 an incidence of theft took place and 324 mobile phones were found to be stolen from the godown and FIR lodged with the concerned Police Authority.

Insurance Company was informed and their surveyor visited and submitted his preliminary report dated 16.1.2004. The complaint was also submitted to Insurance ombudsman by the appellant. Vide order dated 9.12.2005 the Insurance ombudsman rejected the representation on the ground that they have no pecuniary jurisdiction.

The Insurance Company repudiated the claim and reiterated its stand of repudiation. The respondent filed a complaint before the State Commission. By order dated 21.12.2006 the State Commission dismissed the complaint filed by the respondent relying upon the judgment of this Court in United India Insurance Co.Ltd. Vs. Harchand Rai Chandan Lal 2004(8)SCC 644. The first appeal was filed before the Commission. The commission by the impugned judgment has allowed the appeal. The Commission took a view that when the lock of the godown was found on the Street and that the culprit was convicted under Section 454 IPC, it may be gathered that element of force was present when the culprit entered the premises of the godown.

The Commission also returned the finding that relevant terms and conditions of the Insurance Policy were not brought to the knowledge of the insurer. Aggrieved by the judgment of the National Commission, this appeal has been filed.

Learned counsel for the appellant contents that the claim of the respondent was not covered by the policy. He has referred to Clause 3A as extracted by the State Commission and submits that there being no force entry in the premises and the premises having

been opened by duplicate key, the claim was not covered. With regard finding of the Commission that terms and conditions were not informed to Insured, he submits that the State Commission has held that terms and conditions were informed but the National Commission has erroneously observed that the State Commission has not dealt with the matter.

Learned counsel for the respondent submits that in view of the fact that relevant terms and conditions were not supplied, the claim of the respondent cannot be rejected. The respondent submits that his case is fully covered by the judgment in 2019(6)SCC 212 (Bharat Watch Company thro its partner Vs. National Insurance Company Ltd.). He submits that, even before the repudiation, by his letter dated 17.03.2005 the respondent has asked for copy of the terms and conditions from the appellant.

We have heard learned counsel for the parties and perused the records.

As noted above, the National Commission has returned the finding that terms and conditions of the policy were not communicated to the appellant which finding are contained in para 7 to the following effect:

"We have heard learned counsel for the parties. We have perused the record of the State Commission. Before we embark upon discussion on the issue regarding breach of the terms of the Insurance Policy, it may be mentioned that the other contentions of the respondents were rejected by the State Commission. The appellant also had contended before the State Commission that he was not furnished with the terms and conditions of the insurance policy when the insurance policy was taken by him. The fact that the appellant took relevant insurance policy covering period between 5.06.2003 to 4.06.2004 is not in dispute. The case

of the appellant was that the annexure containing terms of the insurance policy had not been attached along with the document of the policy furnished to him. Though the respondents denied such averment of the appellant in their written version yet the appellant reiterated the same stand in his rejoinder affidavit filed before the state Commission. The State Commission did not deal with this aspect of the matter. In our opinion, it was necessary for the respondents to prove that the terms and conditions of the Insurance Policy were furnished to the appellant when the policy document was issued in his favour. We have not come across any tangible material to infer that the relevant terms and conditions of the Insurance Policy were brought to the knowledge of the appellant."

The submission of the counsel for the appellant is that National Commission erred in observing that the State Commission did not deal with the aspect, whereas the State Commission has dealt with. When the National Commission has returned the finding that terms and conditions of the policy were not brought to the knowledge of the respondent, as it is contrary to the finding of the State Commission, the findings of the State Commission shall be treated to have been over ruled.

The judgment of this Court relied by counsel for the respondent in 2019(6)SCC 212 (Bharat Watch Company thro its partner Vs. National Insurance Company Ltd.) supra covers the case, wherein following has been laid down in para 7 & 10:

"7 : "The basic issue which has been canvassed on behalf of the appellant before this Court is that the conditions of exclusion under the policy document were not handed over to the appellant by the insurer and in the absence of the appellant being made aware of the terms of the exclusion, it is not open to the insurer to rely upon the exclusionary clauses. Hence, it was urged that the decision in Harchand Rai will have no application since there was no dispute in that case that the policy document was issued to the insured.

"10 : Having held this, SCDRC also came to the conclusion that the exclusion would in any event not be attracted. The finding of SCDRC in regard to the interpretation of such an exclusionary clause is evidently contrary to the law laid down by this Court in Harchand Rai. However, the relevance of that interpretation would have arisen provided the conditions of exclusion were provided to the insured. NCDRC missed the concurrent findings of both the District Forum and SCDRC that the terms of exclusion were not made known to the insured. If those conditions were not made known to the insured, as is the concurrent finding, there was no occasion for NCDRC to render a decision on the effect of such an exclusion."

In view of the above we are of the opinion that no other issue needs to be considered. The appeal of the appellant is liable to be dismissed on the above ground.

Appeal is dismissed.

Pending application(s) stand disposed of.

.....J
[ASHOK BHUSHAN]

.....J
[NAVIN SINHA]

New Delhi;
February 04, 2020

ITEM NO.20

COURT NO.9

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 10398/2011

NEW INDIA ASSURANCE CO.LTD.. & ORS.

Appellant(s)

VERSUS

PARESH MOHANLAL PARMAR

Respondent(s)

IA No. 152269/2019 - VACATING STAY)

Date : 04-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s) Mr.Vishnu Mehra,Adv.
 Mr.Anant Mehrotra,Adv.
 Ms. Manjeet Chawla, AOR
 Ms.Joohi Zaidi,Adv.

For Respondent(s) Mr.Shivansh Pandya,Adv.
 Mr. Kamal Mohan Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Appeal is dismissed in terms of the signed order.

Pending application(s), if any, stand disposed of.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT

(RENU KAPOOR)
BRANCH OFFICER

(The Signed Order is placed on the file)

