

Moti Mahal Hotel (P) Ltd. Vs Oriental Insurance Co. Ltd.

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 12, 1989

Citation: (1990) 1 ACC 542

Hon'ble Judges: M.S. Liberhan, J

Bench: Single Bench

Judgement

M.S. Liberhan, J.

The petitioner brought the suit for mandatory injunction against respondents Nos. 1 and 2 directing them to deliver the

car duly repaired to the plaintiff, which was insured with respondent No. 1 and after the accident, was repaired by respondent No. 2. Further a

claim for damages on account of non-delivery of car was made. During the pendency of the suit, an application was made for an ad interim relief

directing the respondents to deliver the car duly repaired with its accessories to the plaintiff on Supardari. Plaintiff claimed that the car was handed

over to respondent No. 2 on the direction of respondent No. 1 for repair after it met with an accident, it was the liability of respondent No. 1 to

get the same repaired as it was comprehensively insured with respondent No. 1, the repair was carried out but the car was not delivered to the

plaintiff-petitioner on the ground that the insurance company had not paid the bill for the repairs. The Insurance company however, controverted

the claim of Rs. 76,000/- as charges for carrying out the repairs being exaggerated charges, and offered to pay Rs. 57,889/- only as their liability.

2. The learned trial Court directed the insurance company to pay the amount accepted by it and the plaintiff-petitioner to pay the amount over and

above the amount accepted by the insurance company i.e. beyond Rs. 57,889/- with a further direction that the insurer shall issue a discharge

voucher on receipt of the whole amount being paid by the insurance company. The order was challenged in appeal.

3. The appellate Court directed that the vehicle be released to the plaintiff-petitioner on his furnishing Bank guarantee for the amount over and

above Rs. 57,889/- to the effect that in case his suit fails the insurance company will be reimbursed the excess amount beyond Rs. 57,889/- with

interest to be paid by the insurance company to the repairer. It was further directed that the repairer shall also furnish a Bank guarantee to the

effect that in case he was not found entitled to the excess amount i.e. beyond Rs. 57,889/- he shall reimburse the insurance company with interest

to the extent they were found not liable to pay beyond Rs. 57,889/-.

4. The petitioner has challenged the order and the only relief he seeks is that the order be modified to the extent, that instead of furnishing Bank

guarantee he may be permitted to file an undertaking of Kamal Kapoor-Director of the plaintiff company to the effect that in case the suit is

dismissed, or withdrawn, the plaintiff shall reimburse the insurance company with respect to the amount aid to the repairer over and above Rs.

57,889/-. Counsel for respondent No. 2 prays that he should also be permitted to furnish an undertaking in the similar terms by their Director.

Though the counsel for the insurance company insisted for the Bank guarantee but he has not been able to advance any substantial argument for

pressing for the Bank guarantee. Rather he half heartedly accepts that the company shall not suffer in any way if instead of furnishing the Bank

guarantee, the parties are permitted to furnish an undertaking as prayed by them.

5. In view of my above observations, the order of the lower appellate Court is modified only to the extent that instead of furnishing Bank

guarantee, an undertaking shall be furnished by the plain tiff and defendant No. 2 in the trial Court in the same terms in which they were to furnish

the Bank guarantee. The undertaking may be furnished within two weeks and on furnishing of the undertaking by the plaintiff, the car shall be

delivered to the plaintiff within a week thereafter. Counsel for the insurance company undertakes that the insurance company shall make payment

of the amount within a week of filing of the said undertaking by defendant No. 2.