

(2006) 06 GAU CK 0041

Gauhati High Court

Case No: None

Rahul Das

APPELLANT

Vs

Oriental Insurance Co. Ltd. and
Others

RESPONDENT

Date of Decision: June 15, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 406, 420

Citation: (2007) 2 GLR 394 : (2006) 3 GLT 427

Hon'ble Judges: A.H. Saikia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

A.H. Saikia, J.

Heard Mr. K.K. Mahanta, learned senior counsel assisted by Mr. A. Samua, learned Counsel for the petitioner. Also heard Mr. A. Ahmed, learned Counsel appearing for the Oriental Insurance Company Ltd. ("the company").

2. The case of the petitioner herein is that his vehicle which was duly insured with the company for the period from 1.2.2003 to 31.1.2004 was taken on 24.5.2003 by the driver with the passengers therein on hire for the journey to and fro from Nagaon to Golaghat and since then whereabouts the vehicle including the driver was not known. In this regard a police case was registered with the Nagaon Police Station being Nagaon P.S.G.R. No. 1100 dated 26.5.2003 u/s 406/420 IPC.

3. The petitioner, having the valid insurance policy, approached the concerned authority of the insurance-company claiming compensation of the vehicle under the head of theft.

4. However, vide order dated 8.6.2004 (Annexure-15 to the writ petition) the respondent-insurance company repudiated the claim of the petitioner on the sole ground that the driver of the vehicle had committed breach of trust and as such their policy did not cover any liability occurring due to breach of trust committed by the driver.

5. By means of this writ petition the petitioner has sought for a direction in the nature of writ of mandamus directing the company to settle the claim of the petitioner to the tune of Rs. 3,48,000 (Rupees three lakh forty eight thousand) only.

6. Manifestly the above fact situation speaks that there is a disputed question involved in this case due to the simple reason that the compensation under the valid insurance policy claimed by the petitioner was refused by stating that the petitioner's case was not of theft but merely a breach of trust which was not covered by the policy.

7. Besides, significantly it appears from the FIR lodged by the petitioner that the case was registered u/s 406/420 IPC and there is no whisper that the driver had ever stolen the vehicle so as to attract insurance cover under the head of theft.

8. Mr. Mahanta, learned senior counsel has submitted that the company had their public duty to honour the claim made under a valid insurance policy and as such this is a fit case where this court under the facts and circumstances of the case can issue a Writ of Mandamus as prayed for. In support of his submission, Mr. Mahanta has relied on a decision of the Calcutta High Court reported in [Mohit Kumar Saha Vs. New India Assurance Co. Ltd. and others](#), Mohit Kumar Saha v. New India Assurance Co. Ltd. wherein the court issued a writ of mandamus against the Insurance Company directing to make payment to the claimant, the truck owner, the loss of insured truck as "total loss" for alleged theft. After carefully going through this cited case, this court is of the view that the principle laid down therein is not applicable in the instant case which basically pertains to breach of trust as evident from the FIR mentioned above.

9. On the other hand, refuting the claim of the petitioner Mr. Ahmed, learned Counsel for the Insurance Company has contended that the Insurance Company is not at all liable for any payment on such claim as it is not a case of theft to be covered by any valid insurance policy so held by the petitioner. He relying on the affidavit filed on behalf of the insurance company, ha also submitted that the stand of the Insurance Company is that the case made out by the petitioner is of a civil nature because it is a case of breach of trust and the insurance company is not liable for such breach of trust under the policy. Accordingly it is submitted that since the claim of the petitioner has been repudiated by the insurance company it become a disputed question of fact and this court under Article 226 may not entertain this application.

10. Strong reliance has been made on a decision of the Apex Court reported in [Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another](#), wherein the Supreme Court, dealing with the question of maintainability of the writ petition on the basis of repudiation of claim, categorically held that where the claim was repudiated by the Insurance-Company which requires oral and documentary evidences for determination, appropriate remedy was a civil suit and not writ petition to enforce the claim under the contract of insurance.

11. On close perusal of the materials available on record as well as upon hearing the learned Counsel for the parties, it appears that the petitioner has raised a disputed question of fact before this court. Even in the FIR lodged with the Nagaon Police Station as stated above, the petitioner has not made out a case for theft but the case was only registered u/s 406/420 IPC.

12. That apart, once the claim of the petitioner was repudiated/refused by the insurance company, such disputed question of fact cannot be entertained under writ jurisdiction.

13. In view of what has been stated, discussed and observed above and having regard to the legal position laid down in Asha Goel's case (supra), this court is of the view that there is no merit in this writ petition and accordingly the same stands dismissed. No costs.