A B.V. NAGARAJU

v.

M/S. ORIENTAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, HASSAN

B MAY 20, 1996

[M.M. PUNCHHI AND K.S. PARIPOORNAN, JJ.]

Motor Vehicles Act, 1988: Sections 147 and 149.

C *Insurance policy—Terms of—Permitted only certain number of humans in goods vehicle—Breach of carrying humans in goods vehicle more than the number permitted—Held: not such a fundamental breach so as to deny indemnification to the insurer unless some factors existed which contributed to causing accident—Exclusion term of the policy must be read down to serve the main purpose of the policy.*

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The appellant was the owner of an insured truck which was covered by a comprehensive insurance policy issued by the respondent. The truck sustained major damages in an accident with a gas tanker on account of which repairs were necessitated. At the time of the accident the truck was E **carrying 9 persons while the insurance cover was limited to carrying passengers in the vehicle except employees (other than the Driver) not exceeding 6 in numbers coming under the purview of Workmen's Compensation Act, 1923. The appellant raised a claim with the respondent- Company for reimbursement of repair charges. However, the claim of the appellant was spurned by the respondent-Company. Thereafter, the appel-** F **lant moved the State Consumer Disputes Redressal Commission which allowed his claim to the extent of the respondent's Official Surveyor's estimate of the repair charges. This order was upset by the National Consumer Disputes Redressal Commission relying upon the above terms of the insurance policy. Being aggrieved, the appellant preferred the** G **present appeal.**

On behalf of the appellant it was contended that the terms of the insurance policy should be read down to carry out the main purpose of the policy as the presence of 9 persons (when upto 6 were permissible), irrespective of their being employees or not, had not contributed in any H **manner to the occurring of the accident as also when the claim did not**

relate to any injuries to those 9 persons (who were owners of the goods loaded) or any loss incurred by them; and that the claim pristinely relating to the damage caused to the vehicle insured, which could not have been denied in the facts and the circumstances. A

Allowing the appeal, this Court B

HELD : 1.1. It is plain from the terms of the insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have C contributed to the causing of it is the poser, keeping apart the load it was carrying. In the present case the driver of the insured vehicle was not responsible for the accident. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle D was somewhat irregular though but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. [26-D-F]

Skandia Insurance Co. Ltd. v. *Kokilaben Chandravadan & Ors.*, [1987] E 2 SCC 654, relied on.

Glynn v. *Margerson & Co.*, (1983) AC 351 and *Suissee Atlantique Societe d' Armement Maritime S.A.* v. *N.V. Rotterdamsche Kolen Centrale*, (1967) 1 AC 361, cited.

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Carter: *"Breach of Contract"*, para 251, referred to.

1.2. The exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused to the vehicle. [28-A] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6296 of 1995.

From the Judgment and Order dated 30.11.94 of the National Consumer Disputes Redressal Commission, New Delhi in F.A. No. 439 of 1993. H

A S.N. Bhat for the Appellant.

Vishnu Mehra and K.M.K. Nair for the Respondent.

The Judgment of the Court was delivered by

B **PUNCHHI, J.** In this appeal by special leave, the question of importance arising therein is whether the alleged breach of carrying humans in a goods' vehicle more than the number permitted in terms of the insurance policy, is so fundamental a breach so as to afford ground to the insurer to eschew liability altogether? Ancillary to the question is the poser: whether C the terms of the policy of insurance need be construed strictly or be read down to advance the main purpose of the contract as viewed by this Court in *Skandia Insurance Co. Ltd.* v. *Kokilaben Chandravadan & Ors.*, [1987] 2 SCC 654.

The appellant herein was the registered owner of a 'Tata' Truck D bearing No. KA-13/438, duly insured with the Oriental Insurance Co. Ltd. the respondent herein, vide Policy dated 24.8.1990 covered for period uptil 23.8.1991. The policy was comprehensive in nature, covering risk to the limit of Rs. 2,09,000. During the subsistence of the policy, the vehicle of the appellant met with an accident on 5.8.1991 when, allegedly, a gas tanker E came and dashed against the said vehicle. Apart from the other damage which occasioned due to the accident, the appellant's vehicle sustained major damages on account of which repairs were necessitated. The appellant, therefore, incurred from his pocket repair charges/damages to the tune of Rs. 87, 170 in order to make the vehicle road-worthy. Pursuant to such expenditure, the appellant raised a claim with the respondent-Com- F pany inter-alia for reimbursement of the repair charges/damages submitting therewith the claim-form and the bills for payment. The claim of the appellant was spurned. The appellant sent a legal notice calling upon the respondent-Company to make payment of the claim as per the contractual conditions of the policy but in vain. The appellant then moved the Kar- G nataka State Consumer redressal Forum under the Consumer Protection Act, 1986 raising a demand of Rs. 2,13,500, diversifying the claim as repair charges, loss of prospective income, interest. legal notice charges and other miscellaneous expenses.

The respondent-Company denied their liability altogether stating H that since the appellant's goods vehicle was used for the purpose of

carrying passengers, the appellant was disentitled to claim any compensation, and even otherwise those were nine in numbers. The amount of money spent by the Appellant on repairs however was not seriously disputed as the respondent's Official Surveyor himself had estimated the repair possibility at Rs. 75,700.

The State Commission went into the matter thoroughly and by its order dated 19.7.1993 allowed the claim of the appellant to the extent of Rs. 75,700, the figure at which the Official Surveyor of the respondent Company had estimated the repair charges, along with interest at the rate of 18% per annum from the date of the accident i.e. 5.8.91 till the date of payment. A sum of Rs. 2,000 also was awarded to the appellant as costs. This order, at the instance of the respondent company, was, however, upset on appeal on 30.11.994 by the National Consumer Disputes Redressal Commission, New Delhi, relying upon the terms of the insurance policy in taking the view that the policy did not cover use for carrying passengers in the vehicles except employees (other than the Driver) not exceeding 6 in numbers, coming under the purview of the Workmen's Compensation Act. This has culminated into this appeal.

The terms of the Insurance Policy, inter alia, provide as follows :

> "Limitations as to use: Only for the carriage of goods within the meaning of the Motor Vehicles Act, 1988.
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> The policy does not cover -1) Use for organised racing, pace-making reliability trial or speed testing. 2) Use whilst drawing a trailer except towing of any one disabled mechanically propelled vehicle. 3) Use for carrying passengers in the vehicle except employees (other than driver) not exceeding six in numbers coming under the purview of W.C. Act. 1923."

Learned counsel for the appellant, in support of this appeal, strongly relied on *Skandia's* case (supra), making a fervent appeal that the terms of the policy afore referred to, should be read down to carry out the main purposes of the policy as the presence of 9 persons (when upto 6 were permissible), irrespective of their being employees or not, had not contributed in any manner to the occurring of the accident as also when the claim did not relate to any injuries to those 9 persons (who were owners of the goods loaded) or any loss incurred by them; the claim pristinely

A relating to the damage caused to the vehicle insured, which could not have been denied in the facts and the circumstances. Strong reliance, in support, was sought from the reasoning of the State Commission which had in so many words said:

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> "..... Even for the sake of argument, that 9 persons travelling in the vehicle were passengers, it cannot be a ground for insurance Company to repudiate the contract as the fact of their being passengers or coolies does not make any difference to the risk involved. These persons were in no way concerned with the cause of the accident nor have they contributed to the risk in respect of
C the loss caused to the vehicle. The complainant has not claimed any compensation in respect of his liability to the persons travelling in the vehicle."

It is plain from the terms of the Insurance Policy that the insured
D vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. Here, it is nobody's case that the driver of the insured vehicle was respon-
E sible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should , in all events, be
F denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however, we find no such contributory factor. In *Sikand's* case this Court paved the way towards reading down the contractual Clause by observing as follows :

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> "..... When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupa-
H tional hazard undertaken by him by way of business activity, there

is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinnaire approach, the very same conclusion would emerge in obeisance to the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is supported by Carter's "Breach of Contract" vide paragraph 251. To quote :

> Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For example, in *Glynnn* v. *Margetson & Co.*, [1893] AC 351, 357, Lord Halsbury, L.C. stated : It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard..... as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract.
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> Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in *Suissee Atlantique Societe d' Armement Maritime S.A.* v. *N.V. Rotterdamsche Kolen Centrale*, [1967] 1 AC 361. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."

The National Commission went for the strict construction of the exclusion clause. The reasoning that the extra passengers bring carried in the goods vehicle could not have contributed, in any manner, to the occurring of the accident, was barely noticed and rejected sans any plausible account; even when the claim confining the damage to the vehicle only was limited in nature. We, thus, are of the view that in accord with

A the Skandia's case, the aforesaid exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused to the vehicle, which we hereby do.

For the view above taken, this appeal is allowed, the judgment and order of the National Consumer Disputes Redressal Commission. New
B Delhi is set aside and that of the State Commission in restored in its entirety, but without any order as to costs.

V.S.S. Appeal allowed.