PETITIONER:
B.V. NAGARAJU

Vs.

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

DATE OF JUDGMENT: 20/05/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
PARIPOORNAN, K.S.(J)

CITATION:
1996 SCC (5) 71 JT 1996 (5) 285
1996 SCALE (4)608

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

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 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. vs. Kokilaben Chandravadan & Ors. [1987 2 SCC 654]?

The appellant herein was the registered owner of a 'Tata' Truck bearing No. KA-13/438, duly insrued 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 came and dashed against the said vehicle. Apart from he 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 necessitated. The appellant, therefore, incurred form 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-Company 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 to the claim as per the contractual conditions of the policy but in vain. The

appellant then moved the Karnataka 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 that since the appellant's goods vehicle was used for the purpose of the 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 and 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/-, figure at which the Official Surveyor of the respondent Company and estimated the repair charges, along with the 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 as costs. This order, at the instance of the respondent Company, was, however, upset on ap peal on 30.11.1994 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 vehicle 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.
>
> The policy does not cover - 1) Use for organized 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 servant 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 went he 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 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 Commissioner which had in so many words said:

"....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 collies does not make any difference to the risk involved. These persons were in no way concerned with the cause of the accident not have they contributed to the risk in respect of 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 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 contribued to the causing of it is the poser, keeping apart the load it was not carrying. Here it is nobody's case that the driver of the insured vehicle was responsible 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 persons 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 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 :

> ".....When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational 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 doctrinaire 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 wise

> 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.
>
> 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 Societed' 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 being 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 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 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 Delhi is set aside and that of the State Commission is restored in its entirety, but without any order as to costs.