



R.S.A. No. 4201 of 2017 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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R.S.A. No. 4201 of 2017
DATE OF DECISION :- 08.08.2025

Ganpat Rai

...Appellant

Versus

The Branch Manager Iffco Tokyo General Insurance Company Ltd.
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Bahadur Singh, Advocate
with Ms. Rajni, Advocate for the appellant.

VIRINDER AGGARWAL, J. (Oral)

1. The appellant-plaintiff being owner of motor cycle bearing Registration No. HR-13-D-2951 got it ensured with respondents w.e.f. 26.10.2008 to 26.10.2009 for a sum of Rs.39,190/-. The vehicle got stolen from Bahadurgarh on 21.05.2009. The matter was informed to Police Station, City Bahadurgarh on the same day and the Insurance Company was informed on Toll Free No. 1800-3453-303 vide complaint No. 1-35JQ4U. The FIR was registered only on 15.10.2009. After several representations made to the higher police authorities, appellant-plaintiff claimed for compensation which was repudiated by respondent-defendants on account of delay in lodging the FIR. The matter was taken to District Consumer Disputes Redressal Forum, Jhajjar but the complaint was dismissed on 09.12.2010 on the ground that plaintiff has not promptly



informed the police regarding theft of the vehicle. The appeal was filed in State Consumer Disputes Redressal Commission, Haryana but the same was got dismissed as withdrawn on 03.02.2011 with liberty to approach the Civil Court. The matter was taken to the Civil Court by filing the suit. Notice was served upon respondents. Respondent-defendants contested the suit by filing written statement raising objections regarding maintainability, Court fee, resjudicata, jurisdiction and further held their act of repudiating the claim as correct on the grounds that FIR was filed late after a period of more than 05 months. Replication was filed reiterating the contents of plaint and denied the averments of the written statement. From the pleadings of the parties, following issues were framed :-

- “1. Whether the plaintiff is the consumer of defendants, as alleged by the plaintiff in the plaint?OPP
2. Whether the claim of the plaintiff has not been dealt with by defendants company on flimsy grounds?OPP
3. Whether by the act of defendants caused mental torture, pain & agony to plaintiff and caused grave irreparable loss, injury to the plaintiff?OPP
4. Whether the plaintiff is entitled for the recovery of Rs.39,190/- along with interest @24% per annum till its realization?OPP
5. Whether the plaintiff is entitled for the compensation of Rs.50,000/- for physical as well as mental harassment along with litigation charges?OPP
6. Whether the suit of the plaintiff is not maintainable in the present form?OPD
7. Whether the suit of the plaintiff is barred by the principle of resjudicata?OPD
8. Whether the civil court has no jurisdiction to entertain the present suit?OPD



9. Relief.”

2. Plaintiff examined himself as PW1 and tendered into evidence, copy of Registration Certificate of the vehicle Ex.P1, Copy of Insurance Policy Ex P2, complaint lodged to the police Ex.P3, untraced report submitted by the police Ex. P4, copy of the orders Ex.P5 &P6. Santosh Raj appeared as PW2 and Indraj appeared as PW3 and in order to rebut the evidence defendants failed to lead any evidence and their evidence was closed and after hearing arguments the learned Civil Judge dismissed the suit by relying upon the judgment of the Apex Court titled as ‘**United India Insurance Co. Ltd. Versus M/s Harchand Rai Chandan Lal**’ 2005(1) RCR (Civil) 217. The First Appeal was preferred against the judgment and decree so passed and the same was also dismissed.

3. Aggrieved by the decrees and judgments so passed, the present Regular Second Appeal has been filed.

4. The only short question is as to if the Courts below has correctly appreciated the evidence. The evidence led by the appellant-plaintiff remained unrebutted on the file. Plaintiff has tendered an affidavit Ex. PW 1/A wherein he has categorically deposed that the matter was reported to the police immediately vide moving application Ex.P3. The learned Courts below has rejected the version of the appellant-plaintiff on the grounds that there is no stamp of Police Station on copy of the complaint Ex.P3 but none of the Courts have discussed the testimonies of PW2 and PW3 who has supported the version of the plaintiff that the complaint was lodged with the police with regard to theft of the motor cycle promptly by moving application Ex.P3. There is no rebuttal to this evidence led by the plaintiff. The plaintiff has further deposed



that the matter was reported to the respondents-defendants on Toll Free number immediately. The theft has taken place on 21.05.2009 and Ex.P3 is of the same date. The document Ex.P3 has been disbelieved on the grounds that there is a possibility of same being having prepared in order to support the case by the appellant-plaintiff but two witnesses PW2 and PW3 have supported the version of the plaintiff and as already recorded, the learned Courts below has not discussed their testimonies.

5. The repudiation of claim by respondents-defendants on the ground of delay in lodging the FIR is certainly not warranted as lodging of FIR is not in the hands of the complainant. Appellant-plaintiff was only required to inform the police about the incident of theft and it was for the police officials to record the FIR and if there is delay on the part of police officials in recording the FIR then the rightful claim of the appellant-plaintiff should not have been repudiated due to the fault of the police officials as testimonies of plaintiff and PW2 and PW3 are sufficient to prove that the matter was reported to the police promptly on the same day.

6. As such both the Courts below have committed material illegality in appreciation of evidence. The evidence of the parties was not properly martialled. From the evidence on record it cannot be concluded that appellant-plaintiff has not reported the matter to the police promptly or there is any violation of the terms and conditions of the Insurance Policy on the part of appellant-plaintiff. As such Insurance Company was not within its right to repudiate the claim of appellant-plaintiff. It is proved on record that the theft of motor cycle could not be traced and untraced report was submitted by the



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police. So stolen motor cycle could not be recovered by the police, as such plaintiff is entitled to recover the amount of motor cycle.

7. Resultantly, the appeal filed by the appellant-plaintiff is allowed and judgment and decree passed by the First Appellate Court is set aside and suit of the appellant-plaintiff stands decreed for recovery of rightful damage on account of theft of the motor cycle. No specific amount is granted to the appellant-plaintiff as it is for the Insurance company to work out the compensation after calculating the depreciation etc. and the amount of compensation be calculated within a period of one month from passing of the decree and the amount be paid within one month thereafter failing which the amount would carry interest at the rate of 12%.

(VIRINDER AGGARWAL)
JUDGE

08.08.2025

P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No