

**Insurer cannot rely on the Terms of Exclusion of a policy to repudiate claim, if the same are not communicated to the insured.**

Insurance companies are known to almost always be on the lookout for the slightest of reason/s in order to reject an insured entity's claim. Recently, in ***Bharat Watch Company Vs. National Insurance Co. Ltd.*** (Civil Appeal No. 3912 of 2019 arising out of S.L.P (C) No. 25468 of 2016), the Supreme Court has made it amply clear that in the event that the terms of exclusion of a policy are not communicated to the insured, the insurer cannot rely upon the same in order to reject the claim.

**Facts and Issues:** The Appellant has a showroom to its name in which watches are sold. In 2001, post operational hours, a theft occurred in the premises. Subsequently, a F. I. R was lodged with the local police and a claim under the insurance policy was made by the Appellant. In the survey report it was recorded that the theft may have taken place utilizing duplicate keys and that there were no signs of forcible entry. On the basis of the said report, the Appellants claim came to be rejected by the Respondent.

Thereafter, the Appellant filed a consumer complaint before the District Consumer Disputes Redressal Forum, Solapur ("**District Forum**"). By an Order dated 26<sup>th</sup> April 2007, the District Forum allowed the claim, which was challenged by the Respondent in the State Consumer Disputes Redressal Forum, Maharashtra ("**SCDRC**"). The decision of the District Forum was affirmed, in appeal, by the SCDRC on 19<sup>th</sup> April 2010.

The above decisions of the District Forum and the SCDRC were reversed by the National Consumer Disputes Redressal Forum ("**NCDRC**") vide its revisional Order dated 16<sup>th</sup> April 2015, placing its reliance upon ***United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal*** [(2004) 8 SCC 644]. ("**Harchand Rai**"). Construing the terms of exclusion in an insurance policy against burglary, the Supreme Court has held that where loss or damage is caused without forcible/ violent entry to the premises, the claim would not be maintained.

The issue that arose for consideration before the Supreme Court was that since the conditions of

exclusion under the policy document were not handed over to the appellant and in the absence of the Appellant being made aware of the terms of exclusion, would it be open for the Respondent to rely upon the said exclusionary clauses in order to repudiate the claim.

**Judgment and Analysis:** The Supreme Court held that in the present case the decision in **Harchand Rai** would not be applicable as the conditions of exclusion under the policy were not communicated to the Appellant, rendering them unaware of the terms of exclusion of the insurance policy.

The NCDRC missed the concurrent findings of both the District Forum and the SCDRC that the exclusionary terms were not made known to the Appellant. Since, in this instance, the conditions were not communicated to the Appellant, there was no occasion for the NCDRC to render a decision on the effect of such an exclusion. Therefore, the NCDRC was erroneous in reversing the decisions of the District Forum and the SCDRC, which were grounded on a pure finding of the fact that the terms of exclusion were not made known to the Appellant.

However, the Supreme Court clarified that had the terms of exclusion been communicated to the Appellant, the law laid down in **Harchand Rai** would most definitely stand attracted. The present case is quite distinguishable on facts, since the exclusionary terms were not communicated to the Appellant.

In light of the above, the Order dated 26<sup>th</sup> April

2007 passed by the District Forum stood restored and the Appellants' claim was allowed.

**Conclusion:** The terms of exclusion of an insurance policy have to be communicated/ made known to an insured entity in order for the same to be enforced by the insurance company at the time of processing the said entity's claim. It is the duty of the insurance company to inform the insured entity about the terms of exclusion, failing which, the

insured entity cannot be legally bound by such terms.

This judgment is a positive step towards preventing insurance companies from backing out of their contractual obligations and not fulfilling a justified claim of an insured entity.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*