

Court No. - 6

Case :- WRIT - C No. - 1007958 of 2015

Petitioner :- The Oriental Insurance Company Ltd. Thur. Divisional Manager

Respondent :- Smt. Shanti Devi And Ors.

Counsel for Petitioner :- Waquar Hashim

Counsel for Respondent :- C.S.C.,Naresh Singh

Hon'ble Alok Mathur,J.

1. Heard Sri Naresh Singh, learned counsel for private respondents and learned standing counsel for the State.

2. The present writ petition has been preferred by the petitioner for quashing of the order dated 03.11.2015 passed by the Permanent Lok Adalat, Lucknow in P.L.A. Case No. 98 of 2015 (Smt. Vedwati & others Vs. Oriental Insurance Company and others).

3. It has been submitted that the issue involved in this case has already been decided by a coordinate Bench of this Court in Writ C No.1007958 of 2015 (The Oriental Insurance Company Ltd. through Divisional Manager Vs. Smt. Shanti Devi and others) vide judgment and order dated 3.11.2022, the relevant portion of which is quoted as under:-

"3. Learned counsel for the petitioner-Insurance Company have submitted that the judgments passed by the Permanent Lok Adalat are against Clause 4 of Agreement dated 19.11.2009 entered into between the Government of Uttar Pradesh and the petitioner-Insurance Company. It is further submitted that as per Clause 4 of the Agreement, the documents mentioned in said clause are required to be produced to the petitioner-Insurance Company for claim process which includes computerized khatauni but the claimants had failed to provide the computerized khatauni to the petitioner-Insurance Company therefore, their claims were liable to be rejected.

4. It is further submitted that the petitioner-Insurance Company had acted on the basis of Clause 4 of the Agreement which is quoted hereunder for ready reference:-

"Scope of Cover:- Oriental Insurance Company Limited hereby agrees, subject to the terms, conditions and exclusions contained or otherwise expressed in the policy document, to pay to the insured a sum not exceeding the sum insured during the tenure of the policy, if any of the insured Person dies due to

or suffers disability as mentioned in the benefit table due to sustaining any bodily injury resulting from accident, caused by external, violent and visible means, to the extent and in the manner hereinafter provided. The accident will included death due to snake bite, drowning in River, Tank, Pond or well, collapse of roof or falling of tree, falling from roof or tree, vehicle (including tractor/trolley and tempo) accident, dacoity, riot, scuffle. Enmity, violence, terrorist activities, fire, flood, lightning thunder & electric shock etc. Necessary documents will be required to establish the cause of death. The following documents will be required to be produced to Oriental Insurance Company Limited for claim processing.

- (1) Fully complete claim Form
 - (2) Computerized Khatauni
 - (3) Age proof in following order of priority-
 - (a) Matriculation Certificate/High School Certificate
 - (b) Parivar Register
 - (c) Ration Card
 - (d) Voter ID card/Voter List
 - (e) Any other age proof
 - (4) Post Mortem Report
 - (5) Copy of FIR/GD (in case of death due to snake bite)
 - (6) Death Certificate
 - (7) Police panchnama
 - (8) CMO Certificate in cases of disability
- Postmortem report will not be insisted upon where body is irrecoverable, say due to flood or body is in such a shape after accident the post mortem is not possible. Also in case of drowning and snakebite, FSL/CA report will not be insisted upon to establish the cause of death. Disablement, to the extent mentioned in the benefit table, caused due to an accident defined above, shall be covered. The Policy covers accidental death and disability/arising out of an accident only as elaborated in the policy document."

5. The second submission raised by the learned counsel for the petitioner-Insurance Company is that imposition of maximum penalty as provided under Clause 22(b) of the Agreement is illegal and exorbitant as there was no fault on the part of petitioner-Insurance Company while rejecting claim of the claimants. It is further submitted that in the almost identical matters wherein also the judgments of the Permanent Lok Adalat were under challenge pertaining to dispute for rejection of claims of the claimants under the Agreement dated 19.11.2009 have been decided by this Court in Writ Petition Nos. 20736 of (M/S) of 2018 (The Oriental Insurance Company Limited Thru. Divisional Mgr. Vs. Chote Singh & Ors.) and 5324 of (M/S) 2015 (**Oriental Insurance Company Ltd. Thru**

its Divisional Manager Vs. Smt. Ramkali @ Rajkumari and others) wherein this Court has quantified and reduced the penalty from Rs. 1,50,000/- to Rs. 50,000/- and Rs. 75,000/- respectively. The relevant portion of the judgment passed in the case of Chote Singh (supra) is reproduced hereunder for ready reference:-

"Insofar as the quantum of penalty questioned in the present petition is concerned, it is true that the imposition of penalty in a situation of denial of claim is Rs. One Lakh Fifty Thousand but the present case in a situation of repudiation letter dated 14.12.2010 not being final, can only be treated to be a case of delayed payment, therefore, the quantification of penalty to the tune of Rs. One Lakh Fifty Thousand is clearly illegal and arbitrary and beyond the scope of clause 22(b) of the agreement. This Court would also note that every Permanent Lok Adalat is under a bounden duty to undertake the process of conciliation before advancing to adjudicate a claim on merit. This aspect of the matter has also not been dealt with by the Permanent Lok Adalat in a manner prescribed under law, therefore, the imposition of maximum penalty, in my humble view, is exorbitant.

This Court having regard to the facts and circumstances of the present case as well as the resultant delay would quantify the amount of penalty at Rs. Fifty Thousand and to this extent, the impugned award deserves to be modified.

The amount of penalty modified to the aforesaid extent is thus affirmed. The award is accordingly modified. The petitioner is directed to discharge the liability not later than a period of one month from today."

6. The relevant part of the judgment passed in the case of Smt. Ramkali @ Rajkumari and others (supra) is reproduced hereunder for ready reference:-

"7. However, considering the fact that the present case is almost identical to that one of the subject matter of judgement dated 13.8.2018 passed in Writ Petition No.20736 (MS) of 2018, interest of justice would meet if the present writ petition is also disposed of with direction to the petitioner-Insurance Company to pay the insured amount of Rs.1 Lakh with interest @9% per annum from the date of the order passed by the Permanent Lok Adalat. The amount of penalty is reduced from Rs.1,50,000/- to Rs.75,000/- to be deposited within a period of six weeks from today. The amount of Rs.1 Lakh along with interest @9% per annum from the date of the order of the Permanent Lok Adalat as well as the amount of penalty of Rs.75,000/- to be deposited before the Permanent Lok Adalat, shall be released in favour of the opposite parties forthwith

after due verification of their identities. Any amount deposited in pursuance of the interim order dated 11.9.2015, shall be adjusted against the total amount to be paid by the petitioner-Insurance company in pursuance of the order passed today."

7. On the other hand, learned counsel for the private respondents have submitted that there is no illegality in the judgments impugned herein passed by the Permanent Lok Adalat. It is further submitted that as per the Clause 2 of the Agreement, there is no such requirement of providing the computerized khatauni. It is further submitted that Clause 17 of the Agreement deals with exclusion even in that clause the computerized khatauni is not a ground for rejecting the claim.

8. Learned counsel for the private respondents have relied upon the Clause 24 of the Agreement wherein it has been provided that the claims will be accepted as rule and would be rejected as an exception and if there is any shortcoming or deficiency in the documents filed, the petitioner-Insurance Company would itself make an inspection for confirming the cause of death and shall make the payment accordingly thus, the claims shall not be rejected on mere technicalities.

9. It is further submitted that denying the claim of the private respondents on the ground of not providing copy of computerized khatauni is against the Agreement particularly, when the reason that due to consolidation proceedings, the computerized khatauni was not available with the private respondents.

*10. It is further submitted that the Hon'ble Supreme Court in the case of **Gurmel Singh Vs. Branch Manager, National Insurance Co. Ltd.** (Civil Appeal No. 4071 of 2022), judgment dated 20.05.2022) has held that the claim shall not be denied on the ground of non providing the documents which were beyond the control of the person to procure and furnish. It is lastly submitted that the penalty imposed under Clause 22(b) of the Agreement has rightly been imposed.*

11. After hearing learned counsel for the respective parties and going through the record, the position which emerges out is that the Agreement has been entered into between the State of UP and the petitioner-Insurance Company on 19.11.2009 with an object to insure the farmers of Uttar Pradesh for Rs. 1 lakh aged between 12 to 70 years whose names were in the revenue records of the State of Uttar Pradesh as the owner of the agricultural land under the Janta Personal Accident Policy.

12. Undisputedly, Clause 4 of the Agreement deals with scope

of cover and it has been provided therein that the documents mentioned in the said clause are required to be produced to the petitioner-Insurance Company for claim processing including the computerized khatauni. Clause 4 is to be read in totality with other clauses of the Agreement like Clause 2 of the Agreement which talks about the farmers whose names were in the Khatauni records of the State of Uttar Pradesh as the owner of the agricultural land shall be covered by the agreement. For convenience, the Clause 2 of the Agreement is quoted hereunder:-

"This is an unnamed policy and all farmers in the age group of 12 to 70 years, both inclusive, whose names appear in the Khatauni records of the state of Uttar Pradesh as the owner of agricultural land in the State of Uttar Pradesh shall be covered under this policy, without any selection, If a farmer attains 12 years of age on any date during the currency of policy period, he/she will be deemed to be covered from such date. But if a farmer crosses 70 years of age during the tenure of this policy, he/she will also remain covered till the end of the policy period."

13. Similarly, Clause 17 of the Agreement deals with exclusion, where the petitioner-Insurance Company shall not be liable under this policy. The Clause 17 is reproduced hereunder for ready reference:-

"17. Exclusions:
Oriental Insurance Company Limited shall not be liable under this Policy for:-
(i) Compensation under more than one of the categories specified in the Basis of Assessment of the JPA Policy document in respect of the same period of disablement of the Insured Person under this Policy.
(ii) Any other payment to the same person under this policy after a claim under one of the categories I & II as specified in the Basis of Assessment of the JPA policy document of claims he has been admitted and become payable. However, this exclusion shall apply only to this policy and shall in no way affect benefits derived by the Insured Person or his/her legal heir(s) under any other Insurance Policy or Scheme.
(iii) Any payment in case if more than one claim in respect of such Insured person, under this policy during any one period of insurance by which the sum payable as per the Basis of Assessment of Claims of this Policy to such insured person exceeds the maximum liability of Oriental Insurance Company Limited as applicable to such insured person.
(iv) Payment of compensation in respect of death, injury or disablement of insured person.

- (a) From intentional self-injury, suicide or attempted suicide.
 - (b) Whilst under the influence of intoxication of liquor or psychotropic drugs.
 - (c) Whilst engaging in aviation or ballooning or whilst mounting into, or dismounting from or traveling in any balloon or aircraft other than as a passenger (fare paying or otherwise) in any duly licensed standard type of aircraft anywhere in the world. Standard type of aircraft means any aircraft duly licensed to carry passengers (for hire or otherwise) by appropriate authority irrespective of whether such an aircraft is privately owned or chartered or operated by a regular airline or whether such a aircraft has a single engine or multi engine.
 - (v) Payment of compensation in respect of death, injury or disablement of the Insured Person due to, or arising out of, or directly or indirectly connected with or traceable to war, invasion, act of foreign enemy, hostilities (where war be declared or not) civil war, rebellion, revolution, insurrection, mutiny military or usurped power, seizure, capture arrests, restrains and detainment of all kinds.
- Payment of compensation in respect of death or bodily injury on any disease or illness to the Insured Persons:-
- (a) Directly or indirectly caused by or contributed to by or arising from ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this exception, combustion shall include any self sustaining process of nuclear fission.
 - (b) Directly or indirectly caused by or contributed to by or arising from nuclear weapon materials.
 - (vi) Death or disablement directly or indirectly caused by an/or contributed to and/or aggravated or prolonged by child birth or pregnancy or in consequence thereof.
 - (vii) Payment of compensation in respect of injury or disablement directly or indirectly arising out of or contributed by or traceable to any disability existing on the date of issue of this policy."

14. Clause 24 of the Agreement provides that, the claim shall not be rejected or repudiated on mere technicalities. The said clause 24 of the agreement is quoted hereunder:-

"This Agreement shall be implemented by following a procedure so that the claims are accepted as a rule and are rejected as an exception, in case the farmer dies of accidental death and when this fact comes in the knowledge of Oriental Insurance Company Limited as per this Agreement, and if there is nay shortcoming or deficiency in the documents filed, the Oriental Insurance Company Limited would itself make an inspection for confirming the cause of death and shall make the

payment accordingly. The claims shall not be rejected or repudiated on mere technicalities."

15. From the conjoint reading of the aforesaid clauses of the agreement, the position which emerges out is that by not providing the computerized khatauni will not take away the right of the claimants to get insurance amount as per the agreement. More particularly, in the present case, there is a specific finding regarding non providing of the computerized khatauni as the letter of the Board of Revenue dated 30.06.2010, wherein it has been informed that the consolidation proceedings were going on and computerized Khatauni could not be provided. The said findings have neither been disputed in the pleadings of the writ petitions nor urged as erroneous.

16. The genuineness of the khatauni on the record as provided by the private respondents under Clause 2 of the agreement had never been disputed. In the above circumstances, rejection of the claim would only be a technicality, which is not to be resorted to while dealing with such claims as in hand. Non furnishing of computerized Khatauni alone will not come in the way of the claim of farmers claimants, as this would be against the spirit of the beneficial agreement and reading of Clause 4 with other clauses of the agreement.

17. As per the judgment of Hon'ble the Supreme Court in the case of Gurmel Singh (supra), wherein the truck of the appellant was stolen and he was unable to provide certified duplicate copy of the registration certificate which was denied by the RTO as after receiving the information of theft, the details regarding registration certificate on the computer of the RTO was locked and due to not providing the duplicate certified copy of the registration certificate, the insurance company denied the claim of the claimant. In this case, Hon'ble the Supreme Court has held that the insurance company has become too technical while settling the claim. The relevant extract of the judgment in the case of Gurmel Singh (supra) is reproduced hereinbelow, for ready reference:-

"4.1 In the present case, the insurance company has become too technical while settling the claim and has acted arbitrarily. The appellant has been asked to furnish the documents which were beyond the control of the appellant to procure and furnish. Once, there was a valid insurance on payment of huge sum by way of premium and the Truck was stolen, the insurance company ought not to have become too technical and ought not to have refused to settle the claim on non -submission of the duplicate certified copy of certificate of registration, which the appellant could not produce due to the circumstances beyond

his control. In many cases, it is found that the insurance companies are refusing the claim on flimsy grounds and/or technical grounds. While settling the claims, the insurance company should not be too technical and ask for the documents, which the insured is not in a position to produce due to circumstances beyond his control. "

18. In view of the discussions made above, it is found that there is no illegality and perversity in the impugned judgments passed by the Permanent Lok Adalat as far as accepting the insurance claims of the private respondents and hence, no interference is called for in the judgments impugned.

19. From the above discussion made hereinabove, the position with regard to the applicability of Clause 22(b) of the Agreement which emerges out is that as per Clause 4 of the agreement, the computerized khatauni was required for the purpose of the claim and hence it cannot be said that rejection of claim on the said ground is wholly illegal. As the judgments relied by the learned counsel for the petitioner with regard to the quantifying the penalty by this Court in Writ Petition Nos. 20736 of (M/S) 2018 and 5324 of (M/S) 2015 , this Court has held that the penalty imposed as per Clause 22(b) of the Agreement is exorbitant and quantified the amount of penalty as Rs. 50,000/- and 75,000/- respectively.

20. This Court having regard to the facts and circumstances of the case as well as the resultant delay would quantify the amount of penalty at Rs. 75,000/- and to this extent, the impugned judgments are modified. The amount of Rs.1 Lakh along with interest @9% per annum from the date of the order of the Permanent Lok Adalat as well as the amount of penalty of Rs.75,000/- to be deposited before the Permanent Lok Adalat within a period of six weeks and shall be released in favour of the opposite parties forthwith after due verification of their identities. If any amount was deposited earlier that shall be adjusted against the total amount to be paid by the petitioner-Insurance company in pursuance of the order passed today.

21. For the foregoing reasons, as mentioned above, the petition is partly allowed in so far, it relates to reduction of amount of penalty imposed under Clause 22(b) of the agreement only.

22. The petition is therefore, disposed of in the manner as indicated above.

4. Both the parties fairly submit that aforesaid judgment and order squarely covers the present case also. Accordingly, in terms of the aforesaid judgment and order the present petition

also stands **allowed** in so far, it relates to reduction of amount of penalty imposed under Clause 22(b) of the agreement only.

(Alok Mathur, J.)

Order Date :- 21.2.2024

RKM.