

Court No. - 6

Case :- WRIT - C No. - 7757 of 2021

Petitioner :- Oriental Insurance Co. Ltd. Thru. Senior Divisional Manager

Respondent :- Murlidhar And Ors

Counsel for Petitioner :- Rehana Khan

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

Hon'ble Alok Mathur,J.

1. Heard Ms. Rehana Khan, learned counsel for petitioner as well as learned Standing Counsel for respondent No. 4 and Sri Naresh Singh, learned counsel appearing on behalf of private respondents.

2. By means of present writ petition, the petitioner has challenged the judgment dated 09.11.2020 passed by Permanent Lok Adalat in P.L.A. Case No. 240 of 2017 (Murlidhar Yadav and another Vs. The Oriental Insurance Company Limited and others) whereby the claim of the private respondents has been allowed and they have been given compensation of Rs. 5 lakh along with penalty @ of Rs. 1,000/- from the date of repudiation of the claim till the date of decision of the Permanent Lok Adalat and additionally the petitioner has been saddled interest @ 9% per annum from the date of filing of the claim till the date of payment of the compensation as provided therein along with cost of Rs. 5,000/-.

3. The brief facts of the present case are that one Baldu who was the farmer died on 29.09.2016 due to an accident. The private respondents who are the legal heirs and dependents of the deceased preferred a claim before the petitioner insurance company stating that as per the provisions of Mukhya Mantri Kisan Avam Servahit Bima Yojana (M.K.S.B.Y.) issued on 14.09.2016 they were entitled for compensation. It was further stated that the deceased was the sole bread earner of the family.

4. The claim was duly considered by the petitioner and was repudiated on 30.01.2017 and the private respondents were also duly communicated about the repudiation of the claim. On coming to know about the rejection of the claim, the private respondents preferred an application before the Permanent Lok Adalat for settling of the claim and setting aside of the repudiation of their claim by the petitioner. The petitioner appeared before the Permanent Lok Adalat and filed their objections mainly on the ground that the deceased though was

the head of the family but not the sole bread earner as defined in the M.K.S.B.Y. agreement dated 14.09.2016 entered into between petitioner and the State of Uttar Pradesh and consequently they were not entitled for the benefit of the said scheme. The Permanent Lok Adalat by means of impugned judgment dated 09.11.2020 has accepted the claim and has directed the petitioner to pay compensation as per the said scheme apart from imposing penalty and interest for the delayed payment of compensation along with cost of the said case.

5. While allowing the claim of the private respondents, they have considered the evidence filed by the applicants therein where it was stated that the deceased was a farmer and the applicants were the dependents on him. The sons of the deceased (private respondents in the present writ petition) had submitted the evidence on affidavit before the Permanent Lok Adalat staking their claim for compensation and stating that their case squarely fell within the provisions contained in the scheme dated 14.09.2016.

6. On the other hand, the Permanent Lok Adalat has considered that though the petitioner had disputed the said facts stated by the claimants but no evidence was filed by the petitioner contesting the facts stated before the Permanent Lok Adalat and it is in the aforesaid circumstances there was no material to accept objections raised by the petitioner and accordingly the Permanent Lok Adalat accepted the contention raised by the claimants and allowed the claim. The petitioner before this Court while challenging the judgment of the Permanent Lok Adalat dated 09.11.2020 has submitted that the Permanent Lok Adalat has erred in accepting the contentions raised by the claimants which require interference in the present writ petition.

7. He has further submitted that though there is a provision for grant of penalty for the delayed payment of compensation but there is no provisions with regard to grant of interest and to that extent the relief granted by the Permanent Lok Adalat is beyond the provisions contained in the agreement dated 14.09.2016 and consequently the grant of interest is arbitrary and deserve to be set aside.

8. Learned counsel for private respondents on the other hand has supported the impugned order. It has been submitted that their claim was wrongly repudiated by the petitioner despite the fact that the applicants were squarely covered under the provisions of Mukhya Mantri Kisan Avam Servahit Bima Yojana and also that the deceased who was aged about 67 years at the time of his death was wholly engaged in agricultural work and he was the sole bread earner and he was supporting the entire family. There was sufficient material adduced by the

claimants before the Permanent Lok Adalat and there was no other material available before them to take a contrary view. The petitioner though have contested the said fact, but no material or evidence was produced by them to suggest that the facts were otherwise. He further submits that there is no infirmity in the impugned order and prayed for dismissal of the writ petition.

9. I have heard the arguments of the parties and perused the record.

10. The first question which arises for consideration is as to whether the claimants fulfilled all the conditions prescribed under the Mukhya Mantri Kisan Avam Servahit Bima Yojana for claiming compensation on the ground of death of Mahesh Patel. In this regard, a perusal of the scheme dated 14.09.2016 would indicate that it was to be implemented with effect from the date it was entered and as per the provisions of the scheme, in case of death arising out of an accident pertaining to the head of the family/bread earner of the family during the operation of the agreement, the insurance company is bound to make the compensation @ Rs. 5 lakh to the nominee/legal heirs.

11. Baldu, the father of the claimants had met with an accident on 29.09.2016 and succumbed to his injuries. A claim was preferred before the petitioner-insurance company which was rejected on 30.01.2017 on the ground that the deceased though was head of the family but not the sole bread earner and hence would not be covered under the said scheme.

12. A perusal of the impugned judgment clearly indicates that before the Permanent Lok Adalat, it was stated that the deceased Baldu was involved in agricultural work and due to his labour the family was being maintained and was the only bread earner of the family. The name of the deceased was also registered under the Employment Guarantee Card. There was no other evidence available on record nor did the petitioner file any evidence which may suggest that deceased was not the bread earner of the family. It was in the aforesaid circumstances that the Permanent Lok Adalat came to a conclusion that the deceased was in fact the bread earner of the family and was squarely covered under the scheme of 14.09.2016 and the claimants were entitled for the compensation.

13. Before this Court also though this issue has been agitated by learned counsel for petitioner but there is no material to interfere in the findings given by the Permanent Lok Adalat nor is there any evidence to the contrary available on record and filed along with the writ petition so as to enable this Court from recording satisfaction contrary to the findings of the Permanent Lok Adalat, accordingly contention of the petitioner in this

regard is rejected.

14. The second issue which arises for consideration is as to whether the Permanent Lok Adalat was correct in granting 9% interest on the delayed payment of compensation from the date of filing of the claim till the date of payment. In this regard, learned counsel for petitioner relies upon the judgment of a coordinate bench of this Court in the case of **Oriental Insurance company Vs. State of U.P. (Matter under Article 227 No. 27 of 2021)**. He has submitted that the claimants are entitled for compensation only under the specific provisions contained in the Mukhya Mantri Kisan Avam Servahit Bima Yojana issued on 14.09.2016, where there is no provision of grant of interest, and the only provision is of penalty of Rs. 1000/- per week from repudiation of claim till date of actual payment.

15. The liability of the petitioner is under the aforesaid contract and the payment can only be made in accordance with the aforesaid terms and conditions of the scheme. He submits that though the provisions for imposition of penalty is provided for in the said scheme but there is no provision for grant of interest and accordingly the said direction issued by the Permanent Lok Adalat is arbitrary and contrary to the said scheme. This Court while deciding the aforesaid issue in the case of **Oriental Insurance Company (Supra)** has observed as under:-

"13. Question no.(i) is answered accordingly in favour of claimant.

Question No.(ii) : Whether award of interest in addition to penalty indicated in the agreement amounts to double jeopardy?

14. With regard to the second question, it transpires that agreement dated 14.09.2016 provides for imposition of penalty upon the Insurance Company in case payment is not made to claimant in accordance with the terms and conditions of the agreement. It appears that earlier an amount of Rs.2500/- per week had been imposed as penalty, which was subsequently reduced to Rs.1,000/- per week.

15. Apparently, the imposition of penalty upon the Insurance Company is a measure not only of encouragement to adhere to the terms and conditions of the agreement but is also in the nature of cost imposed upon the Insurance Company in case the claim is wrongly repudiated and compensation is not made to the nominee/legal heir of the insured.

16. By means of impugned order, while the Permanent Lok Adalat has imposed the aforesaid penalty, at the same time interest at the rate of 9% has also been imposed upon the Insurance Company.

17. It is trite that when claims are made and are to be decided in terms of a contract, it is only the conditions of contract which are required to be adhered to. The court concerned cannot on its own volition impose a condition which is not contemplated in the agreement. In the present case, it appears that a steep penalty of Rs.1000/- per week has been imposed upon insurance Company for repudiating or not providing compensation in terms of the insurance scheme. Award of penalty by Permanent Lok Adalat as such appears to be in conformity with agreement dated 14.09.2016. However, so far as award of interest at the rate of 9 percent per annum is concerned, the Permanent Lok Adalat in its impugned order does not indicate any provision or condition of agreement under which interest has been awarded over and above penalty imposed in terms of the agreement nor does the agreement contain any clause regarding payment of interest to claimant over and above the penalty clause. As such, in the considered opinion of this Court, the permanent Lok Adalat travelled beyond the conditions of agreement dated 14.09.2016 in granting interest while ignoring the fact that a steep penalty of Rs.1,000/- per week has already been imposed and is payable by the Insurance Company in terms of the agreement.

18. As has been indicated herein above that when claim is made in terms of mutually agreed and binding contract, it is only the conditions of contract which are adhered to without imposition of extraneous considerations. As such, once a penalty is clearly indicated under the contract for a party to fulfill in case of breach of contract, it is only that penalty which can be imposed and in the considered opinion of this Court, no further penalty or costs can be imposed which is beyond the terms and conditions of such contract.

19. In the present case, it is apparent that neither any statutory provision has been indicated for grant of interest nor does agreement dated 14.09.2016 stipulate grant of any interest. As such, grant of interest over and above the penalty clearly amounts not only to Double Jeopardy but unjust enrichment and is unsustainable.

20. In view of aforesaid, Question no.(ii) is answered in favour of petitioner-Insurance Company.

21. In terms of aforesaid, order dated 27.12.2019 passed in PLA Case No.15 of 2018(Shameena Khatoon & others v. The Oriental Insurance Co. Ltd. & others) is set aside only to the extent of grant of interest on the claimed amount.

22. The petition as such is partly allowed in terms of aforesaid. Parties shall bear their own costs."

16. A perusal of the aforesaid judgment, it is evident that it has

been rightly observed that according to the agreement there is no provision providing for grant of interest and grant of the same would be an extraneous consideration and such an order cannot be sustained. Accordingly, this Court also subscribes to the view taken by the coordinate bench and accordingly impugned order passed by Permanent Lok Adalat dated 09.11.2020 is set aside only to the extent of grant of interest on the claimed amount.

17. A perusal of the award indicates that Rs. 1000/- penalty has been made admissible to the claimants from the date of repudiation i.e. 30.01.2017 till the date of judgment while according to scheme the penalty has to be paid till the date of payment accordingly the impugned order is modified to the extent that award of interest @ 9% is set aside and further the amount of penalty of Rs. 1000/- per week has to be paid by the petitioner from the date of repudiation till the date of payment.

18. It has been informed that the decretal amount has already been deposited in the Permanent Lok Adalat which may be released in favour of private respondents on their moving an application to the satisfaction of the Court concerned with expedition.

19. Accordingly, the writ petition is **partly allowed** in terms of the aforesaid. Parties shall bear their own cost.

Order Date :- 29.2.2024

A. Verma

(Alok Mathur, J.)