IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3585 of 2007 (O&M)
Date of decision: January 7, 2016

M/s The New India Assurance Co. Ltd.
...Petitioner
Versus
M/s Anand Sarup Ramesh Kumar
...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. RK Bashmaboo, Advocate,
for the petitioner.

K. KANNAN, J. (Oral)

1. Service is complete. None appears on behalf of the respondent.

2. The revision by the insurer is on the liability cast by the Permanent Lok Adalat for theft/loss caused at a shop which was brought under “shopkeeper insurance”. The liability included also the loss by accident or misfortune whilst the insured's money was in his hands or in the hands of his employees in transit, between any two places within a radius of fifteen miles from the insured's premises. In this case, the staff of the insured was tapped on his back when he was carrying money of the insured by some unknown person and tricked to keep down the bag in hand to turn and remove the dirt which was stated to be sticking to his shirt. The trickster ran away with the money contained in the bag. For a claim which was lodged by the insured reported on 29.12.2005 for the alleged loss caused on

6.12.2005, the insurance company pleaded that a loss during transit must be during an occasion when the amount was in the hands of the employee in transit and in this case it was not actually in his hands. The delayed notice itself was also against the terms of the policy and hence no amount is recoverable. The insured has not taken reasonable care in protecting the money.

3. I will reject all these contentions as legally not tenable. The amount in the hands of the employee in transit must include a situation of a person who keeps the article by his side for attending to a person who was distracting him and ought not to be given a literal meaning of money being held in the hand. This would defeat the very purpose of insurance, for, it was possible for an insurer to deny even the money held in the pocket, for, after all it was not a hand.

4. A want of care of what was pleaded must be a case of wanton negligence. Any theft/loss takes place by circumstances, where at least a minimum lack of care must have been prevalent. It is not as if a person was inviting some person to take the money and then making claim of loss. The money lost by the acts of the trickster, as happened in this case, ought not to be seen as want of due care, as contemplated in the policy.

5. The prescription of time period for information is only a manner of eliciting that the contingency for which a claim could be made under the policy was taken was genuine. If the permanent Lok Adalat was otherwise convinced that the complaint was genuine, a delay of issuing the notice of demand cannot be used to defeat the claim. The time prescription invariably is governed by the law of limitation and there can be no

prescription through a term in contract which offends the statutory law of limitation. A claim for insurance is required to be made within three years from the date of demand and refusal in terms of Article 45 (6) of the Limitation Act and there can be no restriction of that period through a term of contract. The delay in demand if it was still perceived as not making a false claim, the insured's right cannot be defeated. A restriction of right to enforce an accrued right through a legal proceeding is void also, as opposed to Section 28 of the Contract Act.

6. The learned counsel had yet another argument, which alone was credible, for, the contention was that the policy cover allowed for a limited liability at ₹10,000/- for money insured, if the loss was not at the shop but when the money held by an employee was in transit. I have seen through the terms of the policy and it provides the sum insured as ₹50,000/- but if it was "for amount being carried by a person" it was an amount not exceeding ₹10,000/-. I therefore, restrict the entitlement of the insured at ₹10,000/- instead of ₹50,000/- as awarded by the Permanent Lok Adalat.

7. The award is modified and the revision is allowed to the above extent.

January 7, 2016 **(K. KANNAN)**
prem **JUDGE**