IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5049 of 2016
Date of Decision-15.09.2016

Bharti Axa General Insurance Company Ltd. ... Petitioner
Versus
Permanent Lok Adalat, Narnaul and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sanjeev Goyal, Advocate for the petitioner.
Mr. Rao Ajender Singh, Advocate for respondent No.2.
Mr. Yashdeep Nain, Advocate for respondent No.3.
***

RAJ MOHAN SINGH, J.

[1]. This revision petition has been directed against the order/award dated 12.05.2016 passed by the Permanent Lok Adalat (Public Utility Services), Narnaul in an application under Order 22-C of the Legal Services Authorities Act, 1987 (for short 'the Act') for settlement of the dispute.

[2]. Respondent No.2-Samsher Singh filed an application under Section 22-C of the Act for settlement of the dispute before the Permanent Lok Adalat (Public Utility Services), Narnaul against Sidheshwar Motors Private Limited and others.

[3]. Respondent No.2 contended that he had purchased a car on 19.11.2015 from the authorized dealer after payment of total amount of Rs.6,27,908/-. The vehicle was duly insured with the petitioner-Insurance Company after payment for a sum of

Rs.16,030/- as premium. Policy was issued for the period from 19.11.2015 to 18.11.2016.

[4]. On 02.12.2015, at the time of driving the car, a stray dog appeared before the car and the car met with an accident. The car was repaired by Sidheshwar Motors Private Limited and claimant-respondent No.2 took possession of the car on 09.12.2015. The amount of Rs.44,922/- was reimbursed by the Insurance Company towards repair charges. Thereafter, on 03.01.2016, when respondent No.2/claimant was returning from Chandigarh, all of a sudden, some manufacturing defect appeared and the engine of the car got seized. Respondent No.2 gave a call on toll free number and the car was taken to Malwa Nissan Motors, Karnal with the help of crane. The engine of the car was seized on account of its manufacturing defects as per the layman language of the claimant. Respondent No.2-claimant asserted that the authorized dealer and manufacturer of the car were under legal obligation to carry out necessary repairs or to replace the car. The Insurance Company was liable to indemnify such a loss.

[5]. The claim put forward by respondent No.2 was contested by respondent-Sidheshwar Motors Private Limited and it was contended that the accident which occurred due to sudden appearance of stray dog and the damage to the car was duly repaired and the car was given in a fit condition. The inspection was done on 02.12.2015 and it was found that besides front side

accidental damage, the engine was found to be internally damaged as well.

[6]. Permanent Lok Adalat (Public Utility Services), Narnaul vide impugned order dated 12.05.2016 held that applicant was entitled to get the damage caused to the engine of the vehicle. Malwa Nissan Motors was directed to get the vehicle repaired within 20 days. Petitioner-Insurance Company was held liable to pay the amount of repair charges incurred by Malwa Nissan Motors in repairing of the vehicle. However, the amount was ordered not to exceed Rs.5,88,915/-.

[7]. I have heard learned counsel for both the sides and have also perused the material on record.

[8]. Perusal of initial inspection sheet issued by Sidheshwar Motors Private Limited Ex.R2 showed "front side accidental damage". In the aforesaid inspection sheet, it was also recited that the engine was internally damaged and it needed to be repaired. Petitioner asserted that there was a manufacturing defect in the vehicle as per own showing of claimant-respondent No.2 and therefore, Insurance Company was not liable to reimburse the insured in case of manufacturing defect of the vehicle. Petitioner based its argument on the stand taken by the claimant that the engine was seized due to manufacturing defect. A layman cannot form his opinion over and above the opinion given by the expert.

[9]. Perusal of document Ex.R-2 showed that the accident was caused because engine was damaged in the accident. The internal portion of the engine was damaged in the accident which took place on 02.12.2015. The vehicle was insured for a sum of Rs.5,88,915/- for the period from 19.11.2015 to 18.11.2016. The accident took place on 02.12.2015 during currency of the insurance. In the insurance policy, there was a specific column in respect of damage and its basic premium was shown to be Rs.18,792/-.

[10]. It is also necessary to have a glance over Section 22-C of the Act. For ready reference, Section 22-C (supra) is reproduced hereas under:-

> ***"22-C.-Cognizance of cases by Permanent Lok Adalat:-***
>
> *(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute:*
>
> *Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law:*
>
> *Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees:*
>
> *Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees*

specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub section (1) to the Permanent Lok Adalat, no party to that application, shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub Section (1), it-

(a) Shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and others evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the applicant;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the

application in such manner as it thinks appropriate taking into account the circumstance of the dispute.

(5). The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement or the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at any agreement under sub section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute."

[11]. Perusal of the aforesaid section and sub sections reveals that Permanent Lok Adalat on receipt of conciliation proceedings was obligated to assist the parties in order to reach

amicable settlement in an independent and impartial manner. During conduct of conciliation proceeding, it was the duty of every party to cooperate in good faith with Permanent Lok Adalat in conciliation of the dispute and to comply with the directions so given by the Lok Adalat to produce evidence and other related documents. When the Permanent Lok Adalat after undertaking conciliation proceedings is of the opinion that there exist elements of settlement, then it may formulate the terms and conditions thereof and give opportunity to the parties to reach at an agreement on the settlement of the dispute. Where parties failed to reach at an amicable resolution of dispute under sub Section (7), then the Permanent Lok Adalat shall proceed to decide the same, if the dispute does not relate to any offence. Both the parties are stressing hard on the issue.

[12]. Learned counsel for the petitioner submitted that the impugned order suffered from incurable illegality inasmuch as that before passing the same, the Permanent Lok Adalat was obligated to comply with the requirement of Section 22-C of the Act in the context of exploring possibility of amicable settlement by way of conciliatory proceedings. A defined procedure has been prescribed under Section 22-C and its sub Sections and procedure was required to be followed by the Permanent Lok Adalat.

[13]. In support of his contention, learned counsel for the petitioner relied upon ***United India Insurance Co. Ltd. Vs. Ajay***

Sinha and another, 2009(1) RCR (Civil) 726, Uttar Haryana Bijli Vitran Nigam and another Vs. Kusum Jain, 2015(3) RCR (Civil) 690 and ***Reliance General Insurance Company Limited Vs. Vijay Kumar and another, 2013(5) RCR (Civil) 226.*** Learned counsel also relied upon order dated 07.12.2015 passed by this Court in ***CR No.1349 of 2013*** titled as ***Shri Ram General Insurance Co. Ltd. Vs. Permanent Lok Adalat (Public Utility Services) Gurgaon and another*** and order dated 14.03.2016 passed by this Court in ***CR No.1365 of 2013*** in case titled as ***Shri Ram General Insurance Co. Ltd. Vs. Permanent Lok Adalat (Public Utility Services), Gurgaon and another*** in the aforesaid context.

[14]. On the other hand, learned counsel for respondent No.2-claimant relied upon sub Section 8 of Section 22-C of the Act and contended that the parties failed to reach at amicable settlement before the Permanent Lok Adalat. Perusal of the impugned order and material placed before the Court do not suggest that the Permanent Lok Adalat has undertaken the requirement of conciliation proceedings before passing the impugned order. It is mandatory before the Permanent Lok Adalat to have recourse the conciliatory proceedings in terms of Section 22-C sub Sections 1 to 8 of the Act. In the event of failure of conciliation proceedings, the Permanent Lok Adalat was obligated to decide the dispute if it does not relate to any offence.

[15]. Learned counsel for the respondents has also highlighted that vide order dated 06.08.2016 passed by Additional Civil Judge (Senior Division), Narnaul in execution of the award, the judgment debtor No.4 has already undertaken to reimburse the amount incurred by judgment debtor No.2 for carrying out the repairs of the vehicle of the decree holder. The amount of judgment debtor was ordered to be released from attachment except an amount of Rs.5,88,215/-.

[16]. In view of aforesaid, it would be futile fasten liability/obligation on either party at this juncture. First of all, the Permanent Lok Adalat (Public Utility Services) can be asked to undertake the exercise of exploring amicable resolution of dispute by way of conciliatory proceedings between the parties in terms of Section 22-C sub Sections 1 to 8 of the Act. In the event of finding that conciliation does not yield any fruitful result, then, the authority shall proceed to pass a fresh order in the light of material available on record. Suffice to observe at this stage that both the parties have already adduced their evidence on record. Since the issue has been deliberated by the parties on the basis of material on record, it is only a technical requirement in terms of Section 22-C sub Sections 1 to 8 of the Act that it was obligatory on the part of the authority to adopt conciliatory mechanism before answering the *lis* on merits. Since both the parties have already brought on record their respective evidence, therefore, the evidence on record would

suffice to allow the authority to pass fresh order after taking conciliatory exercise in accordance with law.

[17]. With the aforesaid observations, the impugned order dated 12.05.2016 is set aside on technical grounds that before passing the order, Permanent Lok Adalat (Public Utility Services), Narnaul is obligated to devise and explore possibility of amicable resolution of dispute by way of conciliatory mechanism given in Section 22-C sub Sections 1 to 8 of the Act.

[18]. With these observations, this case is remanded back to the Permanent Lok Adalat with a direction to explore amicable resolution of the dispute between the parties by way of invoking provisions in terms of Section 22-C (sub Sections 1 to 8) of the Act and then proceed to decide the case on the basis of material on record, of course, in accordance with law. Consequential proceedings to follow after final conclusion of proceedings before the Permanent Lok Adalat.

(RAJ MOHAN SINGH)
JUDGE

15.09.2016
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No