

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10896 of 2012 (O&M)
Date of Decision:-19.09.2016

M/s D.S. Transport Corporation

..... Petitioner

Vs.

The Court of Permanent Lok Adalat and another

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.S.S. Siao, Advocate,
for the petitioner.

Mr.Karminder Singh, Advocate,
for respondent No.2.

RAKESH KUMAR JAIN, J.

This petition is directed against the order dated 17.11.2011 passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana [for short 'the PLA'] by which an application filed by the petitioner under Section 22C of the Legal Services Authorities Act, 1987 [for short 'the Act'] has been dismissed.

In brief, the truck bearing Registration No.PB-10-CF-9565, owned by the petitioner, was insured with National Insurance Company Limited (respondent No.2) vide policy No.401603/31/08/6300001914 from 17.3.2009 to 16.3.2010. The said truck met with an accident on 30.7.2009 and was badly damaged. Respondent No.2 was appointed surveyor, who allowed the petitioner to get the vehicle repaired from the workshop of its

repair bill issued by the workshop was submitted to respondent No.2. However, the claim set up by the petitioner was repudiated by respondent No.2, thus, an application under Section 22C(1) of the Act was filed by the petitioner before the PLA for the recovery of ₹1,93,600/- along with future interest @ 18% from 30.7.2009 to 30.9.2010. Respondent No.2 repudiated the claim of the petitioner on the basis of report dated 28.10.2009 submitted by the Investigator Surinder Kumar Sethi, as per which, at the time of accident, driver of the vehicle Baldev Singh was not holding valid driving license as his driving license bearing DL No.39551 was issued on 9.1.1988 and was valid upto 8.1.2001. The said driving license was further renewed w.e.f. 16.9.2009 vide renewal of DL No.11125 and was valid upto 15.9.2012 whereas, the vehicle met with the accident on 30.7.2009. The PLA dismissed the application of the petitioner, upholding the repudiation of the claim by respondent No.2 on the ground that the driver was not holding effective and valid driving license at the time of accident.

Aggrieved against the order of the PLA dated 17.11.2011, the present petition has been filed in which learned counsel for the petitioner has argued that the PLA had no jurisdiction to decide the matter of compensation, invoking its power under Section 22C(8) of the Act, because the matter of compensation, on account of an accident of a motor vehicle, can be adjudicated only by the Motor Accidents Claims Tribunal [for short 'the Tribunal'] constituted under Section 165 of the Motor Vehicles Act, 1988 [for short 'the Act of 1988'] and the PLA could have exercised its jurisdiction only for the conciliation between the parties at the pre-litigation stage. In support of his submission, he has relied upon a Division Bench judgment of the Kerala High Court, rendered in the case of **"Bhoopesh Vs.**

On the other hand, learned counsel for respondent No.2 has submitted that the insurance services are also included in the Public Utility Services in Section 22B(b) of the Act and is also defined as a 'service' in Section 2(1)(o) of the Consumer Protection Act, 1986. It is further submitted that once the driver of the insured vehicle was not having a valid driving license, the petitioner has no jurisdiction to ask for compensation on account of damage caused to the vehicle in the vehicular accident even if the accident has taken place during the period when the insurance policy was in vogue. It is also submitted that as per the claim set up in the application filed under Section 22C of the Act, in case the conciliation proceedings fails, the PLA has the jurisdiction to invoke Section 22C(8) of the Act to decide the *lis* on merits. It is also submitted that it has been categorically mentioned in para No.4 of the impugned order that the steps were taken for amicable settlement of the dispute between the parties and terms of the settlement were formulated but parties did not reach to any agreement and made separate statement in that regard that the case may be decided on merits. It is further submitted that the petitioner itself wanted a decision on merits and now once the decision has gone against it, it is estopped from raising an objection about the jurisdiction of the PLA on the ground that the matter could have been decided only by the Tribunal set up in terms of the provisions of the Act of 1988.

I have heard both the learned counsel for the parties and perused the record.

There is no dispute that the application under Section 22C(1) of the Act was filed by the petitioner before the PLA in which the petitioner has claimed compensation from the insurance company on account of motor vehicle accident.

However, the issue involved in this case is as to whether the PLA had the jurisdiction to adjudicate upon the issue of grant of compensation to the insured for the claim set up in respect of damage caused to the vehicle in a motor vehicle accident on merits?

Although the decision in the case of **Bhoopesh (Supra)** has been noticed by the PLA in para No.7 of the impugned order but it appears that the *ratio decidendi* of the said judgment has not been truly appreciated. The observations made by the PLA while dealing with the judgment rendered in the case of **Bhoopesh (Supra)** are as follows: -

“United India Insurance Company Ltd. Vs. Ajay Sinha and another 2009(1) RCR (Civil) 726. It has been made clear that para No.24 of the judgment that ordinarily insurance service would not come within the public utility service but having regard to the statutory scheme of the Act, it must be held to be included thereunder. Similar view emerges from the authority reported as Bhupesh Vs. New India Assurance Co. Ltd. 2010(1) RCR (Civil) 363.”

I have thoroughly gone through the decision rendered by the Division Bench of Kerala High Court in the case of **Bhoopesh (Supra)** and has found that the Kerala High Court has taken into account all the aspects of the matter and then authoritatively held that the PLA does not have the jurisdiction to entertain the claim of the petitioner for compensation. The relevant observations of the case of **Bhoopesh (Supra)** are as under: -

“7. Then the question is whether “insurance service” as notified under Section 22A of the Act would take in the claims against insurance companies, who have indemnified the owner of the motor vehicle. We do not think that any elaborate discussion is required to answer the question in the negative since the service of insurance under Chapter VI-A of the Act is one of the public utility services. The Supreme Court in **United India Insurance Company Limited Vs. Ajay Sinha and another** (Supra) has held that “Ordinarily, insurance service would not come within the public utility service. But having regard to the statutory scheme, it must be held to be included thereunder. It is one thing to say that an authority is created under a statute to bring about a settlement through alternate dispute resolution mechanism but it is another thing to say that an adjudicatory power is conferred on it.” In view of the exclusive jurisdiction conferred on the Tribunals set up under Section 165 of the Motor Vehicles Act, 1988 to adjudicate motor accident claims it has to be held that the insurance service contemplated under Section 22A of

*the Act would only take in grievance on deficiency in service rendered by insurance companies to the policy holders. Adjudication of claims for compensation on account of motor vehicle accident is outside the purview of the Permanent Lok Adalat for public utility services. Thus we find it difficult to agree with the view to the contra taken by the Jharkhand High Court in **National Insurance Company Ltd. Vs. Vijay Kumar Sharma and others (2009 ACJ 403).***

With great respect, we may also note that there are no detailed discussions on these aspects in the above decision.

8. *For the above reasons, we do not find any merit in the writ appeal. The Permanent Lok Adalat does not have jurisdiction to entertain claim petitions for compensation under the Motor Vehicle Act, 1988.”*

Even if the petitioner itself had filed the application under Section 22C(1) of the Act, it would not confer jurisdiction upon the PLA to decide the claim for compensation arising out of motor vehicle accident if PLA does not inherently has the same as it exclusively vests with the Tribunal, set up under Section 165 of the Act of 1988.

Thus, in view of the aforesaid discussion, I find merit in the present petition and hence, the petition is allowed and the order passed by

remedy before the Tribunal, in accordance with law, for the recovery of the amount spent on the repair of its vehicle, in terms of the insurance policy.

19.09.2016

Vivek

(RAKESH KUMAR JAIN)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>