IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 14086 of 2016
Date of Decision: 11.8.2016

The Oriental Insurance Company Limited and others

.....Petitioners

Vs.

Abhishek Kumar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.S. Sidhu, Advocate
for the petitioner.

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RAMESHWAR SINGH MALIK J. (ORAL)

Instant writ petition is directed against the order dated 7.4.2016 passed by learned Permanent Lok Adalat for Public Utility Services, Ambala Camp Court at Kaithal, whereby application of the insured moved under Section 22 (C) of the Legal Services Authorities Act, 1987, was allowed, directing the petitioner-Insurance Company to pay the amount to the insured on account of theft of his motorcycle, which was admittedly insured with the petitioner-Insurance Company.

Learned counsel for the petitioner submits that learned Permanent Lok Adalat has misdirected itself, while placing reliance on the judgment of the Hon'ble Supreme Court in **Mallamma (Dead) By LRs VS. National Insurance Co. Ltd. and others, 2014 (2) CCC 694**, which was not applicable to the facts of the present case. He also places reliance on a judgment of the Hon'ble Supreme Court in **M/s Complete Insulations (P) Ltd. VS. New India Assurance Co. Ltd, 1996 AIR (SC) 586**, to contend that respondent No.1 was not entitled for the claim put by him, because there was no privity of contract between the parties. He prays for allowing the present writ petition, by setting aside the impugned order.

Having heard the learned counsel for petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the impugned order passed by the learned Permanent Lok Adalat has not been found suffering from any patent illegality or perversity, the same deserves to be upheld. The writ petition is without any merit which is liable to be dismissed for the following more than one reasons.

Facts are hardly in dispute. Original owner of the vehicle was Ravi, who was insurance policy holder. Petitioner-Insurance Company was insurer and Ravi was insured. It is also not in dispute that original policy holder namely Ravi sold the vehicle in favour of Abhishek Kumar-respondent No.1. It is neither pleaded nor argued case on behalf of the petitioner that theft of the vehicle did not take place, during currency of the insurance policy.

Once the petitioner-Insurance Company itself has admitted that motorcycle in question was sold by original policy holder to respondent No.1 and vehicle also stood transferred in favour of respondent No.1, he would certainly be entitled for the benefits of insurance policy because theft of motorcycle took place during currency of the insurance policy. Having said that, this Court feels no hesitation to conclude that learned

Permanent Lok Adalat committed no error of law, while passing the impugned order and the same deserves to be upheld.

The relevant observations made by the learned Permanent Lok Adalat, in operative part of the impugned order, deserves to be noticed and the same read as under-

> " After giving due consideration to the pleas of both the parties we are of the confirmed view that the petitioner is entitled to receive the claim i.e. the insured value of motorcycle amounting to Rs. 34,000/- for the theft of motorcycle bearing No. HR-40D-7410 from respondents. Now the perusal of letter dated 31.1.2014 Ex.P11 written by respondent insurance company to Ravi shows that insurance company has written to Ravi that the aforesaid vehicle has been sold by you to Sh. Abishek Walia S/o Narinder Kumar R/o 922/25, Gurudwara Colony, Rohtak Road, Jind on 6.9.2013 and NOC was also issued by Registring Authority (MV) Assandh, District Karnal in the name of Sh. Abhishek Walia vide letter dated 10.9.2013, so, there is no insurable interest of insured Ravi S/o Brizpal on the date of alleged loss/theft i.e. 20.09.2013. Further, perusal of reply to notice dated 3.6.2014 by respondent insurance company through Sh. M.R. Miglani, Advocate served by petitioner Abhishek Kumar upon respondent insurance company also reveal that it has been mentioned in this notice that Abhishek had purchased the motorcycle from Ravi and it has been further written that Abhishek did not get transfer the insurance

policy in his name within a period of 14 days of the sale.

Now what comes out the documents Ex.P11, P12 of respondents is that respondents themselves admitted that motorcycle in question has been sold by Ravi to Abhisehk Kumar and thus once when the vehicle is transferred from one person to other, the benefits of insurance policy shall also be transferred to the new owner. Reliance can be placed upon the judgment of Hon'ble Supreme Court of India titled as Mallama (Dead) by LRs Vs. National Insurance Co. Ltd. And others cited as 2014 (2) CCC 694 (SC). It was further held in this judgment that policy will not lapse even if the intimation required U/s 103 of the Act is not given to the insurer. The ratio of this judgment is fully applicable on circumstances in the present case and thus the judgments relied upon on behalf of the respondent (referred above) are no help to the respondents.

In view of above discussion and findings, we accept this application and award is hereby passed U/s 22 C (8) with direction to the respondent to pay the amount of Rs. 34,000/- to the petitioner Abhishek Kumar within a period of two months failing which interest @ 9% per annum shall be payable to the application Abhishek Kumar from the date of filing of the claim petition by the applicant with the respondent insurance company till realization."

A bare reading of the impugned order would show that learned Permanent Lok Adalat has examined, considered and appreciated all the relevant aspects of the matter, before passing the impugned order which has been found based on cogent findings duly supported by sound reasons.

So far as alleged non applicability of the judgment of the Hon'ble Supreme Court in **Mallamma's case** (supra), is concerned, contention raised by learned counsel for the petitioner has been duly considered but the same has been found misplaced. The relevant observations made by the Hon'ble Supreme Court in para 10 of its judgment in **Mallamma's case** (supra), which can be gainfully followed in the present case, read as under:-

> *"Before us, learned counsel for the appellants relying upon Section 157 of the M.V. Act, contended that there is an admitted transfer of ownership of the vehicle as proved before the Commissioner. Once the ownership of the vehicle is admittedly proved to have been transferred to Jeeva Rathna Setty, the existing insurance policy in respect of the same vehicle will also be deemed to have been transferred to the new owner and the policy will not lapse even if the intimation as required under Section 103 of the M.V. Act is not given to the insurer, hence the impugned order passed by the High Court is contrary to law. In support of this contention, learned counsel for the appellant has relied upon a judgment of this Court in* ***G. Govindan*** *Vs.* ***New India Assurance Co. Ltd .*** *(1999) 3 SCC 754."*

When the abovesaid ratio of the law laid down in **Mallamma's case** (supra), is considered in the factual context of the present case, same squarely applies in favour of respondent No.1 and against the petitioner-

Insurance Company. In this view of the matter, it can be safely concluded that learned Permanent Lok Adalat was well justified, while placing reliance on the judgment of the Hon'ble Supreme Court in **Mallamma's case** (supra) and the impugned order deserves to the upheld for this reason also.

Coming to the judgment in **M/s Complete Insulations (P) Ltd's case** (supra), relied upon by the learned counsel for the petitioner, there cannot be any dispute about the law laid down and observations made therein. However, on a careful perusal of the cited judgment, the same has not been found of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In fact, petitioner-Insurance Company has no case either on facts or in law, except raising technical and super-technical pleas. It has been experienced in the recent past that as and when any insured puts up his genuine claim, the insurance company would make every possible efforts to defeat even the genuine claim, proceeding on a wholly misconceived approach raising one or the other technical plea. This cannot be and must not be the object of any insurance policy that as and when any genuine claim is put, same is rejected only on technicalities. Similar stand has been found taken by the petitioner-Insurance Company to defeat the genuine claim of respondent No.1.

Reverting to the facts and circumstances of the case in hand, it has gone undisputed before this Court the original insured namely Ravi has sold vehicle in question to respondent No.1. It goes without saying that transferee will step into the shoes of transferrer including regarding benefit of insurance policy.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order passed by learned Permanent Lok Adalat has not been found suffering from any patent illegality or perversity, same deserves to be upheld, ignoring the technical pleas raised on behalf of the petitioner. The writ petition having been found wholly misconceived, bereft of merit and without any substance, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant writ petition stands dismissed, however, with no orders as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

11.8.2016
Ak Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No