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

Civil Writ Petition No. 14327 of 2016
Date of Decision: 22.7.2016

National Insurance Company Limited through its Senior Branch Manager

.....Petitioner

Vs.

Sunil 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 26.2.2016 (Annexure P-1) passed by the Permanent Lok Adalat for Public Utility Services, ('PUS' for short) whereby claim of the insured-respondent No.1 was allowed, as per his entitlement.

Learned counsel for the petitioner submits that respondent No.2-PUS has exceeded its jurisdiction, while passing the impugned order. Respondent No.1-insured was not entitled for an amount of ₹6,07,948/- as granted vide impugned order. He would next contend that respondent No.2 has not properly appreciated the terms and conditions of the policy, while passing the impugned order. In support of his contentions, learned counsel for the petitioner places reliance on three judgments of the Hon'ble Supreme

Court in **United India Insurance Co. Ltd. and others VS. Roshan Lal Oil Mills Ltd and others, 2000 (10) SCC 19; United India Insurance Vs. Ajmer Singh Cotton & General Mills, 1999 (6) SCC 400** and **Sr. Venkateswara Syndicate Vs. Oriental Insurance Company Ltd. and another, 2009 (8) SCC 507**. He prays for setting aside the impugned order by allowing the present writ petition.

Having heard the learned counsel for the 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 respondent No.2 is based on true facts and has been passed in accordance with law, the same deserves to be upheld. The writ petition is misconceived which is liable to be dismissed.

A bare perusal of the impugned order passed by respondent No.2 would make it crystal clear that each and every relevant aspect of the matter has been thoroughly examined, discussed and appreciated in the correct perspective, before recording cogent findings which have been found duly supported by sound reasons. The entire case of the petitioner is based on technicalities and super technicalities. Joint Surveyor appointed by the parties assessed the compensation to the tune of ₹5,93,900/-, however, the petitioner-company did not accept the said report of the Joint Surveyor.

The amount paid to the insured by the petitioner-company was only ₹4,31,112/-, purportedly after applying average clause. At this stage, learned counsel for the petitioner points out alleged under insurance factor, referred to at page 43 of the paper book. However, when he was asked to substantiate his argument in this regard, he had no answer and rightly so, as there is no supporting document available on record.

Relevant observations made by the learned Permanent Lok Adalat in para 16 to 18 of the impugned order, which deserve to be noticed here, read as under:-

> *"It is pertinent to mention here that the petitioner was never satisfied with the assessment of the loss and he did not give his consent as full and final settlement because the respondent had sent a blank discharge voucher Ex.P11 and instructed him to get signed and also send a blank cross cheque. It has come in evidence that the petitioner had signed on blank discharge voucher and sent the same alongwith crossed cheque. The protest letter was also sent along with the abovesaid documents. The protest letters Ex.P2 and Ex.P10. Respondent had filled up the discharge voucher at their own and mentioned the words 'Full and Final Settlement' of claim on the blank discharge voucher which was signed by the petitioner. The discharge voucher Ex.P11 proves this fact that it was sent to the petitioner without writing anything. Moreover, circular dated 24.9.2015 which has been referred in previous para clearly depicts even if no protest was raised while execution of the voucher in that eventuality also the execution of the voucher does not foreclose the rights of policy holder to seek higher compensation. Meaning thereby the petitioner was not satisfied with the report of the surveyor and he did not give his consent as full and final settlement. It is pertinent to*

> *mention here that there is no need to prove that the discharge voucher or receipt had been obtained from the respondent under the circumstances which can be termed fraudulent or exercise of undue influence or by misrepresentation or the like. Therefore, in view of these circumstances, assessing of Rs. 4,31,112/- is totally wrong, illegal, baseless and mala fide and has no effects on the rights of the petitioner.*
>
> *Now question arises how much compensation the petitioner is entitled.*
>
> *It is pertinent to mention here that the petitioner has claimed the actual loss amount Rs.6,48,447/- as per stock register Ex.P33, whereas the surveyor had assessed the compensation to the tune of Rs. 5, 93,900/- and paid only an amount of Rs.4,31,112/- after applying the average clause. Therefore, from the perusal of the entire case, it is clear that the petitioner is certainly entitled to get at least Rs. 5, 93,900/-+14,948/- as fee paid by the petitioner to the surveyor. So, the petitioner is entitled to Rs. 6, 07, 948/- as a loss to him but he is not entitled to receive Rs. 6, 78,447/- as claimed by the petitioner."*

In fact, except raising the abovesaid arguments based on technicalities alone, petitioner had no case either on facts or in law.

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down and observations made therein. However, on perusal of the cited judgments, none of them has been found to be 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.**

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order. Respondent No.2 recorded cogent findings while passing the impugned order and the same deserves to be upheld. No prejudice has been shown to have been caused to the petitioner. Claimant-respondent No.1 has been granted only that amount for which he was found entitled in law. Although claimant-respondent No.1 was pressing for ₹6,78,447/-, yet he was granted ₹6,07,948/- only.

In case the petitioner was intending to substantiate its claim referring to the alleged under insurance factor or alleged average clause, it was obligatory on the part of the petitioner to refer to the relevant documents by placing the same on record. However, for the reasons best known to the petitioner, no such document has been made available for perusal of the Court. Petitioner has miserably failed to show any prejudice caused to it by passing of the impugned order. In this view of the matter, it is unhesitatingly held that since the impugned order has not been found suffering from any patent illegality or perversity, the present writ petition is liable to be dismissed.

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 present writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

With the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

22.7.2016
Ak Sharma