

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

Civil Writ Petition No. 14350 of 2016

Date of Decision: 22.7.2016

Royal Sundaram Alliance Insurance Company Limited

.....Petitioner

Vs.

Gurudayal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Dinesh Kumar Prajapati, Advocate for
Mr. R.S. Madaan, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant writ petition is directed against the order dated 12.4.2016 (Annexure P-6) passed by the learned Permanent Lok Adalat (Public Utility Services), Gurgaon, whereby the petitioner was held liable to pay the amount for which it had issued a safe loan shield.

Learned counsel for the petitioner submits that late Sh. Raghbir Singh-predecessor-in-interest of respondents No. 1 to 3 took loan from respondent No.4 and petitioner issued the safe loan shield, undertaking to pay the loan amount in case the original loanee-Late Sh. Raghbir Singh would make any default in repayment of loan. He further submits that since Late Sh. Raghbir Singh was suffering from a serious disease which he did not disclose at the time of applying for the safe loan shield, petitioner is not

liable to pay because the loanee has violated the terms and conditions of the safe loan shield. He would next contend that as per the patient booklet (Annexure P-7), Raghbir Singh died because of AIDS. Since respondent No.5 has not appreciated this material aspect of the matter, while passing the impugned order, same is illegal and liable to be set aside. In support of his contentions, learned counsel for the petitioner places reliance on the following judgments:- **Mithoolal Nayak Vs. Life Insurance Corporation of India, 1962 AIR (SC) 814, Satwant Kaur Sandhu Vs. New India Assurance Company Ltd., 2009 (8) SCC 316 and United India Insurance Company Ltd. Vs. Ranjit Singh and another, 2013 (3) RCR (civil) 325.** 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 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 would show that learned Permanent Lok Adalat has examined, considered and appreciated all the relevant facts in the right perspective, before recording cogent findings which have been found duly supported by sound reasons. It is also a matter of record and not in dispute that petitioner issued safe loan shield, giving an undertaking to repay the loan amount advanced by respondent No.4 in favour of late Sh. Raghbir Singh. Late Sh. Raghbir Singh has also paid a premium of ₹34,407/-. However, thereafter, unfortunately he died on

22.4.2015. Respondent No.4 invoked the safe loan shield against the petitioner-company, requesting it to pay the remaining loan amount, as per its undertaking.

After denial by the petitioner-company, legal representatives of Late Sh. Raghbir Singh, respondents No.1 to 3 herein, approached the learned Permanent Lok Adalat by way of an application under Section 22-C of the Legal Services Authority Act, 1987. After granting due opportunity of being heard to the parties, the impugned order was passed by the learned Permanent Lok Adalat, holding the petitioner responsible to pay the loan amount, as per its undertaking.

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.**

What to talk of earlier stage, even today it is a mystery as to how Late Sh. Raghbir Singh died and due to which disease. Except the patient booklet (Annexure P-7) placed on record by the petitioner, there is no relevant medical document available on record to support the contentions raised by learned counsel for the petitioner. In fact, learned counsel for the petitioner wants this Court to draw inference in favour of the petitioner,

without there being any basis for the same. No reason is forthcoming as to why the petitioner has withheld the relevant medical documents to show the cause of death of Sh. Raghbir Singh, if any such medical record was available with the petitioner.

In the absence of any supporting medical record, this Court cannot presume that Late Sh. Raghbir Singh died due to AIDS, as sought to be argued by learned counsel for the petitioner. It is not clear as to which hospital issued the patient booklet (Annexure P-7). There is no death certificate of Late Sh. Raghbir Singh to show actual cause of his death. No such fact situation was the subject matter of consideration in any of the abovesaid three judgments relied upon by the learned counsel for the petitioner, because of which the petitioner cannot draw any help from the cited judgments. It is not in dispute that petitioner issued a safe loan shield and undertook the liability to repay the loan amount on behalf of the original loanee-Late Sh. Raghbir Singh, in case he would be unable to pay or dies before repayment.

The relevant observations made by the learned Permanent Lok Adalat in para 6 to 8 of the impugned order, which deserve to be noticed here, read as under:-

“There is no dispute that the applicants father Raghbir Singh got his truck financed from respondent No. 1 for an amount of Rs. 20,97,614/- and that loan amount was repayable in 47 instalments starting from 15.4.2015. Raghbir Singh obtained a safe loan shield from respondent No.2 for the period 17.3.2015 to 16.3.2018 by paying a premium of Rs. 34,407/-. This policy covered the finance of Rs. 20,97,416/- advanced by respondent No.1 to Raghbir Singh. As per terms of the policy, the outstanding loan amount was to be paid by the respondent insurance

company in case of death of Raghbir Singh. Since Raghbir Singh died on 22.4.2015 and the instalment due prior to that date had been paid by the insured, the liability for payment of the balance instalments of loan lies upon respondent No.2 under the safe loan shield.

The only defence of respondent No.2 is that the applicant did not inform them about the death of Raghbir Singh within 30 days, which was a condition precedent for claim settlement, and so the respondent insurance company is not liable for payment of balance instalments and more so when the applicants did not lodge any claim with the insurance company regarding the payment of instalments. But this defence of respondent No.2 is not tenable because the intimation of death of the insured within 30 days is not a mandatory condition and the lodging of claim would have also served no purpose when the respondent insurance company was not required to settle payment of any lump sum to the applicants or to respondent No.1 but are required to pay the remaining instalments of loan raised by Raghbir Singh from respondent No.1 as and when the loan instalments become due. The only thing to be decided in this application is whether respondent No.1 after the death of Raghbir Singh is liable to pay the balance instalment of loan to respondent No.1 or not. Since respondent No. 2 issued a safe loan shield towards the loan of Rs. 20,97 416/- raised by Raghbir Singh from respondent No.1 and Raghbir Singh died after paying the first two instalments, the liability for payment of the remaining instalments lies upon respondent No.2.

So respondent No.2 is directed to pay the balance instalments of loan raised by Raghbir Singh, deceased father of the applicants, from respondent No.1. Respondent No.1 is directed to issue a no dues certificate to the applicants after their loan is cleared by respondent No.2. The application is disposed off accordingly. File be

consigned to record room.”

A bare reading of the abovesaid findings recorded by learned Permanent Lok Adalat would show that the impugned order is based on true facts and has been passed, strictly in accordance with law. Further, no prejudice has been shown to have been caused to the petitioner. Learned counsel for the petitioner also failed to point out any patent illegality or perversity in the impugned order, so as to warrant interference at the hands of this Court, while exercising its writ jurisdiction under Article 226/227 of the Constitution of India.

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

Whether speaking/reasoned/non-speaking

Whether reportable: Yes/No