

Civil Writ Petition No. 15091 of 2016

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

**Civil Writ Petition No. 15091 of 2016
Date of Decision: 10.11.2016**

United India Insurance Company

.....Petitioner

Vs.

Permanent Lok Adalat (PUS), Sangrur through its Chairman

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Harsh Aggarwal, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Instant writ petition is directed against the impugned award dated 5.4.2016 (Annexure P-5), passed by the learned Permanent Lok Adalat, (Public Utility Services), Sangrur, whereby claim of the private respondents, on account of death of Late Sh. Ram Lal, was allowed.

Heard learned counsel for the petitioner.

The arguments raised by learned counsel for the petitioner are not on merits but based on technicality alone. While doing complete and substantial justice between the parties, technicality must not weigh with the court. It is not in dispute that deceased was insured with the petitioner-insurance company. It is also not in dispute that the insured died because of road accident during the currency of the insurance policy. It is neither

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pleaded nor argued case on behalf of the petitioner that the insured defaulted in making the payment of premium in time. Once the abovesaid basic facts have gone undisputed before this Court, it can be safely concluded that learned Permanent Lok Adalat committed no error of law, while passing the impugned award and the same deserves to be upheld.

Learned counsel for the petitioner refers to clause 4 of the insurance policy, reproduced at page 8 of the paper book, to contend, that the deceased was under the influence of liquor, as per medical report (Annexure P-1). This argument raised by learned counsel for the petitioner has been duly considered but has been found wholly misplaced and not worth acceptance. It is so said, because a bare perusal of the medical report (Annexure P-1), does not suggest that deceased was, as a matter of fact, under the influence of liquor. Once cause of the death was road accident, the medical report (Annexure P-1) would lose its significance, if any. All these issues were dealt with by the learned Permanent Lok Adalat, while recording cogent findings, which have been found based on sound reasons and the impugned award deserves to be upheld for this reason also.

The relevant observations made by the learned Permanent Lok Adalat in the operative part of the impugned award, which deserve to be noticed here, read as under:-

Points for determination:

- 1. Whether Ram Lal received injuries in an accident?*
- 2. Whether the deceased was under the influence of alcohol/liquor at the time of accident? If so, its effect.*

Point No.1

Ld. Counsel for the respondent No.3 argued that the

applicants have failed to prove that Ram Lal received injuries in an accident. On the other hand, Ld. Counsel for the applicant argued that this respondent in its written statement did not state that Ram Lal did not receive injuries in an accident. Rather this respondent has denied for want of knowledge that the deceased sustained multiple grievous injuries in an accident. The investigator appointed by respondent No.3 stated in his report EX-R2 that claim filed by respondent no. 2 regarding the death of Ram Lal is genuine but not maintainable as cause of death was not clear for want of report of Chemical Examiner. In other words, it can be said that it was not the case of respondent No.3 at any stage that the deceased did not receive injuries in an accident. Thus it can be safely inferred from the documents available on the file that Ram Lal received injuries in a vehicular accident and those injuries proved fatal.

Point No.2

Ex-A4 repudiation letter dated 19.8.2011 issued by respondent No.3 would show that claim of the applicants was repudiated as the accident occurred as the deceased was under the influence of alcohol. It has also been stated in Ex.-A4 that Chemical Examiner had found 69.0 mg % ethyl alcohol in the blood.

Chemical Examiner found ethyl alcohol to the extent of 69.0% mg in the blood taken from the heart of the deceased. Contents of stomach, small and large intestine, lungs, liver, spleen and kidney and blood from heart gave positive test for ethyl alcohol. In Bajaj Allianz General Insurance Co. Ltd. Vs. Smt. Achala Rudraniwas Marde, Revision Petition No. 3934 of 2013 decided on 1.12.2014 by the National Consumer Disputes Redressal Commission, New Delhi (for short the National Commission) has quoted Australian Pathologist V.D. Pleuckhahn, who published several important studies nearly 50 years ago on postmortem blood alcohol levels. His

conclusions, however, are as valid today:

- 1. Blood alcohol levels at autopsy are valid up to 48 hours after death when simple principles are observed in the collection and storage of samples.*
- 2. Alcohol levels in samples of blood taken from the intact heart are as significant as levels of blood from the femoral veins.*
- 3 False blood alcohol levels greater than 0.200% can be generated in autopsy blood samples which are not correctly stored.*
- 4. High blood alcohol levels may develop during putrefaction and levels up to 0.200% do not necessarily indicate that alcohol was imbibed before death.*
- 5. Significant false blood alcohol levels do not develop during incineration, in absence of putrefaction.*

In para No. 10 of its order the National Commission has quoted:

“ In this context we have perused Text book of forensic medicine and toxicology by PC Dikshit and Synopsis of Forensic medicine and toxicology by Dr. KS Narayana Reddy. The research study and medical literature revealed us, that the Postmortem blood alcohol concentrations (BACs) tend to be less reliable and stable than BACs obtained from drinking drivers for the following reasons:

Postmortem blood is not sterile, over half of postmortem blood samples were found to contain bacteria and fungi.

Postmortem blood can have a much higher glucose concentration of 7 to 10 X that of ante-mortem blood.

Postmortem diffusion of alcohol from the gut can falsely elevate the BAC.

It is because of Putrefaction – A high glucose concentration and bacteria/fungi/yeast found in postmortem blood makes an ideal environment for the production of alcohol as the sugar is converted eventually into alcohol causing a falsely high BAC.

Ram Lal received injuries on 13.6.2010 before 8:30 PM. He remained admitted in the Hospital till his death i.e. at about 7:20 PM on 16.6.2010. Had he consumed alcohol before receiving injuries, the same would have passed out in urine till he died. It is not clear as to whether dead body was preserved properly or not till the post mortem was conducted. It is also not clear as to whether the exhibits taken out from the body during post mortem were preserved properly till analysis by the Chemical Examiner. It is also not clear from the record as to which preservative was used. In this situation it appears that false blood alcohol level greater than 0.200% can be generated in autopsy blood samples which are not correctly stored and high blood alcohol levels may develop during putrefaction.

In view of above discussion, it can be safely inferred that the deceased was not under the influence of liquor at the time of receiving injuries and died due to injuries received in a vehicular accident.”

A bare reading of the abovesaid observations made by the learned Permanent Lok Adalat would make it crystal clear that petitioner-insurance company has no case either on facts or in law. It is so said, because entire case of the petitioner was based on technicality alone. Having said that, this Court feels no hesitation to conclude that the impugned award passed by the learned Permanent Lok Adalat has not been found suffering from any patent illegality or perversity and the same deserves to be upheld, for this reason also.

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

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

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

(RAMESHWAR SINGH MALIK)
JUDGE

10.11.2016
Ak Sharma

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