

CWP No.16545 of 2016

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

**CWP No.16545 of 2016
Date of decision:15.11.2016**

Magma HDI General Insurance Co. Ltd. ...Petitioner

Versus

Vikas Sharma and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Pankaj Mehta, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

This petition is filed in order to assail the validity of the order dated 18.03.2016, passed by the Permanent Lok Adalat, Public Utility Services, Bhiwani, by which application filed by respondent No.1 under Section 22-C of the Legal Services Authority Act, 1987 (hereinafter referred to as the “Act”) has been allowed.

In brief, respondent No.1 is the registered owner of tractor bearing registration No.HR-32G-0738, insured with the petitioner-company w.e.f. 10.07.2013 to 09.07.2014. During the intervening night of 07/08.03.2014, the said tractor met with an accident with a truck bearing registration No.RJ-19GB-1654 and was totally damaged. FIR No.99 dated 08.03.2014, under Sections 279, 337, 304A and 427 IPC was registered against the driver of the offending truck. Respondent No.1 received grievous injuries and one person, namely, Subhash died in the said accident.

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The tractor was shifted to M/s. Dalip Motors, Narwana, District Jind, from where it was purchased and information was sent to the petitioner-company regarding the accident and its total damage. The surveyor allegedly assured respondent No.1 about the claim but it was repudiated vide order dated 11.07.2014. Respondent No.1 filed the application under Section 22-C of the Act, in which the petitioner filed reply and raised objection regarding breach of the terms and conditions because as per the FIR, 3-4 persons were seated in the tractor at the time of accident, whereas seating capacity of the tractor was one and that too for the driver only.

It is noticed by the Permanent Lok Adalat that the sole contention of the petitioner-company before it was that at the time of accident, the vehicle was carrying more passengers than its sitting capacity, on the basis of which claim of respondent No.1 was repudiated. The Permanent Lok Adalat found that from the perusal of record, Subhash was the only person who was travelling with the driver and the other two persons were sitting in the trolley. It is also observed that the sitting capacity of the tractor was one but there is no evidence that the accident was caused by the driver due to his negligence or due to the intervention of deceased Subhash, who was sitting on the mud-guard of the tractor. It is also observed that it was nobody's case that the driver of the insured tractor was responsible for the accident and as per the contents of the FIR, the vehicle bearing No.RJ-19GB-1654 was being driven rashly and negligently and caused accident with the tractor resulting in its total damage. On these observations, the order has been passed by the Permanent Lok Adalat, directing the petitioner to pay to the respondent No.1 ₹3,60,000/-, after

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deducting the salvage value i.e. ₹90,000/- along with interest at the rate of 10% per annum from the date of accident i.e. 07.03.2014 and also ₹5,500/- as litigation charges.

The petitioner has raised an altogether new point in this petition alleging that since the trolley attached to the tractor was not insured, therefore, the petitioner is not liable to pay any amount and be exonerated.

I have heard learned counsel for the petitioner and examined the available record.

Although respondent No.1 has claimed the damage only to the extent of the cost of the tractor which was insured and not for the trolley, which of course was not insured but still the plea raised in this petition was not at all taken before the Permanent Lok Adalat.

Consequently, I do not find any reason to interfere in the well considered order of the Permanent Lok Adalat, awarding the amount of insurance, claimed by the petitioner and, thus, the present petition is hereby dismissed.

November 15, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No