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

**Civil Writ Petition No. 21383 of 2016
Date of Decision: 9.12.2016**

Cholamandlam MS General Insurance Co. Limited

.....Petitioner

Vs.

Ravi Kumar and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Vandana Malhotra, Advocate
for the petitioner.

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RAMESHWAR SINGH MALIK J. (ORAL)

CM No. 14173-CWP-2016

Applicant seeks permission to place on record circular dated 20.9.2011 as Annexure P-9.

Application is allowed, as prayed for.

CM stands disposed of.

CWP No. 21383 of 2016

Instant writ petition is directed against the impugned award dated 18.12.2015 (Annexure P-1) passed by learned Permanent Lok Adalat (Public Utility Services), Rewari-respondent No.2, whereby application moved by respondent No.1 under Section 22-C of the Legal Services Authority Act, 1987, was allowed, directing the petitioner-Insurance Company to indemnify respondent No.1 for the financial loss suffered by him, on account of theft of his insured vehicle.

Heard learned counsel for the petitioner.

Placing reliance on the order dated 17.8.2010 passed by the Hon'ble Supreme Court in **Special Leave to Appeal (Civil) No. 12741 of 2009 (Oriental Insurance Co. Ltd. Vs. Parvesh Chander Chadha)** and judgment of this Court in **National Insurance Company Limited Vs. State of Hayana and others, 2013 (1) RCR (civil) 434**, learned counsel for the petitioner submits that since the incident of theft was intimated to the petitioner-Insurance Company after 71 days, claim of respondent No.1 was rightly repudiated by the petitioner-Insurance Company. She further submits that since learned Permanent Lok Adalat failed to appreciate this material aspect of the matter, the impugned award has resulted in miscarriage of justice. She prays for allowing the present writ petition, by setting aside the impugned award.

Having heard 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 award passed by the learned Permanent Lok Adalat is not suffering from any patent illegality, the same deserves to be upheld. Writ petition is without any force and liable to be dismissed, for the following more than one reasons.

Since the Insurance Regulatory and Development Authority ('IRDA' for short) had been receiving numerous complaints like the present one, self contained circular dated 20.9.2011 was issued to all the Insurance Companies. The relevant part of this circular, which is binding on the petitioner-Insurance Company as well, reads as under:-

> *"The Authority has been receiving several complaints that claims are being rejected on the ground of delayed submission of intimation and documents.*
>
> *The current contractual obligation imposing the condition that the claims shall be intimated to the insurer with the prescribed documents within a specified number of days is necessary for insurers for effecting various post claim activities like investigation, loss assessment, provisioning, claim settlement etc. However, this condition should not prevent settlement of genuine claims, particularly when there is delay in intimation or in submission of documents due to unavoidable circumstances.*
>
> *The insurers' decision to reject a claim shall be based on sound logic and valid grounds. It may be noted that such limitation clause does not work in isolation and is not absolute. One needs to see the merits and good spirit of the clause, without compromising on bad claims. Rejection of claims on purely technical grounds in a mechanical fashion will result in policyholders losing confidence in the insurance industry, giving rise to excessive litigation.*
>
> *Therefore, it is advised that all insurers need to*

develop a sound mechanism of their own to handle such claims with utmost care and caution. It is also advised that the insurers must not repudiate such claims unless and until the reasons of delay are specifically ascertained, recorded and the insurers should satisfy themselves that the delayed claims would have otherwise been rejected even if reported in time.

The insurers are advised to incorporate additional wordings in the policy documents, suitably enunciating insurers' stand to condone delay on merit for delayed claims where the delay is proved to be for reasons beyond the control of the insured."

A bare perusal of the impugned award would show that learned Permanent Lok Adalat rightly placed reliance on the abovesaid circular, while passing the impugned award. Petitioner-Insurance Company tried to repudiate the most genuine claim of respondent No.1, vide its communication dated 18.8.2014 and relevant part thereof which finds mention in the impugned award, at page 21 of the paper book, reads as under:-

"In the document dated 18.4.2014, it has been mentioned as under:-

'It has been observed that theft of your vehicle took place on 11.2.2014 and the FIR was lodged on 10.3.2014, belated by 29 days and also there is a delay in intimation to company by 71 days. Hence, the delay in FIR and intimation to company, which has

prejudiced possibilities of recovery of the vehicle.'

No affidavit of respondent insurance company has been filed. Veil in the document dated 18.8.2014 or any other document, it has not been mentioned that the claim of the applicant must have been repudiated even if claim of the applicant would have been rejected even if, the applicant has informed the reported immediately of the theft.

In the light of abovesaid circular, we hold that the claim of the applicant was illegally rejected vide document dated 18.8.2014. The abovesaid circular was not discussed in the authorities, which have been referred to by the respondent. Thus the same were of no help to the respondent. Thus, we hold that the claim of the applicant was wrongly repudiated vide letter dated 18.8.2014. The applicant is entitled to get Rs. 4,56,000/- which is 1DV amount of the vehicle alongwith interest at the rate of 9% per annum from 18.8.2014. If the payment is not paid by the insurance company within one month from the date of passing of the order, till the date of disbursement of the amount to the applicant as has been mentioned in this award. We direct the respondent to pay Rs. 40,000/- for the harassment caused to the applicant. This award is accordingly passed."

It has gone undisputed before this Court that vehicle of respondent No.1 was duly insured with the petitioner-Insurance Company. It is also undisputed that incident of theft took place during the currency of the insurance policy. FIR No. 104 dated 10.3.2014 was registered by respondent

No.1. The investigating agency, after making its best efforts, could not trace out the stolen vehicle and finally, filed untraced report in the court on 6.5.2014. However, before filing of untraced report, petitioner-Insurance Company was informed on 22.4.2014 about the incident. Neither there was any intentional delay on the part of respondent No.1 in intimating the petitioner-Insurance Company regarding theft of the insured vehicle, nor he was going to gain anything in not informing the petitioner-Insurance Company in this regard. Since the abovesaid material aspect of the matter has been altogether ignored by the petitioner-Insurance Company, while repudiating the undisputed and most genuine claim of respondent No.1, the stand taken by the petitioner-Insurance Company is wholly unjustified.

Strong observations made by the IRDA, while issuing the abovesaid circular dated 20.9.2011, which undisputedly binding on the petitioner-Insurance Company, has also been altogether ignored by it, with a view to repudiate the most genuine claim of respondent No.1, by proceeding on purely a technical approach. Such a stand taken by an Insurance Company would not be permissible in law. This seems to be the reason that IRDA had to issue the abovesaid circular but unfortunately there seems no visible improvement in the working of Insurance Companies like the petitioner, which are most of the times, have been found bent upon to repudiate the genuine claims of the insured, on one or the other flimsy grounds. Having said that, this Court feels no hesitation to conclude that learned Permanent Lok Adalat committed no error of law, while passing the impugned award and the same deserves to be upheld.

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, these have not 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. Further, sometimes difference of 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, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275** and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.** With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon’ble Supreme Court in para 11 and 12 of its later judgment in <u>Ganeshi Lal’s case</u> (supra), reiterating its view taken in <u>Amrit Lal Manchanda’s case</u> (supra) and <u>Mohd. Illiyas’s case</u> (supra), which can be gainfully followed in the present case, read as under:-

> 11. “12….*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge’s decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law*

applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15….Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (AII ER p. 14 C-D)

> *"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."*

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (AII ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (AII ER p.

761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it ***Ed.*** *See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."*

Coming to the peculiar fact situation obtaining on record of the present case and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned award passed by the learned Permanent Lok Adalat. Further, no prejudice of any kind, whatsoever, has been pointed out by learned counsel for the petitioner, which might have been caused to the petitioner-Insurance Company by passing the impugned award, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 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 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

9.12.2016
Ak Sharma

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