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

**Civil Writ Petition No. 24075 of 2016
Date of Decision: 30.11.2016**

Cholamandalam MS General Insurance Co. Limited

.....Petitioner

Vs.

M/s D.C. Transport Management Pvt. Ltd 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)

Instant petition is directed against the impugned award dated 13.1.2016 (Annexure P-1) passed by learned Permanent Lok Adalat (Public Utility Services), Gurgaon-respondent No.1, whereby application moved by respondent No.1 under Section 22-C of the Legal Services Authority Act, was allowed, directing the petitioner-Insurance Company to indemnify the insured for the financial loss suffered by him on account of theft of insured vehicle.

Heard learned counsel for the petitioner.

It is a matter of record that vehicle make Tata Sumo, bearing registration No. UP-16-AT-8504 was insured with the petitioner-Insurance

Company w.e.f. 19.4.2012 to 18.4.2013. The incident of theft took place during the intervening night of 2/3.9.2012 wherein the insured vehicle was stolen. The owner-respondent No.1 got FIR No. 263 dated 7.9.2012 under Section 379 IPC registered at Police Station Shahdara, Delhi. In fact, the FIR was registered on the basis of information given by the driver of the vehicle about the theft on telephone No. 100 on 3.9.2012 itself. It was also the pleaded case on the applicant- respondent No.1 herein that when he lodged his claim for theft of his vehicle and submitted all the relevant documents to the petitioner-Insurance Company, the petitioner-Insurance Company did not accept the same and sought to repudiate the claim.

Having been left with no other option, insured-respondent No.1 approached the Permanent Lok Adalat by way of application under Section 22-C of the Legal Services Authority Act. Parties led their respective evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned Permanent Lok Adalat came to the conclusion that respondent No.1 had a genuine claim, which was illegally sought to be repudiated by the petitioner-Insurance Company. Accordingly, by passing the impugned award dated 13.1.2016 (Annexure P-1), petitioner-Insurance Company was directed to pay an amount of ₹5,13,000/- to respondent No.1 on account of theft of his insured vehicle, however, subject to submission of subrogation letter, indemnity bond, undertaking and documents for transfer of RC of the vehicle. Hence this writ petition.

The only argument raised by learned counsel for the petitioner is that respondent No.1 intimated the petitioner-Insurance Company after 18 days of the alleged incident. In support of her contention, learned counsel for the petitioner places reliance on an order dated 17.8.2010 passed by the Hon'ble Supreme Court in **Civil Appeal No. 12741 of 2009 (Orinetal Insurance Co. Ltd. Vs. Parvesh Chander Chandha).**

Having heard learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contention 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.

As learned Permanent Lok Adalat, in para 7 of the impugned award, has rightly referred to the order dated 31.5.2011 passed by this Court in **CWP No. 11350 of 2012 (Shri Ram General Insurance Company Ltd Vs. Permanent Lok Adalat and another)**, instant writ petition has been found squarely covered against the petitioner by the said order of this Court in Shri Ram General Insurance Company Ltd's case (supra). In fact, in Shri Ram General Insurance Company Ltd's case (supra), delay was of more than four months. The relevant observations made by this Court in Shri Ram General Insurance Company Ltd's case (supra), which can be gainfully followed in the present case, read as under:-

> *The petitioner has stated that the Permanent Lok Adalat was precluded from entertaining the plea of respondent no.2 on the following grounds:-*
>
> *i) that as per the policy the petitioner was to be intimated immediately regarding the theft of the vehicle but the intimation was given to the petitioner after more than 4 months of the theft.*
>
> *ii)That there were disputed questions of fact involved.*

iii)that the Lok Adalat did not have the jurisdiction to entertain the proceedings.

I have considered the submissions made by the learned counsel for the petitioner and I am of the opinion that in so far as the first grievance is concerned, the same is mis-placed. The policy merely requires that intimation should be given immediately. The word immediately has not been defined to be limited to a particular period and considering the fact that when the theft was there, the first endeavour of the respondent was to lodge an FIR to trace out the vehicle. Therefore, a lapse of 3-4 months would not make any difference to defeat the claim of the respondent specially when the FIR has been registered and the untraced report has been given by the police.

Hon'ble Supreme Court in case titled as ***United India Insurance Co. Ltd. Vs. Ajay Sinha and another*** *reported as 2009(1) RCR (Civil) held as under:-*

"37. Section 22-C(1) contains certain Provisos which limit the jurisdiction of the PLA. Given the principle of statutory interpretation stated earlier, these Provisos, as a corollary, must be interpreted in an expansive manner.

38. What is important to note is that with respect of public utility services, the main purpose behind Section 22- C(8) seems to be that "most of the petty cases which ought not to go in the regular Courts would be settled in the prelitigation stage itself."

39. Therefore, in the instant case, the terms "relating to" an "offence" appearing in Proviso 1 must be interpreted broadly, and as the determination before the Permanent Lok Adalat will involve the question as to whether or not *an offence, which is non-compoundable in nature, has indeed been committed, this case falls outside the jurisdiction of the Permanent Lok Adalat.*

40. We must guard against construction of a statute which would confer such a wide power in the Permanent Lok Adalat having regard to sub-section (8) of Section 22-Cof the Act. The Permanent Lok Adalat must at the outset formulate the questions. We however, do not intend to lay down a law, as at present advised, that Permanent Lok Adalat would refuse to exercise its jurisdiction to entertain such cases but emphasise that it must exercise its power with due care and caution. It must not give an impression to any of the disputants that it from the very beginning has an adjudicatory role to play in relation to its jurisdiction without going into the statutory provisions and restrictions imposed thereunder."

The factum of the theft of vehicle, registration of FIR and subsequent un-traced report given by the police is not in dispute and therefore, the plea that it involved disputed questions of fact is also misplaced.

So far as judgment of the Hon'ble Supreme Court in Parvesh Chander Chandha's case (supra) is concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgment, it has 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.**

Coming to the peculiar fact situation obtaining on record of the present case, it has gone undisputed before this Court that vehicle of respondent No.1 was duly insured with the petitioner-Insurance Company. Theft took place during the currency of the insurance policy. It is neither pleaded nor argued case on behalf of the petitioner that insured defaulted in making the payment of premium at any point of time. 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, for this reason also.

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. The solitary contention raised by learned counsel for the petitioner was based on a purely technical aspect, which has been found wholly misplaced and not worth acceptance.

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)
30.11.2016 **JUDGE**
Ak Sharma

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