IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24088 of 2016
Date of decision: 22.11.2016

Iffco Tokio General Insurance Co. Ltd.

... Petitioner

Vs.

Rajbir Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Yogesh Gupta, Advocate
for the petitioner.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned award dated 26.05.2016 (Annexure P-4) passed by learned Permanent Lok Adalat (Public Utility Services), Karnal, whereby application under Section 22-C of the Legal Services Authorities Act, 1987, moved by the insured-respondent No.1, was allowed, petitioner-Insurance Company has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned award.

It is not in dispute that vehicle of respondent No.1 was insured with the petitioner-Insurance Company. It is also not in dispute that incident of theft took place and the vehicle of respondent No.1 was stolen. He reported the matter to the police. FIR was registered. Petitioner-Insurance Company also received intimation in time. Petitioner-Insurance Company deputed its representative to look into the matter and furnish the report. Statement of insured was also allegedly recorded. When the petitioner-Insurance Company did not accept the genuine claim of respondent No.1, he was left with no other option except to approach the learned Permanent Lok Adalat by moving his appropriate application under the Legal Services Authorities Act, 1987. Both the parties brought on record their respective evidence. After hearing learned counsel for both 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 and by accepting the application of the insured, petitioner-Insurance Company was directed to indemnify the loss suffered by the insured. Accordingly, impugned award dated 26.05.2016 (Annexure P-4) was passed against the petitioner-Insurance Company.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the 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 learned Permanent Lok Adalat has not been found suffering from any patent illegality or perversity, the same deserves to be upheld. The writ petition is liable to be dismissed, for the following more than one reasons.

As noticed hereinabove, facts are hardly in dispute. Vehicle of respondent No.1 was insured with the insurance company. It is neither pleaded nor argued case on behalf of the petitioner-Insurance Company that the insured did not pay the premium in time. Incident of theft is also not in dispute. Respondent No.1 immediately intimated the police and acting upon said information, FIR Ex.P1 was registered. Alleged negligence on the part of respondent No.1 has not been proved by the petitioner-Insurance Company. Even if there was some negligible lapse on the part of respondent No.1, that was not found sufficient to deny his genuine claim. In fact, the learned Permanent Lok Adalat considered all the relevant facts before 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 learned Permanent Lok Adalat in para No.11 of the impugned award, which deserve to be noticed here, read as under: -

> *"As far as condition No.4 of the insurance policy is concerned, the insured is required to take all reasonable steps to safeguard the vehicle from loss or damage. As regards to its second part, the insured is required not to leave the vehicle unattended without proper precaution in the event of any accident or break down. Thus, the relevant part of condition No.4 which is applicable in the case in hand is that the petitioner was required to take reasonable steps to safeguard the vehicle. He had parked the truck in the Transport Nagar which can be said to be one of the safe places for parking of the truck because that area is inhabited by the owners and drivers of the trucks, out of whom numerous would have been familiar to the petitioner. He had hidden the key underneath the cabin of the truck. As a natural conduct of a person, the petitioner would have taken utmost precautions while hiding the key so that no one should notice that he was hiding the key underneath the cabin of the truck. As already observed, it is not certain that the*

thief had taken the key from underneath the cabin and then committed the theft of the truck. He would have adopted some other mode in stealing the truck without using the hidden key. Thus, all these facts lead us to the conclusion that the petitioner might be accused of violation of condition of the insurance policy but it was not a case of gross negligence on his part nor it can be termed to be fundamental breach of the condition. Had the petitioner left the key in the ignition then the matter would have been different as the same would have amounted to a fundamental breach of the condition, but it is not the case here. Here, the key was hidden at a safe place, the truck was locked and was parked at the Transport Nagar. Hence, in view of the law laid down in the cited authorities and circumstances of the case, we come to the conclusion that the insurance company committed illegality in repudiating the claim of the petitioner in toto vide repudiation letter Ex.R1 dated 11.12.2013. We hold that in the present case the claim of the petitioner should be decided on the non-standard basis. Thus finding merit in the claim of the petitioner, we allow the application moved by him under Section 22-C of the Act partly and pass an award directing the respondent insurance company to pay the claim of the petitioner on non-standard basis and to pay 75% of the total insurance amount. The truck was insured for a total sum of Rs.19,50,000/-. On the basis of treating the claim of the petitioner on non-standard basis, he is entitled to get a sum of Rs.14,62,500/- (Rupees Fourteen Lac sixty two thousand five *hundred only) as claim under the insurance policy of his truck. Thus, we direct the respondent insurance company to pay a sum of Rs.14,62,500/- (Rupees Fourteen Lac sixty two thousand five hundred only) to the petitioner with interest @9% per annum from the date of petition i.e. 09.06.2014 till payment. The petitioner is also entitled to get a sum of Rs.5500/- as litigation expenses to be paid by the respondent within a period of one month from the date of award, failing which the petitioner would be entitled to get interest @9% per annum on this amount from the date of award till payment.*

It may be made clear that once the payment is made by the insurance company and subsequently, the stolen struck is recovered then the truck number HR45-B-0331 would be the property of the insurance company and the petitioner would have no claim on that vehicle."

During the course of hearing, when confronted with the abovesaid fact situation obtaining on the record of the present case, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. No patent illegality or perversity was pointed out in the impugned award passed by learned Permanent Lok Adalat. Further, no prejudice has been shown, 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 since the impugned award passed by learned Permanent Lok Adalat has not been found suffering from any patent illegality, the same deserves to be upheld. The 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

22.11.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No