

Civil Writ Petition No. 26178 of 2016

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

**Civil Writ Petition No. 26178 of 2016
Date of Decision: 17.12.2016**

National Insurance Company Limited

.....Petitioner

Vs.

Sandeep and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajneesh Malhotra, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the impugned award dated 1.3.2016 (Annexure P-1) passed by learned Permanent Lok Adalat (Public Utility Services), Bhiwani-respondent No.3, 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.

The basic and material facts which have gone undisputed are that vehicle of respondent No.1 was insured with the petitioner-Insurance Company. Theft took place during the currency of the insurance policy. Incident of the theft took place during the night of 2.9.2012 and on the very next morning, FIR No. 193 dated 3.9.2012 under Section 379 IPC was got registered, thus, there was no delay on the part of insured-respondent No.1.

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The only ground taken by the petitioner-Insurance Company to repudiate the claim of the insured was that petitioner-Insurance Company received intimation regarding theft of insured vehicle on 6.9.2012, i.e. after a gap of three days. Having a threat of repudiation of his claim at the hands of the petitioner-Insurance Company, it seems that respondent No.1 was made to submit his consent to the petitioner-Insurance Company that he would accept the claim on lower side, i.e. an amount of ₹4,01,482/- instead of ₹5,35,976/-.

The only argument raised by learned counsel for the petitioner before this Court is that once respondent No.1 has submitted his consent and petitioner-Insurance Company was ready to indemnify him to the extent of ₹4,01,482/-, application of respondent No.1 before learned Permanent Lok Adalat was not maintainable, thus, the impugned award is liable to be set aside.

Having heard learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the solitary contention raised, this Court is of the considered opinion that argument raised by learned counsel for the petitioner is wholly misplaced, for the reason that it was none of the fault of respondent No.1 for which he should have been made to suffer. In fact, it is so obvious on record that it was an unfair practice adopted by the petitioner-Insurance Company.

When respondent No.1 was having an apprehension that his claim may not be repudiated at the hands of petitioner-Insurance Company, he succumbed to the pressure and submitted his consent, which cannot be said to be a consent by free will. In such a situation, neither any estoppel would apply against the insured-respondent No.1, nor learned Permanent

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Lok Adalat committed any error of law, while entertaining his application under Section 22-C of the Legal Services Authorities Act.

During the course of hearing, when confronted with the fact that what was the patent illegality or perversity in the impugned award, learned counsel for the petitioner had no answer and rightly so, it being a matter of record. It is so said, because neither the factum of theft of insured vehicle has ever been in dispute at any point of time, nor it is pleaded or argued case on behalf of the petitioner-Insurance Company that theft of insured vehicle did not take place during the currency of the insurance policy.

Further, the FIR came to be registered on the very next morning, i.e. 3.9.2012, whereas the insured vehicle was stolen during the night of 2.9.2012. It is the own pleaded case on behalf of the petitioner-Insurance Company that it received the intimation regarding theft of insured vehicle on 6.9.2012, i.e. after three days, which cannot be said to be fatal under the peculiar facts and circumstances of the case, noticed hereinabove. Having said that, this Court feels no hesitation to conclude that learned Permanent Lok Adalat was well within its jurisdiction, while passing the impugned award and the same deserves to be upheld, for this reason also.

A bare perusal of the impugned award would show that learned Permanent Lok Adalat was very well conscious of this fact that case of the petitioner-Insurance Company was based on technicalities alone. This was the reason that learned Permanent Lok Adalat rightly referred to the instructions dated 21.9.2011 issued by the Insurance Regulatory and Development Authority ('IRDA' for short), which is binding on the petitioner-Insurance Company as well, and the same 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

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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."

Had the petitioner-Insurance Company followed the abovesaid guidelines issued by the statutory authority, present unwarranted litigation would have been easily avoided. However, in spite of the abovesaid positive guidelines issued by IRDA, there is hardly any visible improvement in the working of the insurance companies and the petitioner is no exception. The end result of this arbitrary working of the insurance companies is that even poor and genuine-citizens insured are being made to suffer and most of the times, for none of their fault, defeating the very purpose of insurance policies.

It is not uncommon that all the insurance companies, be it public sector undertaking or private insurance company, would issue lucrative offers and incentives, so as to attract maximum number of citizens. However, the moment any insured puts even the most genuine claim, seldom said claim would be accepted by any insurance company. Most of the times, as it has been experienced in the recent past, even the genuine claim would be rejected on one or the other technical or flimsy ground, giving rise to such kind of avoidable litigation.

In fact, thrust of the insurance companies is, as to how and on what grounds, including baseless ones, claims can be repudiated, instead of settling the same proceeding on a reasonable approach. They always keep their consumers misinformed or misguided. At the time of accepting premiums, there would be no technical grounds in their schemes. However,

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when any insured puts his genuine claim, the insurance companies will repudiate that claim on technical and super technical grounds, which were not even known to the insured. Thus, even genuine policyholders are losing faith in the institution and insurance industry is getting infamous, earning a bad name.

This Court is constrained to observe that it is high time that the abovesaid instructions issued by IRDA deserve a revisit by the highest decision making body, so as to ensure that real purpose and object of the insurance is achieved and faith of people may not shatter in the system any further. It is also pertinent to note here that courts of law are flooded with such kind of avoidable litigation. Most of these type of litigations can be easily settled by the concerned insurance companies themselves, if they so desire and sincerely work in that direction.

Litigants do not come to the courts by choice but they are forced to do so, because of the unwarranted conduct of the officials of the insurance companies, particularly when the most genuine claims are sought to be repudiated or rejected on one or the other baseless grounds. In such a situation, a genuine insured would have no other option except to knock the doors of the court and that is how, this kind of avoidable litigation is being generated. The basic flaw lies with the insurance companies themselves, while providing deficient service to their customers. This is the reason that more purposeful and effective mechanism needs to be put in place, by IRDA by suitably amending its abovesaid guidelines dated 21.9.2011 and then also ensure effective implementation thereof.

Reverting to the facts and circumstances of the present case, noticed hereinabove, it can be safely concluded that since the petitioner-

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Insurance Company sought to reject the most genuine claim of the insured-respondent No.1, learned Permanent Lok Adalat was well justified to pass the impugned award and the same deserves to be upheld. No prejudice of any kind, whatsoever, has been shown to have been caused to the petitioner-Insurance Company, by passing of the impugned award, which may warrant 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.

However, before parting with the order and keeping in view the observations made hereinabove, this Court would like to impress upon the IRDA to look into the matter and take appropriate remedial measures, at an early date, so as to ensure that the real object of insurance is achieved and innocent citizens/insured may not keep on suffering. Another laudable object which can be achieved to a great extent would be curtailing the increasing trend of this type of avoidable litigation.

Registry is directed to send a copy of this order to the Chairperson, Insurance Regulatory and Development Authority of India, 3rd Floor, Parisrama Bhavan, Basheer Bagh, Hyderabad-500004, Telangana State (India), enabling him to do the needful. After doing the needful, Chairperson of the IRDA shall file his own affidavit alongwith action taken report before this Court at an early date and in any case within a period of

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three months.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs. With a view to monitor the progress and also for passing any further orders, if required, the case for this limited purpose, is directed to be listed on 19.4.2017.

(RAMESHWAR SINGH MALIK)
JUDGE

17.12.2016
Ak Sharma

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