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

**Civil Writ Petition No. 26714 of 2016
Date of Decision: 22.12.2016**

National Insurance Company Limited

.....Petitioner

Vs.

M/s Jai Raj Ancillaries Pvt. Ltd., and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sandeep Suri, Advocate
for the petitioner.

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RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned award dated 14.10.2013 (Annexure P-1) passed by learned Permanent Lok Adalat (Public Utility Services), Faridabad-respondent No.2, whereby application under Section 22-C of the Legal Services Authority Act, 1987, moved by respondent No.1, was allowed, petitioner-Insurance Company has approached this Court, by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned award.

Heard learned counsel for the petitioner.

Facts are hardly in dispute. Respondent No.1 was having the insurance policy for the sum of ₹57,66,000/-. Incident of fire in the factory of insured-respondent No.1 took place during the currency of the insurance policy. Without wasting any time, insured-respondent No.1 informed the petitioner-Insurance Company about the incident on the same day. No allegation of negligence has been levelled by the petitioner-Insurance Company against the insured. Insured-respondent No.1 submitted his claim for an amount of ₹9,37,737.30/-, but the learned Permanent Lok Adalat, proceeding on very conservative approach, adopted principle of average and granted an amount of ₹7,50,000/-, vide impugned award (Annexure P-1).

The only argument raised by learned counsel for the petitioner-Insurance Company before this Court is that since there was an exclusion clause in the insurance policy, petitioner-Insurance Company was entitled to invoke the said exclusion clause to repudiate the claim of the insured-respondent No.1.

In view of the abovesaid argument raised by learned counsel for the petitioner, the only question that falls for consideration of this Court is, as to whether the insurance company can be permitted to invoke the exclusion clause in every given situation and that too mechanically, without referring even to the basic facts of the case.

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 answer to the question posed hereinabove is and has to be an emphatic no. It is so said, because the petitioner-Insurance Company has been found to have acted in most arbitrary manner. It tried to invoke the exclusion clause in a mechanical way without levelling any kind of allegation against the insured qua his negligence in the incident of fire. In this view of the matter, it can be safely concluded that since the petitioner-Insurance Company has tried to repudiate the most genuine claim, learned

Permanent Lok Adalat was well within its jurisdiction to pass the impugned award and the same deserves to be upheld, for this reason also.

The Insurance Regulatory and Development Authority ('IRDA' for short) had been receiving numerous such type of complaints about the conduct of insurance companies like the petitioner-Insurance Company, which forced it to issue guidelines dated 21.9.2011. It goes without saying that instructions dated 21.9.2011 issued by IRDA are binding on all the insurance companies, including petitioner-Insurance Company as well, and the same read as under:-

> *"The Authority has been receiving several complaints that claims are being rejected on the ground of delayed submission of intimation and documents.*
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> *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."

When confronted with the abovesaid instructions issued by IRDA, learned counsel for the petitioner expressed his complete ignorance about the same. In fact, had the petitioner-Insurance Company made any effort to follow the abovesaid instructions issued by IRDA, present litigation could have been easily avoided. However, the only object of the petitioner-Insurance Company was to repudiate the genuine claim of the insured-respondent No.1, proceeding on one or the other technical ground, which has resulted in the instant unwarranted litigation.

Nature of business of insured-respondent No.1 was also not in dispute. Petitioner-Insurance Company issued the insurance policy in favour of the insured, despite knowing fully well about the nature of activities to be carried out in the factory premises of the insured. In the factory premises of respondent No.1, which was insured by the petitioner-Insurance Company, plastic injections and other components were being manufactured. It was the compulsive necessity of the insured-respondent No.1 to adopt heating process, using required chemicals, so as to manufacture the end product. Had the competent authority of the petitioner-Insurance Company applied his mind keeping in view the peculiar facts and circumstances of the case of the insured, there was no scope for invoking the exclusion clause in the present case. It was impossible for the insured to run its manufacturing unit without adopting heating and drying process.

It is also not in dispute that incident of fire took place during the heating and drying process. The incident took place on 18.9.2011 at about 6:30 A.M. There was no delay on the part of the insured in intimating the petitioner-Insurance Company about the incident of fire. Petitioner deputed its Surveyors, who submitted their reports. Even Surveyors of the petitioner-Insurance Company did not dispute the factum of incident of fire. No allegation of any negligence was levelled by any of the Surveyors of the petitioner-Insurance Company against insured-respondent No.1. All these aspects of the matter were minutely dealt with by learned Permanent Lok Adalat, before passing the impugned award, which deserves to be upheld, for this reason as well.

Learned Permanent Lok Adalat, while passing the impugned award, recorded cogent findings which have been found based on sound reasons. The relevant operative part of the impugned award, which deserves to be noticed here, reads as under:-

"We having scanned the two reports

annexures R-3 and R-7 besides the details of loss furnished by the petitioner as given in the report annexure R-4 are more than convinced that the respondent was not justified in declining the genuine claim of the petitioner. The respondent was required to rely upon the positive evidence collected immediately after the incident as detailed in R-3. In view thereof, the respondent could quantify the loss or accept the same as such as projected by the petitioner. But it did not move on either side rather invoking the exclusion clause rejected the claim of the petitioner. This led the petitioner to come to this court.

After scanning the things and the documents already referred to the hereinabove threadbare we are convinced that the petition did suffer a loss on account of the above fire incident which occurred in its plants all of a sudden for no fault of the petitioner. As per the terms forming the part of the insurance policy R-1 the respondent was liable to indemnify the petitioner for the loss caused in the fire incident and the exclusion clause could not be invoked in this case for the reason highlighted hereinbefore. It has been seen that the insurance company while insuring any unit is keen to extract the maximum premium but subsequently if it happens to indemnify the insured it tries to exonerate itself from the liability on one pretext or the other. If the insurance company like the respondent continue to adopt such a stance none would come forward to obtain the insurance cover from any insurance company. Heavy premium is charged by the insurance company while issuing such policy knowing the assured sum and its liability in the event of any such situation having emerged in future. In this case when as per the terms of insurance policy the plant of the petitioner was insured and the *above incident had occurred and the fire was not proved to have been intentionally caused the respondent was required to show the positive gesture and compensate the petitioner adequately for the loss suffered by it. The documents furnished by the petitioner did not reflect the exact quantify of the loss but the same was in the shape details in Annexure R-4. Presumption of correctness is not attached to the figures furnished by the petitioner but still it shall be in the fitness of the circumstances in case on the average basis and by applying the principle of natural justice and fair-play, equity and good conscience we quantify the loss suffered by the petitioner in the incident at Rs. 7,50,000/- after making reasonable deduction. The ends of justice shall be amply met in case this amount is paid to the petitioner by the respondent against the claimed amount of Rs. 9,37,737/-.*

In the result, the present petition is hereby partly accepted. An award is hereby passed in favour of the petitioner against the respondent. The respondent is directed to pay the amount of Rs. 7,50,000/- to the petitioner alongwith interest at the rate of 7.5.% per annum from the date of filing of this petition till the realisation of the whole of this amount. No order as to costs. File be consigned to the records."

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 learned Permanent Lok Adalat. Further, no prejudice of any kind, whatsoever, has been shown which might have been caused to the petitioner by passing of 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. In fact, instant writ petition could have been dismissed solely on the ground of long and unexplained delay of more than three years. However, ignoring the said aspect of the matter, on the request made by learned counsel for the petitioner, matter has been considered and decided on merits.

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

22.12.2016
Ak Sharma

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