HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.881 of 2014
Date of decision:3.8.2016

Sanjeev Kumar

...Petitioner

Versus

Insurance Ombudsman, Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sanjeev Kodan, Advocate for the petitioner.
Mr.A.S.Sidhu, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 26.10.2012 passed by Insurance Ombudsman, Chandigarh-respondent No.1, whereby claim of the petitioner to indemnify him on account of theft of his insured vehicle was declined.

Notice of motion was issued.

As per office report dated 10.12.2014, service was complete. But none has put in appearance on behalf of respondent No.1. However, written statement has been filed on behalf of respondent No.2.

Heard learned counsel for the parties at considerable length.

A bare reading of the impugned order would show that it is a non-speaking and cryptic order. Further, the impugned order also runs contrary to the laid down by the Division Bench of this Court in LPA No.1242 of 2012 (ICICI Lombard General Insurance Co. Ltd. Vs. Permanent Lok Adalat and others) decided on 23.11.2012, whereby appeal filed by respondent No.2 was dismissed in almost identical fact situation.

Material facts are hardly in dispute. Vehicle of the petitioner was insured with respondent No.2, which is undisputed. Learned counsel for respondent No.2 has also not disputed the fact of theft of vehicle owned by the petitioner. Claim of the petitioner has been rejected by respondent No.1 solely for the reason that petitioner did not exercise reasonable care throughout for keeping ensured vehicle in safe custody.

Identical question fell for consideration before a Division Bench of this Court, in the above-said judgment rendered in the case of **(ICICI Lombard General Insurance Co. Ltd.** (supra). The relevant part of the order passed by the Division Bench, covering the issues involved herein, reads as under:-

> *"In all fairness, the appellant-Insurance company vide our order dated 27.8.2012 was directed to place on record a specific affidavit of its authorized representative explaining as follows:-*
>
> > *"(i) whether the factum of theft is specifically disputed before the Permanent Lok Adalat? (ii) whether the factum of stolen vehicle insured with the appellant-Company, is disputed before the afore-stated forum? and (iii) whether the fact that the vehicle was stolen was got investigated by the appellant-Company from its own agency? If so, what is the report...."*
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> *In response thereto, the Legal Manager of the appellant-Insurance company has filed an affidavit dated 20.11.2012, paragraphs 6 & 7 whereof are to the following*

effect:-

> *"...6. That as far as point No.3 is concerned the investigation of the vehicle of respondent No.2 was not done from any independent investigation agency. However, the company itself investigated the cause of theft from the insured and during investigation, the theft of the vehicle was not disputed, however, the insured by stating that he left one key in the ignition of the motor cycle.*
>
> *7. That the appellant has challenged the award of learned Permanent Lok Adalat <u>neither on the ground that the vehicle of respondent No.2 was not stolen nor on the ground that the vehicle was not insured with the appellant</u>....."*

(emphasis applied)

It would thus be seen the factum of theft of the motor-cycle or it being insured with the appellant-Insurance company was not disputed before the Permanent Lok Adalat. Even without disputing the fact that the vehicle was stolen, the appellant-company has refused to release the insured amount on the plea that the theft had taken place due to alleged negligence of the insured. Learned counsel has referred to clause 4 of the terms and conditions of the insurance policy in this regard, which reads as follows:

> *"4. <u>The insured shall take all reasonable steps to</u>*

> *safeguard the vehicle from loss and damage and to maintain it in efficient condition and the Company shall have at all times free and full access to examine the vehicle or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown, the vehicle shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle be driven before the necessary repairs are effected any extension of the damage or any further damage to the vehicle shall be entirely at the insured's own risk..."*
>
> *(emphasis applied)*

We find that even the above reproduced clause does not help the appellant for the reason that the claim is for the theft of the vehicle and not for damage to or any mechanical defect of the vehicle.

The learned Single Judge has rightly referred to Section 22- D of the Act which enables the Permanent Lok Adalat (Public Utility Services) to hold a fact-finding enquiry in accordance with principles of natural justice wherever the respondent raises a factual dispute though the Permanent Lok Adalat may not be obligated to record evidence like a civil court so as to adjudicate the triable issues raised before it."

Learned counsel for respondent No.2 argued that petitioner cannot seek writ of mandamus against respondent No.2, it being a private insurance company. Having considered this argument raised by learned counsel for respondent No.2, this Court is of the considered opinion that the argument raised is wholly misconceived. It is so said because petitioner is not praying only for a writ of mandamus. Petitioner has approached this Court, seeking a writ in the nature of certiorari for quashing the impugned order dated 26.10.2012 (Annexure P-1) passed by respondent No.1. Writ of mandamus has been sought only as a consequential relief.

Relationship of the petitioner and respondent No.2 is not in dispute. Petitioner got his vehicle insured with respondent No.2. During the currency of insurance, said insured vehicle was stolen. As noticed hereinabove, material fact of theft is also not in dispute between the parties. In such a situation, respondent No.1 proceeded on wholly misconceived and perverse approach, while denying the genuine claim of the petitioner, only for the reason that he did not exercise reasonable care throughout for keeping insured vehicle in safe custody. Having said that, this Court feels no hesitation to conclude that the impugned order is palpably wrong and the same cannot be upheld.

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 order has been found suffering from patent illegality and perversity, besides being contrary to the abovesaid order passed by the Division Bench of this Court, it cannot be upheld. Accordingly, the impugned order is set aside.

Consequently, respondent No.2 is directed to indemnify the petitioner for the loss suffered by him on account of theft of his vehicle which was admittedly insured with respondent No.2. Let needful be done at an early date and in any case within a period of three months from the date of receipt of a certified copy of this order.

Resultantly, with the above-said observations made and directions issued, the present writ petition stands allowed, however, with no order as to costs.

3.8.2016 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No