

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

**CWP No.12691 of 2010
Date of decision:30.01.2017**

Oriental Insurance Company Ltd.

... Petitioner

Vs.

Sai Cabs and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. Rakesh Gupta, Advocate
for respondent no.1.

AMIT RAWAL J. (Oral)

The petitioner – Insurance Company is aggrieved of the award dated 25.03.2010 (Annexure P-1) rendered by the Permanent Lok Adalat, Public Utility Services, Gurgaon on the following grounds:-

- i) the award has not been signed by all the members of the Lok Adalat except Chairman which is no award in the eyes of law as per the provisions of Section 22-C of the Legal Services Authorities Act, 1987 (hereinafter referred to as “1987 Act”;
- ii) before taking the policy in hand, the vehicle in question was insured with previous insurer, i.e., M/s Iffco Tokyo General Insurance Company and the said vehicle had already met with an accident, in essence, the insured had claimed three claims and therefore, he was not entitled for no claim bonus.

iii) at the time of taking insurance policy, the insured had given undertaking that if any information furnished would be found incorrect, the amount of insurance shall stand forfeited.

All these factors were taken before the Lok Adalat but the same have not been looked into, rather Insurance Company has been fastened liability to entertain the claim by charging 20% of the premium.

The contention of Mr. Ashwani Talwar, learned counsel appearing on behalf of the petitioner is that the award is not an award in the eyes of law as it has the force of decree as per the provisions of Section 21 of 1987 Act. The insured denied the execution of the undertaking (Annexure P-9). If it was so, there was no consensus, the parties could have been relegated to the Civil Court.

In support of his contention, he relies upon the ratio decidendi culled out by a Single Bench of this Court in **Reliance General Insurance Co. Ltd. vs. Vijay Kumar and another 2012(1) PLR 794** and the judgment rendered by the Hon'ble Supreme Court in **Bar Council of India vs. Union of India 2012(4) R.C.R. (Civil) 262**.

Per contra, Mr. Rakesh Gupta, learned counsel appearing on behalf of private respondent submits that no prejudice and harm has been caused to the Insurance Company in entertaining the claim by charging 20% of the premium as the factum of insurance is not denied. It was incumbent upon the Insurance Company to ascertain the information from the previous Insurance Policy. Once having accepted the premium, their claim could not

have been repudiated on account of damage of vehicle in question. He further submits that the order under challenge is liable to be upheld and thus, urges this Court for dismissal of the writ petition with costs.

I have heard learned counsel for the parties, appraised the paper book and of the view that once there was denial with regard to execution of the undertaking (Annexure P-9), relevant clause reads as under:-

Insurance Act 1938, Section -41, Prohibition of Rebates

“No person shall also or offer to allow, either directly or indirectly as in inducement to any person to take out or renew or continue as insurance in respect of any kind or risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing an policy accept any rebate except such rebate as may be allowed in accordance with the prospectus or tables or the insurer. Any person making default in complying with the provision of this section shall be punishable with fine, which may extend to five hundred rupees.”

the parties were bound by the contract. Since the insured had denied the execution of the document and there was no consensus as per provisions of Section 22-C of 1987 Act, in my view, the Lok Adalat should have refrained itself in proceeding ahead with the lis, it should have relegated the parties to other forum by exercising the powers under sub-section 8 of Section 22-C of 1987 Act as the insured was required to lead evidence by disproving the

signatures on the aforementioned document. The award was also not signed by all the members of the Lok Adalat, thus, in my view, the award is not sustainable in the eyes of law.

No doubt, the procedure under Chapter 6-A has been intended to provide affordable, speedy and effective mechanism to secure the justice, in essence, the provisions of Code of Civil Procedure in Evidence Act, have not been made applicable but in case of such disputes, particularly with regard to the signatures, the Lok Adalat should have refrained itself by undertaking the task under sub-section 8 of Section 22-C of 1987 Act. Once the terms and conditions of the Insurance Policy ceased to exist, much less, the earnest money stood repudiated, the Insurance Company cannot be called upon to charge premium and revive the policy by entertaining the claim.

Resultantly, the impugned order is set aside leaving the claimant to seek redressal of the grievance in accordance with law but not in the manner and mode as indicated above.

Accordingly, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

January 30, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No