IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4978 of 2012
Date of decision : 05.05.2017

Cholamandlam General Insurance Company Ltd.

...Petitioner

Versus

Permanent Lok Adalat (Public Utility Services), Gurgaon and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Ms. Vandana Malhotra, Advocate for the petitioner.

Mr. Satbir Rathore, Advocate for respondent No.2.

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AMIT RAWAL, J. (Oral)

The Insurance Company is against the order dated 22.09.2011 (Annexure P-1) rendered by Permanent Lok Adalat in respect of application submitted by Satish Kumar Saini alleging himself to be insured of a vehicle bearing No.HR-55-C-3317 having insurance policy bearing No.3362/0031935500000.

Ms. Vandana Malhotra, learned counsel appearing on behalf of petitioner in order to challenge the order has raised two very important arguments:-

1. No conciliation proceeding as enshrined under sub-Section C of Section 22 of the Act has been initiated,
2. Original previous policy of the vehicle obtained from the National Insurance Company has not seen the light of the day.

In fact copy of the insurance policy supplied no doubt showed the expiry of insurance on 14.12.2008 but later on it was acquired that expiry date was 13.11.2008 whereas insurance done by the present insurance company is for a period of 14.12.2008 to 13.12.2009 and intimation of the alleged theft of the vehicle was received on 07.01.2009 i.e. almost 7 days from the date of incident. It is apparent case of fraud whereas office of insurance company ought to have seen the vehicle in question but believed the particulars supplied by the insured of the vehicle. All these question required detailed evidence and could not be adjudicated under the aforementioned Act.

Per Contra, Mr. Satbir Rathore, learned counsel appearing on behalf of Claimant submits that there is no adherence and compliance to the order dated 09.01.2015 passed by this Court, whereby the petitioner-Insurance Company was called upon to file an affidavit of an official from the National Insurance Company in order to lend support to Annexure P-9 i.e. certificate issued by the National Insurance Company to verify the risk date to be November, 2008.

He further submits that in pursuance to the order dated 09.01.2015, the respondents have been granted permission to withdraw 50% of the amount without security which has already been withdrawn and, thus, no cause of action survives in the present writ petition.

I have heard learned counsel for the parties and appraised the paper book.

No doubt, the petitioner-Insurance Company was called upon to submit an affidavit of National Insurance Company in support of the documents (Annexure P-9) but the fact remains that since complainant had lodged the complaint before the Permanent Lok Adalat alleging the deficiency of the service, much less, breach of terms and conditions of the obligation, it was incumbent upon him to place on record or show original copy of the policy in order to belie the stand of Insurance Company. Having failed to do so, a doubt is created with regard to the authenticity of the document (Annexure P-8), whereby risk factor of the insurance policy reportedly expired on 13.12.2008. All these factors are required to be looked into by leading direct and cogent evidence and the Forum in which the application is filed, is not competent to decide the same. Even no conciliation effort has been done which has been time and again debated upon by this Court and reference has been given to the judgment rendered by this Court in CWP No.11542 of 2015 titled as Vijay Pal Verma Vs. Permanent Lok Adalat and others. I am of the view that detailed evidence would be required, therefore, Civil Court would be the appropriate remedy for adjudication of the lis.

Resultantly, order under challenge is set aside.

The respondent is at liberty to avail the alternative remedy. In case, 50% of the amount is already withdrawn, same shall be refunded by the respondent to the Insurance Company and for remaining amount, Insurance Company shall be entitled to seek refund. In case, respondent does not refund the amount, Insurance Company shall be able to seek the refund of the amount by moving an appropriate application.

With the aforementioned observations, present writ petition stands disposed of.

05.05.2017 **(AMIT RAWAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**