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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25973 of 2013
Date of decision:18.09.2017

Ashok Kumar …Petitioner

Versus

The Permanent Lok Adalat and others …Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Divya Sarup, Advocate,
for the petitioner.

Mr. Nitin Gupta, Advocate,
for respondents no.2 and 3.

Mr. Nakul Sharma, Advocate,
for respondent no.4.

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Rakesh Kumar Jain, J.

The petitioner is aggrieved against the award of the Permanent Lok Adalat (Public Utility Services), Hisar dated 14.05.2013, by which his application filed under Section 22-C of the Legal Services Authorities Act, 1987 (hereinafter referred to as the "Act") has been dismissed.

In short, the petitioner was the owner of vehicle TATA-LPT 2515 bearing registration no.HR-39D-5141, which was financed and hypothecated with the Magma Finance Company (respondent no.4 herein). It was got insured by the petitioner from respondents no.2 and 3 and the insurance was valid from 17.11.2005 to 16.11.2006. The premium of ₹18,599/- was paid to respondents no.2 and 3 by respondentno.4 on behalf of the petitioner. The said vehicle met with an accident on 11.09.2006 and was totally damaged. The

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surveyor assessed the total loss of ₹8,50,000/-. The petitioner, with the instructions of the insurance company, sold the vehicle for a sum of ₹1,90,000/- as scrap.

Since respondents no.2 and 3 did not pay the insurance amount, the petitioner filed the application before the Permanent Lok Adalat. The defence of respondent no.2 and 3 was that the insurance policy was already cancelled on the request of the tie-up partner, i.e. respondent no.4, on 03.04.2006 and no policy was in existence at the time of the accident on 11.09.2006. It was also the case of the insurance company that after cancellation of policy, premium of ₹15,028/- was refunded to respondent no.4 and the cancellation intimation was also sent to respondent no.4 who has to further inform the petitioner. The Permanent Lok Adalat dismissed the application of the petitioner on the ground that the insurance company had cancelled the insurance on 03.04.2006 and informed respondent no.4 about it.

Counsel for the petitioner has submitted that neither the insurance company nor the finance company informed the petitioner about cancellation of the insurance policy and refund of the insurance premium to respondent no.4. The insurance company is claiming that it was the duty of the finance company to inform the petitioner regarding cancellation of policy and refund of the premium but the finance company did not inform the petitioner about cancellation of the insurance policy and refund of the insurance premium, which is lying with them in their suspense account, therefore, it is the liability of the finance company. The finance company has though stated in its reply that the information about cancellation of the insurance policy was given by it to the petitioner but there is no evidence brought on record either before the

Permanent Lok Adalat or before this Court in this regard. Thus, it was only a bald statement.

Counsel for the petitioner has submitted that as per General Rule 24 of the Indian Motor Tariff, in case of cancellation of insurance policy, the insurer has to inform the insured by way of 7 days' notice. The relevant General Rule 24 is reproduced as under:-

> "**GR.24. Cancelation of Insurance and Double Insurance**
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> **A Cancellation of Insurance**
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> (a) A policy may be cancelled by the insurer by sending to the insured seven days notice of cancellation by recorded delivery to the insured's last known address and the insurer will refund to the insured the pro-rata premium for the balance period of the policy.
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> (b) A policy may be cancelled at the option of the insured with seven days notice of cancellation and the insurer will be entitled to retain premium on short period scale of rates for the period for which the cover has been in existence prior to the cancellation of the policy. The balance premium, if any, will be refundable to the insured. Refund of premium will be subject to:
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> i) there being no claim under the policy, and
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> ii) the retention of minimum premium as specified in the Tariff.
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> (c) A policy can be cancelled only after ensuring that the vehicle is insured elsewhere, at least for Liability Only cover and after surrender of the original Certificate of Insurance for cancellation.
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> (d) Insurer should inform the Regional Transport Authority

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> (RTA) concerned by recorded delivery about such cancellation of insurance."

In the present case, no such procedure has been adopted either by the insurance company or by the finance company and the petitioner was kept totally in dark, otherwise had it been brought to the notice of the petitioner by the financier, who had paid the premium on his behalf at the time of purchase of the vehicle, the petitioner would have deposited the insurance premium himself. The insurance company has averred that they had cancelled the insurance not on the asking of the petitioner but on the asking of the financier and also refunded the insurance premium to the financier, which is admittedly lying in their suspense account, meaning thereby the insurance company did not inform the insured about cancellation of the insurance policy rather their case is that it was the duty of the financier to inform the petitioner about cancellation of his policy.

On the other hand, the financier though has stated that the petitioner was informed about cancellation of the policy but there is no evidence brought on record in this regard nor any such thing was produced during the course of hearing from which it can be transpired that the finance company informed the petitioner and, thus, everything was done by the tie-up partners, namely, the insurance company and the finance company, beyond the back of the petitioner who has suffered total loss of his vehicle due to accident and is not being paid by the insurance company.

Thus, in my considered opinion, both the insurance company (respondents no.2 and 3) and the finance company (respondent no.4) are liable to make the loss good of the petitioner and the order passed by the Permanent Lok Adalat is patently illegal and the same is hereby set aside.

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Consequently, the present writ petition is hereby allowed and respondents no.2 and 3 (insurance company) are directed to make good the loss of the petitioner within a period of one month from the date of receipt of certified copy of this order. However, respondents no.2 and 3 are at liberty to claim the said amount from respondent no.4 because of the fact that it did not inform the petitioner about cancellation of his insurance policy.

September 18, 2017 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No