IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8051 of 2014
Date of Decision.25.04.2017

New India Assurance Company Limited ....Petitioner

Vs

Permanent Lok Adalat Utility Services, Gurgaon and another ....Respondents

Present: Mr. Rajnish Malhotra, Advocate for the petitioner.

Mr. Ashish Gupta, Advocate for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The insurance company is aggrieved of the order of the Permanent Lok Adalat whereby an application moved under Section 22C of the Legal Services Authorities Act, 1987 by the insured has been allowed.

Mr. Rajnish Malhotra, learned counsel appearing on behalf of the petitioner-insurance company submits that the vehicle bearing No.HR-55/F-3599 was insured with the insurance company vide policy No.0572 for the period from 15.05.2012 to 14.05.2013 for a sum of ₹3,50,000/- . The terms and conditions of the insurance policy were sacrosanct. On 17.06.2012 i.e. during the subsistence of the insurance policy, when the aforementioned vehicle was parked near Bilaspur Toll Tax in the area of Police Station Bilaspur, was stolen and in this regard an FIR bearing No.125 dated 17.06.2012 was lodged. The insured did not lodge the claim within the reasonable period but intimated on 20.06.2012. The insurance company, on receipt of the aforementioned request, appointed a surveyor. It was found that the vehicle was insured as private carrier but it was found to have been overloaded and was not kept guarded, in essence, the insured had not taken effective measures by safeguarding the vehicle and therefore, the insurance company cannot indemnify the loss, as there has to be contributory negligence.

In fact, there was deficiency of premium of about ₹4353/- on account of not getting the vehicle insured as a public carrier and therefore, the insurance company is willing to pay a sum of ₹2,61,500/- and a sum of ₹2,57,147/- has been deposited as per receipt No.20 of 13.06.2014, therefore, the Award of the Permanent Lok Adalat is not sustainable.

Per contra, Mr. Ashish Gupta, learned counsel appearing on behalf of the respondent-insured has drawn attention of this Court to determine the terms and conditions of the policy, particularly, clause 2, which reads as under, to contend that de hors of the fact that vehicle was overloaded, the fact remains that once the vehicle had been stolen, the insurance company cannot wriggle out from discharge of their obligation of indemnifying the insured.

> *"xxxxxx xxxxxx xxxxxx*
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> *2. The company shall not be liable to make any payment in respect of:-*
>
> *a) consequential loss, depreciation, wear and tear, mechanical or electrical breakdown failures or breakages nor for damage caused by overloading or strain of the insured vehicle nor for loss of or damage to accessories by burglary, housebreaking or theft unless such insured vehicle is stolen at the same time."*
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> *xxxxxx xxxxxx xxxxxx*

The vehicle was being used for private carrier as the petitioner was carrying the goods belonging to him and therefore, the plea of deficiency of premium is neither here nor there and not substantiated by any other proof. The insurance company never objected the aforementioned fact and insured the vehicle on the information provided by the insured by receiving the premium and therefore, cannot volte face and come out with a new plea. In support of his contention, he relies upon the judgment of National Consumer Disputes Redressal Commission, New Delhi rendered in ***New India Assurance Company Limited Vs. Him Ispat Limited 2008 Vol. IV CPJ 174*** to contend that deduction and deficiency from the total amount of premium is no ground, as the insurance company had insured the vehicle with full knowledge, much less, verified and seen the vehicle and as well as business of the insured, thus, urges this Court for upholding the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Malhotra. A simple and fair perusal of the condition of the policy *ibid* leaves no manner of doubt that the insurance company would be liable to make the payment in view of the fact that the vehicle has been stolen, if it is overloaded even if a theft has taken place. The deficiency of premium is not a ground as the insurance company was well aware and had inspected the vehicle, much less, avocation and business of the insured while taking the premium. The opinion of the surveyor cannot be a basis for repudiating the claim, insisting the insured to take the remedy for vindication of the grievance, for, the information given by the insured was verified. Copy of the surveyor report in the writ proceedings has not seen the light of the day, therefore, presumption can be drawn that there is no such evidence that the insured had been using the vehicle for rental purposes instead of using it as public vehicle. The plea of deficiency of premium is wholly misplaced.

In my view, the order of the Permanent Lok Adalat is perfectly legal and justified, in terms of the insurance policy and therefore, would not call for interference, much less, cannot be said to be brought within the realm of judicial review. No ground for interference is made out.

The writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

April 25, 2017
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No