

CWP-9585-2014

Date of Decision : 19.01.2017

Future Generali India Insurance Co. Ltd.

.....Petitioner

versus

Permanent Lok Adalat and another

...Respondents

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI**Present:** Mr. Vishal Aggarwal, Advocate
for the petitioner.Mr. Pulkit Dagar, Advocate for
Mr. Rajesh Lamba, Advocate
for respondent No. 2.**M.M.S. BEDI, JUDGE (ORAL)**

The petitioner is insurer of truck/canter No. HR-73-1171 owned by respondent No. 2 which was insured vide a policy No. V1608657 valid from 13.01.2012 to 12.01.2013. During the insured period, the truck met with an accident on 14.06.2012. The petitioner-Company deputed a Surveyor on 16.07.2012 to assess the damages. After assessing the damages and taking into consideration the other circumstances i.e. registration of FIR and claim of the petitioner, loss assessment was done assessing net loss at Rs. 3,67,468.31 but excluding certain depreciations on mettle and rubber parts @ 10 pre cent and 50 per cent, respectively, decreasing the toeing charges, amount payable to

respondent No. 2, was assessed as Rs. 2,35,502.72.

Declining the assessed amount offered, respondent No. 2 opted to file a petition under Section 22C (I) of the Legal Services Authority Act by approaching the Permanent Lok Adalat for Public Utility Services at Palwal. Vide order dated 17.04.2014, a direction was given to the petitioner to pay a sum of Rs. 3,58,050/- to the petitioner.

Aggrieved by the order passed by the Permanent Lok Adalat, the present writ petition has been filed claiming that the Permanent Lok Adalat does not have jurisdiction to determine the disputed claim and that any amount ordered beyond Rs. 2,35,502.72/- is not payable to respondent No. 2 pursuant to the award passed by the Permanent Lok Adalat.

I have heard learned counsel for the parties and gone through the report of the Surveyor. The Surveyor, while assessing the loss payable and determining compensation payable, to the private respondent, has ordered certain deductions. He deducted certain amounts i.e. deductions in respect of labour charges, depreciation of mettle and plastic parts, salvage and deduction in respect of toeing charges.

So far as the jurisdiction of the Permanent Lok Adalat is concerned, both the parties had submitted to the jurisdiction of the said authority. Without entering into the controversy whether jurisdiction of a forum after having surrendered to its jurisdiction, same could be challenged, I am of the opinion that the controversy at present, required

to be determined, is whether respondent No. 2 could have been paid a sum of Rs. 3,58,050/- or he was entitled only for Rs. 2,35,503/-. The difference of the claim and the amount admitted is merely Rs.1,23,000/-. In the exercise of writ jurisdiction, the calculation of deduction and reasonableness of the amount deducted, as per the report of the Surveyor, will certainly be a debatable issue. The claim of respondent No. 2 to the extent of approximately Rs. 2,35,000/- having been admitted, the appropriate remedy for respondent No. 2 could have been either to approach the Consumer Forum or to approach the Arbitrator or Ombudsman appointed for the insurance claims but taking into consideration the extent of controversy which remains to be settled, I deem it appropriate, in the interest of justice, for the benefit of both the parties to enhance the amount of compensation assessed to the extent of 50 per cent of the difference, which amount is the disputed amount. Interest of justice would be adequately met, in case, the present petition is disposed of directing the petitioner to pay a sum of Rs. 60,000/- against their challenge to Rs. 1,23,000/-.

The present petition is disposed of with a direction that irrespective of the amount assessed by the Permanent Lok Adalat for Public Utility Services, Camp at Palwal, on the basis of the assessment of the Surveyor, the petitioner is directed to pay only a sum of Rs. 60,000/- more, against the remaining claim of Rs. 1,23,000/- of respondent No. 1. The amount will be paid within a period of one month. In case, the amount is not paid within the prescribed period, the

petitioner will be required to pay interest @ 6 per cent per annum, on the delayed payment.

(M.M.S. BEDI)
JUDGE

19.01.2017

Neha

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No