

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 825 of 2017

Date of Decision: February 20, 2017

Oriental Insurance Company Ltd.

.....Petitioner

Vs.

Shamiksha Dua and anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Satpal Dhamija, Advocate
for the petitioner.

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M.M.S. BEDI, J.

The present writ petition has been preferred by Oriental Insurance Company Ltd. against order dated August 1, 2016 passed by Permanent Lok Adalat for Public Utility Services, Patiala, whereby the claim submitted by respondent No.1 for insurance has been allowed in a case of accidental damage caused to the insured Tata Tipper vehicle.

Respondent No.1 had made a claim pleading that she had purchased one Tata Tipper to earn livelihood after obtaining loan from Punjab National Bank. As respondent No.1 could not herself drive the tipper she engaged Gurdip Singh to drive the said Tipper and got the same

comprehensively insured with the petitioner Company vide cover note which his not disputed. The sum insured was Rs.16 lacs against requisite premium. At the time of insurance, the representative of the petitioner Company inspected the vehicle along with documents. The claim had been raised on the ground that on January 22, 2011, Gurdip Singh was driving the said vehicle and it met with an accident near Ajnali Bus Stand, Mandi Gobindgarh, District Fatehgarh Sahib. In the accident, the vehicle was damaged to the tune of about Rs.3 lacs. Petitioner Company was duly informed in writing. The petitioner deputed surveyors for spot and final survey. Respondent No.1 completed all the formalities as desired by the surveyors and investigators of the petitioner. All original claim papers were produced but the claim was lingered on, on one pretext or the other. Respondent No.1 sought information under Right to Information Act on June 23, 2014 and came to know that her claim had been repudiated vide letter dated November 26, 2011 but no information had been sent to respondent No.1. After receiving no claim letter dated August 6, 2014, respondent No.1 went to the office of the petitioner and requested to reconsider her genuine claim but no payment was made.

The petitioner on receipt of notice filed reply contesting the claim of respondent No.1 denying that Tata Tipper had been purchased for earning livelihood. Rather it was pleaded that the Tipper was purchased for commercial purposes. The petitioner had issued insurance policy of the Tipper for the period February 22, 2010 to February 21, 2011 for sum of

Rs.16 lacs in the name of respondent No.1 but the petitioner had got no liability as no premium was charged by it covering the risk of “overturning” as admittedly the Tipper was stationary and the earth was being unloaded and suddenly the soil below the tyres got loosened and Tipper overturned to its left side and got damaged. The petitioner took up a specific plea that such risk of overturning is not covered as the loss has taken place due to overturning of stationary vehicle. It was denied by the petitioner that accident had taken place on January 22, 2011 or that the vehicle was damaged to the extent of Rs.3 lacs. It was admitted that on receipt of intimation of loss on February 10, 2011, the petitioner had deputed Mohaninder Singh, Surveyor and Loss Assessor for spot survey and Dinesh K. Verma and Co., Khanna, Surveyor and Loss Assessor were deputed to assess final loss who in his report dated April 14, 2011 assessed the loss to the tune of Rs.1,36,838/- and the claim was repudiated as the loss had taken place due to overturning when the tipper was stationary and was being unloaded. The insured was informed on November 26, 2011.

The conciliation proceedings were held but it appears that no amicable settlement could be arrived at. Thereafter the parties were directed to produce respective evidence and matter was adjudicated as per the provisions of Section 22-C (8) of the Legal Services Authority Act.

The Permanent Lok Adalat relied upon the report Ex.A7 of the Assessor wherein he had assessed the loss to the tune of Rs.1,36,838/- and held that the petitioner was required to indemnify the loss suffered to the

tune of Rs.1,36,838/- holding that the insurance Company was legally bound to pay the amount as assessed by the Surveyor and non-payment of the same amounts to deficiency in rendering service.

Mr. Satpal Dhamija, learned counsel for the petitioner has vehemently contended that mere assessment by the Assessor will not ipso facto confer a right on the insured to get claim. Jurisdiction of the Permanent Lok Adalat has been challenged by arguing that it has jurisdiction only to decide the cases on the basis of the compromise and reconciliation and that the Adalat has erred in entering into the appreciation of evidence and determination of liability of the petitioner.

I do not find any force in the said contention of learned counsel for the petitioner as the insurance dispute falls within the ambit of Section 202A of the Legal Services Authority Act, for short 'the Act'. Section 22-C (8) of the Act enables the Permanent Lok Adalat to adjudicate a matter in case the dispute is not settled as has been held by the Supreme Court in **Bar Council of India Vs. UOI** 2012 (4) RAJ 309.

Counsel for the petitioner has vehemently contended that the relationship between the insurer and the insured is governed by the terms and conditions of the insurance policy. He argued that the case of respondent No.1 is that while unloading the earth suddenly the soil below tyres got loosened and the insured vehicle overturned on its left side and got damaged. He referred to the terms of the policy, copy of which has been appended with the petition, by arguing that under the category of

Miscellaneous Class D Vehicles Package Policy subject to IMT Endorsement IMT-47 does not cover the loss or damage resulting from overturning arising out of the operation as a tool of such vehicle. He referred to IMT 47 which reads as follows:-

**“IMT 47. MOBILE CRANES/ DRILLING RIGS/
MOBILE PLANTS/ EXCAVATORS/
NAVVIERS/ SHOVELS/ GRABS/ RIPPERS.**

It is hereby declared and agreed notwithstanding anything to the contrary contained in this Policy that in respect of the vehicle insured the Insurer shall be under no liability-

- a) Under Section I of this Policy in respect of loss or damage resulting from overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto except for loss or damage arising directly from fire, explosion , self ignition or lightening or burglary housebreaking or theft.
- b) Under Section II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the insured arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.”

I have considered the said contention and gone through the Indian Motor Tariff -47 mentioned hereinabove. No doubt, the vehicle was not insured as commercial vehicle but has been insured only as miscellaneous Class D Vehicle. Counsel for the petitioner has made available copy of the IMT containing general regulations and different IMTs endorsements in support of his contention that for a commercial vehicle all losses will be covered in case the extended cover is sought by the insured on payment of additional premium. In the present case nominal premium of Rs.21054/- had been paid under the Miscellaneous Class D Vehicle Package Policy Zone 'C'.

I have carefully perused the insurance certificate. The vehicle of respondent No.1 had been insured for the value of Rs.16 lacs on receipt of premium of Rs.21054/- for a period of one year. Between the lines it is mentioned that the policy was subject to IMT Endorsement printed herein/ attached to IMT 47, IMT 28, IMT 29 and IMT 23. It is also mentioned that details of IMT Endorsements and GR is available on internet TAC website www.tac.org.in. It is not the case of the petitioner pleaded before the Permanent Lok Adalat that the IMT 47 was printed on the insurance policy or was attached with the policy. The plea that the liability incurred by the insured arise out of the operation of the vehicle as a tool and as such loss or damage resulting from overturning arisen out of the operation as a tool is not permissible. The said plea has been taken up for the first time in the writ petition. Since the description of IMT 47 is not proved to have been brought

to the knowledge of respondent No.1 while receiving the premium of Rs.21054/-, the petitioner Company cannot be permitted to avoid the liability. It is held that the repudiation of the claim by the petitioner Company is illegal. I do not find any infirmity in the order passed by the Permanent Lok Adalat for Public Utility Services.

The petition is dismissed in limine.

February 20, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.