

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 14250 of 2014

Date of decision : 02.08.2018

Oriental Insurance Co. Ltd.

...Petitioner

versus

Virender and another.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Talwar, Advocate, for the petitioner.

Mr. Naveen Kumar, Advocate
for respondent No. 1

RITU BAHRI, J.

The present petition is for issuance of writ in the nature of certiorari quashing the impugned order dated 28.01.2014 (P-1) passed by respondent no. 2 whereby petitioner-Insurance Co has been directed to pay insured amount i.e 4.25 lacs.

Brief facts of the case are that respondent No. 1 is registered owner of truck trolly 2213 of 10 tyres bearing registration No. HR-46-B-1744 model 2000. The said truck was comprehensively insured with petitioner-Insurance Co, vide Insurance Policy No. 2007/3407 valid from 11.02.2007 to 10.02.2008 with IDV of Rs.4.25 lacs. In the intervening night of 06-07.12.2007, the said truck trolly was stolen by some unknown person when the same was parked after locking the same in front of house of amar Singh at Village Ugala, District Ambala where the said truck trolly was engaged for loading of sugarcane with Adhoi Sugarcane Centre, District Ambala. The matter was reported to police and F.I.R NO. 153 dated 10.12.2007 was registered under Section 379 IPC at P.S. Barara. The

Insurance Company was also informed on 10.12.2007 about the theft of truck in question and the petitioner-Insurance Co had also deputed an Investigator i.e M/s royal Associates to verify the facts and circumstances of the present loss and after receiving the investigation report and verifying the documents and scrutiny of file, the petitioner-Insurance Co repudiated the claim of respondent No. 1 vide letter dated 25.03.2010 (P-2).

Against the above said order, respondent No. 1 approached respondent No. 2- Permanent Lok Adalat by way of claim application dated 01.08.2012, which was passed in favour of respondent No. 1 and hence the present writ petition.

Learned counsel for the petitioner has argued that the impugned award is liable to be set aside as respondent No. 1-Permanent Lok Adalat has no jurisdiction to settle the dispute. Learned counsel has further argued that the alleged theft took place on 06/07.12.2007 and even the intimation to the petitioner-Insurance Company was given after one month from the date of alleged theft i.e 04.01.2008. F.I.R was also registered after a gap of 04 days of the theft. This act of respondent No. 1 is giving intimation to the petitioner-Insurance Company after one month is violative of the policy in which it has been clearly mentioned that ***“Claim for theft of vehicle not payable if the theft not reported within 48 hours of its occurrence.”***

On the other hand, learned counsel for respondent No. 1 states that the intimation of theft was given to petitioner-Insurance Company promptly. There was no violation of any term or condition of Insurance Policy, as alleged by petitioner-Insurance Company. Learned counsel for respondent No. 1 has referred to report dated 25.03.2010 by the Investigator

respondent No. 1 had sold the truck in question to one Amar Singh, therefore, the insurable interest of respondent No. 1 has been ceased.

Reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of ***M/s Galada Power and Telecommunication Ltd vs. United India Insurance Co. Ltd and another, 2016 (4) RCR (Civil) 124*** wherein the Goods were duly insured for transit loss. Insurance Company informed of Transit loss. Therefore, the Insurance Company appointed two surveyors one after the other. Both the surveyors confirmed the shortage. Thereafter, the Investigator appointed by the Insurance Company and relying upon the report of this Investigator, the Insurance company repudiated the claim. However, the order of repudiation was set aside and it was held that there was no valid reasons to appoint Investigator who submitted the report after 08 months. In para 12 and 13, it has been observed as under:-

“12. The National Commission has relied upon Clause 5 and on that basis has rejected the claim by putting the blame on the complainant. The letter of repudiation dated 20th September, 1999, which we have reproduced hereinbefore, interestingly, does not whisper a single word with regard to delay or, in fact, does not refer at all to the duration clause. What has been stated in the letter of repudiation is that the claim lodged by the complainant does not fall under the purview of transit-loss because of the subsequent investigation report. It is evincible, the insurer had taken cognizance of the communication made by the appellant and nominated a surveyor to verify the loss. Once the said exercise has been undertaken, we are disposed to think

*that the insurer could not have been allowed to take a stand that the claim is hit by the clause pertaining to duration. In the absence of any mention in the letter of repudiation and also from the conduct of the insurer in appointing a surveyor, it can safely be concluded that the insurer had waived the right which was in its favour under the duration clause. In this regard, Mr. Mukherjee, learned senior counsel appearing for the appellant has commended us to a decision of High Court of Delhi in **Krishna Wanti v. Life Insurance Corporation of India 2000 (2) RCR (Civil) 140**, wherein the High Court has taken note of the fact that if the letter of repudiation did not mention an aspect, the same could not be taken as a stand when the matter is decided. We approve the said view.*

*13. In this context, we may with profit, reproduce a passage from **Halsbury Law of England, which reads as follows:- "In Halsbury's Laws of England, Vol. 16(2), 4th Edn., Para 907, it is stated:***

"The expression 'waiver' may, in law, bear different meanings. The primary meaning has been said to be the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may arise from a party making an election, for example whether or not to exercise a contractual right.. Waiver may also be by virtue of equitable or promissory estoppel; unlike waiver arising from an election, no question arises of any particular knowledge on the part of the person making the representation, and the estoppel may be suspensory only... Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without

the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver; nor may a party benefit from the waiver unless he has altered his position in reliance on it."

Reference has further been made to a judgment of this Court in a case of ***IFFCO Tokio Gen Insurance Co. Ltd vs. Ved Pal and another, 2014 (4) PLR 595*** wherein Insurance Company filed the writ petition against the award passed by Permanent Lok Adalat on the ground that intimation of theft of tractor was given after a gap of ½ years but F.I.R was registered on the next day. The award was passed in favour of the respondents and the petition filed by the Insurance Company was dismissed by this Court. In para 9, 10 and 11, it has been observed as under:-

*"9. After hearing learned counsel for the parties, the objection with regard to the fact that the Lok Adalat had no jurisdiction to entertain an application, is liable to be rejected, as the Lok Adalat was not making an assessment under the Indian Penal Code or was examining the fact, as to "whether the offence was non-compoundable or not." There was no dispute with regard to theft of the vehicle in question. The objection of the petitioner-company is that respondent No.1 had given intimation after a gap of 1½ years. The fact that the FIR had been registered on 03.02.2010 i.e. very next day of the theft, clearly shows that there was no delay on the part of respondent No.1 in informing the police about the theft of vehicle. A Coordinate Bench of this Court in ***ICICI Lombard General Insurance Co. Ltd. Vs. Permanent Lok Adalat, Ferozepur and others***, CWP No.12562 of 2012 (decided on 06.07.2012) while examining the issue of jurisdiction of the Permanent Lok Adalat, held that the objection with regard to jurisdiction should have been taken by the petitioner before the Lok Adalat.*

Having accepted and participated in the proceedings of the Lok Adalat, the

question of jurisdiction cannot be permitted to be raised to defeat the validity of the proceedings in favour of an incumbent. Moreover, as per Section 22 (D) of the Act, the Permanent Lok Adalat while conducting conciliation proceedings or deciding a dispute on merit under the Law, is to be guided by the principles of natural justice, objectivity, fair play, equity and other principles of natural justice. Section 22-D of the Act is reproduced as under:-

*“22-D. **Procedure of Permanent Lok Adalat.**- The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of natural justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 2008) and the Indian Evidence Act, 1872 (1 of 1872).”*

10. In the present case, even though there was a delay of 1½ years in giving legal notice to the petitioner-company by respondent No.1, but the fact that the vehicle had been stolen is not being disputed, as FIR No. 47 dated 03.02.2010, under Section 380 IPC was immediately got lodged at Police Station Sadar, Thanesar.

*11. Recently, the Hon'ble Supreme Court in **Bar Council of India Vs. Union of India**, 2012 (4) RCR (Civil), 262, while examining the provisions of Section 22 (C) of the Legal Services Authorities Act, 1987, has held that the purpose of creating a Forum under the Public Utility Services was to offer an opportunity to get the petty disputes decided by providing an alternative Forum other than the Civil Court. In para Nos. 28 and 29 of the aforesaid judgment, the Hon'ble Supreme Court has observed as under:-*

“28. Sine qua non of taking cognizance of a dispute concerning public utility service by the Permanent Lok Adalat is that neither party to a dispute has approached the civil court. There is no merit in the submission of the petitioner that the service provider may pre-empt the consideration of a dispute by a Court or a forum

under special statute by approaching the Permanent Lok Adalat established under Chapter VI-A of the 1987 Act and, thus depriving the user or consumer of such public utility service of an opportunity to have the dispute adjudicated by a civil court or a forum created under special statute. In the first place, the jurisdiction of for a created under the Special Statutes has not been taken away in any manner whatsoever by the impugned provisions. As noted above, the Permanent Lok Adalats are in addition to an not in derogation of for a provided under Special Statutes. Secondly, not a single instance has been cited where a provider of service of public utility in a dispute with its user has approached the Permanent Lok Adalat first. The submission is unfounded and misplaced.

29. The alternative institutional mechanism in Chapter VI-A with regard to the disputes concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the Civil Procedure Code and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit.”

This judgment is directly applicable to the facts of the present case, as in the present case as well the truck trolly was stolen by some unknown person in the intervening night of 06-07.12.2007 and F.I.R No. 153 was registered on 10.12.2007. The Insurance Company was informed

on 10.12.2007. The Insurance Company then deputed an Investigator i.e M/s royal Associates to verify the facts and circumstances of the present loss. If there was a condition in the policy that ***“Claim for theft of vehicle not payable if the theft not reported within 48 hours of its occurrence”*** then whey the Insurance Company deputed an official to assess the loss. This ground is itself sufficient to dismiss the present writ petition.

Applying the ratio of law laid down in ***Ved Pal's case (supra)*** and the fact that the Insurance Company had deputed an official to assess the loss, the present writ petition is dismissed.

02.08.2018
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>