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

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CWP No.19212 of 2017 (O&M)
Date of Decision: 17.01.2018

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Shriram General Insurance Company Ltd.

. . . . Petitioner

Vs.

Suresh Kumar and another

. . . .Respondents

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CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

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Present: Mr.Vinod Kumar Arya, Advocate,
for the petitioner.

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RAKESH KUMAR JAIN, J.

The petitioner has challenged the award of the Permanent Lok Adalat (PUS), Moga [for short 'the PLA'] dated 4.10.2016 by which an application filed by respondent No.1 under Section 22(C) of the Legal Services Authorities Act, 1987 [for short 'the Act'] has been allowed.

In brief, the tractor owned by respondent No.1 bearing registration No.PB-66-6798 having IDV ₹2,75,000/- was insured with the petitioner for a period from 20.7.2011 to 19.07.2012. The said tractor was allegedly stolen by the driver of respondent No.1, namely, Mohinder Singh on 14.9.2011, who was allowed to take the tractor for service to Sonalika Agency. An application in this regard Ex.A3 was made by respondent No.1 to SHO, Police Station, Sadar Moga on 15.9.2011. The police neither found the tractor nor arrested Mohinder Singh rather registered the FIR No.123 dated 27.9.2011 against Mohinder Singh under Section 408 of the IPC instead of Section 379 of the IPC. The police failed to arrest Mohinder Singh and also to recover the tractor in question, submitted untraced report to the

Illaqa Magistrate on 18.6.2013. The Illaqa Magistrate proceeded under Section 299 of the Code of Criminal Procedure, 1973 and consigned the file for the time being with a rider 'to be put up again as and when the presence of accused is procured'. It is not disputed that the said Mohinder Singh was declared as proclaimed offender as he could not be arrested and the tractor has also not been recovered. Respondent No.1 lodged the claim with the petitioner on 21.11.2011 i.e. after 14 months.

The only submission made by the counsel for the petitioner is that the intimation to the Insurance Company was given after a long delay.

The PLA has made the following observations: -

> *"On the other hand Ld. Counsel for applicant has relied upon the judgments of Hon'ble Punjab and Haryana High Court in Civil Writ Petition No.5150 of 2014 decided on 20.03.2014 with the title Oriental Insurance Company Vs. Permanent Lok Adalat and in Civil Writ Petition No.11365 of 2014 decided on 30.05.2014 with the title Oriental Insurance company Vs. PLA" and Civil Writ Petition 13922 of 2016 decided on 28.07.2016 with the title United India Insurance Company Limited vs. Samarjeet Singh. In these cases Hon'ble Punjab and Haryana High Court was of the view that a bare reading of policy conditions show that*

in the case of theft, the insured has to give immediate notice to the police and thereafter co-operate with the company in securing conviction of the offender. The object of informing the police is to set the investigating agency into motion in time, so that the intention of claimant does not become doubtful. In CWP No.5150 there was a gap of 43 days for informing the insurance company whereas in CWP No.11365 there was delay of 3 months in informing the insurance company. The Hon'ble Punjab and Haryana High Court was pleased to observe that this delay cannot be detrimental to the claim of the applicant and Permanent Lok Adalat had rightly deducted on account of excess clause and the amount came to 4,05,360/-. The award passed by the Lok Adalat cannot be dismissed on the ground of delay. This lapse has to be ignored by the insurance company as per the instructions issued by Insurance Regulatory and Development Authority (IRDA) on 20.09.2011 to all the insurance companies.

We have gone through the case law cited by Ld. Counsel for applicant as well as Ld. Counsel for respondent No.2. In view of latest law laid down by various authorities and guidelines issued by IRDA the claim of applicant cannot be ignored unless the delay in informing the insurance company is detrimental to the rights of insurance company. In the present case the theft took place on 14.09.2011. The applicant immediate informed SHO Police Station, Sadar Moga on 15.09.2011 vide application Ex.A3. The Police registered the FIR on 27.09.2011 which was not within the power of applicant. The police failed to arrest the driver Mohinder Singh and recover the stolen tractor. The applicant was definitely at fault in causing delay in informing the insurance company. The applicant informed the insurance company regarding theft of the tractor by lodging claim form no.21.11.12 as has been admitted by him in para No.8 of the applicant. Since the story put forward by the applicant that he was not aware of the name of insurance company is not believeable *rather he is trying to mislead the Adalat. However, in view of IRDA guidelines sent to insurance companies referred above, the insurance company could not repudiate the claim merely on the ground of delay. The applicant had informed the police at the earliest but he was guilty in informing the insurance company after a gap of about 14 months and therefore the applicant will have to face the consequences. In such circumstances, the ends of justice will be met that respondent No.2 is ordered to pay Rs.2,75,000/- IDV of tractor minus the excess clause applicable to the parties. Respondent No.2 will pay the claim amount within fifteen days after the applicant transfers the ownership, submits NOC to be issued by respondent No.1, of vehicle in the name of insurance company and executes letter of subrogation and other relevant documents. Since applicant was negligent in informing the Insurance Company at the earliest and thre is a delay of about 14 months, we are declining any interest on the Award amount. Parties are left to bear their*

> *own costs. Award is partly passed in favour of applicant and against respondent No.2. File be consigned."*

After going through the case file and also the reasoning assigned in the impugned order, I am of the considered opinion that there is no error in the impugned order and hence the present petition is found to be without any merit.

Dismissed.

(RAKESH KUMAR JAIN)
JUDGE

17.01.2018
Vivek

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*