

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

CWP-19125-2016 (O&M)
Date of decision : 14.05.2019

Lilu Ram

...Petitioner(s)

Versus

National Insurance Company Ltd. and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the petitioner.

Mr. Ram Avtar, Advocate for respondent No.1.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for quashing of impugned Award dated 02.06.2016 (Annexure P-7), passed by the Permanent Lok Adalat, Public Utility Services, Sirsa-respondent No.2, dismissing the claim of the petitioner for grant of compensation.

There is no assistance on behalf of the petitioner, however, it has been averred in the petition that the petitioner is registered owner of Maruti Ritz Car bearing registration No.HR-24-S-8234. On 24.02.2014, the said car being driven by one Subhash (since deceased) son of Nathu Ram met with a fatal accident at an unmanned railway crossing within the jurisdiction of P.S. GRP Sirsa. On account of the impact, the vehicle was completely damaged, whereas, the driver, Subhash, received fatal injuries. In this regard, FIR No.5 dated 24.02.2014 was registered under Sections 279, 304-A of the Indian Penal Code and Section 161 of the Indian Railways Act. At the relevant time, the vehicle was insured with respondent

No.1 vide policy valid w.e.f. 27.12.2013 to 26.12.2014 against Insured Declared Value of ₹5,55,435/- (Annexure P-2). The accident was reported to respondent No.1 on the same day and an own damage claim was lodged. A survey was conducted by respondent No.2, wherein, net loss was assessed to the tune of ₹3,14,435/- vide surveyor report dated 30.05.2014 (Annexure P-4). However, the claim of the petitioner was repudiated on 23.02.2015. Feeling aggrieved, the petitioner approached respondent No.2 by moving application under Section 22-C of the Legal Services Authorities Act, 1987 for amicable settlement. However, the said application was dismissed vide impugned Award dated 02.06.2016 (Annexure P-7), passed by respondent No.2.

It is contended in the petition that respondent No.2 fell in error while adjudicating the matter on merits by dismissing the application of the petitioner filed under Section 22-C of the Act as the same does not have any jurisdiction to adjudicate upon the dispute once the parties fail to reach a settlement. Condition No.4 of the terms and conditions of the policy was never violated or ignored by the driver. Furthermore, there were 5 adults and 2 minors travelling in the vehicle at the time of the accident, therefore, it cannot be said that the occupants were in excess of the seating capacity.

On the other hand, learned counsel for respondent-Insurance Company states that the claim of the petitioner has rightly been rejected as the driver/owner of the vehicle failed to take reasonable care for the safety of the vehicle. There were seven occupants travelling in the car against the seating capacity of five including the driver. It is further submitted that in the claim form and in intimation letter, the name of the driver has been

shown as Leelu Ram i.e. the petitioner/owner, whereas, subsequently, the name of the driver has been changed to Subhash Chand.

Heard.

As regards the question of jurisdiction of the Permanent Lok Adalat in deciding the dispute on its merits is concerned, Hon'ble the Supreme Court in ***Bar Council of India versus Union of India, 2012 AIR (SC) 3246***, has laid down as under:-

“17. Upto the above pre-litigation conciliation and settlement procedure, there is no problem or issue. The petitioner is seriously aggrieved by the provision contained in Section 22-C(8) which provides that where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute. This provision followed by Section 22-D which, inter-alia, provides that while deciding a dispute on merit the Permanent Lok Adalat shall not be bound by the Civil Procedure Code, 1908 and the Indian Evidence Act, 1872 and Section 22-E which accords finality to the award of Permanent Lok Adalat under Sub-section (1) and the provision made in sub-section (4) that every award made by the Permanent Lok Adalat shall be final and hence shall not be called in question in any original suit, application or execution proceedings form mainly bone of contention. Are these provisions violative of Article [14](#) of the Constitution of India and contrary to rule of law, fairness and even- handed justice? are the questions to be considered.

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22. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to

Permanent Lok Adalats only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of Permanent Lok Adalat. It is for this reason that Sub-section (1) of Section 22-C states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, the Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto a specific pecuniary limit, if they do not relate to any offence, as provided under Section 22-C(8), be said to be unconstitutional and irrational? We think not. It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment of

Permanent Lok Adalats for settlement of disputes concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence.”

Similar view has been taken by a Division Bench of this Court in ***Tata Teleservices Limited Vs. Kulwinder Singh, 2016 (5) R.C.R. (Civil) 220***, while dealing with the same question, wherein, it has held as under:-

“12. The PLA is an innovative mechanism. While ordinary Lok Adalats decide the matters on the basis of compromise or settlement between the parties, the PLA has additional powers. Sub-section (8) of Section 22C of the 1987 Act stipulates that where the parties fail to reach an agreement/settlement, the PLA shall, if dispute does not relate to any offence, decide the dispute on merit. Obviously, while conducting conciliation proceedings or deciding a dispute on merit the PLA is expected to be guided by the principles of natural justice, objectivity, fair play and equity.

13. Like any other Lok Adalat, the Award passed by the PLA either in terms of settlement or on merits, is final and binding on all the parties and is deemed to be a decree of a Civil Court.

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15. From the above, it comes out that power to adjudicate the disputes relating to public utility services have been entrusted to the PLA only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of the PLA. It is for this

reason that sub-section (1) of Section 22C of the 1987 Act states in no unambiguous terms that any party to a dispute may, before the dispute is brought before any court, make an application to the PLA for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the PLA, with the aid and assistance of the parties, the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, the PLA has power to adjudicate the dispute and once the parties approach the PLA, they are precluded from raising the same dispute before any other forum. That being the scheme and object of the statute, acceptance of the appellant's plea that the parties having failed to reach a compromise or settlement, the PLA should not have decided the case on merits and, instead, ought to have let the parties to have recourse to other remedies available to them, would forfeit the very purpose of establishment of the PLA, besides being contrary to the spirit of the 1987 Act and, therefore, cannot be countenanced.

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20. *It may be hastily added that in State of Punjab v. Jalour Singh & ors. (supra) the Hon'ble Supreme Court was dealing with the jurisdiction of a Lok Adalat under Section 20 of the 1987 Act and not with that of the PLA under Section 22 C of the 1987 Act. Therefore, reference to this case does not fit in the context of the controversy herein involved.*

(emphasis supplied)

Thus, there remains no ambiguity with regard to the fact that the PLA was well within its jurisdiction to decide the case on merits in the absence of compromise/settlement between the parties.

It is further to be noticed that in the claim form and intimation letter, the name of the driver is shown as Leelu Ram, whereas, in the complaint filed before respondent No.2, the name of the driver is written as Subhash. Thus, the petitioner has concealed material facts and not disclosed name of actual driver of the vehicle in question at the time of the accident. Learned MACT, Sirsa, decided the ration of 40:60 holding the negligence of Railway department and owner-driver of the damaged vehicle. It has come on record that the vehicle was being driven by the petitioner at the time of accident and there was a palpable negligence on his part who had not taken proper care to safeguard the insured vehicle and the occupants/passengers travelling in the car. Moreover, as against the sanctioned seating capacity of 5 persons, seven persons were travelling in the vehicle. Therefore, there is a breach of conditions of the insurance policy and the claim of the petitioner has rightly been repudiated.

In view of the above, finding no merit in the instant petition, the same is hereby dismissed.

14.05.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No