IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6119-2013
Date of Decision: July 15, 2019

Oriental Insurance Company Ltd. ... Petitioner

vs.

Permanent Lok Adalat & Another .. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vinod Khunger, Advocate
for the petitioner.

Mr. Ashish Gupta, Advocate
for respondent No.2.

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ARUN MONGA, J.(ORAL)

Challenge herein is to the award dated 22.11.2012 (Annexure P-3) rendered by the Permanent Lok Adalat (Public Utility Services), Gurgaon, whereby the petitioner-Insurance Company was directed to pay a sum of ₹6,24,000/- to respondent No.2 within 40 days, failing which to pay interest on this amount @ 9% per annum from the date of institution of the application till payment.

2. Facts, in brief, are that respondent No.2 had got its Tata HGV vehicle NO.HR-55-D-7555 model 2006 insured with the petitioner from 30.05.2010 to 29.05.2011 for a sum of ₹6,25,000/-. On 19.01.2011, at about 6:30 AM, the vehicle, while on way from Goa to Delhi, fell down in 500 feet deep ditch near Nirsing Dhaba after passing village Paul and the same could not be retrieved. One Mehtab Mohammad Malik, an occupant of the vehicle died on the spot. Other persons also sustained injuries. The insurer

failed to pay the insurance claim. Respondent No.2, therefore, filed an application before respondent No.1 for an award. Reply to the application was filed by the petitioner-Insurance Company. Conciliation failed. Ultimately, respondent No.1 passed the impugned award dated 22.11.2012 (Annexure P-3).

3. The main grounds for challenge to the award are that where the parties do not arrive at a compromise or settlement before the Permanent Lok Adalat, the case has either to be relegated to the Court of law or the parties are advised to seek remedy in a Court of law and that while introducing Section 22-C in Chapter VI of the Legal Services Authorities Act, 1987, the Permanent Lok Adalat had though been given the power to decide the case on merits, but such decision has to be only at pre-litigation stage and where the relief claimed is urgent and petty cases; that the instant case was not a petty case; since in the present case, there was no compromise reached between the parties, there was no occasion for the Permanent Lok Adalat to adjudicate the dispute more so when it involved appreciation of intricate questions of fact and law and that the Permanent Lok Adalat should not have exercised the power under sub Section 8 of the Act *ibid*; that respondent No.1 has erroneously overlooked the contentions of the petitioner that respondent No.2 had violated the terms and conditions of the insurance company, as the vehicle was carrying three passengers in violation of the policy terms.

4. Having perused the record of the case and heard the learned counsel for the parties, I am of the opinion that there is no merit in the writ petition and the same deserves to be dismissed.

5. As averred in the petition itself, while introducing Section 22-C in Chapter VI of the Legal Services Authorities Act, 1987, where the parties do not arrive at a compromise or settlement before the Permanent Lok Adalat, it had been given the power to decide the case on merits, but such decision has to be only at pre-litigation stage and where the relief claimed is urgent and petty cases. Admittedly, the parties had gone to the Permanent Lok Adalat at pre-litigation stage and they did not reach a mutually agreed settlement before respondent No.2. Obviously, the relief claimed was urgent. It follows that respondent No.1 had rightly exercised its power to decide the case on merits. Even otherwise, it cannot be said that the case fell outside the category of petty cases.

6. Considering the facts and circumstances in totality, I am of the opinion that the case hardly involved appreciation of any intricate questions of fact and law. Even otherwise, the award of respondent No.1 is well reasoned and elaborated. Hence, it cannot be said that the Permanent Lok Adalat should not have exercised the power under sub Section 8 Section of the Act *ibid*.

7. As regards the violation of the terms and conditions of the Insurance Company, by carrying three passengers in the vehicle, it would be useful to reproduce hereunder the relevant art of the award:

> *"It may be mentioned that the learned counsel for the respondent has not pressed any such argument that there was violation of the terms and conditions of the Insurance Policy. It is not proved from any documents nor argued before us that the persons were traveling on payment of fare or charges".*

8. Record thus negates that the contention of the petitioner that respondent No.1 had erroneously ignored the contention that there was

violation of the terms and conditions of the policy. Even otherwise, the Hon'ble Supreme Court of India held in **B.V.Nagaraju V. M/s Oriental Insurance Company 1996(4) SCC 647** that if passengers more than permitted in the policy are carried in the goods carrier at the time of accident and the damage to the vehicle is not due to such carrying of passengers, the use of the vehicle may be irregular in that manner but is not such a fundamental breach of the contract, as to dis-entitle the insured from being indemnified for the damage caused to the vehicle.

9. As a result of the above discussion, the petition is dismissed.

July 15, 2019 **(ARUN MONGA)**
smriti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No