

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17717-2020

Decided on: 28.10.2020

New India Assurance Company Ltd. & another

....Petitioners

Versus

M/s Hari Agro Industries & another

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.R.C.Gupta, Advocate, for the petitioners.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. SANDHAWALIA, J.

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India is directed to the order dated 12.09.2019 (Annexure P-1) passed by respondent No.2, Permanent Lok Adalat (Public Utility Services) Kurukshetra.

Vide the said order, respondentNo.2 had directed that the petitioner-Insurance Company is liable to pay a sum of Rs.13,19,500/- as the insurance claim along with interest @ 6% per annum from the date of application till the date of actual payment. Apart from that, compensation of Rs.20,000/- has also been made payable with litigation expenses of Rs.10,000/-. The respondent-applicant had also been directed to procure the latest statement of account from the bank which had financed the truck and produce the same before the Insurance Company, who shall firstly discharge the loan of the bank which had financed the vehicle and then the remaining amount would be paid released to the applicant. In case the amount has already been paid by the applicant to the bank, then after getting the no dues certificate from the bank, the entire amount was to be

paid by the Insurance Company. The key of the vehicle was to be handed over to the Insurance Company after obtaining the receipt and the truck in question was to remain the property of the Company, after payment of the insurance claim. The award was to be executed by the Civil Court of competent jurisdiction as if it was a decree passed by the Executing Court itself.

Counsel for the petitioners-Insurance Company has vehemently submitted that there is a violation of the terms of policy No.5 in as much as the vehicle had been left unattended with key in it. Resultantly, on account of the act of the Driver, the insurance claim had rightly been repudiated and therefore, the award was not justified and the repudiation of the claim on 28.06.2017 (Annexure P-2), was justified.

A perusal of the paperbook would go on to show that the claim was repudiated on 28.06.2017 on the ground that as per the statement of the owner-insured, who is the proprietor of the claimant/respondent-firm, the starting key had been left within the vehicle. The insured, thus, had not taken responsible steps to safeguard the vehicle's loss or damage.

On account of the repudiation, the application under Section 22C of the Legal Services Authorities Act, 1987 had been filed for settling the matter and in the event of failure to reconcile, for getting an award on merits. The claim was that the truck No.HR-65-9285 was insured from 02.12.2015 to 01.12.2016. The vehicle had been parked at the Reliance Petrol Pump, Ismailabad, District Kurukshetra wherein the

applicant was also partner. The vehicle was stolen from the said petrol pump. An FIR No.45 dated 04.04.2016 under Section 379 IPC was registered regarding the theft of the truck. The accused persons were eventually arrested and challan was filed against them. The applicant-owner, after completing all the formalities, had submitted the claim to the Insurance Company for realization which was processed and repudiated on the excuse that the key had been left in the ignition of the vehicle, which fact was denied.

The stand of the petitioner-Company was that the two keys for starting of the truck had not been handed over before the investigator and the applicant had admitted that the starting key had been left in the truck. Therefore, the theft had been facilitated and the repudiation was justified. A sum of Rs.78,000/- had also been recovered from the thieves arrested and the same was taken by the applicant from the Criminal Court.

Keeping in view the stand of the parties, the following points were framed by the Lok Adalat:

- “1. Whether the vehicle in question bearing registration No.HR-65-9285, owned by the applicant was insured with the respondents with effect from 02.12.2015 to 01.12.2016, and that it had been stolen on the intervening night of 3-4 April, 2016?
2. If point No.1, is proved in affirmative whether the applicant is entitled to insurance claim of the said truck? If so, to what amount?
3. Whether the insurance claim of the applicant has wrongly and illegally been repudiated by the respondents thereby

causing harassment, mental agonies, and financial loss to the applicant thereby entitling him for compensation? If so, to what amount?

4. Whether the applicant is entitled to litigation expenses from the respondents? If so, to what amount?"

The relevant points for determination of the Court are points No.2 & 3, as admittedly, the vehicle was insured and had been stolen on 03-04/04.2016, during the validity of the insurance policy.

The Lok Adalat came to the conclusion that reliance had been placed upon the statement of Puneet Mittal (Ex.R-7), the proprietor of the vehicle that the keys had been left in the vehicle. It was, accordingly, held that an FIR (Ex.P-3) had been lodged in which investigation had been completed and the final charge-sheet (Ex.P-5) had also been filed. No such facts had been mentioned in the said document. The Lok Adalat came to the conclusion that as to who had written the statement (Ex.R-7) was not proved on record and the two keys of the truck had been produced before the Lok Adalat on 03.09.2019 and therefore, it was not justified for the petitioner-Company to submit that the keys had been left in the truck. Resultantly, the statement (Ex.R-7) which had been recorded by the Surveyor was held not to be reliable. The report of the Surveyor had also not been placed on record vide which he had come to the conclusion that it was on account of the negligence of the owner/driver, the theft had taken place. Therefore, the Lok Adalat came to the conclusion that unnecessary harassment and financial loss had been caused. Resultantly, Rs.14 lakhs as insured amount, after

deducting Rs.78,000/-, which was recovered in criminal proceedings plus Rs.2500/- which was to be deducted as per condition No.3 of the policy, the amount had been quantified @ Rs.13,19,500/-.

Thus, it is apparent that the reasoning which prevailed with the Lok Adalat was on account of the fact that the stand of the Insurance Company was not proved by producing the necessary material on record and was not substantiated and proven in accordance with law. In such circumstances, the Lok Adalat exercised its powers under Section 22C(8) of the Act and decided the dispute on merits. Thereafter, keeping in view the provisions of Section 22E, it came to the conclusion that the award is to be executable by the Civil Court having local jurisdiction. The amount of compensation of Rs.20,000/- had been granted along with interest @ 6% per annum also on the amount awarded which was only to compensate the claimant since the truck was stolen on 03.04.2016 and the claim was only repudiated after one year and two months on 28.06.2017. The interest element which has been granted is only to compensate the applicant for the amount not being paid to it for the period from April, 2016 till payment. In such circumstances, the Lok Adalat has not erred in any manner or exercised jurisdiction not vested in it under the law since it has come to the conclusion that the stand of the Insurance Company that the key had been left in the vehicle was not proved. There was, thus, no negligence and carelessness in parking the vehicle.

It is pertinent to mention that as pleaded above by the

applicant, the vehicle was parked in the premises of the petrol pump of which the proprietor was a partner, which shows that it was under supervision, as such. But in spite of that it was stolen and therefore, it cannot be said that there was any violation of the terms and conditions of the policy that the vehicle had been left unattended without proper precautions. The fact of the proprietor being owner of the petrol pump has not been denied in the written statement filed by the petitioner-Company. In such circumstances, the repudiation had rightly been held to be unjustified, in the facts and circumstances.

Resultantly, in view of the above discussion, finding no merit in the present writ petition, the same is hereby dismissed in limine.

28.10.2020
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*