IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18446-2017 (O&M)
Date of Decision: March 13, 2020

THE ORIENTAL INSURANCE COMPANY LTD.

...... Petitioner(s)

Versus

BALJINDER SINGH AND ANR.

...... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ram Avtar, Advocate
for the petitioner.

Mr. Ankit Chowdhri, Advocate
for respondent no.1.

*****

LISA GILL, J.(Oral)

The petitioner-The Oriental Insurance Company Limited is aggrieved of award dated 05.04.2017 (Annexure P-1) passed by the learned Permanent Lok Adalat (Public Utility Services), SAS Nagar Mohali, whereby the petitioner has been directed to release a sum of Rs.3,00,000/- to respondent no.1 along with interest @ 9% within 45 days from the date of receipt of award, failing which respondent no.1 would be entitled to interest @ 15% per annum till realization.

Brief facts necessary for the adjudication of the case are that the vehicle i.e. a Tavera Chevrolet, Model 2007, bearing registration No. HR-55-E-9502 belonging to respondent no.1 was duly insured with the petitioner company. Value of the vehicle was assessed as Rs.3,00,000/-

approximately. The vehicle in question was stolen in the intervening night of 20/21.05.2015. Efforts were made to trace out the vehicle. DDR No. 25 dated 21.05.2015 was registered at P.S. Mataur, District SAS Nagar. FIR is on record as Ex.P-4. Respondent no.1 has averred that intimation of the theft was immediately given to the agent of the insurance company, who informed him that an untraced report by the police would be required to process his claim. The vehicle could not be traced and the untraced report Ex.P-6, was prepared. The same was accepted by the Court of competent jurisdiction on 11.08.2015. After acceptance of the untraced report, a formal claim was lodged by respondent no.1 vide communication dated 18.08.2015, stated to be received by the petitioner-insurance company on 28.08.2015. The claim was repudiated by the insurance company on the ground of delay in reporting the matter.

Respondent no.1 filed an application under Section 22-C of the Legal Service Authority Act, 1987 before the Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali. Petitioner-insurance company resisted the claim firstly on the ground of delay in intimation being given to the insurance company besides taking up the ground of non-joinder of necessary parties in-as-much as one Patran Finance & Investment Company, from which the vehicle was stated to be financed, was not impleaded.

Learned Permanent Lok Adalat allowed the application while observing that the theft in any case has not been disputed by the insurance company. Reliance was also placed on the affidavit Ex. RW 1/A of respondent no.1 to the effect that the concerned insurance agent was informed about the theft of the vehicle on the very next day of the theft. Aggrieved therefrom present writ petition has been filed.

Learned counsel for the petitioner vehemently argues that as per condition no.1 of the terms and conditions of the insurance policy attached as Annexure P-2, it was incumbent upon respondent no.1 to have given a notice in writing, immediately upon the occurrence of the theft. Any delay justifies repudiation of the claim by the insurance company. Therefore, the learned Permanent Lok Adalat has grossly erred in allowing the claim set up by respondent no.1. It is further submitted that the vehicle in question was financed from the Patran Finance & Investment Company, therefore, it was a necessary party. Moreover, the learned Permanent Lok Adalat has erred in directing interest @ 15% per annum in case the amount is not deposited within 45 days. It is further submitted that respondent no.1 has not been enjoined upon to complete the necessary formalities, especially the submission of undertaking regarding his rights on recovery of the vehicle, if at all, subrogation etc. It is, thus, prayed that this writ petition be allowed and order dated 05.04.2017 be quashed.

Learned counsel for respondent no.1 refutes the above said arguments and submits that there is no question of delay in intimation to the petitioner. The agent of the insurance company was intimated immediately and the claim raised on acceptance of the untraced report. Moreover, the vehicle in question at the time of theft was not under hypothecation. The liability of loan had been discharged by respondent no.1, which is so reflected on the registration certificate of the vehicle attached as Ex.P-2 before the learned Permanent Lok Adalat. Learned counsel for respondent no.1, on instructions from respondent no.1, who is present in Court, submits that he has no objection whatsoever to furnish the necessary undertaking for conveyance of the vehicle, in case of its recovery, to the petitioner insurance company. It is thus prayed that the present writ petition be dismissed.

I have heard learned counsel for the parties.

Theft of the vehicle in question, which was duly insured with the petitioner insurance company, in the intervening night of 20/21.05.2015 is not disputed. It is further a matter of record that the said vehicle could not be traced. Value of this vehicle was assessed as Rs. 3,00,000/-. The petitioner-company has sought to repudiate the claim of respondent no.1 on the ground of delay in intimation while relying upon the condition in the insurance policy to the effect that the notice would be given in writing to the company immediately upon the occurrence of any accidental loss or damage and in the event of any claim thereafter, the insured would give all such information and assist as the company shall require. In the present case, it is the categoric case of respondent no.1 that he had duly intimated the agent of the insurance company in this respect and he was informed that his claim could be processed only after the vehicle was reported to be untraced. The petitioner immediately raised his claim on 18.08.2015 after the untraced report was accepted on 11.08.2015. There is nothing on record to indicate averment of respondent no.1 in this respect duly supported by his affidavit to be incorrect. Moreover, even the question of mere delay in raising a claim cannot by itself be sufficient to repudiate a claim. The Hon'ble Supreme

Court in ***Gurshinder Singh Vs. Shriram General Insurance Company*** in Civil Appeal No. 653 of 2020, decided on 24.01.2020, has specifically so held. It is reiterated that the theft of the vehicle duly insured with the company is not denied. In this situation, even if there is a delay in raising the claim, the same cannot be denied only on this ground.

In so far as the question of the vehicle being hypothecated is concerned, the said averment is belied by the evidence on record. Thus the claim of respondent no.1 has been rightly allowed by the learned Permanent Lok Adalat. Learned counsel for the petitioner is unable to point out any illegality or infirmity therein. However, there is merit in the argument regarding the interest @ 15% to be paid in case the same is not deposited within 45 days of the passing of the award alongwith 9% interest. It is, thus, directed that the petitioner shall be liable to pay interest @ 9% from the date of application till realization. Furthermore, respondent no.1 in terms of the stand taken by him in Court today shall submit the undertaking in respect to the conveyance of the vehicle within two weeks from receipt of certified copy of this order. The payment of the amount as directed by the learned Permanent Lok Adalat alongwith 9% interest be released thereafter.

With the said modification in the component of interest, this writ petition is dismissed.

13.03.2020 **(LISA GILL)**
Sunil **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No