IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

206

CWP-18095-2017
Date of decision: 21.09.2022

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD.

.........Petitioner

VERSUS

ANIL KUMAR AND ANOTHER

........Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present:- Mr. Puneet Jain, Advocate
for the petitioner.

Mr. Amarjit Beniwal, Advocate
for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

The instant Civil Writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing the impugned award dated 23.12.2016 (Annexure-P-4) passed by respondent No.2-the Permanent Lok Adalat (Public Utility Services), Bhiwani and a further prayer to stay the execution of the impugned award during the pendency of the present writ petition.

2. Briefly summarized, the facts of the instant case are that the respondent No.1-claimant was owner of vehicle bearing registration No.HR-69A-1684 which was insured vide policy No. 3379/00910415/000/01 w.e.f. 09.07.2014 to 08.07.2015 for a sum of Rs. 9,00,000/-. The said vehicle was stolen on 10.11.2014 and FIR No. 256 dated 11.11.2014 was registered in reference to the aforesaid incident. Rajbir son of Devatiya, driver of the vehicle

had lodged the aforesaid FIR. A claim was also filed with the petitioner-Insurance Company. Accordingly, a Surveyor was appointed and upon consideration of the report of the survey, the petitioner Insurance Company awarded a sum of Rs. 1,55,000/- to the respondent No.1-applicant since the same was the amount payable to the financier of the truck. The remaining amount of Rs. 7,45,000/- was not approved. A legal notice dated 01.07.2015 was served by the respondent No.1-claimant, however, as no decision was taken thereupon, application under Section 22 (C) of the Legal Services Authority Act, 1987 was moved before the Permanent Lok Adalat (Public Utility Services), Bhiwani.

3. Pursuant to the institution of the claim application before the Permanent Lok Adalat, response on behalf of the petitioner was filed wherein plea was taken that the respondent No.1-applicant had left the ignition key as well as the documents in the truck and that the same was in violation of condition No.5 of the policy. Consequently, the claim had been rightly repudiated insofar as the claim of the respondent No.1-applicant is concerned.

4. A further plea was also taken that Mandeep was the registered owner of the vehicle and that Anil Kumar-respondent No.1-applicant did not have any insurable interest in the vehicle and as such the claim petition was not maintainable at his behest.

5. Upon consideration of the rival submission advanced by the respective parties, the respondent No.2-Permanent Lok Adalat (Public Utility Services), Bhiwani awarded the claim in favour of respondent No.1-applicant and directed the petitioner-Insurance Company to honour the claim as against the sum insured and to pay the same alongwith interest @12% per annum from the date of intimation regarding the theft till its realization and Rs.5,500/- towards litigation expenses. Aggrieved thereof, the present petition has been filed.

6. Learned counsel appearing on behalf of the petitioner has argued that the award passed by the Permanent Lok Adalat (Public Utility Services), Bhiwani (Camp Court at Jind) is bad and liable to be set aside since the Permanent Lok Adalat has failed to take into consideration Clause 5 of the Insurance Policy. The said clause is extracted as under:-

> *"The insured shall take all reasonable steps to safeguard the vehicle from loss or damage and to maintain it in efficient condition and the Company shall have at all time free and full access to examine the vehicle or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown, the vehicle shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the vehicle be driven before the necessary repairs are affected any extension of the damage or any further damage to the vehicle shall be entirely at the insured's own risk."*

7. It is contended that since the ignition key alongwith necessary documents had been kept by the respondent No.1-applicant in the truck itself, hence, the insured failed to take all reasonable steps to safeguard the vehicle from loss. It is contended that there was no error on the part of the petitioner insurance company in repudiating the said claim. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the matter of "***National Insurance Co. Ltd. versus Nitin Khandelwal***" reported as 2008 (11) SCC 259 as well as on judgment of the Hon'ble Supreme Court in the matter of '***Amlendu Sahoo versus Oriential Insurance Co. Ltd.***' reported as ***2010 (4) SCC 536***. He raised an alternative argument that the interest awarded by the respondent No.2-Permanent Lok Adalat is on the higher side and is not substantiated by any tangible reasons considering that the same is nearly double the prime lending rate of the banks.

8. Counsel appearing on behalf of the respondent No.1-applicant however controverts the submission and contends that the award has been

rightly passed by the Permanent Lok Adalat (Public Utility Services), Bhiwani and all the contentions of the petitioner had been duly noticed. A well reasoned and a speaking order has been passed and that no lapse has been attributed to the respondent No.1-applicant by the Permanent Lok Adalat. He also places reliance on a judgment dated 23.11.2012 passed in LPA-1242-12 titled "***ICICI Lombard General Insurance Company Limited versus Permanent Lok Adalat & Others***' wherein the award against the Insurance Company had been upheld in similar circumstances even when the insured is alleged to have left the keys in the ignition of the motorcycle that had been stolen where as there is no such lapse on the part of respondent No.1.

9. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition as also the judgment cited by the respective parties.

10. Consideration of the award passed by the Pemanent Lok Adalat (Public Utility Service) shows that the submissions advanced by the petitioner-Insurance Company had been duly taken note of and upon consideration, the same did not find favour with the Permanent Lok Adalat (Public Utility Service). The relevant extract of the judgment reads thus:

> *"11. The insurance of the vehicle by the respondent is the admitted fact between the parties as according to Ex.R5 it was concluded that vehicle key was left in the vehicle and while invoking in condition No.5, the claim was repudiated.*
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> *As per admitted case of the respondent sum of Rs.1,55,000/- was paid on the basis of non standard basis and this amount was paid to the bank as the stolen vehicle was financed by the bank.*
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> *When finance amount was cleared not it is to be seen as to whether the bank was justified in not making the payment of total damage to the owner when insurance policy is the admitted fact. The basis of rejecting the claim vide Ex.R5 is that the vehicle key was left in the vehicle and this conclusion is being drawn on the*

basis of claim raised vide Ex. R13 and in Ex.R13 it is mentioned that keys were also inside the vehicle whereas in the statement of Anil Kumar Ex. R14 it is mentioned that all papers and other goods including keys were also there in the vehicle. In other statement made by the Rajbir driver, it is disclosed that all the papers and valuable goods and vehicle documents and keys were inside the vehicle. However, according to Ex.R%, the vehicle was parked by the driver Rajbir in front of Kiryana Shop of the Uncle's son of driver. The stand of the respondent, that the applicant had no insurable interest as according to the driver he was driver of the truck of Mandeep, is not justified simply because of reason that partial claim of Rs.1,55,000/- was paid by the respondent while clearing the vehicle loan and as such after making partially payment of the damage while clearing bank loan it does not lie in the month of the insurer to say that the applicant was not having insurable interest. However, according to statement Ex.R16 made by Mandeep he was only care taker on behalf of the applicant/owner i.e. present petitioner and such, the claim cannot be denied merely on the version disclosed in the FIR by Rajbir driver that Rajbir was the driver of Mandeep on truck bearing registration No. HR-69A-1684. Mandeep was not the registered owner because vehicle number disclosed by driver is that of the petitioner's vehicle. When loan was cleared by the respondent by making payment of Rs.1,55,000/- to the bank the insurance company cannot claim that on account of negligence on the part of the driver the owner is not entitled to any claim.

12. Truck is a vehicle which is always parked outside the house and when it was parked in front of the shop of the relative of the driver certainly truck was parked at a safe place and even presuming that key was left inside the truck this fact alone is not sufficient to conclude that theft took place only because of the reason that ignition key was inside the truck.

13. In the documents placed on record it is no where stated that ignition key was left in the ignition switch and it was disclosed that all the papers and valuable goods and vehicle documents and keys were inside the truck. When a word keys is used certainly the *keys in addition to the ignition key were there in the truck and even presuming that ignition key was also there inside the vehicle even than by no stretch of imagination it can be concluded that leaving the key inside the vehicle facilitated the theft and as such, while partial claim was accepted while making payment of Rs.1,55,000/- to the financer, now it does not lie in the month of the insurance to deny reimbursement of the loss to the owner on account of theft of the insured vehicle. Undoubtedly to some extent leaving the ignition key in the vehicle may be a negligent act but such act cannot be the sole reason for incident of theft as theft incidents are taking place while adopting other modes of starting engine and as such, when the vehicle was parked at a safe place and finance was cleared by the respondent simply because of the reason that respondent was the insurer, now the respondent cannot claim that the theft took place due to sole negligence of the insured or its driver.*

14. In case the claim was to be repudiated on the basis of sole negligence of the insured certainly the respondent company was not bound to clear the vehicle loan because there was no privity of contract between the bank and the insurer and loan was simply discharged because of the privity of the contract in between the petitioner and the respondent being insured and insurer. When partial damage to the incident of Rs.1,55,000/- was reimbursed on account of theft of the insured vehicle the respondent cannot deny the payment and deciding the case on non standard basis is a tactful device adopted for refusing to compensate. The insured vehicle was stolen and the conduct of the respondent company in denying the reimbursement of loss is undoubtedly amounts to deficiency in service.

11. It is evident from a perusal of the above that the submission of the petitioner-insurance company have been fully discussed by the Permanent Lok Adalat (Public Utility Services), Bhiwani.

12. It is undisputed case of the petitioner-insurance company is that the keys of the vehicle were left in the truck and were not in the ignition.Even otherwise, the reasonableness is a perception. What might appear to be

unreasonable to the Insurance Company may be reasonable from the point of view of the insured. It has to be taken into consideration that the vehicle in question was parked in front of the kiryana shop. Needless to mention that ordinarily the truck owners/drivers would not have closed parking areas for trucks and they are parked adjacent to the property owned by the owner and/or driver. Thus, the fact that the parking of the truck in question is invariably a risk that was always in comprehension of the petitioner-Insurance Company and must have been taken into account at the time of assessing the premiums to be paid by the insured. Reasonable prudence has to be seen in the conduct of each individual case and the general practice followed in the concerned trade or vehicle. While what may be perceived as failure to exercise proper case for a L.M.V, the same parameters may not apply to a H.T.V. where general practice would be at variance than the general practice followed by uses of L.M.V.

13. In the use of H.T.V, since long distances have to be travelled there is a rotation amongst the drivers.

14. It is a common practice that the driver of the truck would usually keep such keys at a pre-destined place in the truck, known to the owner as well as alternate/second the Driver for keeping the keys so that in the event the vehicle is required to be taken by the 2nd Driver/helper for further assignment, the same can be taken at the instruction of the owner without disturbing the 1st driver, who may have come at very odd hours. There is nothing on record to suggest that no reasonable precaution had been exercised by the insured while keeping the keys in the truck. The case would have been on an altogether different footing where the petitioner-Insurance Company would have led sufficient evidence to suggest that the act on the part of the insured was so brazen as would have allured theft of the vehicle in question.

15. Furthermore, while adverting to Clause No.5 relied upon by the learned counsel appearing on behalf of the petitioner, it is evident that there are

two distinct situations contemplated in the said condition. The first part of the aforesaid clause stipulates regarding reasonable steps required to be taken by the insured to prevent loss or damage to the vehicle concerned, the second part of the clause prescribes that in the event of any accident or breakdown, if loss is escalated due to failure on the part of the insured to take adequate steps to prevent further loss or damage, the insurance company is not liable to compensate the insured for the said additional loss. However, no such condition has been prescribed to be read inherently in the first part of the clause which talks of 'reasonable' care to be taken to prevent any loss.

16. While the first part uses the words "reasonable steps to safeguard"; the second part is strictly worded end exonerates the Insurance Company from indemnifying such escalation of loss and damage "Reasonable" cannot be defined in a straight-jacket formula & has to be assessed on an individual case to case basis taking into account the reasonable steps from the perspective of the insured and in light of the standard practices of the concerned line of trade. No uniform yardstick can be applied to deprive benefit of an insurance which is taken to set-off such contingencies. Invariably, the Insurance Company was conscious of the said aspect and it is seemingly for the said reason that the claim was allowed partially.

17. Learned counsel could not point out that the view taken by the Permanent Lok Adalat (Public Utility Service), Bhiwani was not a probable view or the said view was completely untenable on the objective consideration of the evidence. Once two views are possible, the view adopted by the lower Court should not ordinarily be interfered with solely because the other view also sounds to be a probable view.

18. Significantly, the policy document is exhaustive and contains various specific clauses or conditions upon occurrence of which the Insurance Company shall not be liable. It also contains numerous Clauses restricting its

liability in the said circumstances. However, in Clause 5 of the policy document, whilst the IInd part excludes the Company from payment of escalated damage, the first part relating to loss does not contain any such authority to repudiate the claim of the insured. Such omission in an exhaustive policy document cannot be given concession of over-sight. The same is rather a collective consensus amongst the insurer and the insured. It is well settled position in law that where a policy document is subject to two possible interpretations, the view favouring the insured needs to be preferred and benefit of such vagueness cannot be extended to the Insurance Company which is the author of the document.

19. Moreover, it is also evident that the judgments referred to by the counsel appearing on behalf of the petitioner are not applicable to the facts of the present case. In the judgment of *National Insurance Company versus Nitin Khandelwal* (supra), the Hon'ble Supreme Court had held that even if it is assumed that there was breach of condition of Insurance Policy, the Insurance Company ought to have settled the claim on non-standard basis and it cannot repudiate the claim in toto in case of loss of vehicle due to theft. Thus, the principle of law enunciated by the Hon'ble Supreme Court was to protect the interest of the insured. The said judgment relied upon by petitioner thus cannot be relied upon by the petitioner –Insurance Company to repudiate the claim of insured.

20. Insofar as the judgment of *Amlendu Sahoo versus Oriential Insurance Company Co. Ltd. (supra)* is concerned, the said judgment also reiterates the aforesaid position of law. Consequently, reliance placed upon the said judgment is misplaced and does not advance the case of the petitioner Insurance Company.

21. Per contra, the judgment of the Division Bench in LPA No. 1242 of 2012 titled "ICICI Lombard General Insurance Company Limited versus Permanent Lok Adalat & Others" relied upon by the counsel for the respondent

No.1-applicant upholding the claim of the insured even where key was left in the ignition would give some semblance of support to the respondent No.1.

22. In view of the facts noticed above and the totality of the circumstances, I do not find sufficient reasons to interfere the judgment of the Permanent Lok Adalat (Public Utility Services), Bhiwani fastening the petitioner with the liability to compensate the insured is concerned. The same however leads to the alternative issue raised by the counsel for the petitioner regarding the award of interest. Taking into consideration, the totality of the circumstances and also the fact that interest @ 12% per annum awarded by the Permanent Lok Adalat (Public Utility Service), Bhiwani is not based on any objectivity and is seemingly on the higher side, I deem it appropriate to reduce the rate of interest from 12% to 7% per annum from the period after the date of award till its realization. The interest for the other period shall be as per the award. The petition is partly allowed. The award passed by the Permanent Lok Adalat (Public Utility Service), Bhiwani dated 23.12.2016 (Annexure P-4) is modified to the aforesaid extent.

The petition is disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 21, 2022
Vishal sharma

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