IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-23925-2017
Date of decision: 31.10.2022

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD AND ANR.

.......Petitioners

VERSUS

SURESH KUMAR AND ORS.

.......Respondents

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

*****

Present:- Mr. Yogesh Gupta, Advocate
for the petitioners.

Mr. D.S. Adalakha, Advocate
for respondent No.1.

Mr. Gaurav Sharma, Advocate
For respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

The question that arises for consideration is whether an insured can be denied benefit of policy on the ground of "failure to co-operate due to delay in registration of FIR although matter had been promptly reported to the police.

2. The instant Civil Writ Petition has been filed under Articles 226/227 of the Constitution of India, 1950 for issuance of a writ in the nature of Certiorari for quashing the impugned award dated 31.05.2017

(Annexure P-3) passed by the respondent No.3-Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra.

3. Briefly summarized the facts of the case are that the respondent No.1-applicant was a registered owner of truck bearing registration No.HR-38D-1600 bearing Chassis No. 373011BQQ105257, Engine No. 697D22B QQ107688 Model 1999 that was insured with the petitioner herein for a sum of Rs. 2,70,000/-. The Insurance policy was valid w.e.f. 16.02.2013 to 15.02.2014. One Bhushan Kumar son of Jai Bhagwan had been employed by the respondent No.1-applicant as Driver of the said truck. On 19.09.2013, the truck was parked in front of Shop of Baba Markanda Building Material, Shahbad at about 6:00 P.M. The same was stolen by some unknown persons. Intimation in this regard was given to the police and finally a formal FIR was registered after verification of facts on 22.09.2013 for commission of offence punishable under Section 379 of the Indian Penal Code, 1860 (herein after referred to as "IPC") at Police Station Shahbad. The respondent No.1-applicant preferred a claim with the petitioner-Insurance Company, however, the same was repudiated on the ground that there was a delay in submission of the intimation as well as in the registration of the formal FIR. Resultantly, an application under Section 22 (C) of the Legal Services Authority Act, 1987 was filed before the Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra.

4. Upon notice issued to the Insurance Company (respondent therein), the aforesaid stand of the delay was reiterated by the petitioner-Insurance Company. Adequate steps for exploring the possibility of amicable resolution of the dispute through conciliation proceedings were

undertaken. However, the parties failed to reach an agreement. Resultantly, the adjudicatory powers under Section 22 (C) (8) of the Legal Service Authority Act, 1987 were initiated. Parties were called upon to tender their respective evidence.

5. Upon consideration of the rival submissions and the evidence led by the respective parties, the Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra came to conclusion that the stand adopted by the petitioner-Insurance Company was inappropriate. Intimation regarding theft was given to the Police promptly. The delay in registration of a formal FIR was on the part of the Investigation agencies. The insured cannot be held liable for any procedural delay on the part of the investigation agency in registration of the FIR. Furthermore, while dealing with the issue of a delay in lodging a claim with the petitioner-Insurance Company, it was said that the respondent No.1-applicant had been prompt in reporting the matter to the police and there was no occasion for any prejudice being caused to the petitioner-Insurance Company due to alleged delay. It was held that the matter having been reported to the police and re-verification of the facts having been done before registration of the formal FIR, a mere delay in submission of formal claim with the petitioner-Insurance Company cannot be held to be a valid basis for denying the benefit of the policy to the respondent No.1-insured. The relevant part of the award is reproduced hereinbelow:-

> *"As referred above, as far as the facts relating to the present case are concerned, are not in dispute. It is true that the petitioner was the registered owner of the vehicle/truck which was stolen in the area of Shahabad. The Intimation was given to the police and primarily, it is obligatory about the investigating agency to verify*

the facts and then only, the law of motion comes in picture and within two days, FIR Ex.P2 was registered which shows the promptness about the petitioner that a due intimation has been given to the police without any inordinate delay. As far as the delay in giving the intimation to the insurer is concerned, a specific contention has been raised by the learned counsel for the respondents no.1 and 2 that since there was an inordinate delay in giving the intimation, the respondents no.1 and 2 were well within their powers to repudiate the claim. With his utter respect, this contention is not legally sustainable at what is expecting from the side of the petitioner, he has promptly informed the police and giving the intimation to the insurer but since the officials of the respondents No.1 and 2/insurer pressed for producing the status report of the police case that may be one of the reasons that the police could file the same Ex.P1 only on 18.03.2015 for which, the petitioner cannot held liable and it has been reported that the vehicle has not been traced. In view of the untraced report/status report filed by the police which has been accepted by the Ld. Area Magistrate by passing the order of the same day. As far as the delay is concerned, it has been comprehensively dealt by the Hon'ble Punjab and Haryana High Court in Iffco Tokio General Insurance Company Ltd. supra's case as well as in ICICI Lombard General Insurance Company of 12562/2012 which was decided on 06.07.2012 wherein there was a gap of giving the intimation to the insurer after six months but since there was a promptness in registration of the FIR, whatever the award was passed by the Lok Adalat, it was upheld. Since the facts and circumstances of the present petition are squarely covered by the ratio laid down by the Hon'ble Punjab and Haryana High Court

> *and two celebrated authorities, whatever the reasons it is mentioned by the insurer for delay in registration of the FIR or giving the intimation are not legally sustainable. Contrary to it, whatever the authorities have been relied upon by the learned counsel for the contesting respondents do not apply or cover the facts and circumstances relating to the present case. Hence, while concurring with the arguments advanced by the learned counsel for the petitioner, this court is of the considered opinion that there are sufficient ground to accept the petition and resultantly, while accepting the petition, the award to the tune of Rs.2,70,000/- (Rupees Two lac seventy thousand only) is passed in favour of the petitioner against respondent no.1 and 2. However passing this award will be having no bearing upon the rights of the respondent no.3 being the financer and can resort the legal remedy for affecting the amount which has been found to be recoverable from the petitioner. Consequently, the petition is accepted and the award accordingly be drawn."*

6. Aggrieved of the said award passed by the Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra, the present petition has been filed.

7. It has been vehemently argued by the learned counsel for the petitioner-Insurance Company that the award passed by the Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra suffers from non-appreciation of the conditions that were incorporated in the policy document. It was essential for the insured to promptly notify the loss of the vehicle to the petitioner-Insurance Company so that appropriate steps could be initiated by the petitioner-Insurance Company as well. He, however, has not referred to any such material condition of the policy

document to substantiate the argument.

8. Per contra, learned counsel appearing on behalf of the respondent has contended that the petitioner has failed to point out any specific condition or any prejudice caused for violation of the alleged terms of the policy. The fact that there was prompt reporting of the matter to the Investigation Agency and efforts were being undertaken by the respondent No.1-applicant for tracing the vehicle are the circumstances that have been rightly weighed by the Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra. He further refers to the judgment of the Hon'ble Supreme Court in the matter of "***Gurshinder Singh versus Shriram General Insurance Co. Ltd. & Another*" *reported as 2020 (11) SCC 612.*** The relevant part of the aforesaid judgment relied upon by the counsel for the respondent No.1-applicant reads thus:

> *"2. Noticing that there is a conflict between the decisions of the Bench of the two Judges of this Court in* ***Om Prakash vs. Reliance General Insurance & Anr., 2018 (1) RCR (Civil) 42****:Civil Appeal No. 15611/2017 decided on 04.10.2017 and in the case of* ***Oriental Insurance Co. Ltd. vs. Parvesh Chander Chadha, Civil Appeal No. 6739/2010 decided on 17.08.2010; 2009 (1) CLT 552*** *on the question, as to whether delay in informing the occurrence of the theft of the vehicle to the insurance company, though the FIR was registered immediately, would disentitle the claimant of the insurance claim. The Bench of two Judges of this Court vide Order dated 09.01.2018 has referred the matter to a three - Judge Bench.*
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> *3. The appellant had got his tractor insured with the respondent(s) on 19.06.2010. On 28.10.2010, the tractor was stolen and an FIR was lodged on the same day. However, the claim was submitted to the respondent(s) on 15.12.2010. It*

was rejected on the ground that intimation was given belatedly after 52 days. The appellant herein, therefore, approached the District Consumer Disputes Redressal Forum, Jalandhar, Punjab, (hereinafter referred to as the "District Forum") vide Complaint No. 380 of 2011. The District Forum, relying on the decisions of the National Consumer Disputes Redressal Commission (hereinafter referred to as the 'National Commission') in the case of Parvesh Chander Chadha (supra) and ***T.D.P. Gram Sewa Sahakari Samiti Ltd. & Ors. vs. Charanjit Kaur and Ors., 2011 (3) CPC 422*** *allowed the complaint and directed the respondents to pay a sum of Rs.4,70,000/ being the declared insured value of the vehicle to the complainant within one month from the date of receipt of copy of the order, failing which, the respondents were made liable to pay interest at the rate of 12% per annum from the date of order till payment.*

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6. When the matter was heard by the twoJudge bench of this Court, it noticed that though in the case of Om Prakash (supra), the theft of the vehicle was reported to the police on the day after the theft occurred, the intimation was sent to the insurance company much later. This Court took the view that delay in informing the insurance company would not debar the insured to get the insurance claim. Per contra, it noticed that in the case of Parvesh Chander Chadha (supra), this Court accepted the contention of the insurance company that on account of delay in intimating the insurance company about the theft, though the FIR was lodged immediately, the insurance company was entitled to repudiate the claim of the claimant. Hence, the present appeal.

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10. We are of the view that much would depend upon the words 'cooperate' and 'immediate', in condition No. 1 of the Standard Form for Commercial Vehicles Package Policy.

Before we analyze this case any further, we need to observe the rules of interpretation applicable to a contract of insurance. Generally, an insurance contract is governed by the rules of interpretation applicable to the general contracts. However, due to the specialized nature of contract of insurance, certain rules are tailored to suit insurance contracts. Under the English law, the development of insurance jurisprudence is given credence to Lord Mansfield, who developed the law from its infancy. Without going much into the development of the interpretation rules, we may allude to Justice Neuberger in ***Arnold v. Britton, [2015] UKSC 36****, which is simplified as under:*

(1) reliance placed in some cases on commercial common sense and surrounding circumstances was not to be invoked to undervalue the importance of the language of the provision which is to be construed.

(2) the less clear the words used were, the more ready the court could properly be to depart from their natural meaning, but that did not justify departing from the natural meaning.

(3) commercial common sense was not to be invoked retrospectively, so that the mere fact that a contractual arrangement has worked out badly, or even disastrously, for one of the parties was not a reason for departing from the natural language.

(4) a court should be very slow to reject the natural meaning of a provision as correct simply because it appeared to be a very imprudent term for one of the parties to have agreed.

(5) when interpreting a contractual provision, the court could only take into account facts or circumstances which existed at the time that the contract was made and which were known or reasonably available to both parties.

(6) if an event subsequently occurred which was plainly not intended or contemplated by the parties, if it was clear what

the parties would have intended, the court would give effect to that intention.

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14. A perusal of the wordings used in this part would reveal, that all the things which are required to be done under this part are related to an occurrence of an accident. On occurrence of an accidental loss, the insured is required to immediately give a notice in writing to the company. This appears to be so that the company can assign a surveyor so as to assess the damages suffered by the insured/vehicle. It further provides, that any letter claim writ summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. As such, the intention would be clear. The question of receipt of letter claim writ summons and/or process or copy thereof by the insured, would only arise in the event of the criminal proceedings being initiated with regard to the occurrence of the accident. It further provides, that the insured shall also give a notice in writing to the company immediately if the insured shall have the knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. It will again make the intention clear that the immediate action is contemplated in respect of an accident occurring to the vehicle.

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17. That the term 'cooperate' as used under the contract needs to be assessed in facts and circumstances. While assessing the 'duty to cooperate' for the insured, inter alia the Court should have regards to those breaches by the insured which are prejudicial to the insurance company. Usually, mere delay in informing the theft to the insurer, when the same was already informed to the law enforcement authorities, cannot amount to a breach of 'duty to cooperate' of the insured.

18. We concur with the view taken in the case of Om Prakash (supra), that in such a situation if the claimant is denied the claim merely on the ground that there is some delay in intimating the insurance company about the occurrence of the theft, it would be taking a hyper technical view. We find, that this Court in Om Prakash (supra) has rightly held that it would not be fair and reasonable to reject genuine claims which had already been verified and found to be correct by the investigator.

19. We find, that this Court in Om Prakash (supra) has rightly held that the Consumer Protection Act aims at protecting the interest of the consumers and it being a beneficial legislation deserves pragmatic construction. We find, that in Om Prakash (supra) this Court has rightly held that mere delay in intimating the insurance company about the theft of the vehicle should not be a shelter to repudiate the insurance claim which has been otherwise proved to be genuine.

20. We, therefore, hold that when an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/investigators appointed by the insurance company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured."

9. While placing reliance on the aforesaid judgment, learned counsel appearing on behalf of respondent No.1-insured contends that the applicant did not cause any delay in reporting to the Investigation Agency and that he had exercised his due prudence. He further contends that the denial of claim cannot be made on the basis of hyper technical

interpretation of the terms and conditions of the insurance so as to defeat the very object of availing of an insurance policy.

10. A perusal of the condition relied upon by the petitioner-Insurance Company is thus essential for appreciating the dispute. The same reads thus:

> *"Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution Inquest or Fatal Inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of the offender. Hence the complaint of the complainant is liable to be dismissed being not maintainable."*

11. It is evident from reading of the above-mentioned that the obligation cast on the insured is to co-operate with the company in securing the conviction of offender. The said condition is not in the nature of a binding duty and is rather in the nature of a solemn reciprocal arrangement that would mitigate the loss or act as a deterrence for commission of offence. It is in the nature of an expectation and is not prescribed as a pre-requisite to indemnify in accordance with the policy.

Consensus ad-idem is basic to an agreement and the Insurance Company cannot be permitted to assign any different understanding or meaning than was normally understood by the party.

12. Besides, the learned counsel for the petitioner-Insurance Company also could not dispute that the above condition/expression has already been interpreted by the Hon'ble Supreme Court of India in the matter of **Gurshinder Singh (supra).** The petitioner-Insurance Company has also failed to point out any distinction as to why the ratio of the said case would not be applicable to the present case especially when the dispute revolves around interpretation of the same expression in a contract of Insurance.

13. I have heard learned counsel appearing on behalf of the respective parties and find myself in agreement with the contention raised by the counsel for the respondent No.1.

14. Besides, the respondent No.1-applicant had promptly reported the matter to the police for taking appropriate and adequate measures to trace the vehicle in question. The insured thus, cannot be accused of not taking prompt steps for mitigating the losses that may occasion to the petitioner-insurance company.

15. The surveyors appointed by the petitioner-Insurance Company have nowhere disputed or denied the theft of the vehicle in question. The denial of the claim is solely on the basis of the alleged delay in lodging of the claim with the authority concerned. The said approach adopted by the Insurance Company would be in conflict with the judgment of Hon'ble Supreme Court in the matter of **Gurshinder Singh (supra).**

16. Furthermore, Permanent Lok Adalat is guided by the

principles laid down in Section 22 (D) of the Legal Services Authority Act, 1987 which prescribe that the Permanent Lok Adalat should follow the principles of natural justice, objectivity, fair play, equity and other principles of justice. The aforesaid guiding principles shall be reduced to a naught in case such hyper technical approach is allowed to defeat the accrued rights of an insured.

17. I find that there is no illegality or perversity committed by the Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra in passing the impugned award. In the absence of any such illegality, perversity, impropriety or gross failure on the part of the Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra to appreciate the evidence adduced on record, the discretion exercised by the Permanent Lok Adalat (PUS) in passing the award should not ordinarily be interfered with by the High Court in exercise of its powers of judicial review.

18. The present petition is accordingly dismissed as being without any merits. The award dated 31.05.2017 passed by Permanent Lok Adalat (Public Utility Services) Karnal Camp at Kurukshetra is affirmed.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 31, 2022
Vishal Sharma

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