2023:PHHC:058802

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP-2632-2022
Date of decision: 25.04.2023**

NATIONAL INSURANCE COMPANY LIMITED
.........Petitioner

VERSUS

KARAM SINGH AND ANOTHER
........Respondents

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

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Present:- Mr. Nitin Gupta, Advocate
for the petitioner.

Mr. Manoj Vashishtha, Advocate
for respondent No.1.

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<u>VINOD S. BHARDWAJ, J. (Oral)</u>

The present petition has been filed for seeking quashing of the impugned award dated 30.09.2021 passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh in application No. 231 of 2019 on the ground that the same has been passed against the principles of law and in violation of the terms and conditions of the insurance policy.

2. Briefly summarized the facts of the present petition are that respondent No.1 is owner of a Tata Truck bearing Registration No. PB 65-T-9521 which was insured from the petitioner-Insurance Company under Goods Carrying Package Policy No. 420102/31/17/6300003861 for a sum of Rs. 9,40,000/- valid from 18.10.2017 to 17.10.2018.

However, the insured truck was stolen on 15.12.2017 in pursuance of which an FIR No. 133 dated 30.12.2017 was registered under Section 379 IPC at Police Station Banur, District Patiala. Submission of claim was thereafter made by the respondent No.1-Insured with the petitioner-Insurance Company. An untrace report qua the incident was submitted by the Investigating Agency on 11.03.2019. All the documents were duly supplied to the petitioner-Insurance Company, however, the claim was not processed. Resultantly, the respondent-insured filed an application under Section 22 (C) of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh.

3. Upon receiving the notice, the petitioner-Insurance Company submitted its reply wherein they raised various objections including that the FIR in question was lodged after a delay of 15 days from the occurrence of the incident. It is averred that there was negligence on part of the applicant-insured in safeguarding the interest of the insurance company and to take appropriate and prompt steps to mitigate the loss that may be sustained by the petitioner-Insurance Company. Had the incident been reported promptly, the police could have taken effective steps to trace the vehicle and to retrieve the same and to avoid the loss that has compounded as a result of the unexplained negligence / delay on the part of the respondent-applicant.

4. Process of amicable resolution of the dispute was initiated by the the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, however, upon failing of the same adjudicatory powers

were invoked under Section 22-C (8) of the Legal Services Authorities Act, 1987.

5. Upon consideration of the evidence adduced before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh and the rival submissions advanced by the respective parties, the application of the respondent-applicant was allowed and the insured value i.e. Rs. 9,40,000/- were ordered to be released in favour of respondent-applicant alongwith interest @ 9% per annum from the date of theft till its realization. Additionally, the cost on account of deficiency of service and litigation expenses alongwith pending interest was also awarded. Aggrieved thereof, the present petition had been filed.

6. Learned counsel appearing on behalf of the petitioner argues that the respondent approached the police after a period of 15 days from the commission of the incident and no reasons have been assigned for such a delay. As a result thereof, the petitioner insured has not taken adequate steps to protect the interest of the Insurance Company and to mitigate the loss by taking appropriate steps to retrieve the vehicle. He contends that the policy document fastened a mandatory obligation upon the insured to promptly report the incident of damage/theft caused and that he having not complied with the terms and conditions of the policy document, the claims submitted by him ought to be rejected. A pointed query was raised to the counsel for the petitioner as to whether the policy document contained any consequence for delay in reporting of the incident to the police and/or delayed submission of the claim with the insurance company, however,

he failed to refer to any provision of the policy document and/or any other terms and conditions of the insurance policy on the basis whereof the consequences as repudiation of claim for such delayed submissions of claim have been prescribed thereunder.

7. Per contra, counsel appearing on behalf of the respondent-applicant places reliance upon the the judgment of ***"Jaina Construction Company versus The Oriental Insurance Company Limited and Another"*** bearing ***Civil Appeal No. 1069 of 2022*** decided on ***11.02.2022*** as well as the judgment in the matter of ***"Gurshinder Singh versus Shriram General Insurance Co. Ltd."*** reported as 2***020 AIR (SC) 1395*** to contend that delay in intimating the insurance company about occurrence of theft is not a ground to deny/repudiate the claim furnished. He contends that the Hon'ble Supreme Court has already held in the aforesaid judgments that where the genuineness of the claim is not disputed and repudiation has been ordered only on the ground of delay in submission of the claim, such delay cannot be reckoned to be fatal to the submission of the claim. An insured cannot be denied the benefit of an insurance policy for such hypertechnical default. He further refers to the circular issued by the Insurance Regulations Development Authority (IRDA) bearing Reference No. IRDA/HLTH/Misc./CIR/216/09/2011 dated 20.09.2011 to further buttress his submission.

8. Controverting the reliance of the respondent-applicant on the aforesaid judgment in the circular, the counsel appearing on behalf of the petitioner contends that the above said judgments are

distinguishable on the bare facts. Insofar as the matter of ***Jaina Construction Company (supra)*** is concerned, the incident in question had taken place on 04.11.2007 and the same had been reported to the police and the consequent FIR had been registered on 05.11.2007 itself. He thus contends that there was a prompt reporting of the incident to the police authorities even though there may be a delayed submission of claim with the insurance company. Similarly, even in the matter of ***Gurshinder Singh (Supra),*** the incident in question took place on 28.10.2010 and the FIR in question was lodged on the same day. The claim in question was, however, submitted with the Insurance Company on 15.12.2010. It is thus reported that a delayed submission of claim with the Insurance Company cannot be equated to a delay in reporting of the incident to the investigating agency as well. In the above said cases, the insured person had taken expeditious and prompt steps to protect the interest of the insured company by approaching the law enforcement agencies without any delay. He argued that the aforesaid aspect is missing in the present case and no satisfactory reasons have been given by the respondent-applicant for such inordinate delay in approaching the police after 15 days of the occurrence of event.

9. Counsel for the respondent has failed to refer to any documentary evidence to give satisfactory and sufficient reasons for delay in approaching the police authorities and intimating about the incident in question.

10. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended

alongwith the instant petition.

11. The primary issues which arises for consideration of this Court is as to whether a delay in intimation of the incident to the law enforcement agency can be taken as a ground sufficient to repudiate the claim under the insurance policy or not. The Insurance policy is a bilateral agreement and the tems must be spelt out unambigously. Termination/repudiation of the claim is the complete denial of the benefit for which the policy was obtained. Not every event or default can be hold sufficient to trigger the repudiation, which is supposed to be the last step and not the first one.

12. The policy document in question is silent regarding the consequences of delay and intimation of the incident giving rise to a claim to the law enforcement agencies. Where the delay is only on account of submission of the claim with the insurance company, the law is well settled that such delay cannot be taken as fatal to the case of the insured and that denial of the benefits under the insurance policy cannot be done by an insurance company merely as a result of such delay. The cases relied by the counsel shows that there had been no delay in reporting the incident to the police and he had thus intimated the law enforcement agencies well in time. It cannot be said that a delay of 15 days in reporting the matter to the police would have no cascading effect in escalating the loss to the insurance company. The judgments can thus be distinguished on the facts. The possibility of the Insurance Company taking expeditious steps to retrieve its loss cannot be ignored. Even though, the terms and conditions of the policy document do not

prescribe the consequence of non-compliance of the aforesaid incident, however, the same alone cannot be the basis to conclude that such a condition has no consequence and no bearing on the rights at all. At the same time, it is not the case of the Insurance Company that the incident in question never took place or that the loss was ever suffered by the insured. No foul play by insured is suggested and it is not denied that final report was filed by the police qua the incident and it never suggested that the event of theft did not occur.

13. Accordingly, the circumstances of the case in hand clearly show that the respondent-insured did not take adequate steps expected out of a prudent-insured to safeguard the interest of the petitioner-Insurance company thus decreasing the chances of the insurance company for taking appropriate steps to mitigate its loss and to swing into an action to retrieve the said vehicle.

14. Taking into consideration the facts and circumstances as a means of balancing the interest and equities of the respective parties, the principal amount awarded by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh is reduced by 10%. The governing principles under Section 22 -D of the Legal Services Authorities Act, 1987 are required to be applied qua all the parties to the dispute. The Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh failed to extend the said equities.

15. The present petition is accordingly partly allowed. The principle amount of Rs. 9,40,000/- as awarded vide award dated 30.09.2021 by the Permanent Lok Adalat (Public Utility

Services), U.T. Chandigarh is reduced by 10% for failure of the respondent-applicant to take adequate steps to safeguard the interest of the petitioner-company. All other benefits may be calculated accordingly.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 25, 2023
Vishal sharma

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