IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

246 **CWP-16476-2021**
Decided On: 27.03.2023

IFFCO TOKIO GENERAL INSURANCE CO. LTD. AND ANOTHER

... Petitioners

VERSUS

RAMESH AND OTHERS

... Respondents

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

****

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

Mr. Inderjit Singh, Advocate for respondents no.1 and 2.

Mr. Ravi Kumar, Advocate for respondent no.3.

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VINOD S. BHARDWAJ, J (ORAL)

The question which arises for adjudication in the present case is whether the additional benefit of personal accident under a Policy meant for an "owner driver" extends also to the "driver" who is not the "owner" of the vehicle in question.

The present writ petition raises a challenge to the Award dated 10.07.2021 (Annexure P-3), passed by the Permanent Lok Adalat (Public Utility Service), U.T. Chandigarh, through its Chairman.

BRIEF HISTORY

Briefly summarized, the facts of the present case as claimed by the respondents-applicants- parents of one Ashok Kumar, who was working with respondent no.3 Anuj Sharma–Managing Director of the company namely Fruit Jump India Private Ltd are that during the course of his employment as a driver, deceased Ashok Kumar was assigned Tata Truck bearing registration No.HR-39D-8823. The vehicle in question was insured with the petitioner Insurance Company vide Insurance Policy Number M6425644 with IDV of Rs.10,00,000/- (Rupees ten lakh only) with an additional coverage of personal accident insurance of Rs.15,00,000/- (Rupees fifteen lakh only), as was opted by the insured for accidental death of driver of vehicle, by paying an additional premium of Rs.325/- (Rupees three hundred twenty five only). On 11.03.2019, the aforesaid vehicle met with an accident because of rash and negligent driving of another vehicle bearing registration No. PB-11-BR-9742. An FIR qua the incident was registered. Ashok Kumar, the son of the respondents-applicants unfortunately passed away in the aforesaid accident. The respondents contend that they submitted a claim to the Insurance Company for the release of the additional coverage amounting to Rs.15,00,000/- in terms of the Insurance Policy, however, the petitioner-Insurance Company repudiated/ declined the aforesaid claim. Consequently, an application under Section 22-C of the Legal Services Authorities Act, 1987 was instituted before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh.

Upon notice, the petitioner-Insurance Company filed its reply wherein it raised various objections including that as per the policy document, the personal accidental coverage of Rs.15,00,000/- was extendable only to the "owner driver" of the vehicle and that as per the general regulations, as clarified in the India Motor Tariff, the "owner driver" is "<u>a person who is the registered owner and is also driving the vehicle in question</u>" at the time of the incident. He contends that the benefit of the additional Insurance Cover was, thus, available only to Anuj Sharma-the registered owner of the vehicle, in case he would have been driving the vehicle and the same is not extendable to an independent driver, who is employed by the owner. Since the deceased Ashok Kumar was separately employed as a driver, the above clause of personal accident in the policy does not cover the claim. It was thus, averred that the claim was rightly repudiated/declined by the Insurance Company.

Proceedings for conciliation/amicable resolution of the dispute were initiated by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh in terms of Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987, however, it failed to amicably resolve the dispute. Consequently, adjudication in exercise of powers under Section 22-C (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh.

Upon consideration of the rival submissions, the application filed by the respondents-applicants was allowed and the petitioner Insurance Company was held liable to pay the amount of Rs.15,00,000/- to the respondents-applicants and to be apportioned equally amongst them. Additionally, a costs of Rs.5,000/- was also imposed. Aggrieved therefrom, the present petition has been filed.

PLEADINGS

The petitioner-Insurance Company has reiterated its stand taken before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh and has averred that the personal accidental cover of Rs.15,00,000/- as detailed in Section 4 of the Policy covered "owner-driver" and was available only to the registered owner of the vehicle, who dies while driving the vehicle. It is not a general insurance cover and only indemnifies a qualified exigency. He further contends that since the aforesaid exigency did not occur, the Award could not have been passed in favour of a person who is not covered under the policy. It is further contended that the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh failed to take into consideration the crucial Clauses of the Policy which read thus:-

> ***"SECTION 4: PERSONAL ACCIDENT COVER FOR OWNER DRIVER***
>
> *Subject otherwise to the terms exceptions conditions and limitations of this policy the Company undertakes to pay compensation as per the following scale for bodily injury/death sustained by the owner-driver of the vehicle in direct connection with the vehicle insured or whilst mounting into/dismounting from or traveling in the insured vehicle as a co-driver, caused by violent accidental external and visible means which independent of any other cause shall within six calendar months of such injury result in:*

Nature of injury	***Scale of compensation***
(i) Death	*100%*
(ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye	*100%*
(iii) Loss of one limb or sight of one eye	*50%*
(iv)Permanent total disablement from injuries other than named above	*100%*

Provided always that

1. The compensation shall be payable under only one of the items (i) to (iv) above in respect of the owner-driver arising out of any one occurrence and the total liability of the insurer shall *not in the aggregate exceed the sum of Rs.15,00,000/- during any one period of insurance;*

2. No compensation shall be payable in respect of death or bodily injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs;

3. Such compensation shall be payable directly to the insured or to his/her legal representatives whose receipt shall be the full discharge in respect of the injury to the insured;

4. <u>This cover is subject to</u>

a) <u>The owner-driver is the registered owner of the vehicle insured herein;</u>

b) <u>the owner-driver is the insured named in this policy.</u>

c) <u>the owner-driver holds an effective driving licence, in accordance with the provisions of Rule 3 of the Central Motor Chides Rules, 1989, at the time of the accident.</u>"

(Emphasis supplied)

A reference is also made to "**GR36**" of the 'Indian Motor Tariff' laid down in accordance with the provisions of the Insurance Act, 1938, which reads thus:-

*"**GR36** Personal Accident (PA) Cover under Motor Policy (not applicable to vehicles covered under Sections E,F and G of Tariff for Commercial Vehicles)*

A. <u>Compulsory Personal Accident Cover for Owner Driver</u>

Compulsory Personal Accident Cover shall be applicable under both Liability only and Package policies. <u>The owner of insured vehicle holding an 'effective' driving license is termed as Owner-Driver for the purposes of this Section</u>.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/dismounting from or travelling in the insured vehicle as a co-driver.

NB *This provision deals with Personal Accident Cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving license. Hence, compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving licence. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A cover for the owner-driver should not be charged and the compulsory P.A cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her."*

The respondents have filed their written statement in which they have reiterated the averments noticed earlier and do not dispute the factual aspects as regards the deceased working as A Driver with Anuj Sharma at the time of occurrence of the incident. They also acknowledge that MACT had awarded a compensation of Rs.22.80 lakh to them on 05.02.2021. The respondent however contends that the additional accidental coverage would cover the driver as well and the Insurance Company could not deny the benefit under the Policy after the accident.

It is further averred that Anuj Sharma being the Managing Director of the Company, could not be expected to be driving truck himself. The agent had, however, assured that the Insurance Company gives personal accidental death coverage even to a paid driver. It was on the abovesaid assurance that the additional premium was paid. The driver being holder of a valid driving licence would step into the shoes of the owner for the purposes of benefits admissible under the policy and the Award has thus been rightly passed in favour of the applicants.

ARGUMENTS

It is further contended that the Permanent Lok Adalat, (Public Utility Services), U.T. Chandigarh has dispelled the contentions raised on behalf of the petitioners by observing as under:-

> "*On perusal of Annexure R-3/2 (C-5) which is a schedule of the insurance policy one "Driver Clause" is mentioned and it is specifically provided therein that "any person including insured provided that the person driving holds and effective driving licence at the time of the accident: and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective learner's licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.*
>
> *Bare reading of this clause clearly envisages that apart from registered owner of the vehicle "any other person or driver", who is having valid driving licence is also covered under this insurance. Thus, the intention of the legislation while framing terms and conditions of the policy is very clear that apart from the registered owner of the vehicle, any other person including the paid driver having valid driving licence is covered under the policy, particularly in the present case when the respondent no.3 has also paid additional premium for Rs.325/- (Rupees three hundred twenty five only) to cover the risk of driver also.*
>
> *After perusal of the insurance policy Annexure R-3/2)C-5), it is found that in column B regarding third party, P.A coverage is for owner-driver for Rs.15,00,000/- (Rupees fifteen lakh only) with payment of premium of Rs.325/- (Rupees three hundred twenty five only).*

> *The learned counsel for the applicants has placed on record the judgment of the Hon'ble Supreme Court in the case of Ramkhiladi (Supra), wherein, it was held that borrower or driver other than registered owner stepped into the shoes of owner is entitled for personal accident claim with accrued interest and we find that in the present case the applicants are on a better footing as late Sh.Ashok Kumar was a paid driver of the respondent no.3 and the respondent no.3 has also paid extra premium for third party risk and categorically mentioned in his reply that he had specifically asked from the agent of respondents no.1 and 2 regarding insurance of the driver as he being the Managing Director of the Company, was not supposed to drive the truck meant for transportation of the products of the company. These averments made by respondent no.3 in his reply remained un-rebutted by the respondents no.1 and 2. Therefore, the same are taken to be correct. Meaning thereby, that since the registered owner of the vehicle has hired a driver having valid driving licence, has stepped into his shoes for the purpose of getting claim by his legal representatives/legal heirs on his death in the accident."*

He argues that the findings recorded by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh to the effect that the driver would step into the shoes of a registered owner for getting the claim, is misconceived and is not based on correct interpretation of the legal instrument. Each word in a policy document is required to be assigned a meaning in law. Any sympathetic consideration of a claim cannot extend the jurisdiction of Permanent Lok Adalat to re-writing of the terms of the contract. The Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, thus, exceeded in its jurisdiction in erasing the distinction between the words and the expressions used and to perceive them as interchangeable notwithstanding that the same was neither the intent of the contracting parties nor the statutory import.

He further contends that the respondents-applicants also preferred a separate claim petition under the Motor Vehicles Act from before the Tribunal against the offending vehicle and the compensation under the Motor Vehicles Act was also awarded to them. They have additionally also lodged the present claim under the aforesaid policy for seeking compensation in a bid to capitalize on the unfortunate incident.

Counsel for the petitioner-Insurance Company also argued that the terms of the policy are specific and unambiguous about the expression used and cannot be held to be a contract under a mistake on the part of the insured. The law is well settled that contract of Insurance creates financial liability on occurrence of the event or default under-written by the Insurance Company. The power of judicial review would not exceed to re-write the contract between the parties or impose a liability for risks not covered. Once the terms of the policy are clear and unambiguous, assuming that there was a mistake on the part of the insured in understanding the same, such a mistake being unilateral, cannot create any binding obligation against the petitioner-Insurance Company. Financial burden cannot be thus imposed upon the petitioner-Insurance Company by holding that the driver of the vehicle involved would step into the shoes of the owner. Reliance is placed on the recommendation/explanation given by “India Motor Tariff” to contend that the word and expression used in the Policy document stand duly explained. The Award thus needs to be set aside.

Counsel for the respondents, on the other hand, reiterates the submissions noticed above and contends that the findings have been rightly recorded by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh with the social welfare object and that the findings recorded are not based on mis-reading or mis-interpretation of the documents. He further contends that law has been laid down by the Hon'ble Supreme Court, wherein it is categorically held that when the terms and conditions of a contract of insurance are ambiguous or liable to more than one interpretation, the interpretation in favour of the insured is to be adopted. Exercise of such discretion in accepting the interpretation favouring the insured is thus of a correct import and the benefit released in favour of respondents-applicants- ought not to be ordinarily interfered with.

He further contends that the terms and conditions of the insurance policy were not placed on record before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh or before this Court. He further contends that reference to the "Indian Motor Tariff GR36" is inadmissible at this stage since the aforesaid fact ought to have been brought before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh. The petitioner would thus be precluded from raising such an issue. Reliance is also placed on certain judgments, referred to in the award to support his arguments.

While rebutting the arguments, counsel for the petitioners contends that aforesaid objection is not tenable since the contract of insurance is based on consensus *ad idem* and is governed by *Uberrima Fides.* Deceased Ashok Kumar was not a contracting party and the understanding/consensus established has to be amongst the petitioner–Insurance Company and the insured i.e Anil Sharma. He also contends that the submissions as regards the terms and conditions and the meaning of PA as mentioned in the Insurance Policy is based upon the general regulations provided in the India Motor Tariff. The same being a legal argument, is not even required to be pleaded and can be raised at any point. It is further submitted by him that it would also be incorrect on the part of the respondents-applicants to contend that the issue in question had not been raised before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh as the said issue was duly agitated and argued before them. As a matter of fact, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh has interpreted the aforesaid clause and concluded that the 'driver' would step into the shoes of the registered owner. He contends that it is thus not the case that the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh was not apprised of the aforesaid objection, rather, the aforesaid objection is duly noticed in internal page 7 of the Award itself.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available with their able assistance.

<u>CONSIDERATION</u>

In order to appreciate the dispute, it would be necessary to refer to various provisions of the Motor Vehicle Act, 1988 and the Rules and Regulations framed there under. **Sections 2(9) and 2(30) of the Motor Vehicles Act, 1988** define a "driver" and "owner" which reads thus:-

> ***"Section 2(9)***
> *"driver" includes, in relation to a motor vehicle which is drawn by another motor vehicle, the person who acts as a steersman of the drawn vehicle;"*
> ***Section 2(30)***
> *"owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of*

> *such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."*

The words "owner driver" are, however, not defined in the Motor Vehicle Act, 1988. The aforesaid expression finds a mention in GR36 of the <u>India Motor Tariff</u> which is the Tariff Advisory Committee, as per Section 64U of the Insurance Act, 1938 and lays down rules, regulations, rates, advantages, terms and conditions for transactions of Motor Insurance in India and is constituted in accordance with the provisions of Part II-B of the Insurance Act 1938. The expression "<u>owner driver</u>" in relation to a personal accident cover under the Motor Accident Policy has already been extracted in the preceding paragraphs as well as Clause 4 of the Policy Document.

The expression "used" in the policy cover note for extending the benefit of personal accident cover is "owner driver". It does not use any other sign or linguistic expression inbetween the usage of the above said both words. The counsel for the respondent-Applicant intends to give it a suggestion and interpretation that the said expression should be construed as "owner/driver" and that the driver shall step into the shoes of owner in view of the law laid down by the Hon'ble Supreme Court. He further contends that where an expression is capable of two different interpretations, the interpretation favouring the insured has to be accepted and no benefits of such ambiguity can be extended to the author of the document i.e. the Insurance Company.

The law in relation to interpretation of statutes/documents lays down various guidelines. It is recognized as a basic principle that the intention/interpretation of a phrase has to be primarily gathered from the language used. It was held by the Hon'ble Supreme Court in the matter of ***Shyam Kishori Devi Vs Patna Municipal Corporation and another*** reported as ***AIR 1966 SC 1678*** that the words of a statute never should, while interpreting, be added or be substituted without a necessity. Hence, where a construction which requires, its support from additions or substitutions of words/expressions is required to be avoided. The abovesaid rule was reiterated by the Hon'ble Supreme Court in the matter of ***Harbhajan Singh Vs. Press Council of India and others*** reported as ***(2002) 3 SCC 722***. Certain well accepted exceptions have, however, been carved out. In discharge of its interpretative functions, the Court can correct an obvious drafting error in a suitable case. It was held in the matter of '***INCO Europe Limited and others Vs First Choice Distribution (A Firm) and others*** reported as ***2000(2) All E.R 109 (HL)*** that before interpreting a statute, the Court must be abundantly sure of three aspects:

(i) the intended purpose of the statute or the provision in question;

(ii) that due to inadvertence, the draftsman/legislature fails to give effect to that purpose in the statute or the provision in question;

(iii) the substance of the provision the Parliament would have made, although not necessarily the precise words the Parliament would have used, had the error in the Bill been noticed.

Hence, it is generally and ordinarily not allowable to read the words in a statute/provision/document which are not there. Departure from the Rule of literal construction may be legitimate to avoid any part of the provision from becoming meaningless. Rule of literal construction mandates that the words of a statute/provision are understood in their natural, ordinary or popular sense and the phrases and sentences are to be construed from their grammatical meaning unless the same leads to some absurdity or there is something in the context or in the object which suggests to the contrary. It was also held by the Hon'ble Supreme Court in the matter of ***Union of India Vs. Excide Industries Limited*** reported as ***(2020) 5 SCC 274*** that when the Court examines the validity of a provision, its primary concern is the literal context of the provision. It is so because the legislation speaks through context and as long as it is not speaking in an equivocal manner, there is a limited space for the Court to venture beyond the context. If the text of a provision is unambiguous, the legislative intent gets coalesced and is epitomized therefrom. While referring to the above said rule of interpretation in the context of an issue pertaining to Indian Limitation Act, 1908 in the case of ***Nagendra Nath Dey Vs. Suresh Chandra Dey*** reported as ***AIR 1932 Privy Council 165***, Sir Dinshah Mulla stated that "the strict grammatical meaning of the words is, *"their lordships think the only safe guide."* The said principle has been re-affirmed by the Hon'ble Supreme Court in various subsequent judgments.

The same thus necessitates this Court to examine whether the literal interpretation of the expression "owner driver" as clarified in GR36 of the "Indian Motor Tariff" read with the definitions provided in the Motor Vehicles Act, 1988 is likely to lead to an absurd and ambiguous result necessitating the reading of the said expression as "owner/driver" which is suggested by the respondent-Applicant recognizing the principle that the driver would step into the shoes of the owner and would thus be entitled to the benefits as would enure in favour of the owner.

Reliance in this regard has been placed by the counsel for the respondents on the judgment of the Hon'ble Supreme Court in the matter of

‘Ramkhiladi and another Vs. United India Insurance Company and another’ reported as ***(2020) 2 SCC 550*** wherein the deceased had borrowed the motorcycle from the owner and met with an accident with another motorcycle due to negligence of the driver of the other offending vehicle. The borrower did not claim compensation from the owner of the offending vehicle, rather he claimed compensation only against the owner and insurer of the motorcycle, which was borrowed. It was hence held by the Hon’ble Supreme Court that the deceased-borrower stepped into the shoes of the owner of the vehicle and not being a third party, such claim at his behest was maintainable.

The above said judgment was followed by this Court in the matter of ***‘M/s IFFCO Tokio General Insurance Co. Ltd. Vs Smt.Kavita and others’*** reported as ***(2020(4) PLR 114.*** The deceased in the said case had also borrowed the motorcycle from the Registered Owner and was held entitled to claim compensation as owner/driver in the personal accident benefit. In the abovesaid judgment, the borrower was again held to have stepped into the shoes of the owner at the time of accident.

Reference was also made to the decision of the National Consumer Disputes Redressal Commission in the matter of ***“United India Insurance Co. Ltd. Vs Gyan Singh Yadav and another”,*** reported as ***(2018) 4 CPR 478*** wherein son of the registered owner was driving the vehicle when he met with an accident and died. It was held that the benefit of the term “owner/driver” would be extended to the son of the registered owner who was driving the vehicle at the time of accident. It was thus the contention that the expression “owner driver” be read as “owner/driver” as per the authoritative pronouncements noticed above

Having heard the learned counsel for the parties and having gone through the judgments relied upon by him, I find it difficult to agree with the arguments advanced on behalf of the respondent-applicant. Apart from the primary rules of interpretation, what is required to be understood is that the symbol (/) or (-) is an expression of grammatical or punctuation signs, which is generally used instead of conjunction “or”. It is thus used to denote the availability of options and choices.

According to Collins Dictionary a slash- “/” has been defined as “a short diagonal line (/) used between two words to show that either is applicable”. The English language uses different types of slashes i.e. forward slash (/)’ backward slash (\) and vertical slash (|). While a forward slash (/) is most commonly used slash symbol to denote “or”, the backward slash (\) is used selectively in computer coding languages alongwith the vertical slash (|) as well, which instead means “such that” or “it is true that”. The symbol of forward slash (/) as suggested by the respondent-applicant thus tends to suggest the incorporation of word “or” in the expression “owner driver”. Applying the principle of literal interpretation, often accepted and affirmed by the Hon’ble Supreme Court, such addition in words is not to be ordinarily resorted to unless the same is absolutely necessary. The use of expression “owner driver” is a conscious usage and not an event of default. There was no inhibition in using the expression “or” or “/” in the event the contracting parties intended to extend the abovesaid benefit to any or every person who is holding the steering wheel. The facts of the case do not mandate such an addition as the same is in no manner necessary for assigning meaningful interpretation to the expression used in the documents, rather, the suggestion of the respondent-applicant is likely to cover a distinct category for the benefit which is not proposed to them by the document.

The second aspect as to whether the driver would step into the shoes of the owner or not is also required to be seen from the grammatical understanding of the phrase “stepping into the shoes”.

The idiom “step into the shoes of someone” connotes “to take someone’s place, often by doing the job they have just left.” Hence, in order to step into the shoes of the owner, the person raising such a claim takes upon himself the extension of the alter ego of that person in the same capacity/status.

The cases of ***Ramkhiladi Yadav; M/s IFFCO Tokio General Insurance Company;*** as well as ***United India Insurance Company (Supra)*** are in relation to the borrowers of the vehicles from the registered owner and the son of the registered owner. The said category of persons had taken the possession of the vehicle from the respective registered owners not in any independent, distinct separate engagement-consideration but as an expression of the owner and with such an understanding and would thus be an extension of the owner in all capacities and rights.

Per contra, the driver is in possession of the vehicle in a defined independent legal relationship. He exercises the possessory rights of the vehicle qualified to driving alone. The aforesaid example can be further clarified by an illustration. Assuming that the driver who has been engaged by the owner to drive the vehicle to some place falls unwell midway and authorizes his son or some other substitute to take the vehicle in his place for remainder of his journey, the person so authorized would be an extension of the driver. Thus, the person who is holding the steering derives his status and capacity from the person who earlier possessed the vehicle. Where there is no independent or distinct relationship to govern the *inter se* rights and obligations, the borrower would be an extension of the owner; and where there are other independent statutory regulations governing the status, he acquires such status. The driver having been engaged by the owner for a defined purpose is entitled to compensation under a separate set of compensatory legislation including the Workmen Compensation Act, 1923/Employees Compensation Act, 2010. The rights of the driver against his employer are governed by other statutory regime and policies. The contention of the counsel for respondent-applicant that the owner of the truck cannot be perceived as driving the vehicle himself cannot be accepted as an unimpeachable argument. As a matter of fact, a large number of drivers of commercial vehicles are owners themselves. It, thus, cannot be said that the driver would step into the shoes of the owner for all purposes. In order to held that a person steps into the shoes or possession of the other, such relationship ought to be unqualified and should remain at par for all intents and purposes. The licence to drive in the capacity of a driver is infact engaging him to perform a specific duty and such engagement for duty, under a legal relationship, takes away the claim of the driver to step into the shoes of the owner. The argument of the respondent-applicant also falls for the reason that the judgments relied by the respondent extend such benefit only to the borrower. The above mentioned three judgments relied upon by the counsel for respondent-applicant would thus be not applicable to facts and circumstances of the present case.

Moreover, the status of "owner driver" having been clarified in the "Indian Motor Tariff", which is a statutory Committee under the

Insurance Act, 1938 further demolishes the case of the respondent-applicant. The same being part of the statutory scheme, it is not required to be necessarily raised in the pleadings and can be raised as an argument even at the level of High Court. Hence, examining it from any perspective, the reasons given by the Permanent Lok Adalat (Public Utility Services) to allow the Application and award the claim against the Petitioner-Insurance Company run contrary to law and is based upon the erroneous application of the judgment of ***Ramkhiladi and another (supra).*** The fine distinction in the relationship of the deceased Ashok Kumar and the claimants therein has not been taken into consideration by the Permanent Lok Adalat.

The next argument raised by the respondent-applicant that he was allured by the agent that the policy would cover the driver as well, also fails to inspire any confidence. The contractual agreement is based upon on *consensus ad idem.* The assurance, if any, can at best be an oral agreement. Once the policy document pursuant to an alleged oral agreement is issued later in point of time, the legal presumption which draws from undisputed policy documents is that the same has been issued in accordance with the agreement arrived at between the parties. In the event of any discrepancy in the assurance made and the terms and conditions of the policy document, the holder of the policy document was within his right to return the policy document and to claim refund thereof, or in the alternative, seek a novation of the contract and claim incorporation of the conditions/risks agreed into between the parties. Having chosen not to do so, any such impression carried on by the respondent-applicant can at best be construed as a unilateral mistake. Section 20 of Contract Act, 1872 renders only those contracts void where both the parties are under mistake as to a matter of fact. A unilateral mistake would not render a contract void unless the mistake about the terms and conditions of the contract is so serious as to undermine the entire bargain. The Hon'ble Supreme Court has affirmed the aforesaid position in law in the judgment of ***'Jacob Punnen and anothers Versus United India Insurance Company Ltd.'*** reported as ***(2022) 3 SCC 655.*** The relevant extract of the same is reproduced hereinafter below:

> *26. In Tarsem Singh v. Sukhminder Singh (1998) 3 SCC 471, this Court clarified that a unilateral mistake would not render a contract void under the Indian contract law:*
>
> > ***"20. Section 20 of the Act lays down as under:***
> > *20. Agreement void where both parties are under mistake as to matter of fact. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.*
> > ***Explanation.*** *An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact."*
> > *21. This section provides that an agreement would be void if both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement. The mistake has to be mutual and in order that the agreement be treated as void, both the parties must be shown to be suffering from mistake of fact. Unilateral mistake is outside the scope of this section.*
> >
> > *(Emphasis Supplied)"*
>
> *27. Therefore, the law in India is that unless the unilateral mistake about the terms of a contract is so serious as to adversely undermine the entire bargain, it does not result in automatic avoidance of a contract. ………"*
>
> *(Emphasis Supplied)*

The last arguments raised on behalf of the respondent-applicant is that the Permanent Lok Adalat is governed by the guiding principles enshrined in Section 22 of the Legal Services Authorities Act, 1987 and that once the said discretion has been exercised, the same should not ordinarily be interfered.

It is, no doubt, that Section 22 (D) of the Legal Services Authorities, Act, 1987 lays down the guiding principles for the Permanent Lok Adalat (Public Utility Services), to be guided by principles of natural justice, objectivity, equity, fairness and other principles of justice in considering the dispute before it. The exercise of discretion, when the conclusion drawn is in consonance with the law applicable to the facts, would thus be a factor which the High Court is required to keep in consideration while recording its conclusion as to whether an Award passed by a Permanent Lok Adalat deserves to be interfered with or not. When the Award is based upon misinterpretation of the statute or misplaced application and interpretation of law to the facts of the case, such an Award would suffer the vice of an illegality and cannot be protected. Extension of protection to any such Award would infact be perpetuating an illegality and burdening the other contractual party with financial liability which it is not bound in law or by contract to discharge.

No other argument has been raised by the counsel for respondent-applicant before this Court.

DECISION

Hence, for the foregoing reasons and the settled principles of law as well as the fact that the judgments relied upon by the counsel for respondent-applicant are not applicable to the facts and circumstances of the present case, I find that the Award dated 10.07.2021 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services) is based upon misreading of judgments; misinterpretation of law and policy document and non-consideration of the grammatical/punctuation expression used in the policy document. There was no possibility of any ambiguity in the expression used and that upon application of the first principle governing the interpretation of documents, the person covered under the personal accident benefit is only the "owner driver" i.e. the registered owner driving the vehicle himself or his "alter ego" and would not extend to a person who has been licensed/permitted under a qualified relationship for a limited purpose i.e. for driving of the vehicle.

Hence, the submissions of the counsel for respondent-applicant fail to impress this Court to accept the impugned Award dated 10.07.2021 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services). Consequently, for the reasons recorded hereinabove, this petition is allowed and the Award dated 10.07.2021 (Annexure P-3), passed by the Permanent Lok Adalat (Public Utility Service), U.T. Chandigarh, is accordingly set aside.

(VINOD S. BHARDWAJ)
JUDGE

27.03.2023
mamta/rajender

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