

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

Judgment Reserved on: 23.11.2023
Judgment Pronounced on: 05.12.2023

251-1 CWP-16427-2022
THE ORIENTAL INSURANCE COMPANY LTD. AND ANR.
... Petitioners

VERSUS
PERMANENT LOK ADALAT AND ANOTHER
... Respondents

A N D

251-2 CWP-25127-2022
VARUN BHASIN
... Petitioner

VERSUS
CHAIRMAN PERMANENT LOK ADALAT, CHANDIGARH
AND OTHERS
... Respondents

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

Present: Mr. Arjun Kundra, Advocate
for the petitioners CWP-16427-2022 &
for respondents No.2 and 3 in CWP-25127-2022.

Mr. Joseph K. Mashi, Advocate and
Ms. Nilakshi Joseph, Advocate
for the petitioner in CWP-25127-2022 and
for respondent No.2 in CWP-16427-2022.

VINOD S. BHARDWAJ, J.

Both the above mentioned writ petitions are being decided by a
common judgment as they arise out of same Award dated 26.05.2022 passed
by Permanent Lok Adalat (Public Utility Services), Chandigarh.

For the facility of reference, the facts are being extracted from CWP-16427-2022 titled as “Oriental Insurance Company Ltd. and another Versus Permanent Lok Adalat and another”.

The respondent-Applicant- Varun Bhasin (petitioner in connected CWP-25127-2022) filed an application under Section 22-C of the Legal Services Authorities Act, 1987 before Permanent Lok Adalat (Public Utility Services), Chandigarh for seeking directions to the petitioner-Insurance Company to make payment of Rs.3,00,000/- towards the sum assured for the car alongwith interest @ 18% per annum from the date of loss and alongwith other charges including compensation towards harassment and mental agony as well as litigation charges. It had been averred that the respondent-Applicant purchased Maruti DZire car bearing Registration No.CH-01-BN-4786, Model 2013. The said car was insured with the petitioner-Insurance Company vide policy No.231291/31/2018/759 valid from 20.11.2018 to 19.11.2019. One Revant Kumar son of Surender Singh resident of Jambal, District Kangra, Himachal Pradesh was employed as driver by the respondent-Applicant and he possessed valid Driving Licence No.DL-1320160204220 dated 19.01.2016 valid upto 18.01.2026 for Motorcycle and LTV-NT issued by the Licensing Authority EZ-II, Surajmal Vihar, Delhi. The said driver was sent to Delhi for personal work of the respondent-Applicant. He started from Delhi on 25.06.2019 at about 06.00 p.m. and was accompanied by his brother Chaman Lal. When they reached near village Kambopura (Karnal) at about 12.15 a.m., the said car hit the back of a trolley towed to a tractor bearing Registration No.HR-05-AN-4164 which was parked in the middle of the road, without giving proper

indicators. Resultantly, the car was badly damaged in the said accident while the driver namely Revant Kumar suffered serious injuries and died at the spot. An FIR No.223 dated 26.06.2019 under Sections 283, 337 and 304-A of IPC was registered at Police Station Madhuban, District Karnal against the driver of the offending tractor-trolley. The damaged car was thereafter, brought to the Chadigarh at M/s Sirsa Motor Garage, Sector 48-C, Motor Market, Chandigarh where estimate of loss was prepared. Thereafter, a surveyor was appointed to assess the loss and to submit his report. The respondent-Applicant claims to have duly associated with the investigator/surveyor and extended all cooperation. Despite supplying the requisite information as sought for by the surveyor, the claim was not released. Resultantly, pursuant whereto the application was filed before the Permanent Lok Adalat.

Upon notice, the petitioner-Insurance Company entered appearance before the Permanent Lok Adalat and filed its written response pointing out a violation of the terms and conditions of the Insurance Policy and with specific reference to Clause "Limitation as to use". The vehicle in question was registered in the name of respondent-Applicant- Varun Bhasin as a private car and the same was insured under the private car package policy for the abovesaid period. The Insurance Policy clearly mentions that the car is to be used for the purposes other than the "hire and reward", however, the insured car was being used for "hire and reward". The said aspect is supported from the contents of the FIR No.223 dated 26.06.2019 registered at Police Station Madhuban, District Karnal lodged by Chaman Lal, brother of deceased Revant Kumar. As per the police investigation

report and the statement of the other co-passenger namely Yash Goel, travelling in the car, recorded under Section 161 of the Cr.P.C., he affirmed that the above said car was being used as a taxi for hire and reward purpose on 25.06.2019 for going from Delhi to Panchkula for a sum of Rs.2,200/-. The said passenger had also sustained injuries and was admitted to Kalpana Chawla Medical College, Karnal, wherefrom he was referred to Chandigarh Hospital, Sector 12 and then to Max Hospital, Mohali. The petitioner-Insurance Company also claimed to have written various letters dated 06.05.2020 and 10.07.2020 to the respondent-applicant to clarify the above discrepancies arising in the claim, however, the respondent-applicant chose not to respond to the same. Consequently, the claim of the respondent-Applicant was repudiated. It was also submitted that the respondent-Applicant had admitted that Revant Kumar was a paid driver and that his mobile number is 98760-82344. The said mobile number is also available on the internet for the booking of the taxi services. Both these facts stand established from the copy of the Motor Claim Form dated 08.07.2019 submitted by the respondent-Applicant and appended as Annexure R-7, copy of the booking taxi service appended as Annexure R-8 as well as the copy of the statement of the respondent-Applicant appended as Annexure R-9 and copy of the statement of Chaman Lal given to the police appended as Annexure R-10 with the reply. The claim was thus repudiated after granting sufficient opportunity to the claimant and failing to find a satisfactory response. The facts established are that the vehicle in question was being used as a Taxi despite having been registered as a private vehicle and insured under the private car package policy. The number plate of the

insured vehicle was also reflecting a yellow number plate, which is used by the vehicles being used as taxies and not as private vehicle.

Upon consideration of the respective submission advanced by the parties, the application submitted by the respondent-Applicant was partly allowed and petitioner-Insurance Company was held liable to pay 50% of the claim on non-standard basis and compensation of Rs.5,000/- for mental and physical agony as well as harassment was also awarded alongwith an amount of Rs.5,000/- towards litigation expenses.

Aggrieved thereof, the present petitions have been filed. While CWP-16427-2022 has been filed by the insurance company against the claim application being partly allowed and the insurance company having been held liable to pay 50% of the claim; the respondent-Applicant preferred CWP-25127-2022 claiming that the entire claim amount ought to have been released to him and that the order passed the Permanent Lok Adalat (Public Utility Services), Chandigarh partly allowing the application was wrong and erroneous.

The counsel for the petitioner-Insurance Company has referred to the policy document as well as the cover note, wherein the insurance had been issued under the private car package policy Zone-B, as per which, under the head “limitations as to use”, the following has been provided for:

“Limitations as to use:

1. *The Policy covers use of the vehicle for any purpose other than a) Hire or Reward, b) Carriage of goods (other than samples or personal luggage c) Organized racing d) Pace making e) Speed testing f) Reliability Trials g) use in connection with Motor Trade.*

Driver: Any person including the insured. Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a license. Provided also that the person holding an effective Learner's license may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989."

(emphasis supplied)

Reference was thereafter made to the FIR No.223 dated 26.06.2019 registered at Police Station Madhuban, District Karnal on the statement of Chaman Lal son of Surender Kumar, who had mentioned that on the date of accident, he and his brother (deceased Revant Kumar) were travelling with another "passenger" from Delhi to Chandigarh in the said car. It was also averred by him in the said FIR that he alongwith said "passenger" had sustained injuries in the accident. Statement of the said "passenger" namely Yash Goel son of Baldev was also recorded and the same is attached as Annexure P-3. The relevant extract of the same is as under:

*"Stated that I am a resident of above said address and do the business of supply of medicine to Govt. of Haryana. On 25.06.2019 in the evening, I had **hired a car for going from Delhi to Panchkula bearing No.CH-01BN-4786 Mark Swift Dezire for a sum of Rs.2200/-**. The said car was being driven by person namely Revant Kumar and I was sitting on back seat....."*

(emphasis supplied)

He also referred to the Motor Claim Form submitted by the respondent-Applicant- Varun Bhasin, wherein he admitted that Mr. Revant

Kumar was a paid driver and his mobile number was also mentioned on the form as 9876082334. Reference was also made to the Online Cab Services under the name and style of “Kumar Cab Services” wherein the abovesaid mobile number is uploaded as a contact number for providing cab services in India. He also referred to the statement of respondent-Applicant, wherein respondent-Applicant also acknowledges that one other person was also travelling alongwith the deceased Revant Kumar at the time when the vehicle met with an accident. Reference was also made to the communication sent by petitioner-Insurance Company to the respondent-Applicant wherein they have sought clarification that as per the evidence available, the vehicle was being used as a taxi and that the photographs of the damaged vehicle also showed that the number plate was yellow in colour even though the vehicle in question has been claimed to be used as a private vehicle. He was also confronted with the statement of Yash Goel – the injured passenger, who was undisputedly travelling in the vehicle in question at the time of accident, to the effect that he had booked the vehicle on hire. It was argued that the statement and the documents have not been disputed or denied by the respondent-Applicant in the written statement filed by him and that the totality of the circumstances clearly establish that the vehicle in question was being used in violation of the Insurance Policy and for “hire and reward.” Consequently, there was a breach of essential terms and conditions of the Insurance Policy. The violation of the essential terms and conditions of the Insurance Policy disentitles the respondent-Applicant from claiming the benefits under the Insurance Policy.

He has also made a reference to the judgment of the Hon'ble Supreme Court in the matter of National Insurance Co. Ltd. Vs. Meena Aggarwal passed in Civil Appeal No.396 of 1999 decided on 23.01.2009.

The relevant extract of the same reads thus:

“3. *Background facts in a nutshell are as follows:*

Respondent was the owner of a vehicle- a Maruti van which was the subject matter of insurance with the present appellant for a period from 27.1.2003 to 26.1.2004. The Vehicle in question met with an accident on 12.6.2003 and was badly damaged. The estimate of the cost of repair was prepared by Automobiles Satya of Bilaspur. According to him the estimated expenditure on total repair of the vehicle was Rs.2,00,000/-. Intimation of the same was given by the complainant to the present appellant and claim was made. The same was rejected on the ground that the driver of the vehicle did not possess a valid driving licence and the vehicle which was a private vehicle was insured for personal use, but was being used as a taxi for carrying marriage parties. A marriage party was being transported in the vehicle after charging rent of Rs.2100/- when the accident occurred. The driver did not possess a valid licence and, therefore, the vehicle was being plied against the terms of the insurance policy. The District Consumer Disputes Redressal Forum Sarguja, Ambikapur Chhattisgarh, rejected the claim petition. An appeal was preferred before the State Consumer Dispute Redressal Commission, Rajpur (in short the 'State Commission'). By order dated 17.10.2005, the appeal was allowed. It was held that it would be proper to declare the claim of complainant as "Non-standard" consequent to the violation and breach. Therefore, the present appellant was directed to pay Rs.90,000/- i.e.

75% of Rs.1,20,000/- i.e. the amount assessed by the surveyor of the insurance company along with 9% interest. The only reason given by the State Commission was that even if the vehicle was being used as a taxi, there was no fundamental breach of the terms of the policy. A revision petition was filed before the National Commission which came to be dismissed by the impugned order. The National Commission held that even though the vehicle was being used as a commercial vehicle and the driver did not have a valid driving licence, there was no fundamental breach of the terms of the policy.

According to the appellant the insured vehicle was being used as a commercial vehicle, and the driver of the vehicle is required to hold an appropriate licence. If the driver who was driving the vehicle at a relevant point of time did not possess any licence to drive a commercial vehicle, there is a breach of the conditions of the policy and such plea was available to be raised as a defence.

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9. We find that the State Commission and the National Commission have not practically indicated any reason for coming to the conclusion that there was no fundamental breach of the terms of the policy. Both the State Commission and the National Commission observed that the vehicle was being driven by a person who did not have a valid driving licence. In addition to that the vehicle which was insured for personal use was used for commercial purposes.

10. Looked at from any angle the impugned orders of the State Commission and the National Commission are unsustainable, deserve to be set aside, which we direct. No costs."

(emphasis supplied)

Reference has also been made to a Division Bench Judgment of Hon'ble Himachal Pradesh High Court in FAO (MVA) No.69 of 1992 titled as New India Assurance Co. Versus Anil Kumar and others decided on 10.08.1999. The relevant extract thereof reads thus:

“20. After analysing the factual and legal position for the purpose of deciding the present case, the vehicle is not covered by a permit to ply for hire or reward and it was a private vehicle not for carrying any passenger for hire or reward. It is the owner of the vehicle herself who gave the vehicle/ allowed the vehicle to be used as taxi to carry passengers for hire or reward and, therefore, it cannot be said that she has not committed breach of condition of the policy which is the same as the one not permitted by the statutory provisions. The appellant company has established that the breach was on the part of the insured and we find that it was the insured who was guilty of violating the terms or infringement of the contract by handing over a private vehicle for using it as taxi for hire or reward which is a fundamental breach of specified condition of the policy and the exclusion clause under Section 96 (2) (b) (i) (a) shall expressly apply in the case in hand denying the respondent owner of the vehicle indemnification by the appellant company.”

(emphasis supplied)

Further reference has been made to the judgment of this Court in the matter of Rajender Versus Kamla and others bearing No.FAO-2385 of 1999 decided on 12.03.2014. The relevant extract of the same is reproduced hereinafter below:

“5. The learned Tribunal framed issue No.1 “Whether Balwan died as a result of rash and negligent of driving? OPP. Ramesh and Dilbag, appeared as PW3 and PW4 respectively,

were travelling as passengers in the offending jeep. They have clearly stated that the jeep was being driven in a rash and negligent manner as the driver could not control the jeep due to high speed and rashness, it turned turtle. The learned Tribunal decided this issue in favour of the claimant and against the driver and owner. Further it has specifically come in the statement of PW2 Harchand, who was traveling in the offending jeep at the time of accident, that the jeep was booked by Rajmal, who had gone to Panihari for booking the jeep for marriage party. The same was corroborated by PW3 Ramesh and PW4 Dilbagh Singh. In view of the same, it is proved on record that the offending vehicle i.e. jeep was being used for hire and reward purpose.

(emphasis supplied)

Further reliance has been made on the judgment of Chhattisgarh High Court in the matter of **Ravi Kumar s/o Jivrakhan Prasad Gupta Versus Ashutosh son of Om Prakash Tiwari and others; M.A. (C) No.74 of 2013** decided on **15.02.2019**.

“11. From considering the above evidence and material available on record, it is evident that the offending vehicle was taken on hire and the claimant along with other persons went for a tour. The offending vehicle though registered as private vehicle, but was being used as a 'Taxi', which is violation of the conditions of the insurance policy, therefore, the Insurance Company cannot be held liable for payment of any amount of compensation because no premium has been charged for carrying passengers in a vehicle. In the case in hand, there is no privity of contract between insurer and insured to compensate the injury/death of the passengers travelling on vehicle for hire.

12. *In view of the above, in the opinion of this Court, the learned Claims Tribunal has not committed any error in exonerating the Insurance Company from its liability to pay the compensation and has rightly fastened the liability to pay the compensation on the owner of the offending vehicle.*

(emphasis supplied)

No other argument has been raised by the counsel for the petitioner-Insurance Company.

Learned counsel for the respondent, on the other hand, has argued that the Award in question was liable to be modified and that the respondent-Applicant is entitled to reimbursement for the total/complete loss sustained by him. It is further argued by the learned counsel that driver of the vehicle was holding a valid driving licence and that the insurance company cannot deny its liability merely because some other person was also sitting in the vehicle. It is contended that there is no evidence available on record on the basis whereof, it can be assumed that the vehicle was being operated as a taxi. Further, merely because the respondent-Applicant is also carrying on business as a taxi operator, it cannot be held sufficient to infer that the vehicle in question was also actually being used as a taxi at the time when the accident had taken place. He further argues that if the driver of the vehicle has picked up some passenger contrary to the instructions issued by the petitioner-Insurance Company, the benefit of Insurance Policy cannot be denied. He places reliance on the judgment of Hon'ble Supreme Court in the matter of **Jitendra Kumar Versus Oriental Insurance Co. Ltd. and another** reported as **(2003) 6 SCC 420**. The relevant extract of the same is reproduced hereinafter below:

“7. We have heard learned counsel for the respondents who has supported the orders of the State Commission as well as that of the National Commission. So far as the facts of this case are concerned, there is hardly any dispute, therefore, we can safely proceed on the basis that the vehicle in question was damaged due to a mechanical fault and no fault of the driver. For the purpose of argument, we may also proceed on the basis that the driver of the car did not have a valid driving licence. Question then is: can the Insurance Company repudiate a claim made by the owner of the vehicle which is duly insured with the Company, solely on the ground the driver of the vehicle who had nothing to do with the accident did not hold a valid licence? Answer to this question, in our opinion, should be in the negative. Section 149 of the Motor Vehicles Act, 1988 on which reliance was placed by the State Commission, in our opinion, does not come to the aid of the Insurance Company in repudiating a claim where driver of the vehicle had not contributed in any manner to the accident. Section 149(2)(a)(ii) of the Motor Vehicles Act empowers the Insurance Company to repudiate a claim wherein the vehicle in question is damaged due to an accident to which driver of the vehicle who does not hold a valid driving licence is responsible in any manner.

8. It does not empower the Insurance Company to repudiate a claim for damages which has occurred due to acts to which the driver has not, in any manner, contributed i.e. damages incurred due to reasons other than the act of the driver.

9. We notice that in the impugned order National Commission has placed reliance on the judgment of this Court in the case of New India Assurance Company (supra) which, in our opinion, has no bearing on this aspect of the case in hand. This Court in the said case held that the fake driving licence when renewed genuinely, does not acquire the validity of a

genuine licence. There can be no dispute on this proposition of law. But then the judgment of this Court in the case of New India Assurance Company (supra) does not go to the extent of laying down a law which empowers the Insurance Company to repudiate any and every claim of the insured (appellant) merely because he had engaged a driver who did not have a valid licence. In the instant case, it is the case of the parties that fire in question which caused damage to the vehicle occurred due to mechanical failure and not due to any fault or act, or omission of the driver. Therefore, in our considered opinion Insurance Company could not have repudiated the claim of the appellant.

Further reference has also been made to the judgment of the Hon'ble Supreme Court in the matter of **B.V. Nagaraju Versus M/s Oriental Insurance Co. Ltd. Hassan** reported as **(1996) 4 SCC 647** The relevant extract of the same is reproduced hereinafter below:

“7. It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was not carrying. Here it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a persons or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract,

unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however, we find no such contributory factor. In Sikand's case this Court paved the way towards reading down the contractual Clause by observing as follows :

".....When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is supported by Carter's "Breach of Contract" vide paragraph 251. To quote :

Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wise exclusion clauses defining a promisor's contractual obligations. For example, in Glynn v. Margetson & Co. [1893 AC 351, 357], Lord Halsbury, L.C. stated : It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and

seeing what one must regard as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract.

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in Suisse Atlantique Societed' Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale [1967 1 AC 361]. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."

8. *The National Commission went for the strict construction of the exclusion clause. The reasoning that the extra passengers being carried in the goods vehicle could not have contributed, in any manner, to the occurring of the accident, was barely noticed and rejected sans any plausible account; even when the claim confining the damage to the vehicle only was limited in nature. We, thus, are of the view that in accord with the Skandia's case, the aforesaid exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is indemnify the damage caused to the vehicle, which we hereby do.*

9. *For the view above taken, this appeal is allowed, the judgment and order of the National Consumer Disputes Redressal Commission, New Delhi is set aside and that of the State Commission is restored in its entirety, but without any order as to costs."*

Reference has also been made to the judgment of the Hon'ble

Supreme Court in the matter of **New India Assurance Co. Ltd. & others**

Versus Paresh Mohanlal Parmar reported as **(2020) 1 R.C.R. (Civil) 1006.**

The relevant extract of the same is reproduced hereinafter below:

“10. The judgment of this Court relied by counsel for the respondent in 2019(6) SCC 212 (Bharat Watch Company thro its partner Vs. National Insurance Company Ltd.) supra covers the case, wherein following has been laid down in para 7 & 10:

“7. “The basic issue which has been canvassed on behalf of the appellant before this Court is that the conditions of exclusion under the policy document were not handed over to the appellant by the insurer and in the absence of the appellant being made aware of the terms of the exclusion, it is not open to the insurer to rely upon the exclusionary clauses. Hence, it was urged that the decision in Harchand Rai will have no application since there was no dispute in that case that the policy document was issued to the insured.

“10. Having held this, SCDRC also came to the conclusion that the exclusion would in any event not be attracted. The finding of SCDRC in regard to the interpretation of such an exclusionary clause is evidently contrary to the law laid down by this Court in Harchand Rai. However, the relevance of that interpretation would have arisen provided the conditions of exclusion were provided to the insured. NCDRC missed the concurrent findings of both the District Forum and SCDRC that the terms of exclusion were not made known to the insured. If those conditions were not made known to the insured, as is the concurrent finding, there was no occasion for NCDRC to render a decision on the effect of such an exclusion.”

11. *In view of the above we are of the opinion that no other issue needs to be considered. The appeal of the appellant is liable to be dismissed on the above ground."*

Reference has also been made to the judgment of Hon'ble Supreme Court in the matter of **M/s Modern Insulators Ltd. Versus The Oriental Insurance Co. Ltd.** decided on **22.02.2000**. Relevant extract of the same is reproduced hereinafter below:

"In view of the above settled position of law we are of the opinion that the view expressed by the National Commission is not correct. As the above terms and conditions of the standard policy wherein the exclusion clause was included, were neither a part of the contract of insurance nor disclosed to the appellant respondent cannot claim the benefit of the said exclusion clause."

It was thus argued that the breach in question cannot be held to be in violation of the terms and conditions of the Insurance Policy. Besides, the accident in question had not taken place on account of the passenger being taken in the said vehicle and when the incident in question is wholly unrelated to the same, benefit could not have been denied.

No other argument was raised on behalf of the respondent-Applicant.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The undisputed facts that emerge from the pleadings as well as the evidence are that:

- (i) the vehicle in question was registered as a private vehicle and was insured under the private car package policy at the time when the accident in question took place.
- (ii) the FIR No.223 dated 26.06.2019 was registered at Police Station Madhuban, District Karnal on the statement of one Chaman Lal- the brother of deceased Revant Kumar.
- (iii) It has also remained undisputed in the said FIR as well as in the statement of Chaman Lal and that of respondent-Applicant-Varun Bhasin that there was another person (passenger) travelling in the vehicle in question. While the defence taken by the respondent-Applicant is that the said passenger was not a passenger for “hire and reward” . It has remained undisputed that statement of the said passenger namely Yash Goel had been recorded by the Investigating Agency and he had specifically stated that he had hired the above said vehicle for going to Panchkula from Delhi for a sum of Rs.2,200/-. The validity of the aforesaid statement and the documents is not denied or disputed in the response filed and the only defence taken is that the said statement is at best be a statement under Section 161 of the Cr.P.C. and is yet to be proved in the Court of law.
- (iv) Further the respondent-Applicant has also not disputed the fact that the respondent-Applicant is a taxi operator and that he was using his mobile number as is available on the online taxi booking service and that the said number had been mentioned in the Claim Form submitted by the respondent-Applicant

Still further the Permanent Lok Adalat (Public Utility Services), Chandigarh has recorded its finding as under:

“This Court has observed the statements of both the parties and has found out that the car being in question was used for commercial purpose and the respondents are not liable to pay insurance claim as per the terms and conditions of the policy. Still the owner of the car has suffered loss and driver without his own mistake, died on the spot during accident, therefore, insurance company are held entitled to pay the claimant 50% of the claim on non-standard basis.”

A perusal of the same shows that the finding recorded by the Permanent Lok Adalat (Public Utility Services), Chandigarh is that the car in question was being used for the commercial purposes and the insurance company was not liable to pay insurance claim as per the terms and conditions of the policy. No reason or explanation has been put forth by the Permanent Lok Adalat (Public Utility Services), Chandigarh as to on what basis the Permanent Lok Adalat (Public Utility Services), Chandigarh deemed it appropriate to award claim to the extent of 50% despite noticing that there was a violation of the terms of the Insurance Policy and that as per the Insurance Policy, the petitioner company was not liable to pay the said claim. There has also been no denial of the specific averment made by the Insurance Company in the present case that the vehicle in question flashed a yellow number plate which is to be used under the Motor Vehicles Act, 1988 for passenger vehicles/taxi services.

It is also evident that the policy cover note which had been relied upon by the petitioner-Insurance Company for claiming the benefit of the Insurance as Annexure C-2 (Annexure P-1 in the writ petition) clearly

specified the limitations as to use on the first page itself. Besides, the policy was titled as a 'Private Car Package Policy'. Hence, it cannot be assumed that the respondent-Applicant was not aware of the difference between a 'private car' and 'the car to be used as passenger vehicle/taxi'. It is not the case of the respondent-Applicant that he intended to use the car as taxi and that the registration certificate of the car as a taxi had been duly handed over to the Insurance Company. The respondent-Applicant being a taxi operator certainly knew the difference of the registration required to be done. The use of the vehicle as a taxi is clearly reflected from the yellow number plate that has been affixed to the vehicle in question. It is also not averred by the respondent-Applicant in the claim application as well as in the separate writ petition filed by him that the registration certificate of the vehicle reflecting the car to be used as a taxi had not been supplied by him to the Insurance Company and as such all material information had been clearly furnished. Further, it is also not disputed by the respondent-Applicant that Yash Goel was the passenger travelling in the vehicle in question at the time of the accident and he had suffered injuries. In his statement, recorded under Section 161 of the Cr.P.C., Yash Goel stated that he had hired the vehicle to come to Panchkula for a sum of Rs.2200/-. It is also not in dispute that the proceedings have been initiated and are being pursued, as per the investigation conducted by the Investigating Agency, before the competent Court of law against the owner of the tractor-trolley who had parked the vehicle in the middle of the road. The above contemporaneous evidence and circumstances clearly suggest that the respondent-Applicant is not only involved in the vocation of Taxi Services but also that the vehicle had been

engaged by the third person – passenger for hire. A specific finding in this regard was also recorded by the Permanent Lok Adalat (Public Utility Services), Chandigarh. The disclaimer/limitations as to use in the policy cover note expressly excluded the liability in the event of the vehicle being used for hire and reward. It is incomprehensible at this juncture to presume that the respondent-Applicant (who is a professional taxi operator) was not aware of the abovesaid limitation especially when the said limitation is available on the very first page of the insurance cover note itself. Besides the same is not in any small font or italics which may be illegible. It is also not the case of the respondent-Applicant that the terms and conditions for the exclusions were not made known to him, despite his disclosing the complete and true facts. Hence, other than a mere suggestion by the respondent-Applicant that merely because there was another passenger in the vehicle at the time when it met with an accident, the same would not establish that the vehicle was being used for hire and reward, nothing else is available on record to support his claim.

The arguments advanced on behalf of the respondent-Applicant that if the driver has brought in some passenger without authority and may be for hire and reward, he cannot be held liable, is misconceived on the first principle. The driver, using the vehicle, does so for and on behalf of the owner and is at best the agent for the owner. A breach of the terms and conditions of the Insurance Policy, even by the driver, holds the owner vicariously liable for the civil liabilities which arise or accrue as a result of any such breach unless owner establishes express breach of specific instructions to the contrary. Even otherwise, the said suggestion also does

not appear to be convincing that the respondent-Applicant was unaware of the vehicle being used as a taxi especially when the respondent-Applicant himself is a taxi operator and the vehicle flashed a yellow number plate which is required to be used for Taxies under the Motor Vehicles Act, 1988.

The Civil Proceedings are governed by preponderance of probabilities and the respondent-Applicant having chosen to pursue the summary proceedings before the Permanent Lok Adalat (Public Utility Services), Chandigarh under the Legal Services Authorities Act, 1987, cannot claim that the test of establishing the claim beyond reasonable doubt for repudiating the right of the respondent-Applicant, must be applied against the petitioner-Insurance Company, especially when the C.P.C. and the Evidence Act are exempted under Section 22D of the Legal Services Authorities Act, 1987 from application to the proceeding before the Permanent Lok Adalat.

Further, the law mandates that a vehicle which is insured must be operated in accordance with the terms and conditions specified in the policy cover note and that any breach thereof would entail consequences including repudiation thereof. The entitlement of a person to claim compensation on a non-standard basis would come to rescue of a person only when such breach is of a technical nature and is not a breach of the material/essential terms and conditions of the policy. The entitlement of settlement of non-standard claims stipulates that the breach of a condition should not be attributed to the insured or his agent or that the breach was not committed consciously or that the intentions of the insured were bonafide or

even where the accident had no nexus to the breach, the claim may still be honoured.

The express exclusion of the liability, in the event of the vehicle being used for a purpose of hire and reward, clearly shows the intent of the parties and that the said condition was essential and integral to the decision of the Insurance Company to underwrite a risk. The respondent-Applicant could have clearly dispelled the above said notion and established his bonafide intention by placing on record the relevant material including the submission of Registration Certificate and/or the proposal form about his intention to use the vehicle as a taxi and also that the vehicle was actually registered as a Taxi and was to the knowledge of the petitioner-Insurance Company. For the reasons best known to him, the respondent-Applicant chose to withhold the best evidence in his possession and not to bring the same on record. Further, the non-denial of the statement of the passenger and brother of deceased, the reference to the photographs in the claim showing yellow number plate and the statement of the passenger Yash Goel add strength to the assertion of the petitioner-Insurance Company that the vehicle was being used in violation of the terms and conditions of the Insurance Policy. As such the respondent-Applicant being in breach of material and fundamental conditions of the policy, the same cannot be held to be a mere non-essential technical lapse or that the said event was beyond the control of the respondent-Applicant. The omission is thus apparent and seems to be intentional. The same would be severely lacking in bonafide. The duty of good faith has been held to be of a continuing nature and no material alteration can be made to the terms and conditions except by mutual

consent. The materiality of a fact is to be judged by the circumstances existing at the time when the contract is concluded. The principle of *uberrimae fidei* i.e. “utmost good faith” has apparently been violated by the respondent-Applicant himself. He drove the Insurance Company to enter into a bargain even though he intended to use the vehicle in breach thereof.

Insofar as the judgment in the matter of ***Jitender Kumar (Supra)*** is concerned, the vehicle in question was damaged due to fire and is not due to any act or omission on the part of the driver/owner. It was on the said aspect that the Hon'ble Supreme Court held that merely because the driver did not hold a valid licence cannot be a ground to repudiate the claim since the damage caused had no nexus with the vehicle being driven. Thus, the reason for repudiation, not even being remotely associated to the cause of claim, hence, the owner was held entitled to the benefit. The said proposition would not be applicable in the present case since the prohibition was for use of vehicle against hire and reward and that at the time when the accident in question occurred, the vehicle in question was being used as a taxi for hire and reward; and a passenger was travelling in the same.

Reference to the judgment of ***B.V. Nagaraju (Supra)*** is also misplaced and even the same does not apply to the facts of the present case. In the abovesaid case, the policy was comprehensive and the vehicle in question was registered and insured as a goods vehicles. It was merely alleged that the number of passengers sitting in the goods vehicle was more than the passengers that had been permitted. The said usage was held to be merely an irregularity and not to be any fundamental breach of the terms and conditions of the contract/ policy. In the present case, the vehicle was not

registered as a passenger vehicle and was registered as a private vehicle. Hence, the violation was in material breach of the terms and conditions of the Insurance Policy. Similarly, reference to the judgment of *New India Assurance Co. (supra)* as well as to the matter of *M/s Modern Insulators (supra)* would not be attracted since the same deal with the an issue where the terms and conditions were not known to the insured. The contemporaneous evidence available on record of this case rather suggests to the contrary. The exclusion clause was clearly legible and was set out on the insurance cover note and on the first page itself, which could not have been missed. Further, the respondent-Applicant had not claimed in his original application before the Permanent Lok Adalat itself that the exclusion clause was not made known to him. The respondent-Applicant being a taxi operator and running taxi services and also owning his own vehicles would be presumed to be aware of different registrations and Insurance Policy. It is hard to comprehend that despite absence of any such pleading in the application filed before the Permanent Lok Adalat (Public Utility Services), Chandigarh, it ought to be still concluded that the "exclusion" clauses of the Insurance Policy was not known to the respondent-Applicant.

Taking into consideration the aspect noticed above as also the ratio laid down in the judgments relied on by the counsel for the petitioner and the non-applicability of the judgments relied on by the counsel for the respondent-Applicant, I am of the view that the Permanent Lok Adalat (Public Utility Services), Chandigarh fell in error in failing to appreciate the 'limitations as to use' of the vehicle available on the first page of the insurance cover note reflecting a material condition of the Insurance

Policy. The respondent-Applicant concealed the said aspect and/or used the vehicle in question in breach thereof. Such breach cannot be deemed to be unintentional or bonafide. There is also nothing on record to suggest that complete information, in all respects, had been duly disclosed by the respondent-Applicant to the petitioner-Insurance Company. There is thus a conscious non-disclosure of the material information which was crucial for the Insurance Company to underwrite a risk.

The respondent-Applicant was thus in breach of the material terms and conditions of the policy and that the Permanent Lok Adalat (Public Utility Services), Chandigarh failed to appreciate that the contract of insurance can be enforced against a Company when a material fundamental condition is not violated. The above non-appreciation of the exclusion clause, which has impact on the contract, referred to and relied upon by the counsel for the petitioner-Insurance Company, the conclusion drawn by the Permanent Lok Adalat (Public Utility Services), Chandigarh suffers from failure to consider the mandate of Insurance Act as well as impact of breach of integral, fundamental and essential terms, on the enforceability of a contract. A claimant who fails to establish all prudent care and caution, cannot plead victimization or invoke sympathy. The onus to dispel the suspicious circumstances lies on the person claiming benefit. If the probabilities do not support the claim by the claimant, he cannot still claim compounding of his lapse and be still given benefit. Invocation of sympathy as would compromise rule of law amounts to giving premium to a violator which tends to a belief that breach of conditions has no bearing or consequences, undermining the very essence of commercial contracting. The

Permanent Lok Adalat failed to consider the law and essence of the contract and thus renders the Award liable to be set aside.

It is well established cordial rule that a contract of insurance is a contract 'uberrima fides' and there must be a complete good faith on the part of the insured, who is under a solemn obligation to make a full disclosure of material facts relevant for the insurer to take into account before accepting a proposal or not. The Hon'ble Supreme Court held in the matter of 'LIC of India Versus Smt. G.M. Channabasemma' reported as AIR 1991 SC 392 (at page 393) that the above duty of the insured cannot be diluted. Insurance being a contract amongst the parties, each party has to uphold its end of the bargain to claim the benefit of insurance. When the underwriting of risk is subject to certain exclusions, allowing the claim despite in violation of terms and conditions of the Policy rather amounts to re-writing the terms of the contract amongst the parties and rendering the exclusions nugatory. Clearly, exercise of such sympathy treads beyond the scope of review and unless circumstances show that the violation is neither fundamental nor material and had not been relevant for the decision to underwrite the risk or that the incidence of claim was in no way related to the exclusion or claimed breach. However, where the incidence of breach itself is an exclusion, it would not be proper for a Court to hold that notwithstanding such violation, the insurance company would still be liable. Commercial contracts covering risks generalizations and spread undertake the risk at different conditions. It is also not anybody's case that there is no insurance policy for the taxi operators or that the petitioner-Insurance Company has a monopoly and the insured had no option. It is also not the case that there is no difference of

premium or that even though complete disclosure had been made by the insured and the policy was issued for the same giving him reasons to believe that the policy would also cover the risk for which claim has finally been lodged. No such plea was raised in the original claim and the claimant cannot be permitted to improve on his pleadings at the writ stage.

It is also seen that even though all these objections had been raised by the Insurance Company in its reply, however, the Permanent Lok Adalat failed to answer the same and allowed the claim on non-standard basis despite accepting the breach. There is thus a failure to appreciate the facts and the relevant law which renders the Award liable to be set aside.

Hence, the petition bearing No.CWP-16427-2022 titled as 'The Oriental Insurance Company Ltd. and Anr. Versus Permanent Lok Adalat and Another' is allowed and the impugned Award dated 26.05.2022 passed by Permanent Lok Adalat (Public Utility Services), Chandigarh is set aside. On the other hand, the petition bearing No.CWP-25127-2022 titled as 'Varun Bhasin Versus Chairman Permanent Lok Adalat, Chandigarh and others is consequently dismissed.

05.12.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No