IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

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CWP-15292-2017 (O&M).
Date of Decision: 22.02.2023.

IFFCO TOKIO General Insurance Company Limited

.. Petitioner

Versus

Hari Krishan Sachdeva and another

... Respondents

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

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

Mr. Sumit Gupta, Advocate,
for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition raises a challenge to the Award dated 29.03.2017 (Annexure P-3) passed by respondent No.2 - the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra.

Briefly summarized, the facts of the present case are that respondent No.1-applicant is an owner of Truck bearing registration No.HR-65-4325 which was comprehensively insured with the petitioner Insurance Company. The above said vehicle met with an accident on 14.02.2014. The amount for which the loss was insured was for Rs.4,50,000/-. An amount of Rs. 4,00,000/- is claimed to have been spent on the repair of the said vehicle. A claim was thereafter submitted by respondent No.1-applicant for an amount of Rs.3,02,500/- however, the same was repudiated by the petitioner Insurance Company for the reason that the driving licence of the driver was found to be fake.

Aggrieved thereof an application under Section 22-C of the Legal Services Authorities Act, 1987 (hereinafter referred to as ‘the Act of 1987’) was preferred by respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra.

Upon notice of the aforesaid application, the petitioner Insurance Company entered appearance and filed its written statement wherein the above main objection of the driver of the vehicle not holding a valid driving licence at the time of the accident was taken. As such, the person was not authorized to drive the said vehicle and the same was in breach of the terms and conditions of the policy document. Hence, the claim was rightly repudiated.

Steps for amicable resolution of the dispute by way of conciliation proceedings in terms of Section 22-C (4) to 22-C (7) of the Act of 1987 were undertaken. However, the terms of the possible settlement were not accepted by the parties whereupon adjudication under Section 22-C (8) of the Act of 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra.

Upon consideration of the evidence led by the respective parties, the application was allowed and the petitioner-Insurance Company was directed to pay an amount of Rs.2 lacs to the respondent No.1-applicant within a period of 45 days of the passing of the said award.

Aggrieved thereof, the present petition had been preferred.

Respondent No.1-applicant/insured entered appearance pursuant to the notice of motion and was granted time to file response to the present writ petition. The counsel for respondent No.1-applicant suffered a statement on 07.02.2019 that he does not intend to file any reply. The matter thus has been heard on merits without any formal reply from the respondent No.1-applicant.

Learned counsel for the petitioner Insurance Company has contended that the Permanent Lok Adalat (Public Utility Services) has committed an error in appreciating the evidence brought on record. It is submitted that the claim of the applicant was repudiated on 05.08.2014 since the driver of the insured vehicle was not holding a valid driving licence and the vehicle was being driven in breach of the terms and conditions of the Insurance Policy as well as provisions of the Motor Vehicles Act, 1988. He further submits that information was sought for by the petitioner Insurance Company from the office of the District Transport Officer, Zunheboto, Nagaland on 24.06.2014 pertaining to the driving licence bearing No.37104/TV/Z/2009 in the name of Amar Singh son of Mohan Singh, resident of village Maneli, District Badayau, Uttar Pradesh. A copy of the aforesaid driving licence has also been placed on the record of this case.

A response was received from the Government of Nagaland Motor Vehicle Department vide letter No. DTO-Z/RTI/2013-14 dated 08.07.2014 which reads as under:-

"No. DIO-ZRII/2013-14/ 493 Dated the 08-07-2014

Shri. Gaurav Gupta (Advocate)
H.No.983, Sector-13 Urban Estate,
Kurukshetra, Haryana.

Sub: - INFORMATION UNDER RIGHT TO INFORMATION ACT 2005.

With reference to your letter dated 24-06-2014 on the subject cited above, I have the honour to inform you that the Driving License No.37101/TV/Z/2009 was not found in any of the office record. Hence you can consider the Driving License as false.

This is for your kind information and necessary action."

It is thus contended that the information having been received to the said effect under the Right to Information Act from the Department of Transport, Nagaland, there was an established case of breach of essential terms and conditions by the insured in allowing the vehicle to be driven by a person not holding a valid driving licence. Learned counsel for the petitioner Insurance Company submits that the Permanent Lok Adalat (Public Utility Services) has rejected the contention of the petitioner Insurance Company solely on the ground that the Surveyor is stated to have reported that the driver was holding a valid driving licence. He contends that the Surveyor was not deputed to authenticate and verify the documents and he would have reported about the driving licence on the strength of the same having been furnished without checking the validity thereof. The authenticity and verification of the said document can only be done by the concerned Department of Transport and when the same was undertaken, a report was received that the aforesaid driving licence was false. There was no occasion thereafter to dispute the aforesaid record and to place credence on the report submitted by the Surveyor.

Counsel for respondent No.1-applicant refutes and contends that the Permanent Lok Adalat (Public Utility Services) has rightly noticed and appreciated the submissions advanced after noticing the documents checked by their own Surveyor. He submits that as per the report EX.P1, the driving license was found to be genuine and that even the Surveyor acknowledged the aforesaid diving licence to be valid. Resultantly, the Award passed by the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra, does not suffer from any error. A specific query was raised regarding the document EX.P1, however, he feigned ignorance about the same.

I have heard learned counsel for the parties and have gone through the documents appended with the petition.

The dispute in the case relates to the admissibility of proof regarding validity of driving licence and as to which of the two i.e. the information received under the Right to Information Act from the Licensing Authority or the report by the Surveyor sans authentication ought to be given precedence.

The petitioner Insurance Company has been laying emphasis on the license being a fake and a resultant material breach.

It is also noticed that a specific plea regarding the driving licence being false was taken by the petitioner Insurance Company in the writ petition by placing reliance on the information received under the Right to Information Act on 08.07.2014, in paragraphs No.5 and 6 of the petition. However, despite having been granted number of opportunities to file response, respondent No.1-applicant chose not to file his reply. Hence, he neither disputed the aforesaid specific averments nor filed any document to the contrary. The applicant thus cannot be permitted to contend that information received under the Right to Information Act is inadmissible or is a disputed question of fact. Once a specific plea duly supported by a supporting document from the Licensing Authority had been raised by the petitioner Insurance Company, the burden fell on respondent No.1-applicant to establish that the vehicle in question was being driven by a person holding a valid driving licence and as per Policy document.

The same next leads to the document relied upon by the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kurukshetra i.e. the Surveyor's report for allowing the application. I am afraid that reliance on the Surveyor's report for returning a finding regarding the validity of a driving licence is mis-conceived and unsustainable and is not based on dispassionate consideration of inter se preference of the document in summary proceedings. The validity, veracity, genuineness of the driving licence can only be ascertained from the issuing Authority and cannot be authenticated by the Surveyor and the report based on declaration by insured regarding driving licence. It is not the case of the applicant that Surveyor had verified the validity, genuineness or legality of the aforesaid document/driving licence before reporting the same. The aforesaid Surveyor report thus cannot override the information received under the Right to Information Act from the competent Authority i.e the Department of Transport, Government of Nagaland.

The Permanent Lok Adalat (Public Utility Services), Karnal (Camp at Kurukshetra), has thus failed in objective appreciation of the evidence and disregarded the credible evidence led by the petitioner Insurance Company. The award is thus passed on the basis of improper appreciation of the evidence available on record.

The present petition is accordingly allowed. The Award passed by the Permanent Lok Adalat (Public Utility Services) Karnal Camp Court at Kurukshetra, is set aside. Parties to bear their own cost.

All pending misc. applications, if any, shall also stand disposed of accordingly.

February 22, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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