IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-17587-2022
Date of decision: 19.01.2023

SHRI RAM GEN. INSURANCE CO. LTD. ....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER ....Respondent

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

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Present:- Mr. Sanjeev Kodan, Advocate for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing of the award dated 07.04.2022 (Annexure P-11) passed by the Permanent Lok Adalat (Public Utility Service), Gurugram.

2. Briefly summarized the facts of the present case are that the respondent-applicant was owner of truck, Make Tata, bearing registration No. HR-55-R-9289 driven by its driver namely Laltun son of Sh. Bala Giri Yadav. The vehicle in question was insured with the petitioner-Insurance Company) vide policy No. 102015/31/15/014729 dated 23.03.2015 valid from 25.03.2015 to 24.03.2016.

3. An accident is stated to be have occurred on 12.09.2015 at about 2:00 a.m. in which the vehicle was damaged badly. Information in this regard was submitted with the concerned Police Station by one Munfaid who was helper on the vehicle. A case bearing FIR No. 368 dated 12.09.2015 was

registered on the basis of the statement of Munfaid under Sections 279 and 304 IPC at Police Station Pataudi. A claim was thereafter lodged vide claim No.10000/31/16/029684. On account of delay in release of the claim, the application under Section 22 (C) of the Legal Services Authorities Act, 1987 (hereinafter referred to as "the Act of 1987") was preferred before the Permanent Lok Adalat (Public Utility Services), Gurugram.

4. Pursuant to the notice issued, the petitioner herein preferred its reply wherein it was pointed out that the respondent No.2-applicant herein has got the FIR registered in collusion with the local police for seeking compensation from the petitioner. During the course of investigation, the respondent No.2-applicant did not co-operate with the petitioner and the requisite documents had not been supplied by him. Accordingly, the claim was repudiated. It was alleged that as the respondent-applicant did not comply with the specific agreed terms and conditions of the insurance policy and being guilty of violation of those terms and conditions, he is not entitled to the said claim.

5. Efforts for reconciliation was made between the parties and the term of settlement were drawn. As the same failed to yield any result, the provision under Section 22-C (8) of the Act of 1987 were invoked for adjudication of the issue.

6. After considering, the rival submissions advanced by the parties, the application was allowed by the Permanent Lok Adalat (Public Utility Services), Gurugram and the petitioner was directed to pay the claim amount to Rs.12,31,236/- alongwith simple interest @ 6% per annum from the date of filing of the application till its realization. A further amount of Rs. 5500/- was directed to pay as litigation expenses. Aggrieved thereof, the

present petition has been preferred.

7. Learned counsel appearing on behalf of the petitioner has argued that the Permanent Lok Adalat (Public Utility Services), Gurugram has grossly failed to appreciate the attending circumstances and the contention raised by the petitioner. The insurance company had appointed its surveyor and as per the survey report submitted by him, the damages/loss sustained by respondent No.2-applicant came to the tune of Rs. 3,35,960/-. The said survey report has been appended as Annexure P-8. It is vehemently argued that passing of the award by the Permanent Lok Adalat (Public Utility Services), Gurugram for Rs. 12,31,236/- over looking the report of surveyor assessing the loss at Rs. 3,35,960/- was incorrect and not based upon correct appreciation of facts available on record. It was also argued that the respondent No.2-applicant was himself guilty and negligent of not supplying the information as required by the petitioner and was in breach of the terms and conditions of the policy. The details of the requisite documents claimed to have been sought for by the petitioner from the respondent No.2-applicant vide letters dated 14.09.2015, 25.09.2015, 03.10.2015, 05.10.2015 and 13.10.2015 are mentioned as under:-

- *Claim form duly filled and signed by Insured.*
- *Claim discharge voucher duly filled and signed by insured.*
- *Address proof, ID proof, passport size photo of insured, cancel cheque copy with passbook of insured.*
- *Registration certificate of insured vehicle.*
- *Driving licence of driver who drive the vehicle at the time of accident.*
- *Fitness certificate of Insured vehicle.*
- *Route permit certificate of Insured vehicle.*

- *Road tax certificate of Insured vehicle.*
- *Repairer's bills and estimates.*
- *Towing bill*
- *Certified copy of FIR*
- *Charge Sheet*
- *Third party vehicle details*
- *Postmortem report of driver*
- *Exact cause of loss and place*
- *Proceeding to which place*
- *Running details*

8. It is thus alleged that since the above said documents had not been furnished to the petitioner-Insurance company, the claim in question could not be processed. The petitioner insurance company not being at lapse or in violation or breach of any of the terms and conditions of the insurance policy, the fastening of the entire liability on the petitioner by the Permanent Lok Adalat (Public Utility Services), Gurugram was misplaced and not sustainable.

9. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended alongwith the instant petition as also the impugned order passed by the Permanent Lok Adalat (Public Utility Services), Gurugram.

10. Insofar as the contention of the petitioner that the requisite documents had not been furnished to the petitioner-Insurance company despite of repeated requests is concerned, the said issues had been duly considered by the Permanent Lok Adalat (Public Utility Services), Gurugram and it was specifically noticed that the respondent No.2-applicant had produced all the documents that were required for the purpose of

processing of the claim. As many as 21 documents that have been noticed in para 9 of the award had been furnished by the respondent No.2. While dealing with the correspondence claimed to have been sent by the petitioner, it was specifically observed that the petitioner-Insurance company failed to produce any document except copies of the letters. Petitioner also failed to demonstrate that the said copies had been duly served upon the respondent No.2-applicant.

11. A perusal and comparison of the list of documents sought for by the petitioner and as extracted above shows that most of these documents had already been furnished. The counsel for the petitioner has failed to demonstrate as to which of the documents in specific had not been furnished especially when it was specifically noted by the Permanent Lok Adalat (Public Utility Services), Gurugram that all the requisite documents as were required under the insurance policy for processing the claim already stood furnished. The petitioner-insurance company could not have prescribe any unnecessary documents other than required for processing of the application and verification of the claim. Besides, it is also noticed that the petitioner Insurance Company got the survey conducted and the surveyor having assessed the loss at Rs. 3,35,960/-. Surprisingly, the stand adopted by the petitioner before the Permanent Lok Adalat was that the respondent-applicant is not entitled to any claim on account of breach of the terms and conditions of the policy and yet got the loss assessed. Besides, there is nothing to dispute that the repairs were undertaken and the bills prepared and submitted by the applicant-respondent No.2 were false, fabricated or forged and that such expenses have not actually been incurred.

12. In the absence of any cogent, convincing or reliable document

having been placed by the petitioner-Insurance Company before the Permanent Lok Adalat (Public Utility Services), Gurugram to come to demonstrate that the loss claimed by the applicant- respondent No.2 was not an actual loss or that the actual expenses incurred were less than the claim, the award passed by the Permanent Lok Adalat (Public Utility Services), Gurugram cannot be faulted with. The said award has been passed by the Permanent Lok Adalat (Public Utility Services), Gurugram on the strength of the evidence before it and upon appreciation thereof.

13. The report of the Surveyor which has now been appended has seen the light of the day at the time of the writ petition for the first time. The respondent-applicant never had the opportunity to confront the insurance agency with the aforesaid report. The petitioner has also appended the reply filed before the Permanent Lok Adalat (Public Utility Services) and no stand has been adopted that any surveyor had ever been disputed to ascertain the loss. In the absence of any pleading to support the same, reliance on any such evidence at belated stage may not advance the interest of justice especially when no reason have been given for leading such evidence. Even though stick rules of procedure are not applicable, however, the principles thereof may be applied for advancing interest of justice. The petitioner chose to not raise said defence in reply or to lead evidence, an inference has to be drawn against him for retaining his best evidence. The finding of fact recorded by the Permanent Lok Adalat (Public Utility Services), Gurugram on strength of pleadings & evidence before it cannot at this juncture be interfered with by introduction of new evidence beyond pleading.

14. The High Court would not ordinarily, in exercise of its power of judicial review, substitute its opinion for the opinion of Permanent Lok

Adalat (Public Utility Services), Gurugram in the award unless such award suffers from grave impropriety, illegality or procedural irregularity or mis-appreciation of evidence on record. I find that there is no such defect in the award. The petition lacks merit & the award needs to be affirmed.

The present petition is hence dismissed in *limine*.

(VINOD S. BHARDWAJ)

JANUARY 19, 2023 **JUDGE**

Vishal Sharma

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