IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

207 **CWP-9780-2016 (O&M)**
Date of Decision: 20.02.2023

NARESH YADAV @ NARESH KUMAR

... Petitioner

VERSUS

FUTURE GENERALI INDIA INSURANCE CO. & ANR.

... Respondents

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

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Vishal Aggarwal, Advocate
for the respondent-Insurance Company.

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VINOD S. BHARDWAJ, J. (ORAL)

The present petition seeks issuance of a writ of Certiorari challenging the Award dated 11.07.2015 passed by the Permanent Lok Adalat (Public Utility Services), Gurugram.

Briefly summarized, the facts of the present case are that the petitioner-applicant claims to have purchased a new blue coloured DI-450-DC-14.0, Model ACE 45-HR Tractor bearing Engine No.12086304 and Chassis No.09124512032 from Shri Maha Laxmi Agricultural Implements, Palwal Road, Sohana, District Gurugram, Haryana for a total sale consideration of Rs.4,70,000/- vide invoice No.02 and Sale Certificate dated 08.03.2013. On the same day, the petitioner-applicant purchased a farmer package Insurance Policy from the respondent-Insurance Company vide Cover Note dated 08.03.2023 and the policy dated 15.03.2013 upon payment of premium of Rs.6,545.78/- It is averred that the petitioner-applicant used to keep his agricultural equipments and the tractor in question at the house in fields situated within the revenue estate of Village Khera Khurrampur, Tehsil Farukh

Nagar, District Gurgaon, which he had taken on lease. In the evening of 05.04.2013, the tractor in question had been parked at the farm-house and under lock. The petitioner-applicant went to his house and when he returned to the fields on the next date i.e. 06.04.2013, the tractor was missing. An extensive search for the missing tractor was made, however, the same failed to yield any result. A complaint was accordingly submitted with the police whereupon, FIR No.107 dated 07.04.2013 was registered at Police Station Farukh Nagar. An untrace report was eventually submitted by the Investigating Agency on 15.05.2013.

It is further averred that the petitioner-applicant approached the Branch Office of the respondent-Insurance Company to report about the incident on the day of theft itself, however, the official of respondent-Insurance Company refused to register the claim of the petitioner-applicant on the pretext that the same could only be entered in the system alongwith the details of the FIR. Thereafter, the petitioner-applicant approached the Branch Office again after registration of the FIR and then the claim of the petitioner was registered by the respondent-Insurance Company on 09.04.2013. The abovesaid claim was, however, repudiated on the pretext that the vehicle had been permitted to be driven in violation of Section 39 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'M.V. Act, 1988') and that there was delay in reporting the matter whereas the information had been duly submitted by the petitioner-applicant expeditiously and without any delay. It is further averred that there has been no violation of Section 39 of the M.V. Act, 1988 and the vehicle was parked at the house when it was stolen.

Aggrieved of the abovesaid repudiation, the application under Section 22 (C) of the Legal Services Authority Act, 1987 had been preferred before the Permanent Lok Adalat (Public Utility Services), Gurugram, wherein notice was issued to the respondent-Insurance Company.

Reply was submitted by the respondent-Insurance Company wherein it was stated that as per the FIR, the tractor in question had been parked in the night of 04.04.2013, however, the FIR in question was registered on 07.04.2013 i.e. after a delay of three days and further intimation to the respondent-Insurance Company was made on 08.04.2013 i.e. after a delay of five days, which is in violation of the terms and conditions of the insurance policy. It is further averred that there was a temporary registration number of the tractor which was valid for the period from 29.09.2012 to 28.10.2012 while the theft of the vehicle occurred on 04.04.2013 i.e. after a period of more than one month of the validity of registration certificate of the vehicle in question. Hence, there was a clear-cut case of violation of Section 39 of the M.V. Act, 1988 and the claim of the petitioner-applicant had been righty repudiated.

Conciliation efforts were made between the parties, however, they failed to arrive at any amicable settlement. Consequently, adjudication of the dispute under Section 22-C (8) of the Legal Services Authority, Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), Gurugram.

After consideration of the rival submissions as well as the evidence led by the respective parties, the Permanent Lok Adalat (Public Utility Services), Gurugram dismissed the application of the petitioner-applicant on the ground that there was a violation of Section 39 of the M.V. Act, 1988. Hence, the present petition has been filed.

Learned counsel for the petitioner has contended that the application of the petitioner-applicant was dismissed by the Permanent Lok Adalat (Public Utility Services), Gurugram by recording the following:

"6. The main defence of the respondent in this case is that the applicant was driving the tractor without holding any temporary or permanent registration certificate in respect of his tractor on 05.04.2013 in spite of the fact that he purchase it on 08.03.2013 and so his claim was repudiated for violation of the provisions of Section 39 of the Motor Vehicles Act which amounts to violation of the terms and conditions of the policy. For appreciating the arguments of the counsel for the applicant, it is necessary to go through the provisions of Section 49 and Section 43 of the Motor Vehicles Act, 1988. Section 39 provides that no person shall drive any motor vehicle in any public place or any other place unless the vehicle is registered in accordance this chapter. Section 43 provides that the owner of a motor vehicle may apply to the registering authority to have the vehicle temporarily registered in the scribed manner. It has been further provided in sub section 2 that a registration made under this Section (i.e. temporary registration) shall be valid only for a period not exceeding one month and shall not be renewable. Section 44 provides for permanent registration of the vehicle.

7. The temporary registration of the tractor in question was issued by the registering authority Ballabgarh in favour of Shri Maha Laxmi Agricultural Implements for the period 29.09.2012 to 28.10.2012 that certificate. The applicant purchased the tractor on 08.03.2013. Since the period of temporary registration had already expired prior to the date of purchase, the applicant was immediately required to obtain permanent registration certificate in respect of his tractor but he went on driving that tractor in his fields for a period of about 27 days without having any temporary or registration certificate. So he committed violation of provision of Section 39 of the Motor Vehicle Act which amounts to breach of terms and conditions of the policy. The respondent company was therefore, justified in repudiating the claim of the applicant.

The counsel for the applicant failed to produce any authority to rebut the arguments raised by the counsel for the respondent."

He contends that the sole reason for dismissal of the application submitted by the petitioner-applicant was on account that the Temporary Registration Certification was valid for one month only i.e. 29.09.2012 to 28.10.2012 and thus attracting Section 39 of the M.V. Act, 1988. The aforesaid reasoning was erroneous and ought to have been rejected. Reference has also been made to the Insurance Cover Note appended as Annexure P-4. He contends that the Invoice No.02 qua the sale transaction had been issued on 08.03.2013. Further, as per the Insurance Cover Note (Annexure P-4) the year of manufacture of the Tractor in question is stated to be 2013. The vehicle in question was duly inspected by the agents of the respondent-Insurance Company and there is no dispute qua the year of the manufacture of the aforesaid tractor or the Invoice No.02 as well as the Sale Certificate dated 08.03.2013. Both documents establish that the year of manufacture of the tractor as '2013' There is hence hardly any merit in the contention of the respondents that the sale transaction was of the year 2012 and the invoice was issued later. It is further contended that the petitioner-applicant is not the generator of the Temporary Registration Certification and he cannot be prejudiced on account of any such lapse by the dealer. He could have been held liable in case the year of manufacture of the tractor would have been 2012 and inference be drawn that the sale invoice had been fraudulently maintained. Once the above two documents remained undisputed, merely because the Temporary Registration Certificate issued by the Dealer/Registering Authority did not reflect the correct particulars, the petitioner-applicant cannot be denied the benefit of valid Insurance Policy especially when there is no allegation of any fraud by the claimant or forgery of any documents. It is further argued that Section 39 of the M.V. Act, 1988 would not be applicable to the facts of the present case, since the vehicle was not being driven or being used at the time of incident. The said vehicle had been parked at the premises of the petitioner when it was stolen. The petitioner acted with promptness and reported the matter to the Investigating Agency immediately whereupon the FIR was registered. He had infact also intimated the respondent-Insurance Company on the date of incident itself but was asked to come again and submit his claim after registration of the FIR. He thus submits that there had been no delay on the part of the petitioner in submission of the claim. He has placed reliance on the IRDA Circular bearing Reference No.IRDA/HLTH/NISC/CIR/216/09/ 2011 to contend that the claim submitted by an insured cannot be denied solely on the ground of delay in submission thereof. A further reliance is placed on the judgment of ***National Insurance Company Ltd. Vs. Kunwar Pal and another*** reported as ***(2014) 3 PLR 315*** wherein the aforesaid circular was relied upon. Reliance was also placed on the judgment of Hon'ble Supreme Court in the matter of ***Dharmender Vs. United India Insruance Co.*** bearing ***Civil Appeal No.5705 of 2021.***

Per contra, learned counsel for the respondent has reiterated the submissions noticed above and held that the Hon'ble Supreme Court has ruled that the Insurance Company would be entitled to repudiate a claim on account of theft of a vehicle after the expiry of period of Temporary Registration Certificate. He placed reliance on the judgment of the Hon'ble Supreme Court in the matter of ***United India Insurance Co. Ltd. Vs. Sushil Kumar Godara*** dated ***30.09.2021*** passed in ***Civil Appeal No.5887 of 2021*** which reads thus:

> *"11. In Narinder Singh (Supra), the claim was in the context of an accident, involving a vehicle, the temporary registration of which had expired. This Court held that the insurer was not liable, and observed that:*

"12. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act.

13. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.

14. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11 1.2006 and the alleged accident took place on 2.2.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.1.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

12. In Naveen Kumar (supra), NCDRC decided a reference, to its bench, and held that: 9. For the reasons stated hereinabove, the reference is answered in following terms:

(i) If a vehicle without a valid registration is or has been used/driven on a public place or any other place that would constitute a fundamental breach of the terms and conditions of the contract of insurance even if the vehicle is not being driven at the time it is stolen or is damaged:

(ii) If a vehicle without a valid registration is used/driven on a public place or any other place, it would constitute a fundamental breach of terms and conditions of the policy even if the owner of the vehicle has applied for the issuance of a registration in terms of S.41 of the Act before expiry of the temporary registration, but the regular registration has not been issued".

(emphasis supplied)"

Further reliance has been placed on the judgment of this Court in the matter of ***Ranjeet Singh Vs. Permanent Lok Adalat and others*** reported as ***(2017) 1 PLR 267*** wherein the claim was rejected on account of breach of provisions of Section 39 of the M.V. Act, 1988. The relevant extract of the said judgment is reproduced hereinafter below:

"2. In brief, the petitioner had purchased Mahindra & Mahindra Scorpio vehicle on 25.02.2014 bearing temporary registration No.HR99PM/2744. The vehicle was insured w.e.f. 14.02.2014 to 13.02.2015 by respondent No.2. The vehicle was alleged to have been stolen on the intervening night of 26/27.04.2014. The petitioner lodged a formal FIR No.427 dated 05.05.2014, under Section 379 IPC against the unknown person. Admittedly, the permanent registration No.HR-24P/5756 was obtained on 14.05.2014. The Lok Adalat dismissed the application of the petitioner on the ground that as per Section 43(2) of the

Motor Vehicles Act, 1988 (hereinafter referred to as the "Act"), the temporary registration of the vehicle is valid only for a period of one month and is not renewable, meaning thereby the owner of the vehicle has to obtain permanent registration number within a period of 30 days and according to Section 39 of the Act, no person can drive any motor vehicle in any public place or in any other place unless the vehicle is registered in accordance with the provisions of the Act and violation of the provisions of Section 39 of the Act is a fundamental breach of terms and conditions of the insurance policy/contract. The Lok Adalat made the following observations in para 12 of its judgment in this regard:-

> *"12. On the other hand, learned counsel for the respondents argued that order of repudiation is liable to be maintained in view of the law laid down by Hon'ble Supreme Court in* ***Civil Appeal No.6739 of 2010 titled as Oriental Insurance Company Ltd. Vs. Parvesh Chandra Chadha decided on 17.8.2010 and Civil Apepal No.9053 of 2014 decided on 18.9.2015 titled as BA Lokesh Kumar Versus Manager, Bharti AXA General Insurance Company Ltd. and Civil Appeal No.8463 of 2014 titled as Narender Singh Vs. New India Assurance Co. Ltd. and others, decided on 4.9.2014****. Learned counsel for the respondents also relied on the judgments delivered by Hon'ble National Consumer Disputes Redressal Commission, New Delhi in* ***IFFCO Tokiyo General Insurance Co. Ltd.and another Vs. Partap Bhagwan Patil, II (2015) CPJ 739 (NC) and Oriental Insurance Co. Ltd. Vs. Vidya Bai, I (2015) CPJ 384****.*
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10. In ***Narinder Singh's case (supra),*** *the insurance company had purchased a Mahindra Pick-up BS-II 4WD vehicle and got it insured for Rs.4,30,037/- for the period from 12.12.2005 to 11.12.2006. The vehicle was temporarily registered for one month. The said period had expired on 11.01.2006. However, the vehicle met with an accident on 02.02.2006 and got damaged. The* *surveyor appointed by the insurance company assessed the loss @ Rs.2,60,845/- but the insured claim was repudiated on the ground that the vehicle was not registered after the expiry of the temporary registration. The insured approached the District Forum under the Consumer Protection Act, 1986. The Forum directed the Insurance Company to indemnify the insured to the extent of 75% of Rs.4,30,037/- along with interest @ 9% per annum. The insurance company and the insured both went in appeal to the State Commission. The State Commission passed a common order and disposed of both the appeals, allowing the appeal of the insurance company and dismissing the complaint of the insured. Aggrieved against the decision of the State Commission, revision was preferred by the insured before the National Commission, which was also dismissed and hence, the SLP was filed before the Supreme Court. A specific issue was framed by the Supreme Court which finds mention in para 11 of its judgment and read as under:-*

> *"Whether the National Commission is correct in law in holding that the appellant is not entitled to claim compensation for damages in respect of the vehicle when admittedly the vehicle was being driven on the date of accident without any valid registration as contemplated under the provisions of Section 39 and Section 43 of Motor Vehicles Act.""*

Reliance is also placed on the judgment of ***Reliance General Insurance Co. Ltd. Vs. Rakesh Kumar and another*** reported as ***(2016) 2 PLR 594***. The relevant extract of the said judgment is reproduced hereinafter below:

> *"5. The fact that respondent No.1 purchased new Bolero car, which was insured with the petitioner-company for the period from 19.09.2007 to 18.09.2008 is not in dispute. Further, it is not in dispute that it was stolen on 02.01.2008. For rejecting the claim, the petitioner sought to raise an issue that on that date the vehicle was not registered. Section 39 of the Act was referred to,*

> *which makes registration of a vehicle mandatory for plying on the road. It is not in dispute that the vehicle in the present case was not being plied on road as it was a case of theft.*
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> *6. As far as the contention raised by learned counsel for the petitioner that the respondent No. 1 after having settled the claim and agreeing to accept Rs.4,50,000/- has filed the petition before the Lok Adalat, hence he should not be awarded compensation more than that, also deserves to be rejected as respondent No. 1 had protested against the same vide his letter dated 15.10.2008."*

While controverting the submissions advanced by the learned counsel for the petitioner, it is submitted by learned counsel for the respondent-Insurance Company that the judgment in the matter of ***Reliance General Insurance Company (supra)*** would not be applicable since the petitioner-applicant had actually been using the aforesaid vehicle at the time of accident in violation of the provisions of M.V. Act, 1988 and the said aspect is duly reflected as per the averment contained paragraph No.4 of the application submitted by the claimant herein.

In rebuttal, counsel for the petitioner submits that the judgment relied by the respondent-Insurance Company are not applicable. The judgment of the Hon'ble Supreme Court in the matter of ***United India Insurance Company (Supra)*** related to a case where the vehicle was being used on a public road without any registration. It is thus not applicable to the facts of the present case. The insured had taken the vehicle to Jodhpur for business purpose and had stayed in Geeta Guest House at night from where the vehicle had been stolen. While responding to the judgment in the matter of **Ranjeet Singh (Supra)**, he submitted that the vehicle in the said case was stolen after expiry of the period of validity of Temporary Registration Certificate. The sale invoice in the present case was of 08.03.2023 and theft took place on 05.04.2013 i.e. within less than 30 days of sale of tractor.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on the case file as well as the judgments relied upon by the respective parties, with their able assistance.

The question which thus arises is as to whether the claim of the petitioner has been rightly repudiated for violation of the mandate of Section 39 of the M.V. Act, 1988. It would thus be relevant to refer to the provision. Section 39 of the M.V. Act, 1988 is reads under:

> ***"Section 39 of The Motor Vehicle Act, 1988***
>
> ***39. Necessity for registration.****—No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner: Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government."*

A perusal of the aforesaid provision shows that the provisions of Section 39 M.V. Act, 1988 would come into operation where the owner of the vehicle drives or cause or permits the vehicle being driven after the expiry of Temporary Registration Certificate.

The position in law is well settled that any such act would be clearly hit by Section 39 of the M.V. Act, 1988 and there is no dispute qua the law laid down by The Hon'ble Supreme Court in this regard. What is to be seen is as to whether the same is applicable to be facts of the present case. It is the case of the petitioner that Sale Certificate of the vehicle in question was issued on 08.03.2013 vide Invoice No.02 and that the vehicle in question was stolen in the intervening night of 04/05.04.2013. Hence, the theft in question is reported to have taken place within the period of thirty days of the sale of the vehicle. Learned counsel for the respondent-Insurance Company, however, contends that the Temporary Registration Certificate was valid from 20.09.2012 to 28.10.2012 and as such, the vehicle in question was being used/drive in violation of the provisions of Section 39 of the M.V. Act, 1988.

Even though the parties in question had led their respective evidence, however, there was nothing on record to suggest that the Sale Certificate and the Invoice dated 08.03.2023 issued in favour of the petitioner-applicant were forged or fabricated. Further, the Insurance Cover Note that had been brought on record specifically mentions the year of manufacturing of the vehicle in question as 2013. Hence, the Temporary Registration Certificate for the aforesaid period 29.09.2012 to 28.10.2012 cannot be given much weightage since the Insurance Cover Note itself mentions the year of manufacturing as 2013. Respondent-Insurance Company having placed reliance on the aforesaid Insurance Cover Note, wherein the year of manufacturing has been mentioned as 2013 dispels the submission of the petitioner-applicant that the vehicle in question may have been sold in the year 2012. Further, the Temporary Registration Certificate issued in favour of the owner petitioner-applicant is not a document generated by him. It is not the case established by the respondents that the petitioner had not deposited the due charges for temporary registration at the time of sale invoice. Once no lapse or forgery is attributed to the petitioner-applicant and he was acting under a bona-fide belief, he cannot be put to much greater injury. He may himself be a victim of circumstances, wherein the Dealer and/or Registration Authority may have handed over an invalid Temporary Registration Certificate in favour of the petitioner-applicant.

Section 22 (D) of the Legal Services Authority Act, 1987 provide guidelines to decide cases and mandate that the Permanent Lok Adalat (Public Utility Services) shall be governed by principles of equity, objectivity, fairness, principles of natural justice and other principles of justice. Hence, the strict rules of interpretation by objective evidence would not apply in the proceedings before the Permanent Lok Adalat, where the preponderance of circumstances weigh in favour of a person aggrieved. Construction of evidence which promotes justice and prevents miscarriage has to be preferred. Once the explanation offered by insured is probable and reasonable from corroboration of evidence, the same can be accepted by the Permanent Lok Adalat.

In the present case, the petitioner has been able to successfully demonstrate that the vehicle in question had been purchased by him on 08.03.2013 and the same had been stolen within a period of less than 30 days of such purchase. A temporary registration is held valid for a period of 30 days. The petitioner having purchased the tractor within less than 30 days of its being stolen and he having paid necessary chares, benefit of 30 days' validity may be extended to him in the facts of the present case. Once the petitioner deposits the necessary charges towards temporary registration, benefit of welfare legislation ought not be denied to him, when circumstances do not suggest that he is conniving to defraud the insurance company.

The judgments relied by the counsel for the respondent-Insurance Company are, thus, not applicable to the facts and circumstances of the present case and are distinguishable. Once it is evident that the vehicle had been purchased only on 08.03.2013 and was stolen within a period less than 30 days, even then a constructive reading of Section 39 of the M.V. Act, 1988 would permit the owner to use the vehicle for 30 days temporary registration.

In view of the aforesaid, the present petition is hereby allowed.

Consequently, the Award dated 11.07.2015 passed by the Permanent Lok Adalat (Public Utility Services), Gurugram is set aside. The sale consideration of Rs.4,70,000/- as reflected in the Invoice No.02 as well as the Sale Certificate dated 08.03.2013 is awarded in favour of the petitioner-applicant alongwith interest at the rate of 6% per annum from the date of filing of the application under Section 22 (C) of the Legal Services Authority, Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Gurugram till the date of its actual disbursement in exercise of the powers conferred under Section 34 of the Civil Procedure Code, 1908.

(VINOD S. BHARDWAJ)
JUDGE

20.02.2023.
rajender

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