Neutral Citation No. 2023:PHHC:159439

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225 **CWP-28048-2019** (O&M)
Date of decision:- 12.12.2023

PARHLAD KUMAR

... PETITIONER

VS.

PERMANENT LOK ADALAT AND OTHERS

...RESPONDENTS

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

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Present: Mr. Tarun Dhingra, Advocate and
Mr. Salil Soni, Advocate for the petitioner.

Mr. Sanjeev Kodan, Advocate for respondents No. 2 and 3.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 07.03.2019 (Annexure P-2) passed by the Permanent Lok Adalat, Public Utility Services, Kurukshetra in case No. 60 of 2017 vide which an application under Section 22-C of Public Utility Service and Legal Services Authorities, Act, 1987 preferred by the applicant-petitioner has been dismissed.

2. Learned Counsel for the petitioner contends that the petitioner is the owner of motor cycle bearing registration No. HR-41G-4625. The said vehicle was insured with respondent-Reliance General Insurance Company w.e.f. 29.04.2016 to 28.04.2017 on

payment of premium. The said vehicle was parked in front of the house of the petitioner on 05.06.2016 at about 10:00 am. When he came out of the house at 12:00 noon, the motor cycle was missing. The same having been stolen, the petitioner made best efforts to trace the same, however, the efforts went in vain. The petitioner immediately approached the police and got the FIR No. 251 dated 06.06.2016 registered at Police Station Pehowa about the incident. Intimation was also sent to the Insurance Company about theft of the above motorcycle. The respondent No.2-Insurance Company deputed an investigator to inquire into the matter and confirmed about the theft. Certain documents were also demanded by the investigator which were duly furnished. However, the claim of the petitioner was repudiated by the respondent-Insurance Company on the ground of breach of condition No.1 of the policy. Aggrieved thereof, the application was preferred before the Permanent Lok Adalat.

3. The respondent-Insurance company appeared before the Permanent Lok Adalat and submitted that the information of the theft of the motor cycle had been given to the insurance company after a delay of 31 days i.e. on 06.07.2016. The same deprived the insurance company of an immediate opportunity to investigate the theft and to take effective steps to mitigate its loss. The furnishing of delayed information to the Insurance company amounted to breach of condition No.1 of the policy. The insurance company was thus justified in repudiating the claim of the petitioner. A communication in this regard was also sent to the petitioner on 10.08.2016.

4. As the conciliation proceedings under Section 22-C(4) to (7) of the Legal Service Authorities Act, 1987 failed to fructify in an amicable solution of the dispute, adjudication of the dispute was undertaken by the Permanent Lok Adalat.

5. Parties adduced their respective evidence before the Permanent Lok Adalat. Upon consideration thereof, the Permanent Lok Adalat Public Utility Services, Kurukshetra dismissed the application upholding that there was a breach of condition No.1 of the contract of Insurance on the part of the petitioner. Hence the present petition.

6. Counsel for the petitioner has argued that the petitioner had approached the respondent authorities at the earliest and even an investigator was deputed by the Insurance company to verify the allegation and the claim. The information of theft was given to the police immediately on the next day itself and without any delay. Further, in so far as the factum of theft of the motor cycle is concerned, the same is not disputed or belied by any cogent material. The respondents are justifying their acts on the ground that had the information been furnished to them in time, they would have got ample opportunity to investigate and verify the claim made by the petitioner. Even though there is no allegation that no theft took place in the manner alleged or even suggesting how the investigation by Police is not to be relied upon. Reliance is also placed on the judgment of this Court in the matter of ***Iffco Tokio General Insurance Company Ltd. Vs. Ved Pal and another,*** reported as

2014(4) PLR 595, wherein this Court has held that where the FIR is registered on the next day of the theft itself, the same cannot be presumed as an inordinate delay on the part of the vehicle owner in reporting the authorities about theft of the vehicle. Award passed in favour of the insured was upheld and the writ petition filed by the insurance company was dismissed.

7. On the other hand, counsel for the respondent-insurance company contends that petitioner approached the respondent-insurance company by way of lodging a claim after 31 days of the incident and that there was no satisfactory explanation furnished by the petitioner for such delay. Even though such condition was incorporated in the contract of Insuracne. Had the petitioner exercised due care and caution and would have been prompt in reporting the matter to the insurance company, they would have made best efforts to trace the vehicle and to recover the same to mitigate their loss. The failure on the part of the petitioner in not providing immediate information to the respondent-insurance company is thus in violation of the terms and conditions of the policy and it would be justified in repudiating the claim. A reliance is placed on the judgment ***National Bulk Handling Corporation Ltd. Vs. Oriental Insurance Company*** reported as 2016(3) CPR 203 as well as on the judgment of National Consumer Disputes Redressal Commission, New Delhi in the matter of ***Mantoo Ram Bhai Versus New India Assurance Co. Ltd. and another*** reported as 2016(2) CLT 310. It is contended that in both the abovesaid case, when there was a delay on the part of the insured in

reporting the loss to the insurance company, the same was construed as a breach of mandatory conditions of the policy and held as insured not taking effective steps to prevent escalation of loss to the insurance company. The decision to repudiate the claim filed by the insured was upheld by the National Consumer Disputes Redressal Commission, New Delhi.

8. I have heard learned counsel appearing on behalf of the respective parties and have gone the documents placed on record.

9. The undisputed facts which emerge are that theft of the vehicle was held on 05.06.2016; FIR was registered on 06.06.2016 while claim filed with Insurance company and submission of intimation of theft was delayed. The condition No.1 of the Insurance policy relied upon by the Insurance Company to repudiate the claim reads thus:-

> *"Notice shall be given in writing to the Company immediately upon the occurrence of any accident, loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and/or process or copy thereof shall be forwarded to the Company immediately on receipt by the insured. Notice shall also be given in writing to the Company immediately the insured shall have knowledge of any impending prosecution inquest or fatal injury in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the Company in securing the*

conviction of the offender."

10. A reading of the said clause shows that it called upon the insured to report the loss immediately and to render all information and assistance required. The insured is required to extend all cooperation to the Police and the Insurance Company for securing conviction of the offender. The emphasis of the clause is quick reporting of the matter and to render all assistance. The said clause not only does not provide any time period within which information has to be provided but also does not assign any fatal consequence for such lapse. Not every clause of a policy can be construed as fatal to the policy itself. The object behind the clause is only to ensure that matter is reported to the Investigating Agency immediately so that steps to trace and recover the vehicle can be taken and culprit is nabbed. The above clause is not fundamental to the decision making of the Insurance Company to underwrite a risk or in the nature where such violation wold shake the underlying foundation of the contractual relationship and thereby demolish the entire relationship between the parties. Not every clause and letter of the Insurance policy be read as mandatory entitling Insurance Company to repudiate the claim and seek exoneration from liability. Any such heading would defeat the object of the contract of insurance. To uphold any clause at such level, the violation has to be of basic fundamentals of the contract, the violation whereof would be a crucial fundamental breach leading to vesting of a right with the Insurance Company to deny indemnifying the liability. Such import is, however, not drawn from a reading of clause relied by Insurance Company.

11. It is also evident that the matter was reported to the Police without delay. It is not the case of the Insurance Company that the petitioner did not co-operate with the Investigating Agency or did not furnish information required of him due to which investigation was stalled. It is also not the case of the Insurance Company that the Investigating Agency found the information to be false. It is also indiscernible as to how the Insurance Company was better equipped than the Police to investigate and what fundamental errors have been committed by the Investigating Agency. Further, there is also nothing on record. Where the Insurance company has lodged protest against the untrace report submitted by the Police. Hence, merely because claim was lodged after delay, it can't be held sufficient to assume that there is a fundamental breach and hence the claim ought to be rejected.

12. The judgment of the National Consumer Disputes Redressal Commission relied upon by the Insurance Company fails to satisfy this Court as the said judgments are not only binding but also for the reason that no objective and intent based reasons of a contract of Insurance vis-a-vis its beneficial nature are born out from the same. Besides, the law interpreted by the Hon'ble Supreme Court does not support it as well.

13. The Hon'ble Apex Court in the matter of '***Gurshinder Singh Vs. Shriram General Insurance Company Limited and another'*** reported as (2020)11 SCC 612 has held as under:-

> *"9. Before we analyze this case any further, we need to observe the rules of interpretation applicable to a contract of insurance. Generally, an insurance*

contract is governed by the rules of interpretation applicable to the general contracts. However, due to the specialized nature of contract of insurance, certain rules are tailored to suit insurance contracts. Under the English law, the development of insurance jurisprudence is given credence to Lord Mansfield, who developed the law from its infancy. Without going much into the development of the interpretation rules, we may allude to Neuberger J. in Arnold v. Britton, which is simplified as under:

(1) Reliance placed in some cases on commercial common sense and surrounding circumstances was not to be invoked to undervalue the importance of the language of the provision which is to be construed.

(2) The less clear the words used were, the more ready the court could properly be to depart from their natural meaning, but that did not justify departing from the natural meaning.

(3) Commercial common sense was not to be invoked retrospectively, so that the mere fact that a contractual arrangement has worked out badly, or even disastrously, for one of the parties was not a reason for departing from the natural language.

(4) A court should be very slow to reject the natural meaning of a provision as correct simply because it appeared to be a very imprudent term for one of the parties to have agreed.

(5) When interpreting a contractual provision, the court could only take into account facts or circumstances which existed at the time that the contract was made and which were known or reasonably available to both parties.

(6) If an event subsequently occurred which was plainly not intended or contemplated by the parties, if it was clear what the parties would have intended, the court would give effect to that intention.

10. A perusal of the aforesaid shows that this contract is to be interpreted according to the context *involved in the contract. The contract we are interpreting is a Commercial Vehicle Package Policy. There is no gainsaying that in a contract, the bargaining power is usually at equal footing. In this regard, the joint intention of the parties is taken into consideration for interpretation of a contract. However, in most standard form contracts, that is not so. In this regard, the Court in such circumstances would consider the application of the rule of contra preferatum, when ambiguity exists and an interpretation of the contract is preferred which favors the party with lesser bargaining power.*

11. xxx xxx xxx

12. In our view, applying the aforesaid principles, Condition 1 of the Standard Form for Commercial Vehicles Package Policy will have to be divided into two parts. The perusal of the first part of Condition 1 would reveal, that it provides that 'a notice shall be given in writing to the company immediately upon the occurrence of any accidental loss or damage'. It further provides, that in the event of any claim and thereafter, the insured shall give all such information and assistance as the company shall require. It provides, that every letter claim writ summons and/or process or copy thereof shall be forwarded to the insurance company immediately on receipt by the insured. It further provides, that a notice shall also be given in writing to the company immediately by the insured if he shall have knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence, which may give rise to a claim under this policy.

13. A perusal of the wordings used in this part would reveal, that all the things which are required to be done under this part are related to an occurrence of an accident. On occurrence of an accidental loss, the insured is required to immediately give a notice in writing to the company.

This appears to be so that the company can assign a surveyor so as to assess the damages suffered by the insured/vehicle. It further provides, that any letter claim writ summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. As such, the intention would be clear. The question of receipt of letter claim writ summons and/or process or copy thereof by the insured, would only arise in the event of the criminal proceedings being initiated with regard to the occurrence of the accident. It further provides, that the insured shall also give a notice in writing to the company immediately if the insured shall have the knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. It will again make the intention clear that the immediate action is contemplated in respect of an accident occurring to the vehicle.

14. We find, that the second part of Condition 1 deals with the 'theft or criminal act other than the accident'. It provides, that in case of theft or criminal act which may be the subject of a claim under the policy, the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of the offender. The object behind giving immediate notice to the police appears to be that if the police is immediately informed about the theft or any criminal act, the police machinery can be set in motion and steps for recovery of the vehicle could be expedited. In a case of theft, the insurance company or a surveyor would have a limited role. It is the police, who acting on the FIR of the insured, will be required to take immediate steps for tracing and recovering the vehicle. Per contra, the surveyor of the insurance company, at the most, could ascertain the factum regarding the theft of the vehicle.

15. It is further to be noted that, in the event, after the registration of an FIR, the police successfully recovering the vehicle and returning the same to the insured, there would be no occasion to lodge a claim for compensation on account of the policy. It is only when the police are not in a position to trace and recover the vehicle and the final report is lodged by the police after the vehicle is not traced, the insured would be in a position to lodge his claim for compensation.

16. As observed by the bench of two learned Judges in the case of Om Prakash, after the vehicle is stolen, a person, who lost his vehicle, would immediately lodge an FIR and the immediate conduct that would be expected of such a person would be to assist the police in search of the vehicle. The registration of the FIR regarding the theft of the vehicle and the final report of the police after the vehicle is not traced would substantiate the claim of the claimant that the vehicle is stolen. Not only that, but the surveyors appointed by the insurance company are also required to enquire whether the claim of the claimant regarding the theft is genuine or not. If the surveyor appointed by the insurance company, upon inquiry, finds that the claim of theft is genuine then coupled with the immediate registration of the FIR, in our view, would be conclusive proof of the vehicle being stolen.

17. xxx xxx xxx

18. xxx xxx xxx

19. xxx xxx xxx

20. We, therefore, hold that when an insured has lodged the FIR immediately after the theft of a vehicle occurred and when the police after investigation have lodged a final report after the vehicle was not traced and when the surveyors/investigators appointed by the insurance

> *company have found the claim of the theft to be genuine, then mere delay in intimating the insurance company about the occurrence of the theft cannot be a ground to deny the claim of the insured."*

14. In view of the aforesaid facts and position in law, it is evident that the Permanent Lok Adalat (Public Utility Services) Kurukshetra failed to apply the correct legal principles. Failure to appreciate the above and considering that there is no dispute as regards the aspect of theft as well as the fact that the intimation in this regard was promptly made to the police has a bearing on the award. Further, it is also not disputed that the 'untraced report' submitted by the investigating agency was incorrect or that the police, at any point of time, suspected that the vehicle in question was never stolen and there was a mis-reporting/mis-representation made by the petitioner. The Permanent Lok Adalat thus failed to appreciate the crucial aspects and legal position which have caused travesty of justice. I find that the same is an illegality that goes to the root of the case rendering the award passed by the Permanent Lok Adalat liable to be set aside.

15. The present writ petition is accordingly, allowed. The award dated 07.03.2019 (Annexure P-2) passed by the Permanent Lok Adalat, Public Utility Services, Kurukshetra, in case No. 60 of 2017 titled as ***Parhlad Kumar Versus Reliance General Insurance Company Ltd. and another,*** is set aside. The respondents-insurance company is directed to disburse the sum assured value of the vehicle to the petitioner on his furnishing of the requisite documents with the insurance company to process and disburse the claim.

16. In the event of the furnishing of the requisite documents by the petitioner within a period of four weeks, the respondent-insurance company shall release the sum assured to the petitioner within a period of 6 weeks thereafter, failing which, the petitioner shall be entitled to interest @ 6% per annum w.e.f. the date of filing of the application till its actual release.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 12, 2023
Pooja Saini/Vishal Sharma

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