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IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-264-2019 (O&M).
Date of Decision: 14.08.2024.

IFFCO TOKIO GENERAL INSURANCE COMPANY

... Petitioner

Versus

DHARAM PAL AND ANOTHER

... Respondents

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

Present: Ms. Manvi Verma, Advocate,
for the petitioner.

Mr. Prashant Singh Chauhan, Advocate,
for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

The petitioner-Insurance Company is in appeal against the order dated 31.05.2018 (Annexure P-1), passed by the Permanent Lok Adalat (Public Utility Services), Narnaul, Haryana, in application No.307 of 22.07.2015 filed under Section 22-C of the Legal Services Authorities Act, 1987.

2 Briefly summarized, the facts of the present case are that the respondent No.1-applicant being the owner of Truck bearing Registration No.HR-66-A-0914 got it insured with the petitioner-Insurance Company

vide Policy No.84414180 for a period w.e.f. 02.07.2013 to 01.07.2014. The said vehicle met with an accident on 04.07.2013 at about 1:30 A.M. (midnight) near Village Morund, Near Nangal Choudhary, Tehsil Narnaul. A DDR No.28 dated 20.07.2013 in this regard was also registered. The vehicle was totally damaged and as per estimate prepared by Tirupati Motors, Delhi Road, Rewari, which is the authorized service provider intimated estimate regarding the repairs of the vehicle to the tune of Rs.24,14,245/-, in addition to the expenses of Rs.3,10,000/- incurred for repair of cabin and Rs.3,00,000/- on account of loss and as such, a total loss of Rs.30,14,245/- was estimated. The intimation about the same was sent to the petitioner-Insurance Company whereupon the Surveyor reached at the spot on 20.07.2013 who also prepared the estimate which was submitted to the petitioner-Insurance Company. Another Surveyor also reached at the spot on 27.07.2013 and submitted the estimate to the petitioner-Insurance Company. Fire Brigade also reached at the spot and charged Rs.2,050/-. The service quotation of Tirupati Motors, Delhi Road, Rewari, the authorized service station, in original, was sent to the petitioner-Insurance Company. As the claim was not being considered, hence, the application under Section 22-C of the Legal Services Authorities Act, 1987 was filed before the Permanent Lok Adalat (Public Utility Services), Narnaul.

3 The petitioner-Insurance Company entered appearance before the Permanent Lok Adalat (Public Utility Services), Narnaul and filed its written statement raising various objections with respect to the

maintainability; cause of action and concealment of facts. It submitted that the petitioner-Insurance Company had raised various queries which were not responded to and that the intimation to the petitioner-Insurance Company with respect to accident which took place on 04.07.2013 was sent to the petitioner-Insurance Company after a lapse of 15 days, hence, the application filed before the Permanent Lok Adalat (Public Utility Services), Narnaul on 22.07.2015 i.e. after a delay of nearly two years is time barred.

4 Efforts for an amicable resolution of the dispute as mandated under Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987 were undertaken by the Permanent Lok Adalat (Public Utility Services), Narnaul, however the same having failed to fructify, adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was undertaken.

5 Parties led their respective evidence and upon consideration thereof, the Permanent Lok Adalat (Public Utility Services), Narnaul, ordered as under:-

> *"11. We have heard the counsel for the parties and gone through the evidence.*
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> *12. As per evidence the applicant has not proved on file that there was total loss of the vehicle The applicant has submitted on record estimate in the sum of Rs.24,14,245/- on account of repair of the vehicle, Rs.3,10,000/- repair body + labour, the estimate cost of repairs in the sum of Rs.24,14,245/- has been assessed by the workshop which has been authorized by the*

manufacturer of the vehicle. On the other hand the respondent in the policy has assessed the IDV of the vehicle to the tune of Rs. 17,00,000/- and the surveyor appointed after getting information of the accident assessed the value of loss of the vehicle to the tune of Rs.9,93,000/-. Thus there is a difference of Rs. 15,00,000/-. The applicant has not produced the sale letter of the vehicle so as to compare the amount assessed by the authorized workshop with the total value of the vehicle, besides it is an established fact that it is the prerogative of the insurance company to assess IDV of the vehicle, no doubt the policy has to be signed by the owner of the vehicle too but it does not mean that in fact the IDV assessed by the insurance company is always correct. In these circumstances we are of the considered opinion that the amount of loss to the applicant due to accident of the vehicle has assessed by the authorized workshop needs to be kept in view to quantify the compensation in the interest of justice. Besides admittedly the applicant had given information of the accident after 15 days thus it becomes clear that he has violated terms and conditions of the policy.

13. In ***Amalendu Sahoo Vs. Oriental Insurance Co. Ltd. II (2010) CPJ (9) (SC)*** *the vehicle was not used for personal cause but was used for transportation of passengers by way of being hired. The claim was repudiated by insurance company. The complaint dismissed by Consumer Form. The order was upheld in appeal. Revision against the order was dismissed. The Hon'ble Apex Court held that the repudiation of claim is due to violation of condition of the Policy. Settlement of claim was directed to be settled on non-standard basis mentioned below:-*

	Sr. No.	Description	Percentage of Settlement
g	*(i)*	*Under declaration of licensed carrying capacity.*	*Deduct 3 years difference in premium from the amount of claim or deduct 25% of claim amount, whichever is higher*
	(ii)	*Overloading of vehicles beyond licensed carrying capacity*	*Pay claims not exceeding 75% of admissible Claim*
h	*(iii)*	*Any other breach of warranty/ condition of policy including limitation as to use.*	*Pay upto 75% of admissible claim.*

On the basis of this schedule the amount of compensation of Rs.5,00,000/- was restricted to Rs.2,50,000/-.

14. The instant case is squarely covered by Amalendu Sahoo's case (supra). Thus we restrict 50% of the amount claimed viz. Rs.27,24,245/- to Rs.13,62,122.5 paise. The respondent is directed to pay a sum of Rs.13,62,122.5 paise with interest @ 4% per annum from the date of institution of the petition i.e. 22.07.2015 till realization.

15. This award is passed accordingly."

6 Aggrieved of the award passed by the Permanent Lok Adalat (Public Utility Services), Narnaul, the present writ petition has been filed.

7 Learned counsel appearing for the petitioner-Insurance Company has vehemently argued that the Permanent Lok Adalat (Public

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Utility Services), Narnaul was in an error in not considering that the I.D. Value of the vehicle was Rs.17 lakhs as per the policy and that in the absence of accident having been proved by the respondent No.1-applicant, he could at best be awarded 50% of the I.D. Value. Still, the Permanent Lok Adalat (Public Utility Services), Narnaul has awarded the claim on the basis of 50% of the conveyed amount by the authorized workshop for repair of the vehicle. She further contends that I.D. Value had been assessed by the Surveyor of the petitioner-Insurance Company to the tune of Rs.9,94,965/-, as such an excessive amount has been ordered to be paid by the Permanent Lok Adalat (Public Utility Services), Narnaul. She further contends that the claim was lodged after an inordinate delay of the accident inspite of reporting the loss promptly.

8 Learned counsel for the respondent No.1-applicant, on the other hand, has controverted the same by arguing that sufficient documents in relation to the occurrence of the incident had been produced on record which have been specifically adverted to by the Permanent Lok Adalat (Public Utility Services), Narnaul in Para No.5 of its award. Besides, the fact that the two Surveyors of the petitioner-Insurance Company have also estimated the loss, it clearly shows that the factum of occurrence of accident is not being disputed or denied. The fire brigade charges and the report has also been accepted by the petitioner-Insurance Company. Thus the factum of accident cannot be denied, at this stage.

9 In so far as the contention of the petitioner-Insurance Company about the claim having been lodged after a delay is concerned, the same is immaterial at this juncture since a DDR in relation to the occurrence was recorded promptly and since it was not a case of accident and instead was a case of fire of the vehicle. Hence, the petitioner-Insurance Company cannot say that it is not liable to make good on the claim merely because the loss as a result of fire was communicated after some delay and all other steps for mitigating the loss had been properly undertaken by the respondent No.1-applicant.

10 He also argues that the Surveyor of the petitioner had assessed the value of the loss to the tune of Rs.9,93,000/- without giving any basis for the mode and manner in which the said assessment has been undertaken especially when the authorized service station had duly prepared the invoice giving details of the cost of the repair. He contends that the Permanent Lok Adalat (Public Utility Services), had relied upon the judgment in the matter of ***Amalendu Sahoo (supra)*** where a direction was issued that settlement of the claims would be done on non-standard basis and that on the said parameters, the Permanent Lok Adalat (Public Utility Services), Narnaul partly allowed the application in favour of the respondent No.1-applicant.

11 No other argument has been raised.

12 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

13 I find myself in agreement with the arguments advanced by the counsel for the respondent No.1-applicant. It has been held by the Hon'ble Supreme Court in the matter of ***Surendra Kumar Bhilawe Vs. New India Assurance Company Limited, reported as (2020) 18 SCC 224*** that mere delay in reporting the matter to the Insurance Company would not be a sufficient ground for the insurance company to repudiate the claim. The relevant para of the aforesaid judgment is extracted as under:-

> *"50. The FIR was lodged within three days of the accident. In the case of a major accident of the kind as in this case, where the said truck had turned turtle and fallen into a river, slight delay if any, on the part of the traumatized driver to lodge an FIR, cannot defeat the legitimate claim of the Insured. Of course in our view, there was no delay at all in lodging the FIR. In case of a serious accident in course of inter-state transportation of goods, delay of 20 days in lodging a claim is also no delay at all. It is nobody's case that the claim application filed by the Appellant was time barred. Moreover, the insurer had, in any case, duly sent its Surveyors/ Assessors to assess the loss. The claim of the appellant could not have, in this case, been resisted, either on the ground of delay in lodging the FIR, or on the ground of delay in lodging an accident information report, or on the ground of delay in making a claim.*
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> *51. In any case, as held by this Court in Om Prakash vs. Reliance General Insurance and Another, (2017) 9 SCC 724 delay in intimation of accident, or submission of documents*

> *due to unavoidable circumstances, should not bar settlement of genuine claims."*

14 Once an accident has happened, the priority of the person/owner would be to recoup from the said accident and to take effective steps for mitigating the said loss instead of first rushing to the insurance company. Such a conduct of the respondent No.1-applicant cannot be said to be unreasonable or lacking of objectivity. Further, the Surveyor's report which is being relied upon by the petitioner-Insurance Company is only one such document that was required to be considered for assessing the claim. It is the specific contention of the respondent No.1-applicant that bills were prepared by the authorized workshop of the petitioner-Insurance Company and the same were submitted by the respondent No.1-applicant to the petitioner-Insurance Company. There is no valid basis for the Surveyor by relying whereupon, the loss has been assessed at Rs.9,93,000/-. No details have been furnished or established as to whether the workshop had agreed to the above said proposal and as to whether the vehicle in question would become roadworthy on the basis thereof. It is also not disputed by the petitioner-Insurance Company that the judgment of the Hon'ble Supreme Court in the matter of ***Amalendu Sahoo*** **(supra)** empowers settlement of claim on non-standard basis in such circumstances. Where the petitioner-Insurance Company fails to establish its ground and prove that the repair expenses would under no circumstances

exceed the assessment of loss by the Surveyor by taking into consideration all relevant factors.

15 Even otherwise, Section 22-D of the Legal Services Authorities Act, 1987 mandates that the Permanent Lok Adalat (Public Utility Services), is guided by the principles of natural justice, objectivity, fairness, equity and other principles of justice while the claims are brought before it. The principles relied upon by the Permanent Lok Adalat (Public Utility Services), on the basis of the judgment in the matter of ***Amalendu Sahoo* (supra)** cannot be said to be illegal, ultra vires, perverse or in gross disregard to the evidence which was per se unimpeachable.

16 This Court would not ordinarily interfere with the discretion so exercised by the Permanent Lok Adalat (Public Utility Services), in the absence of any of the aforesaid factors. The High Court in exercise of its judicial power does not sit as a Court of appeal on the view taken by the Permanent Lok Adalat (Public Utility Services), and substitute its own opinion for the judgment of the Permanent Lok Adalat (Public Utility Services), merely because some other view is also probable. Any illegality, perversity or gross mis-appreciation of the evidence is required to be established before a decision taken by the Permanent Lok Adalat (Public Utility Services), is required to be interfered.

17 Finding no merits, the present writ petition is dismissed. The order dated 31.05.2018 (Annexure P-1), passed by the Permanent Lok

Adalat (Public Utility Services), Narnaul, Haryana, in application No.307 of 22.07.2015, is affirmed.

18 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

August 14, 2024 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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