

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-5028-2016
Reserved on 19.10.2023
Date of decision: 16.01.2024

New India Assurance Company Ltd.

...Petitioner

Versus

Supreme

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. R.C. Gupta, Advocate for the petitioner.

None for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. The present civil revision petition has been filed by petitioner Insurance Company against the impugned award dated 06.05.2016 passed by the Permanent Lok Adalat (Public Utility Services), Rohtak (in short, the Permanent Lok Adalat).
2. The brief facts of the case are that respondent was registered owner of Vokswagen Polo Car No. DL-8CV-0560. On 06.11.2012 the said car met with an accident in the area of Gharaunda, District Karnal. The car being insured with the petitioner-insurance Company, it processed the case of respondent and repudiated the claim since the respondent-insured had wrongfully obtained a no claim bonus of 20% from the petitioner-insurer, whereas in fact he had already taken a claim in the previous year from

another insurer and thus, respondent-insured concealed the said facts at the time of renewal of the insurance policy with the petitioner-insurer and therefore, committed breach of insurance contract.

3. The respondent being aggrieved filed petition before the Permanent Lok Adalat. The petition was contested by the insurance Company and it filed written reply wherein preliminary objection was raised that the previously the vehicle in question was insured with M/s Bajaj Allianz Insurance Company and at that time the owner lodged claim on the basis of previous insurance policy. The insured enjoyed the said claim but at the time of renewal of insurance policy with the petitioner-insurance Company, he concealed the said fact and obtained 20% 'No Claim Bonus' (in short, NCB), which resulted in breach of insurance policy and thus, the claim of the respondent was rightly rejected.

4. The Permanent Lok Adalat made sincere efforts for amicable settlement of the dispute between the parties but the efforts did not materialize. Then both the parties were directed to submit documents in support of their contentions. The respondent furnished photo copy of letter dated 04.03.2013, copy of report of Surveyor dated 24.01.2013, as per which the total damage was assessed as Rs.4,59,000/- and copy of insurance form. On the other hand, insurance Company placed on record copy of claim form.

5. After hearing counsel for both the parties, Permanent Lok Adalat came to the conclusion that respondent concealed fact regarding availing of claim under the previous insurance policy and the petitioner-insurance Company was negligent in verifying the said fact. Consequently, Permanent Lok Adalat directed the petitioner-insurance Company to pay

Rs.2,29,500/- to the respondent to satisfy his claim and further if the respondent kept the salvage, Rs.1,00,000/- more be deducted and if salvage is given to the petitioner-insurance Company, then total amount of Rs.2,29,500/- is to be paid to the insured.

6. Being aggrieved, the petitioner-insurance Company has filed the present revision petition.

7. I have heard the counsel for the parties.

8. The counsel for the insurance Company while assailing the impugned order has argued that there is no doubt that previously the vehicle in question was insured with Bajaj Allianz Insurance Company and at that time respondent took claim under the said previous policy. It has further been contended that factum of availing claim under the previous policy was not disclosed when the policy in question was obtained by the respondent-insured. Thus, the respondent/his father made false statement in the proposal form for availing NCB and resultantly committed breach of the terms and conditions of insurance policy in question. The counsel for the petitioner has further contended that in the given circumstances the claim of the respondent was rightly repudiated by the petitioner insurance Company. It has been further contended that the impugned award is not sustainable in the eye of law. In support of his contentions, the counsel for the petitioner has placed reliance upon the decision of Hon'ble Supreme Court in ***Oriental Insurance Company Limited Vs. Mahendra Constructions 2019(3) RCR(Civil) 852.***

9. On the other hand, the counsel for respondent while supporting the impugned award has, *inter alia*, contended that even if there was concealment of certain facts by the respondent/ his father while insuring the

car in question with petitioner-insurance Company, the insurer has failed to prove that it had followed the procedure enshrined in GR-27 of India Motor Tariff and in the given circumstances the Permanent Lok Adalat while considering the negligence on part of both the parties rightly directed the petitioner insurance Company to make payment of half of the total damage assessed by the surveyor.

10. I have considered the submissions made by counsel for the parties.

11. In Mahendra Constructions's case (supra) which has been referred by the counsel for the petitioner/insurance company, the Hon'ble Supreme Court allowed the appeal and set aside the impugned judgment and order of NCDRC and dismiss the complaint filed by the respondent with following observations:-

"15 Learned counsel appearing on behalf of the insured urged that the respondent relied on the Administrative Officer who filled in the requisite details in the proposal form. The fact of the matter is that the respondent was under an obligation to make a full disclosure of the status of the previous insurance policy, together with the material facts relevant to the claim which had been lodged with New India Assurance Company Limited. The fact that such a claim was lodged and had been settled at Rs 36.66 lakhs was suppressed. This suppression goes to the very root of the contract of insurance which would validate the grounds on which the claim was repudiated by the insurer."

12. The relevant portion of GR-27 of India Motor Tariff reads as follows:-

GR.27. No Claim Bonus

(a) No Claim Bonus(NCB) can be earned only in the Own Damage section of Policies covering all classes of vehicles but not on Motor Trade Policies (Road Transit Risks / Road Risks / Internal Risks) and policies which cover only Fire and / or Theft Risks. For policies covering

Liability with Fire and/or Theft Risks, the NCB will be applicable only on the Fire and / or Theft components of the premium. An insured becomes entitled to NCB only at the renewal of a policy after the expiry of the full duration of 12 months.

(b) No Claim Bonus, wherever applicable, will be as per the following table.

ALL TYPES OF VEHICLES	0% OF DISCOUNT ON OWN DAMAGE PREMIUM
No claim made or pending during the proceeding full year of insurance	20%
No claim made or pending during the proceeding 2 consecutive years of insurance	25%
No claim made or pending during the proceeding 3 consecutive years of insurance	35%
No claim made or pending during the proceeding 4 consecutive years of insurance	45%
No claim made or pending during the proceeding 5 consecutive years of insurance	50%

Sunset Clause: If at the renewal falling due any time between 1st July 2002 and 30th June 2003, both days inclusive, (after completion of the full policy period of 12 months) an insured becomes entitled to an NCB of 55% or 65% in terms of the Tariff prevailing prior to 1st July 2002, the entitlement of such higher percentage of NCB will remain protected for all subsequent renewals till a claim arises under the policy, in which case the NCB will revert to „Nil" at the next renewal. Thereafter, NCB if any earned, will be in terms of the above table.

(c) The percentage of applicable NCB is to be computed on the Own Damage premium required for renewal of the insurance after deducting any rebate in respect of "Vehicle Laid Up" under the policy. If the policy period has been extended in lieu of the rebate for the lay up of the vehicle, as per „Vehicle Laid Up" Regulation, such extended period shall be deemed to have been part of the preceding year of insurance.

(d) The entitlement of NCB shall follow the fortune of the original insured and not the vehicle or the policy. In the event of transfer of interest in the policy from one insured to another, the entitlement of NCB for the new insured will be as per the transferee's eligibility following the transfer of interest. It is however, clarified that the entitlement of No Claim Bonus will be applicable for the substituted vehicle subject to the provision that the substituted vehicle on which the entitled NCB is to be applied is of the same class (as per this tariff) as the vehicle on which the NCB has been earned. Provided that where the insured is an individual, and on his/ her death the custody and use of the vehicle pass to his/her spouse and/or children and/or parents, the NCB entitlement of the original insured will pass on to such person/s to whom the custody and use of the vehicle pass.

(e) The percentage of NCB earned on a vehicle owned by an institution during the period when it was allotted to and exclusively operated by an employee should be passed on to the employee if the ownership of the vehicle is transferred in the name of the employee. This will however require submission of a suitable letter from the employer confirming that prior to transfer of ownership of the vehicle to the employee, it was

allotted to and exclusively operated by the employee during the period in which the NCB was earned.

(f) In the event of the insured, transferring his insurance from one insurer to another insurer, the transferee insurer may allow the same rate of NCB which the insured would have received from the previous insurer. Evidence of the insured's NCB entitlement either in the form of a renewal notice or a letter confirming the NCB entitlement from the previous insurer will be required for this purpose.

13 Where the insured is unable to produce such evidence of NCB entitlement from the previous insurer, the claimed NCB may be permitted after obtaining from the insured a declaration as per the following wording:

"I / We declare that the rate of NCB claimed by me/us is correct and that no claim as arisen in the expiring policy period (copy of the policy enclosed). I/We further undertake that if this declaration is found to be incorrect, all benefits under the policy in respect of Section I of the Policy will stand forfeited."

Notwithstanding the above declaration, the insurer allowing the NCB will be obliged to write to the policy issuing office of the previous insurer by recorded delivery calling for confirmation of the entitlement and rate of NCB for the particular insured and the previous insurer shall be obliged to provide the information sought within 30 days of receipt of the letter of enquiry failing which the matter will be treated as a breach of Tariff on the part of the previous insurer. Failure of the insurer granting the NCB to write to the previous insurer within 21 days after granting the cover will also constitute a breach of the Tariff.

(g) If an insured vehicle is sold and not replaced immediately, or laid up, and the policy is not renewed immediately after expiry, NCB, if any, may be granted on a subsequent insurance, provided such fresh insurance is effected within 3 (three) years from the expiry of the previous insurance. The rate of NCB applicable to the fresh policy shall be that earned at the expiry of the last 12 months period of insurance.

(h) On production of evidence of having earned NCB abroad, an insured may be granted NCB on a new policy taken out in India as per entitlement earned abroad, provided the policy is taken out in India within three years of expiry of the overseas insurance policy, subject to relevant provisions of NCB under these rules.

(i) Except as provided in Rule (g), no NCB can be allowed when a policy is not renewed within 90 days of its expiry.

(j) Except as provided in Rules (g), (h) and (i) above, NCB is to be allowed only when the vehicle has been insured continuously for a period of 12 months without any break.

13. In the present case, plea of the respondent is that he neither made any false declaration nor suppressed material facts in the proposal form and as such, insurance company is liable to pay the entire amount of compensation as has been awarded by the permanent lok adalat. It has come on the record that the proposal form was filed by the father of the respondent wherein false statement to get NCB was made. It could be easily inferred

that the said statement was made by the father only on the instructions of the proposer. The insured is presumed to have known the declaration made in the proposal form, even if it was filled and signed by his agent (father).

14. In case of **LIC of India Vs. Smt. G.M Channabasamma (1991) 1 SCC 357**, the Hon'ble Supreme Court has held that a contract of insurance is a contract of 'uberrima fides' and there must be complete good faith on the part of the assured. The assured thus, is under a solemn obligation to make full disclosure of material fact which may be relevant for insurer to take into an account.

15. In **LIC of India Vs. Asha Goyal (2001) 2 SCC 160** the Hon'ble Supreme Court held as under:-

"12... The contracts of insurance including the contract of life assurance are contracts uberrima fides and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and the also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person." (Emphasis supplied)".

16. The same view has been reiterated by the Hon'ble Supreme Court in **Mahendra Constructions's case** (supra) which has been relied upon by the counsel for the petitioner-insurance company.

17. In the present case, on the basis of the declaration made by the proposer, the respondent was given no claim bonus of 20% by the petitioner insurance company but the said declaration was not true and NCB was claimed by the respondent by making mis-statement and the said

suppression goes to the very root of the contract of insurance and thus, the insurance company rightly repudiated claim of the respondent and there was no occasion for permanent lok adalat to interfere in the matter, in the light of the settled position of law as discussed above.

18. Consequently, the present revision petition filed under Article 227 of the Constitution of India is allowed and the impugned judgment and order dated 06.05.2016 passed by Permanent Lok Adalat, Rohtak is set aside. The application No.2513/2013 filed by the respondent before the Permanent Lok Adalat, Rohtak stands dismissed.

16.01.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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