

2024:PHHC:109659



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

207

**CWP-15174-2015 (O&M)
Date of Decision: 22.08.2024**

UNITED INDIA INSURANCE CO. LTD.

... Petitioner

VERSUS

PERMANENT LOK ADALAT & ORS

... Respondents

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

Present: Mr. Vikas Mohan Gupta, Advocate and
Mr. Nakashvir Singh Aulakh, Advocate
for the petitioner.

Mr. Rishabh Gupta, Advocate
for the respondents No.2 to 4.

VINOD S. BHARDWAJ, (ORAL)

Challenge in the present petition is to the Award dated 25.03.2015 (Annexure P-4) (wrongly mentioned as 24.12.2014 in the petition) passed by Permanent Lok Adalat (Public Utility Services), Bathinda, whereby the application filed by respondents No.2 to 4-applicants under Section 22-C of the Legal Services Authorities Act, 1987 has been allowed and the petitioner-Insurance Company has been directed to pay compensation to the tune of Rs.2,00,000/- on account of death of driver.

Briefly summarized, the facts of the present case are that the petitioner-Insurance Company insured one goods carrying vehicle bearing Registration No.RJ-13GA-5229 (wrongly mentioned in the petition as RJ-139A-5229) owned by one Amrinder Singh son of Amarjit Singh resident of



Village and Post Office Gatmali, Court Road, Block 3, Tehsil Talwandi Sabo, District Bathinda with validity period w.e.f. 23.10.2012 to 22.10.2013. The Insurance Cover Note No.2004063112000265 dated 20.10.2012 (Mark-A) produced before this Court today i.e. 22.08.2024, was issued by the petitioner-Insurance Company. The vehicle in question met with an accident on 03.01.2013 within the jurisdiction of police Station Verka Amritsar, in which Naib Singh-driver of the truck suffered fatal injuries. The accident in question was reported to the local police vide DDR No.8 dated 03.01.2013. Postmortem examination was conducted on the dead body of the deceased. Since an additional charge to the tune of Rs.200/- had been deposited at the time of availing of the insurance policy towards providing personal accident insurance cover to the driver and helper (as per the cover note). A claim was lodged by the respondents No.2 to 4—applicants to the petitioner-Insurance Company. The same having not been honoured, an application under Section 22-C of the Legal Services Authorities Act, 1987 was preferred by the respondents No.2 to 4—applicants before the Permanent Lok Adalat (Public Utility Services), Bathinda. The petitioner-Insurance Company appeared before the Permanent Lok Adalat and raised various objections and also denied the liability to pay the alleged claim. It is contended that the amount of Rs.200/- had been charged on account of personal accident insurance cover for the driver-owner and a sum of Rs.100/- was charge for the Workman Compensation Coverage to two employees. It is contended that the petitioner-Insurance Company had issued the insurance policy extending insurance coverage to the owner-driver and that in the present case, the fatality was not in relation to the owner-driver, hence, in accordance



with GR-36 of the Indian Motor Tariff, the benefit under the personal accident cover would not be extendable and the petitioner-Insurance Company is not liable to pay the same.

On failure of the conciliation proceedings for an amicable settlement between the parties, adjudication under Section 22-C(8) of the Legal Services Authorities Act, 1987 was undertaken. Considering the submissions advanced by the respective parties, the application was allowed by the Permanent Lok Adalat (Public Utility Services), Bathinda vide impugned Award dated 25.03.2015. The operative part of the Award reads thus:

“4. We have heard both the parties and had carefully gone through the record. We find a good deal of substance in the application. The Learned counsel for the respondent had argued that the respondent had provided insurance cover to the vehicle No. RJ-13GA-5229 as per the provisions of the Act and the rules framed thereunder. In accordance with Section 147 of the Act and GR 36 of IMT, personal accident insurance coverage was not to be provided to the driver. Hence the respondent was not liable to pay compensation to the applicants. The applicants had already claimed compensation under the Employees Compensation Act. The agent of the respondent had issued cover note therein erroneously stating insurance cover for personal accident to the driver. The cover note was valid for a period of 60 days. Well before expiry of 60 days, the insurance company had issued insurance policy. The insurance policy nowhere provided personal accident coverage to the driver As such, the application must fail

5. We find no merit in the submission of leaned counsel for the respondent. The respondent had admitted having provided insurance cover to vehicle No RJ-13GA-5229. Insurance policy, if



any, had been prepared on the basis of cover note issued by the agent. The respondent had not sought to rectify the error if any committed by its agent. There was nothing to suggest even remotely if insurance policy in question stood delivered to the owner of the vehicle. Also the owner had nowhere consented to the amendment of the insurance cover as cancellation of the policy itself after adjustment of the period during which the vehicle had been under insurance cover as per the cover note.

6. *The owner of the vehicle had filed a duly attested affidavit. He had stated that he had not sought personal accident insurance cover himself. The owner was stated to have sought additional insurance coverage to the driver and the agent of the respondent had charged Rs.100/- specifically for the purpose. The respondent was bound by the act of its agent. Affidavit of the agent that he had charged Rs.100/- for providing insurance cover to the owner driver could not be upheld since it was against the written document prepared at the time of commencement of the insurance cover. As noticed above, error if any was not sought to be corrected prior to the accident. The respondent could not be allowed to wriggle out of the cover note after the accident.*

7. *The respondent is liable to pay the sum of Rs.2 lac on account of death of the driver under personal accident insurance coverage of the driver. The applicants are the sole legal heirs of Sh. Naib Singh. It had been established that Sh. Naib Singh had died on 03.01.2013 while driving truck No RJ-13GA-5229. The respondent had been wrong in withholding the claim of the applicants. The respondent is directed to pay the amount of Rs.2 lacs on account of the applicants. The respondent is directed to pay the amount of Rs.2 lacs on account of death of the driver under personal accident insurance coverage to the applicants in equal share within 2 months from today, failing which it shall be liable to*



pay simple interest @ 12% p.a. from today, failing which it shall be liable to pay simple interest @ 12% p.a. from today till payment Preliminary objections of the respondent are without any merit and are rejected. The application is allowed. A copy of this award be supplied to the parties free of cost.”

Aggrieved thereof, the present petition has been filed.

Counsel for the petitioner-Insurance Company has referred to the Insurance Policy appended alongwith the present petition as Annexure P-1 to contend that the sum of Rs.200/- was bifurcated for different insurance covers i.e. for owner-driver as well as the legal liability under the Workman Compensation Act for two employee for a sum of Rs.100/- each. He places reliance on the judgment of this Court in the matter of ***"IFFCO Tokio General Insurance Co. Ltd and another Versus Ramesh and others"*** bearing No.***CWP-16476 of 2021*** decided on ***27.03.2023 (Neutral Citation No.2023 NCPHHC 45337)*** to contend that the benefit of compensation as per the Insurance Policy Cover note under the owner-driver liability is available only to the owner of the vehicle who is driving the same at the relevant point of time and that the same is not a personal accident cover to the driver of the vehicle alone. The relevant extract of the same is reproduced hereinafter below:

“33. Per contra, the driver is in possession of the vehicle in a defined independent legal relationship. He exercises the possessory rights of the vehicle qualified to driving alone. The aforesaid example can be further clarified by an illustration. Assuming that the driver who has been engaged by the owner to drive the vehicle to some place falls unwell midway and authorizes his son or some other substitute to take the vehicle in his place for



remainder of his journey, the person so authorized would be an extension of the driver. Thus, the person who is holding the steering derives his status and capacity from the person who earlier possessed the vehicle. Where there is no independent or distinct relationship to govern the inter se rights and obligations, the borrower would be an extension of the owner; and where there are other independent statutory regulations governing the status, he acquires such status. The driver having been engaged by the owner for a defined purpose is entitled to compensation under a separate set of compensatory legislation including the Workmen Compensation Act, 1923/Employees Compensation Act, 2010. The rights of the driver against his employer are governed by other statutory regime and policies. The contention of the counsel for respondent-applicant that the owner of the truck cannot be perceived as driving the vehicle himself cannot be accepted as an unimpeachable argument. As a matter of fact, a large number of drivers of commercial vehicles are owners themselves. It, thus, cannot be said that the driver would step into the shoes of the owner for all purposes. In order to hold that a person steps into the shoes or possession of the other, such relationship ought to be unqualified and should remain at par for all intents and purposes. The licence to drive in the capacity of a driver is infact engaging him to perform a specific duty and such engagement for duty, under a legal relationship, takes away the claim of the driver to step into the shoes of the owner. The argument of the respondent-applicant also falls for the reason that the judgments relied by the respondent extend such benefit only to the borrower. The above mentioned three judgments relied upon by the counsel for respondent-applicant would thus be not applicable to facts and circumstances of the present case.



34. Moreover, the status of “owner driver” having been clarified in the “Indian Motor Tariff”, which is a statutory Committee under the Insurance Act, 1938 further demolishes the case of the respondent-applicant. The same being part of the statutory scheme, it is not required to be necessarily raised in the pleadings and can be raised as an argument even at the level of High Court. Hence, examining it from any perspective, the reasons given by the Permanent Lok Adalat (Public Utility Services) to allow the Application and award the claim against the Petitioner-Insurance Company run contrary to law and is based upon the erroneous application of the judgment of Ramkhiladi and another (*supra*). The fine distinction in the relationship of the deceased Ashok Kumar and the claimants therein has not been taken into consideration by the Permanent Lok Adalat.

35. The next argument raised by the respondent-applicant that he was allured by the agent that the policy would cover the driver as well, also fails to inspire any confidence. The contractual agreement is based upon on consensus ad idem. The assurance, if any, can at best be an oral agreement. Once the policy document pursuant to an alleged oral agreement is issued later in point of time, the legal presumption which draws from undisputed policy documents is that the same has been issued in accordance with the agreement arrived at between the parties. In the event of any discrepancy in the assurance made and the terms and conditions of the policy document, the holder of the policy document was within his right to return the policy document and to claim refund thereof, or in the alternative, seek a novation of the contract and claim incorporation of the conditions/risks agreed into between the parties. Having chosen not to do so, any such impression carried on by the respondent-applicant can at best be construed as a unilateral mistake. Section 20 of Contract Act, 1872 renders only



those contracts void where both the parties are under mistake as to a matter of fact. A unilateral mistake would not render a contract void unless the mistake about the terms and conditions of the contract is so serious as to undermine the entire bargain. The Hon'ble Supreme Court has affirmed the aforesaid position in law in the judgment of 'Jacob Punnen and anothers Versus United India Insurance Company Ltd.' reported as (2022) 3 SCC 655. The relevant extract of the same is reproduced hereinafter below:

26. *In Tarsem Singh v. Sukhminder Singh (1998) 3 SCC 471, this Court clarified that a unilateral mistake would not render a contract void under the Indian contract law:*

"20. Section 20 of the Act lays down as under:

20. *Agreement void where both parties are under mistake as to matter of fact. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.*

Explanation. *An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact."*

21. *This section provides that an agreement would be void if both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement. The mistake has to be mutual and in order that the agreement be treated as void, both the parties must be shown to be suffering from mistake of fact. Unilateral mistake is outside the scope of this section.*

(Emphasis Supplied)"

27. *Therefore, the law in India is that unless the unilateral mistake about the terms of a contract is so serious as to adversely undermine the entire bargain, it does not result in automatic avoidance of a contract."*



(Emphasis Supplied)''

Reference is also made to the provision of GR36 of the Indian Motor Tariff, which reads thus:

“GR.36. Personal Accident (PA) Cover under Motor Policy.

A. Compulsory Personal Accident Cover for Owner-Driver

Compulsory Personal Accident Cover shall be applicable under both Liability Only and Package policies. The owner of insured vehicle holding an “effective” driving license is termed as Owner-Driver for the purposes of this section.

Cover is provided to the Owner-Driver whilst driving the vehicle including mounting into/ dismounting from or traveling in the insured vehicle as a co-driver.

NB. This provision deals with Personal Accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving license. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving license. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory P.A. cover for the owner - driver should not be charged and the compulsory P. A. cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her.”

Attention of the Court has also been drawn to IMT-39 in relation to Legal Liability to persons employed in connection with the operation and/or



maintaining and/or Loading and/or Unloading of Motor Vehicles. The same is extracted as under:

IMT. 39. Legal Liability to persons employed in connection with the operation and/or maintaining and/or Loading and/or Unloading of Motor Vehicles. (For GOODS VEHICLE)

*In consideration of the payment of an additional premium of *..... it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the..... and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent*

Provided always that:-

(1) this Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurer or Group of Underwriters a Policy of Insurance in respect of liability as herein defined for his general employees.

(2) the insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) the insured shall keep a record of the name of each driver cleaner, conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid



to such employees and shall at times allow the insurer to inspect such record.

(4) in the event of the Policy being cancelled at the request of the insured no refund of the premium paid in respect of this Endorsement will be allowed. The premium to be calculated at the rate of Rs.25/- per driver and/or cleaner or conductor and/or person employed in loading and/or unloading but not exceeding the number permitted by the Motor Vehicles Act 1988 including driver and cleaner.

Subject otherwise to the terms exceptions conditions and limitations of this Policy except so far as necessary to meet the requirements of the Motor Vehicles Act, 1988.”

Referring to the same, he has argued that as per the Insurance Policy, the personal accident cover was extended only to the owner-driver and could not have been extended to the driver alone.

Responding to the above, counsel for the respondents No.2 to 4-applicants refers to the Insurance Cover Note dated 20.10.2012 issued to the owner wherein a sum of Rs.200/- has been shown to be received on behalf of the petitioner-Insurance Company towards personal accident cover to the driver and “helper” (the second part of the written note has been suggested by the counsel for the petitioner-Insurance Company to be “legal liability” and not “helper”) Referring to the same, counsel contends that under either of the circumstance, the personal accident cover was provided to the driver and helper/ the legal liability to the workman. The same was thus not an insurance cover for owner-driver. The driver would thus fall within the domain of insurance policy for which the respondents No.2 to 4-applicants had paid



premium and was assured by the authorized Agent of the petitioner-Insurance Company. He further refers to the insurance policy placed on record by the petitioner-Insurance Company and contends that the date of issuance of the said policy is mentioned as 08.11.2013. He contends that the abovesaid policy has been issued much after the date of the accident in question that took place on 03.01.2013 and the liability has been bifurcated arbitrarily by the petitioner-Insurance Company so as to shield itself from the liability of paying the claim that had been lodged by the respondents No.2 to 4-applicants. He contends that the Insurance Policy Document which has been placed on record by the petitioner-Insurance Company and which has been sought to be relied upon is not the part of the evidence led by the petitioner-Insurance Company before the Permanent Lok Adalat (Public Utility Services), Bathinda and has been produced for the first time only before this Court. He contends that the said insurance policy clearly shows that the same has been issued beyond the expiry of the insurance cover which was valid from 23.10.2012 to 22.10.2013. The reliance on the policy placed on record by the petitioner-Insurance Company which is issued after the expiry of the policy document cannot be relied upon for defeating the claim of the respondents No.2 to 4-applicants.

Responding to the above, counsel for the petitioner-Insurance Company contends that the policy cover note is valid for a period of sixty days and the policy document is issued only later in point of time and as such, the subsequent date would have no bearing on the contentions of the petitioner-Insurance Company.



I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The proposition of law laid down by this Court in the matter of ***IFFCO Tokio General Insurance Co. Ltd and another Versus Ramesh and others (supra)*** and relied upon by the counsel for the petitioner-Insurance Company is not disputed, however, apparently in view of the factual aspects arrived and identified by the respective parties, the said judgment is not applicable to the facts of the present case. The position in law is well settled that the cover note is a part of the insurance documents and can be taken into consideration so as to understand the actual nature of liability which the insured wanted to avail for himself. The Insurance Cover Note supplied by the petitioner-Insurance Company and taken on record as Mark-A was issued on 20.10.2012. The same being already a part of the record of the Permanent Lok Adalat (Public Utility Services), Bathinda has also not been disputed by the counsel for the respondents No.2 to 4-applicants. The said Insurance Cover Note uses the expression “PA-driver and (illegible)”. However, on a visual examination, the said expression does not and cannot be read for “owner). Counsel for the petitioner-Insurance Company has contended that the said expression is “Legal Liability”. Thus, even if the contention of the petitioner is taken into consideration, the personal accident cover, for which a premium of Rs.200/- had been charged, was for driver and legal liability in the share of Rs.100/- each. The expression “owner-driver” as reflected in the Insurance Policy placed on record by the petitioner-Insurance Company as Annexure P-1



uses the expression “owner-driver”. Thus, a prefix of “owner” has been made in the policy document placed on record by the petitioner-Insurance Company which was actually not a part of the record before the Permanent Lok Adalat (Public Utility Services), Bathinda. It cannot be assumed that the persons seeking the insurance cover would have been aware of the Indian Motor Tariff and GR 36 to contend that the expression “driver” would mean and has to be interpreted as “owner-driver” and not just a “driver”. The position in law is also well settled to the effect that if there is a probability of a document to be read in two different ways, the interpretation thereof has to be done in favour of the person who is the beneficiary and against the author of the document. The Insurance Cover Note issued in favour of the respondents No.2 to 4-applicants having been authored by and on behalf of the petitioner-Insurance Company, in the event of any vague averment contained thereunder leading to a possible interpretation which is not suitable to the petitioner, the inference has to be drawn against the petitioner-Insurance Company and in favour of the person insured. Further, the Permanent Lok Adalats (Public Utility Services) are guided by the principles enshrined under Section 22-D of the Legal Services Authorities Act, 1987, which are in the nature of principles of natural justice, objectivity, fairness, equity and other principles of justice. Exercise of an equity which is permissible and is likely within the parameters of law and is born out from reading of evidence can be deemed to be a balanced exercise of equity.

I do not find that the discretion exercised by the Permanent Lok Adalat (Public Utility Services), Bathinda suffers from the any perversity, illegality, infirmity or gross impropriety. The impugned Award dated



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25.03.2015 (Annexure P-4) has been passed on the basis of the evidence adduced before the Permanent Lok Adalat (Public Utility Services), Bathinda.

The present writ petition is accordingly dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

AUGUST 22, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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