2024:PHHC:144005

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

205 **CWP- 11015-2017**
Date of Decision: 04.11.2024

BHARTI AXA GENERAL INSURANCE CO. LTD. AND ANOTHER

... Petitioners

VERSUS

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES), PANIPAT AND OTHERS

... Respondents

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

Present: Mr. Rajbir Singh, Advocate
for the petitioners.

Ms. Archita Jain, Advocate (Legal Aid Counsel)
for respondent No.2 (though proceeded *ex-parte* today).

None for respondents No.3 and 4.

****

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the impugned Award dated 13.10.2016 passed by respondent No.1-Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat.

Briefly summarized, the facts of the present case are that respondent No.2-applicant had moved an application before the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat claiming that he was the owner of a Duster Car bearing Registration no.HR-42C-5000 which was hypothecated with the Central Bank of India, Ganaur. The said vehicle was insured with the petitioner-Insurance Company for the period w.e.f. 03.12.2014 to 02.12.2015 for a sum of Rs.10,00,000/-. The car met with an accident on

14.03.2015 near Karnal while on way from Chandigarh. Information in this regard was given to the petitioner-Insurance Company, which deputed its surveyor to ascertain the facts. The claim was, however, repudiated by the petitioner-Insurance Company on the ground that at the time of accident on 14.03.2015, the vehicle was overloaded beyond the seating capacity and as such there was a violation of terms and conditions of the policy as well as provisions of Motor Vehicles Act, 1988. Hence, the application under Section 22-C of the Legal Services Authorities Act, 1987 was filed before the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat.

The petitioner-Insurance Company entered appearance and filed its reply taking objections w.r.t. the maintainability of the application before the Permanent Lok Adalat and also justified its decision repudiating the claim vide communication dated 17.07.2015, on merit, on the ground of the vehicle being overloaded beyond the permissible seating capacity. It was also averred that a total of seven persons were sitting in the vehicle as against the capacity of five - riding three persons in the front row. The same being impermissible as per Section 113 (3) (b) of the Motor Vehicles Act, 1988, hence the respondent No.2-applicant was/is not entitled for any indemnification. The other respondents were, however, ordered to be proceeded against *ex-parte* by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat as they did not appear before it despite service of notices.

The Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat explored the possibility of an amicable resolution of the dispute but as the same could not be arrived at, an adjudication under Section 22-C (8) of the Legal Services Authorities Act, 1987 was undertaken.

Parties led their respective evidence and advanced arguments.

Upon consideration thereof, the application filed by the respondent No.2-applicant was partly allowed and an Award was passed in favour of the respondent No.2-applicant and against the petitioner-Insurance Company by directing it to pay a sum of Rs.6,50,000/- alongwith interest @ 9% per annum from the date of filing of the application till actual realization. The operative part of the Award reads thus: -

> *"8. After hearing the arguments of the Id. Counsel for the parties and going through the documents relied upon by the parties, It is undisputedly clear that the car was insured with the respondents No.1 and 2 for the period w.e.f. 03.12.2014 to 02.12.2015 for a sum of Rs.10 lac and it met with an accident on 14.03.2015 near Karnal while coming from Chandigarh to Gannaur. After receiving the intimation regarding accident, the respondents No.1 and 2 appointed M/s Uppal Associates Surveyor and Loss Assessor who submitted its report dated 24.06.2015 (copy of annexure R-3). This investigator has recommended the claim for Rs.9 lac net on salvage basis. Anyhow, the said surveyor has finally mentioned in its report that the claim is not payable because seven persons were travelling against the seating capacity of five persons when the car met with the accident. Thus, no claim has to be allowed under the law and insurance policy conditions.*

Hence, in view of this report ultimately the claim of applicant was repudiated and the letter (copy annexure A11/R4) in this regard was sent to the applicant on 17.07.2015.

9. Anyhow, the total repudiation of the claim of the applicant by the respondent was not justified rather the claim should have been passed on 'non-standard' basis as held by the Hon'ble Apex Court in Amalendu Sahoo's & Nitin Khandelwal's cases (Supra). In these cases, the Hon'ble Apex Court has held that the repudiation of the claim in toto could not be said to be justified in case of violation of terms and conditions of the insurance policy rather the claim should have been decided on "non-standard" basis. The Hon'ble Apex Court has categorically further held that 75% of the admissible claim might be paid to the insured by the insurance company. Thus, in view of the ruling of this authoritative judgment, the applicant is held entitled to the sum of Rs.7,50,000/- (75% of Rs.10 lakh). Out of this amount, the Insurance company would have a right to deduct the amount of salvage which as per surveyor's report (copy annexure R-3) is Rs.99,000/-, besides a sum of Rs.1000/- towards policy clause. Accordingly, the applicant is entitled to a sum of Rs.6,50,000/- only alongwith interest @ 9% per annum from the date of filing of the claim till its realization. It is also held that out of the awarded amount, firstly the respondent's No.1 & 2 would deposit the amount payable to the Central Bank of India, Ganaur and balance, if any, to the applicant.

10. It is not out of place to mention here that the respondents No.1 and 2 in their reply had taken a ground that this Adalat has got in territorial jurisdiction decide this application but vide order dated 17.05.2016, this Adalat has held that this Adalat has got the jurisdiction to entertain and decide the application as the policy *was purchased at Gannaur, District Sonipat through respondent No.4. This order has become final.*

11. No other material point was raised by either of the parties before this Adalat.

12. Hence, in view of the above discussion, the application is hereby accepted partly and an award passed in favour of the applicant and against the respondents No.1 & 2 directing them to pay the applicant a sum of Rs.6,50,000/- along with interest @ 9% per annum from the date of filing of the claim form with the respondents No.1 & 2 till its realization. Out of the awarded amount firstly the respondents No.1 & 2 would deposit the amount payable to the Central Bank of India, Ganaur with whom the car was hypothecated against loan and balance, if any, to the applicant. Seeing the facts and circumstances of the case, the parties are left to bear their own costs. Memo of cost be prepared accordingly. File be consigned to the record room after due compliance."

Aggrieved of the same, the petitioner-Insurance Company approached this Court by filing present writ petition.

Learned counsel for the petitioner-Insurance Company has vehemently argued that the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat failed to appreciate that there was a violation of the provisions of the Motor Vehicles Act, 1988, which disentitles the respondent No.2-applicant from availing any benefit under the insurance policy. It is argued further that the vehicle in question was overloaded beyond the permissible seating capacity and three persons were sitting on the front row of the vehicle which caused an impediment to the driver in driving the vehicle properly, thus escalating the probability of accident. Hence, the respondent No.2-applicant had not taken due care and precaution to mitigate the probability of an accident and was guilty of driving the vehicle in violation of the statutory provisions and in creating circumstances that obstructed the driver from being in total control of the vehicle.

Initially, one Manoj K. Sharma, Advocate had entered appearance on behalf of respondent No.2-applicant and sought time to address arguments. The matter was adjourned, but the counsel did not appear on the next two dates when the case was taken up. On 24.09.2019, one Mr. Himanshu Jawa, Advocate entered appearance and filed reply on behalf of respondent No.2-applicant, which was taken on record. When the matter was taken up on 28.02.2023, there was no representation on behalf of respondent No.2-applicant. In the interest of justice, the matter stood adjourned to 18.07.2023. On the said date, one Mr. Varun Sharma, Advocate entered appearance on behalf of respondent No.2-applicant and requested that since he had been engaged recently in the case, he needed time to complete his paper book and advance arguments. The matter was hence adjourned to 17.10.2023. On the said date, instead of Mr. Varun Sharma, Advocate, the earlier counsel Mr. Himanshu Jawa, Advocate entered appearance through video conferencing and sought time. The case was then adjourned to 27.02.2024, on which date, no one had appeared on behalf of respondent No.2-applicant but in the interest of justice, the matter was still adjourned to 20.08.2024. There was no representation on behalf of respondent No.2-applicant even on the said date. Last opportunity was accordingly granted to the counsel for respondent No.2-applicant to advance arguments, failing which appropriate orders were proposed to be passed, and the case was adjourned for today i.e. 04.11.2024. No one has entered appearance on behalf of respondent No.2-applicant. It appears that respondent No.2-applicant is unnecessarily delaying the proceedings by engaging multiple counsel, who choose to abstain after seeking a date or two.. Accordingly, respondent No.2-applicant is hereby ordered to be proceeded against *ex-parte* today. However, for the facility of adjudication of the present controversy, Ms. Archita Jain, Advocate, who is present in Court today, is hereby appointed as Legal Aid Counsel to assist the Court on behalf of respondent No.2-applicant. Copy of the paper book has been supplied to her by the counsel for the petitioner-Insurance Company during the course of hearing today itself.

She has referred to the reply filed on behalf of respondent No.2-applicant and argues that the Award passed by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat duly takes care of all the objections that have been raised today by the learned counsel for the petitioner-Insurance Company. She contends that a specific reliance has been placed by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat on the judgment of Hon'ble Supreme Court in the matter of

Amlendu Sahoo Versus Oriental Insurance Co. Ltd. reported as ***(2010) CPJ 9 (SC).*** It is contended that taking note of the abovesaid judgment of the Hon'ble Supreme Court, the petitioner-Insurance Company was directed to pay the compensation on non-standard basis and as such, the equities were balanced by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat. It was specifically observed by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat that even though the respondent No.2-applicant is entitled to Rs.7,50,000/- i.e. 75% of the sum assured but after taking into consideration the surveyor's report and the salvage value, his entitlement was held to be at the rate of Rs.6,50,000/-.

She contends that the claim having been settled on non-standard basis, the alleged breach stands considered in favour of the petitioner-Insurance Company and that it would not be appropriate or justified at this juncture on the part of the petitioner-Insurance Company to say that it is entitled to repudiate the claim in its entirety.

No other argument has been addressed by the counsel for the either parties.

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

The sole contention raised by the counsel for the petitioner-Insurance Company is that there was a breach of Section 113 (3) (b) read with

Section 125 of the Motor Vehicles Act, 1988. Since three persons were sitting on the front row of the vehicle, there was an obstruction caused to the driver in exercising complete control over the vehicle.

It is evident from a perusal of the Award that the said ground has been duly considered by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat. It was only after noticing the said contentions as well as the judgment of Hon'ble Supreme Court in the matter of ***Amlendu Sahoo (supra)*** that the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat extended a benefit to the petitioner-Insurance Company and directed assessment of compensation on non-standard basis. A deduction to the extent of 25% was thus granted in favour of the petitioner-Insurance Company.

Counsel for the petitioner-Insurance Company is not in a position to dispute that a total repudiation of the claim by the petitioner-Insurance Company on every breach, which may not vitiate the enforceability of the contract of insurance, was deprecated by the Hon'ble Supreme Court in the said judgment. The provisions referred to above are even though a violation of the provisions of the M.V. Act, 1988 but the same should not be viewed as a material breach as would absolve the insurance company of its contractual obligation. A total compliance of the provisions of the M.V. Act, 1988 is even though desirable, however, distinction qua a major or a minor breach needs to be drawn to the satisfaction of judicial conscience before it can be ruled that there is a complete violation which entitles the Insurance Company to repudiate a claim.

It is also a settled proposition in law that Permanent Lok Adalat (Public Utility Services) is to decide the cases guided by the principles of natural justice, objectivity, fairness, equity and other principles of justice. The Permanent Lok Adalat took due note of all the said objections as well as judgment of the Hon'ble Supreme Court and passed an Award thereafter. It cannot thus be said that the impugned Award passed by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat suffers from any patent illegality, perversity, impropriety or non-appreciation of evidence available on record. This Court, while sitting in judicial review, does not substitute its opinion for the decision of a Permanent Lok Adalat (Public Utility Services), unless such decision is illegal, perverse or suffers from any non-appreciation of material evidence, merely because any other view is also possible or probable.

For the foregoing reasons and noticing the Award passed by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonepat has taken note of all the grounds of challenge, I find that no ground exists for interfering in the said Award.

The present petition is accordingly dismissed.

Copy of this judgment be sent to the High Court Legal Services Committee, Chandigarh for information and doing the needful qua release of remuneration of Legal Aid Counsel appointed by this Court today.

(VINOD S. BHARDWAJ)
JUDGE

04.11.2024.
rajender

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