

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-18590-2014 (O&M)
Date of decision: 04.03.2024

National Insurance Company Limited ...Petitioner

VERSUS

M/s. Garg Building Material and another ...Respondents

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

Present :- Mr. D.P. Gupta, Advocate for the petitioner.

Mr. Dheeraj Narula, Advocate for respondent No.1.

Mr. Munish Behl, Advocate for respondent N.2.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 22.05.2014 (Annexure P-6) passed by respondent No.2-Permanent Lok Adalat (Public Utility Services), Sirsa, directing the petitioner to pay a sum of Rs.1,03,912/- (-) Rs.3,624/- with interest @9% per annum from the date of lodging of the claim till payment with Rs.5,000/- as compensation on account of harassment to respondent No.1.

2. Briefly summarized facts of the present case are to the effect that respondent No.1-applicant is the owner of vehicle Tata 1109 bearing Registration No.HR-64/4323 Model 2009 and the said vehicle was insured with IFFCO Tokio General Insurance Co. Ltd., Gurgaon under Policy No.74109475 which was valid upto 24.09.2011. On 26.09.2011, a representative of respondent No.1-applicant came to the office of the

petitioner-Insurance Company and after taking photographs of the vehicle (as the earlier policy had expired on 24.09.2011) a fresh Policy bearing No.420700/31/11/6300002867 was issued for a period w.e.f. 26.09.2011 to 25.09.2012. On 27.02.2012 (wrongly mentioned as 27.09.2012 in Annexure P-6), Janak Raj, the attorney of the respondent No.1-applicant was coming from Ellenabad to Sirsa. While driving the vehicle at a moderate speed, when he reached at a small distance ahead of village Mangala, the vehicle met with an accident and struck against the trees towards the conductor side since he could not see the trees on account of heavy flash lights of a vehicle coming from the opposite direction due to which the vehicle suffered damages. Information in this regard was furnished to the petitioner-Insurance Company and the same was repaired after incurring a huge expense of Rs.1,25,000/-. The bills of Rs.1,03,912/- however could be procured by respondent No.1-applicant. The claim was lodged with the petitioner-Insurance Company, however, the same was repudiated on the ground that respondent No.1-applicant had already received the claim from the earlier insurer IFFCO Tokio General Insurance Co. Limited, Gurgaon and that he had furnished wrong information to the petitioner at the time of obtaining the insurance policy. Aggrieved of such repudiation, respondent No.1-applicant preferred an application under Section 22-C of the Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services), Gurgaon.

3. The petitioner- Insurance Company entered appearance and contended that the rejection of the claim was valid since the policy had been

obtained by mis-declaration and concealment of vital information. Respondent No.1-applicant had obtained a no claim bonus from the petitioner while purchasing the insurance policy and had concealed the fact that he had earlier obtained insurance claim from the erstwhile insurance company i.e. IFFCO Tokio General Insurance Co. Limited, Gurgaon. The said declaration being incorrect, the claim was rightly repudiated.

4. As the efforts on the part of the Permanent Lok Adalat (Public Utility Services) to resolve the issue amicably fell in vain, adjudication under Section 22C (8) of the Legal Services Authorities Act, 1987 was initiated. Upon consideration of the evidence adduced, the application was partly allowed after taking note of the non-disclosure and availing benefit of the no-claim bonus, a claim to the extent of 75% of Rs.1,03,912/- on Non-Standard Basis was allowed in favour of respondent No.1-applicant minus the premium amount.

5. Learned counsel for the petitioner has vehemently argued that respondent No.1-applicant made a mis-declaration to the petitioner-Insurance Company at the time of availing the Insurance Policy and that he concealed the factum of having made an insurance claim. The petitioner was entitled to repudiate the claim on the said account as the same amounted to an act of concealment. Insurance being an act of utmost good faith, concealment of a material fact would render the policy liable to be repudiated.

6. Learned counsel for respondent No.1-applicant on the other hand controverts the above said submission by averring that the above aspect

has already been considered by the Permanent Lok Adalat (Public Utility Services) and that the claim has been awarded on Non-Standard Basis and after deduction of premium amount. The arguments having been already dealt with by the Permanent Lok Adalat (Public Utility Services), the writ petition deserves to be dismissed.

7. No other argument has been raised.

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

9. It is evident from a perusal of the award passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon, that the above objection of the petitioner-Insurance Company as regards non-disclosure of the earlier claim availed by respondent No.1-applicant from the erstwhile Insurance Company i.e. IFFCO Tokio General Insurance Co. Ltd., Gurgaon, was duly considered by the Permanent Lok Adalat (Public Utility Services) and a reference was also made to the general regulation No.27 which deals with the said issue. It was also noticed that the petitioner-Insurance Company did not obtain any declaration from respondent No.1-applicant (insured) before issuing the policy in question. Reliance was placed on the judgment dated 01.04.2013 of National Consumer Disputes Redressal Commission, New Delhi, in the matter of '**United India Insurance Company Ltd. Vs. Bhupender Singh**', wherein it was held that Insurance Company shall not have the authority to decline the claim for concealment of a fact such as 'No Claim Bonus' and under such circumstances, equities should be balanced by awarding on Non-Standard Basis. The relevant

extract of the above said award is reproduced hereunder:-

“XXX

11. If for the sake of arguments the version of the respondent is accepted to be true that the petitioner had concealed the material fact regarding the taking of claim under the previous policy, even then the version of the respondent is not sufficient to dis-entitle the petitioner from the claim because as per General Regulation No.27, which deals with No Claim Bonus, it was the duty of Agent/Development Officer of the Insurance Company to obtain a declaration to the following effect from the Insured:

"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 1 of the policy will stand forfeited."

12. It is an admitted fact that the Agent/Development Officer/employee of the respondent Company did not obtain any declaration from Janak Raj before issuing the policy in question. Therefore, in view of the law laid down by Hon'ble National Consumers Disputed Redressal Commission, New

Delhi in revision petition No.473 of 2013 decided on 1.4.2013 titled as United India Insurance Company Ltd. Versus Bhupender Singh and by Himachal Pradesh State Consumer Disputed Redressal Commission, Shimla in IV(2008) CP) 355, the respondent had no authority decline the claim of the petitioner on the ground of concealment of any material fact.

13. *Though in the present case the employees of the respondent did not obtain the above quoted declaration from the petitioner, but if they would have taken this declaration from the petitioner and would have not obtained any verification from the previous Insurance Company within a period of one month, even then the respondent would not have been in position to decline the claim of the petitioner and on this point the provisions of GR 27 are very much clear.*

14. *Though respondent relied on Ex.R-6, which is the copy of judgment dated 22.8.2012 pronounced by National Consumer Disputes Redressal Commission, New Delhi in Brij Bhushan Vs. National Insurance Company and another, Revision Petition No.33 of 2012. In that case a truck owned by appellant was insured with the respondents-Insurance Company for Rs.9.7 lacs. During the period of operation of the policy the truck met with an accident on 4.1.2004.*

Surveyor appointed by the Insurance Company made an assessment of loss and the appellant allegedly with the oral consent of the Surveyor, got the vehicle repaired, spending over Rs.5.5 Lacs. The respondent-National Insurance Company repudiated the claim on 23.6.2005 giving the following reasons:

"On going through the documents, including your representation dated 26.4.2005 and the circumstances, the competent authority, after due application of mind, has observed that since you have deliberately and fraudulently misrepresented and mis-led the Company, while getting benefit of 55% NCB, transferred on your new Truck No.PB- 13-I-5375. You have breached the principle of utmost good faith, which is the foundation of contract of insurance in question. Moreover, you have utterly failed to justify your entitlement of 55% discount on the premium as well as indemnity against the loss caused to your vehicle in an accident dated 4.1.2004. As per the Indian Motor Tariff, 2002 framed by the Tariff Advisory committee, a statutory body under the Insurance Act, 1938, you are not entitled to any own damage claim, since in the light of General Regulation No.27, all the benefits under Section 1 of the policy of insurance stand forfeited in the given

circumstances of the case. Hence your claim with regards to the accident damages dated 4.1.2004 caused to vehicle No.PB-13-I-5375 is hereby repudiated and we are not liable to pay any amount as claimed by you."

15. *There is no dispute regarding the law laid down in the aforesaid authority by Hon'ble National Commission but this authority is not applicable in the present case because in the present case, as we have observed above, the petitioner did not conceal any material fact. Rather, the controversy has arisen due to the negligence of the official of the Insurance Company who filled form Ex.R-5 in haste and in utmost negligent manner without tallying the contents thereof to the Insured.*

16. *The learned counsel for the respondent invited our attention towards document Ex.R-3 and tried to prove that the petitioner had admitted that he had concealed the material fact regarding NCB. We have gone through this document. This document is in the shape of an application allegedly written by Janak Raj, the representative of the petitioner, to the Senior Divisional Manager of the respondent-Company on 14.6.2012. No doubt, the contents of this application go to show that Janak Raj admitted that he declared in form Ex.R-5*

that he had not taken the claim on previous policy despite the fact that he had taken the claim. This document further goes to show that Janak Raj prayed for getting the amount of NCB received by him at the time of taking the policy in question deposited from him so that in future any problem regarding claim may not arise.

17. After hearing the rival contentions of the parties and going through the referred document Ex.R-5, we have come to the conclusion that this document is nothing but a futile attempt of the respondent to create evidence in support of their order of repudiation dated 11.6.2012 passed against the petitioner. This document was not written by Janak Raj. This fact is quite clear from the fact that the writing of this document does not tally with the writing of the signatures of Janak Raj. The fact remains that the document was written by somebody else and was only signed by Janak Raj. Who wrote this document is not made clear by the respondent. The petitioner has not admitted the correctness of the contents of this document. He has stated that his signatures were obtained by the employees of the respondent on this document under the pretext that they were going to settle his claim. The petitioner was on the receiving end, he was not in position to refuse to sign the document sought to be signed by the

employees of the respondent. The claim was repudiated on 11.6.2012 whereas this document was brought into existence on 14.6.2012 i.e. to say after three days of the order of repudiation. There is no conclusive evidence on the file which can go to show that the respondent had informed the petitioner about the repudiation of his claim. Therefore, in these circumstances we have no hesitation to hold that this document was brought into existence with mala-fide intention by the employees of the Insurance Company to create evidence in support of their order of repudiation.

18. *In view of our aforesaid discussion, we have no hesitation to hold that the petitioner did not conceal any material fact. The respondent wrongly repudiated his claim by assigning unsound reasons. Therefore, the order of repudiation passed on 11.6.2012 is liable to be quashed and the same is hereby quashed. Consequently, the claim of the petitioner succeeds.*

19. *Now the question arises what should be the amount of claim in the given circumstances of the case. From the aforesaid discussion, it is clear that the petitioner was given the benefit of NCB while issuing the insurance policy by the respondent-National Insurance Company despite the fact*

that he was not entitled for the benefit of NCB. Therefore, in view of the law laid down in United India Insurance Company Ltd. V/s.Bhupender Singh (supra) and National Insurance Company Vs. Prem Singh (supra) the petitioner is entitled for claim on Non Standard Basis.

20. *Now the question arises of which amount 75% can be given as claim to the petitioner. In the petition the petitioner has claimed a sum of Rs. 1,25,000/- as expenses of repair of the ill- fated/insured vehicle. But he has placed on record the bills Ex.P-7 to Ex.P-15 of Rs.1,03,912/-. He has not explained as to why he has not furnished the bills of the remaining amount. Therefore, it is inferred that he actually incurred the amount mentioned in the bills and he has claimed the exaggerated amount. Therefore, in these circumstances, we hereby direct the respondent to pay 75% of Rs.1,03,912/- on Non Standard Basis to the petitioner on account of loss occurred to his vehicle in the accident on 27.2.2012. Out of this amount, the respondent is entitled to deduct an amount of Rs.3,624/- which was given to the petitioner by the respondent as "No Claim Bonus" while issuing the policy, copy of which is Ex.P-4, alongwith interest @ 9% Per Annum. As we have held above, that it is not a case of misrepresentation or concealment of material fact,*

therefore, in our opinion the petitioner is entitled for interest @9% per annum on the amount of the claim payable to him, to be calculated in the aforesaid manner, from the date of the lodging of the claim till the date of the payment. Besides the amount of claim and interest thereof, as mentioned above, the respondent is also directed to pay a sum of Rs.5,000/- as compensation on account of unnecessary harassment of the petitioner. We pass the award accordingly in favour of the petitioner and against the respondent. A copy of this Award be supplied to the parties free of costs. File be consigned to the records after due compliance.

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10. The Permanent Lok Adalat (Public Utility Services) is governed by the Legal Services Authorities Act, 1987. As per Section 22-D of the Legal Services Authorities Act, 1987, the Permanent Lok Adalat (Public Utility Services) is to be guided by the principles of natural justice, objectivity, fairness, equity and other principles of justice. Thus, once an equitable jurisdiction has been exercised by the Permanent Lok Adalat (Public Utility Services), after considering the impact of the alleged mis-declaration under the statutory provisions and thereby granted the benefit of mis-declaration in the form of awarding the claim on Non-Standard Basis and after allowing the deduction of premium amount, the award in question could not be said to be mis-conceived, bad and liable to be set aside or based upon mis-appreciation of any evidence.

11. Besides, such legal principle is already approved by the National Consumer Disputes Redressal Commission in its judgment of **United India Insurance Co.** (Supra) and is provided also under the **Regulation 27 of Indian Motor Tariff**. The above legal precedents and principles have been followed by the Permanent Lok Adalat (Public Utility Services). Learned counsel for the petitioner has not been able to refer to any judgment to the contrary where an award on Non-Standard Basis for availing no claim bonus has been set aside. It cannot be said that there was any illegality, perversity or impropriety in the above said award.

12. It is a well settled position of law that an award passed by the Permanent Lok Adalat (Public Utility Services) is not liable to be set aside merely because any other view is also possible. If the view taken by the Permanent Lok Adalat (Public Utility Services) is plausible and does not suffer from any illegality, impropriety, irrationality or gross misappreciation of the evidence, the same should ordinarily not be interfered with.

13. Considering it from the any of the above said perspectives, I do not find sufficient evidence on record on the basis whereof it can be said that the award 22.05.2014 (Annexure P-6) passed by respondent No.2-Permanent Lok Adalat (Public Utility Services), Sirsa, is illegal, perverse and liable to be set aside.

14. The present petition is accordingly **dismissed**.

(VINOD S. BHARDWAJ)
JUDGE

04.03.2024

Mangal Singh

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