IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214

CWP-19231-2019
Date of decision: 19.09.2024

SHRI RAM GENERAL INSURANCE COMPANY LTD.
......Petitioner

VERSUS

PERMANENT LOK ADALAT (PUS), HISAR AND OTHERS
.......Respondents

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

*****

Present: - Mr. Sachin Ohri, Advocate for the petitioner.

Mr. Hardeep Singh, Advocate for Mr. Bikram Chaudhary, Advocate for respondent No.2.

Mr. R.C. Gupta, Advocate for respondents No. 3 to 5.

*****

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the Award dated 31.01.2019 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Hisar whereby the application preferred by the respondent-applicant had been allowed and the petitioner-Insurance Company had been directed to pay the claim to the tune of Rs. 6 lakhs (Insured Declared Value) alongwith interest @ 9% per annum from the date of filing of the application till its actual realization alongwith cost.

2. The awarded compensation was to be paid equally by the two Insurance companies i.e. the petitioner-Shri Ram General Insurance

Company Ltd. as well as respondent-New India Assurance Company Ltd. Aggrieved of the apportionment of the compensation, liability, the petitioner-Shri Ram General Insurance Company Ltd. has approached this Court. The argument is confined only to the extent that the respondent-insured had obtained insurance policies from two different insurance company i.e. the petitioner as well as the respondent-New India Assurance Company for the same duration i.e. from 06.10.2015 to 05.10.2016. It is submitted that the respondent assured had submitted an application to the petitioner supported by an affidavit for seeking cancellation of the insurance policy issued by the petitioner-Insurance Company on 21.11.2015 whereupon the proportionate premium after deduction was returned to the insured. Hence, the petitioner cannot be held liable to bear the apportioned loss caused to the respondent-insured and the entire liability is required to be discharged by the respondent-New India Assurance Company only.

3. Counsel on behalf of the contesting-New India Assurance Company, however, contends that the incident in question had already taken place on 26.10.2015 and at the time of accident, the vehicle in question was insured with both the Insurance companies. He contends that Permanent Lok Adalat (Public Utility Services), has referred to G.R. 24 of the Indian Motor Tarrif and that the refund of the amount has been made after deducting the proportionate premium for the period during which the vehicle in question was also insured with the petitioner--Shri Ram General Insurance Company Ltd. Hence, as on the date of the incident, the vehicle in question would be

deemed to be insured by both the insurance companies. Hence, the award has been rightly apportioned equally amongst both the insurance companies.

4. The factum of incident having occurred on 26.10.2015 is not disputed by the Counsel for the petitioner. He further does not dispute and claim that a proportionate deduction of the premium from the premium deposited by an insured is permissible under G.R. 24 and that the refund is made only after having made such a deduction.

5. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

6. The Permanent Lok Adalat (Public Utility Services), Hisar has taken into consideration the peculiar facts and circumstances of the present case as also the applicability of G.R. 24 of the Indian Motor Tariff and has then apportioned the compensation, liability, after noticing that as on the date of accident dated 26.10.2015, both the companies have insured the petitioner and they were already in receipt of the premium for the Insurance policy against the IDV. The relevant extract of the Award reads thus:-

> *While drawing our attention to the claim application of the petitioner, Counsel for the respondent No.1 to 3 stated that applicant has nowhere stated in his pleadings/claim application that he had no stake with the Shriram General Insurance Co. Ltd. Rather, the applicant had laid his claim with both the insurers. Further submitted that policy can be cancelled only prior to claim and not afterwards i.e.. the policy has been cancelled on 05.01.2016 which is after*

thought and respondent No.4 cannot escape from its liability. It is also settled law that the parties can not go beyond the pleadings and the honourable Supreme Court in the case Civil Appeal No.638 of 1980 dated 08.04.1987 AIR 1987 SC1242 has held that "It is well settled that in the absence of pleadings, evidences, if any, produced by the parties cannot be considered. It is also equally settled that no parry should be permitted to travel beyond the pleading and that all necessary and material facts should be pleaded in support of the case set up by it. It is also settled law that, as per GR -24 OF IMT, insurance policy cannot be cancelled after the claim is lodged for the incident Ld. In order to fortify their case Ld. Counsel of the New India Assurance Co. Ltd relied on the following case laws ***1 PLR 2017 (1)-427-P7H (National Insurance Company Vs. Hari Om 2. PLR 2013(1)-715-P&H (Sushila vs. Pankaj Mahajan)***

Wherein it is held that Indian Motor Tariff Regulations are issued by the Tariff Committee they have statutory effect as law. Further, Respondent No. 1 to 3 maintained that they have rightly repudiated the claim vide their letter dt. 10.06.2016 (R11) taking the plea the petitioner obtained the insurance policy with respondent No. 4 earlier to the risk placed with them, and as per GR 24 of the. IMT when 2 policies are in existence on the same vehicle with identical cover, the policy cover which commenced later is to be cancelled by the insurer.

To prove his case Counsel for the Respondent 4 tendered an Affidavit RW4/A of Sh. Bhanwar Govind Singh Chauhan alongwith copy of documents RW4/B to RW 4/J and closed the evidence. In support of his contention Ld. Counsel for Respondent 4 drawn our attention to the document R-10 (page 1 to 8) wherein the petitioner on oath gave an undertaking to withdraw the claim and accordingly the *premium was refunded to the petitioner and the claim was closed as "No Claim". In his support the counsel of the respondent No. 4 relied on the case law Mohan Singh Vs. National Insurance Ltd decided by NCDRC (2013(2) Č.P.J. 566.*

Apart from above, both the counsels of the insurers/respondents argued that the claimant delayed in intimating the loss and did not take precautions to keep the vehicle in safe custody. To-rebut their stand the petitioner counsel argued that as soon as the vehicle was stolen, he informed the police by VT and got REGITERED the FIR with the police. The documents were lying in the vehicle which were also stolen alongwith his vehicle. It took some time to know the policy particulars and address of the issuing offices to inform the incident.

On weighing the argument put forth by the Ld. Counsel of both the insurer/respondents, we have reached the conclusion that both the respondent insurance companies have not properly appreciated the intention contained in the GR 24. It is so provided in the GR 24 that policy cannot be cancelled once claim is reported on it, any undertaking/ agreement to cancel the policy by the respondent 4 are ultravires the aforesaid General Regulations contained in the Indian Motor tariff. It is also settled law that any contract/ agreement in violation of the law is void ab-initio. Accordingly, the cancellation of policy by respondent No.4 is quashed.

Similarly, the respondent No.1 to 3 has tried to escape their liability on the plea that they are the later to issue the policy. They have not kept in mind the express Condition of CONTRIBUTION stipulated in their respective insurance policies which reads as under:

If there is any other insurance covering the same damage or liability, the insurer shall not be liable to pay more than his 2 rate able proportion of any damage, compensation, costs of expenses.

In the light of the foregoing discussion and the law referred, the petitioner has been able to convince us that the repudiation of the claim by both the insurance companies/ respondents is illegal and against the terms and conditions of the insurance policy & Indian Motor Tariff. The case law referred by respondent No. 4 does not help him as the facts are distinguishable. Accordingly, the petition of the petitioner succeeds and the same is hereby partly allowed. An award is hereby passed in favour of the petitioner and against the respondents to pay a claim of Rs. 6. lakhs ((insured Declared Value) to the petitioner alongwith interest @ 9 per annum from the date of filling the petition till the realisation of amount. Besides, a compensation of Rs. 10,000/-(Rupees ten thousand) to the petitioner, on account of mental harassment and other expenses incurred by the petitioner. The awarded amount is to be apportioned between both the insurers of the vehicle on pro rata to the I.D.V. of their respective policies. The respondent No.4 shall be entitled to recover already refunded premfum to the petitioner from the share of their claim. File be consigned to the record room after due compliance."

7. It is evident that the issue in question has been duly considered by the Permanent Lok Adalat (Public Utility Services), Hisar and it is noticed that as on the date of the incident, the petitioner Insurance company had also undertaken the risk. At a subsequent stage and after occurrence of a liability during the currency of a policy period issued by the petitioner-

Insurance company, it cannot now seek its exoneration on the strength of a subsequent request sent by the respondent seeking refund of the money. The incidence of liability took place during the currency of the policy for which the premium had also been retained by the petitioner, it becomes liable to bear the burden of the liability for the said period.

8. The Permanent Lok Adalat (Public Utility Services), while taking a decision on an application brought before by it, is guided by the principles of equity, objectivity, fairness, principle of natural justice and other principles of justice under Section 22-D of the Legal Services Authorities Act, 1987. Where the view adopted by the Permanent Lok Adalat does not suffer from any illegality, perversity or impropriety, such view would not ordinarily be interfered with. I do not find any reason as to how and under what manner the subsequent cause of action of seeking cancellation of one of the insurance policies on occurrence of a double insurance would entitled the petitioner to absolve itself of its liabilities for which it has also parallely insured the vehicle.

9. Finding no merit, the instant writ petition is dismissed. The Award dated 31.01.2019 passed in Case No. 2782 dated 22.06.2016 by the Permanent Lok Adalat (Public Utility Services), Hisar is affirmed.

(VINOD S. BHARDWAJ)

SEPTEMBER 19, 2024 **JUDGE**

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No