IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201

CWP-1991-2015
Date of decision: 07.02.2024

NATIONAL INSURANCE COMPANY LTD. ......Petitioner

VERSUS

SHREE SALASAR INTER LOCKING TILES & OTHERS ....Respondents

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

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Present: - Mr. Nitin Gupta, Advocate
for the petitioner.

Mr. Bhuwan Vats, Advocate
for respondents No.1 and 2.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the award dated 21.11.2014 passed by Permanent Lok Adalat (Public Utility Services), Bhiwani (Camp Court at Jind) in Application No. 12 of 2014.

2. Counsel for the petitioner contends that respondent No.1-applicant-Shree Salasar Inter Locking Tiles had purchased a Burglary Business Premises Insurance Policy No. 420605/46/10/7500000246 for a sum assured of Rs. 10 lacs valid w.e.f. 26.02.2011 to 25.02.2012 for Inter Locking Tiles, Cement related machinery, finished and semi finished goods etc. located at Housing Board Colony, Jind. He contends that a theft of Inter

Locking block dyes, Generator set, mixture machines, masala box etc. is reported to have occurred at the premises of Shree Salasar Inter Locking Tiles in village-Radhana, Gohana Road, Jind on 10.11.2011. An FIR No. 298 was registered at Police Station, Jind Sadar on 21.11.2011. The intimation as regards the loss was thereafter submitted by the applicant to the respondent No.2-Bank on 23.11.2011 and a further intimation was sent to the Insurance Company about the said loss on 29.11.2011.

3. That on receipt of the information as regards the theft, the Insurance company deputed a Surveyor and loss assessor to verify the loss in question. After inspection of the premises and verifying the inventory, a report dated 29.09.2012 was submitted by the Surveyor and loss assessor quantifying the loss at Rs. 3,82,750/-. The requisite documents and details alongwith the returns etc. were duly furnished. The claim was, however, repudiated by the Insurance company for the reason that the premises where the theft had taken place was at a place other than the premises shown to have been insured. i.e. village Radhana, Gohana Road, Jind, instead of Housing Board Colony, Jind.

4. He contends that aggrieved of such repudiation, the respondent-applicant preferred an application before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind for being awarded the insurance value.

5. The petitioner Insurance Company had taken its objection against the application and re-iterated its stand of rightly repudiating the claim.

6. On failure of the conciliation proceedings, adjudication was undertaken by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind.

7. Upon consideration of the evidence led by the respective parties, the application was allowed and the petitioner Insurance Company was directed to pay an amount of Rs.5,20,000/-. Aggrieved thereof, the present writ petition has been filed.

8. Learned counsel appearing on behalf of the petitioner has submitted that initially the challenge to the award was on two accounts firstly on the ground that the location of the premises, where theft had taken place is at variance from the premises insured and secondly the compensation awarded of Rs. 5,20,000/- on the basis of the bill submitted by the petitioner, is inappropriate since the Surveyors report assessed the loss at Rs. 3,82,750/-. He contends that he has instructions to not press the first objection against the respondent and confine his prayer only to the extent of amount awarded by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind ignoring the report furnished by the Surveyor. It is argued that the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind has directed the petitioner to pay the entire claim to the petitioner notwithstanding that a depreciated value was required to be paid.

9. Responding to the above, counsel for the respondent-applicant contends that the petitioner-Insurance Company has wrongly applied the deduction/depreciation and the claim has been rightly awarded by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind on the basis of the invoice/claim lodged by the petitioner.

10. On a point query raised, counsel for the respondent-applicant Company could not refer to any provision/regulations on the basis whereof it could be held that the depreciation applied by the Surveyor was inappropriate or was in violation of the approved accounting principles.

11. No other argument has been advanced.

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

13. Since the dispute only pertains to the quantum of the award to be disbursed, hence, other factual aspects are not being gone into. While the petitioner-Insurance Company has placed reliance on the loss Surveyor/Assessor's report quantifying the loss at Rs. 3,82,750/- after applying the deductions and depreciation as permissible in law, the respondent claimed it on the total loss invoiced.

14. It is evident from a perusal of the documents available on record that there is no evidence on the basis whereof it can be held that the depreciation/deductions applied by the Surveyor, in his report which is exhibited before the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind, was incorrect or was in violation of the approved accounting principles and as approved by the IRDAI. Further, the Hon'ble Supreme Court has already upheld the applicability of the depreciation due to normal use or exposure of the machinery in the judgment of ***"Sumit Kumar Saha versus Reliance General Insurance Company limited"*** passed in Special Leave Petition (Civil) No. 27695 of 2018 decided vide judgment dated 30.01.2019. The operative part thereof reads thus:

“This Court raised two questions:

"(1) Whether the insurer was justified in accepting report dated 15-5-2000 submitted by the surveyor who had assessed the loss of Rs.14,45,000/- after deducting about Rs.10,55,000/- from Rs.25,00,000/- i.e. actual amount paid by the complainant for repairing the diesel generating set?

(2) Whether the insurer was justified in deducting an amount of Rs.3,71,509.50 (25.71%) as under insurance from the loss assessed at Rs.14,45,000/- by the surveyor in its report dated 15-5-2000?"

As regards first question, this Court found that insurer would not be liable in respect of wearing out of machinery from normal use or exposure and the cost of replacement of insured property by new property of the same kind and same capacity would be subject to the exception that repair or replacement would not extend to the machinery or parts which had undergone normal wear and tear. With regard to the second question, on facts it was found that there was an element of under insurance and the surveyor was justified in deducting 25.71%.”

15. Hence, the deduction towards depreciation, as a principle under a General Insurance has been approved and affirmed by the Hon’ble Supreme Court. In the absence of any material on record, on the basis whereof it can be said that no deprecation or deduction could have been applied by the Insurance Company as per the accounting principles, it cannot be assumed that the respondent-applicant would still be entitled to the Insured Declared Value (IDV).

16. The Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind failed to assign any satisfactory reason as to how the

report furnished by the Surveyor/Assessor about the net loss to be compensated was incorrect and why the value as assessed by him was liable to be ignored. Thus the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind thus failed to appreciate the legal position, as regards the applicability of the depreciation and deductions, and fell in error in directing disbursement of the entire claim as made.

17. **The present writ petition is accordingly partly allowed.** The award passed by the Permanent Lok Adalat (Public Utility Services), Bhiwani Camp Court at Jind is modified to the extent that instead of the awarded amount of Rs. 5,20,000/- as per Ex. P-21, the petitioner-Insurance Company shall be liable to pay the amount of Rs. 3,82,750/- as assessed by the Surveyor.

18. It is further pointed out by the parties that the entire awarded amount stands deposited with this Court in terms of the interim order dated 09.02.2015. The Registry is directed to release the amount as computed above alongwith proportionate interest accrued thereupon, if any, in favour of the respondent-applicant and the balance amount and interest be released to the petitioner-Insurance Company as per law.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 07, 2024
Vishal Sharma

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