

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

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**CWP-23033-2015 (O&M).
Date of Decision: 16.01.2024.**

HDFC ERGO GENERAL INSURANCE COMPANY LIMITED

... Petitioner

Versus

MANOJ KUMAR AND ANOTHER

... Respondents

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

Present: Mr. Raghav Garg, Advocate, for
Mr. Sandeep Suri, Advocate, for the petitioner.

Mr. S.K. Tripathi, Advocate, for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed raising a challenge to the award dated 24.01.2013 passed by the Permanent Lok Adalat (Public Utility Services), Gurugram, in Application No.705 of 2012 whereby the application under Section 22 C of the Legal Services Authorities Act, 1987 filed by the respondent No.1-applicant was allowed.

Learned counsel for the petitioner-Insurance Company refers to the facts of the present case as per which the respondent No.1-applicant is the registered owner of the truck bearing registration No. HR 55-C-6513 (Model 2005) and is running his business of transportation under the name

and style of Manoj Transport Company, Fleet owner Transport and Cargo Contractor. He got insured the above said vehicle with the petitioner-Insurance Company for the period commencing from 03.03.2010 to 02.3.2011. A premium of Rs.13,074/- had been deposited by the respondent No.1-applicant against the assessed total IDV of the vehicle at Rs.5,40,000/- . It is further contended that the above said vehicle met with an accident on 15.01.2011 at Chandauli, Uttar Pradesh and an intimation in this regard was sent by the respondent No.1-applicant to the petitioner-Insurance Company. The vehicle was taken to ABS Motors Private Limited at Chandauli and the same was repaired at a cost of Rs.2,73,884/-. Alleging that the payment of the bill for repairs had not been released, the application was preferred by the respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Services), Gurugram. The defence of the petitioner-Insurance Company, however, was struck off vide order dated 22.10.2012 as no reply was filed despite repeated adjournments. Further, the conciliation efforts also failed to yield any final outcome. After hearing the matter on merits and after going through the record, the application in question was allowed by the Permanent Lok Adalat (Public Utility Services), Gurugram vide order dated 24.01.2023. The relevant part of the order reads as under:-

“4. Repeated efforts were made for conciliation but the same was not effected. So we have heard Ld. Counsel for the parties and have gone through the averments made by the applicant in the application and also we have gone through the documents produced by the respondent. It is revealed from the averments made by the applicant and from the documents produced that the vehicle of the applicant was insured with the respondent at Gurgaon and insurance policy has been issued from Gurgaon.

Contention of Ld. Counsel for the respondent to this effect that this Court has no jurisdiction as the accident has taken place in UP and the repairs have been get done in UP is without any merit. Respondent is also having branch office at Gurgaon and insurance policy has been issued from Gurgaon. Applicant is also resident of Gurgaon. So in our considered opinion this Court has no jurisdiction to hear the present application. Damages caused to the vehicle is also proved. The applicant has got repaired damaged vehicle from TATA Motors Authorized Service Station. Applicant has incurred a sum of Rs. 2,73,884/- in getting his vehicle repaired. Photocopies of the bills are produced which are marked as B, C, D, E, F and G have been produced regarding the expenses incurred in the repairs and consolidated amount of this various bills which are marked as A to G comes out to Rs. 2,73,884/-. The respondent has not paid this amount. There is no justification for rejection of this claim. There is no merit in the written arguments submitted by the respondent. There is no version of the respondent as even the respondent has failed to file the written statement or reply to the application in question despite repeated adjournments.

5. So far a result of above discussion, we direct the respondent to Rs. 2,73,884/- (Rs. Two lac. Seventy three thousand eight hundred and eighty four only) to the applicant within forty five days from today failing which respondent will be liable to pay interest at the rate of 9% per annum on this amount from the date of institution of the present application till payment. File be consigned to the record room.”

Aggrieved thereof, the present writ petition has been filed.

Learned counsel for the petitioner has raised the following arguments;-

- (i) That the conciliation proceedings had not been initiated by the Permanent Lok Adalat (Public Utility Services), Gurugram and hence, the mandatory procedure under Section 22 C (4) – (7) of the Legal Services Act, 1987, was not followed;
- (ii) The Permanent Lok Adalat (Public Utility Services), Gurugram, never offered adequate opportunity to the petitioner-Insurance Company to lead its evidence as the defence of the petitioner-Insurance Company was struck off;
- (iii) That the insured is entitled only to the depreciated value of the cost of repairs and the Permanent Lok Adalat (Public Utility Services), Gurugram, awarded the entire amount of the bill as generated by the workshop and no benefit of depreciation was extended to the petitioner-Insurance Company.

Responding to the above, learned counsel for the respondent No.1-applicant has contended that the petitioner-Insurance Company cannot be permitted to raise any fresh argument, at this stage. The Surveyor's report, which has been relied upon by the petitioner-Insurance Company has been accepted as correct, had not been produced on record in the proceedings before the Permanent Lok Adalat (Public Utility Services), Gurugram. It is also contended that the award was passed on the basis of photocopies of the bills of repairs from authorized service centre, that had

been submitted and were undisputed. He further contends that the argument as regards the entitlement of the depreciation had been raised at a belated stage and ought not be considered by this Court. It is further argued that due procedure as provided in the Legal Services Authorities Act, 1987, had been followed by the Permanent Lok Adalat (Public Utility Services). The Petitioner Company was given due opportunity to lead its defence, however, it chose not to plead and prove any defence or to dispute the claim and documents filed by the claimant.

I have heard learned counsel for the respective parties and have examined the documents as well as considered the submissions advanced by the learned counsel.

So far as the two contentions in relation to the opportunity of leading defence and non-compliance of the procedure of conciliation stipulated under Section 22 C (4) - (7) of the Legal Services Act, 1987 are concerned, the said arguments are fallacious and are not sustainable. A perusal of the impugned award clearly shows that the petitioner-Insurance Company was duly represented and numerous opportunities had been extended to the petitioner-Insurance Company to file its reply, however, the same was not done. Ultimately, the defence of the petitioner-Insurance Company was struck off vide order dated 22.10.2012 which such order has attained finality and had not been challenged before any appropriate Forum.

Further, it has been specifically recorded by the Permanent Lok Adalat (Public Utility Services), Gurugram that efforts for reconciliation were made, however, no settlement could be arrived at. There is no evidence adduced or documents referred to by the petitioner-Insurance

Company that the above said finding recorded by the Permanent Lok Adalat (Public Utility Services), in its final award was factually incorrect. In the absence of any supporting document and/or affidavit of the counsel appearing before the Permanent Lok Adalat (Public Utility Services), Gurugram, it cannot be presumed that the finding/observation recorded by the Permanent Lok Adalat (Public Utility Services), Gurugram in its final award are erroneous or are liable to be set aside. A presumption of truth is attached to the factual aspects ascertained in an award and unless there is a cogent *prima facie* evidence available so as to discredit the above said factual aspect, the said finding cannot be interfered with. Hence, the inescapable conclusion which flows from the same is that the efforts were duly made by the Permanent Lok Adalat (Public Utility Services), Gurugram, for exploring the possibility of conciliation but the same could not be effected. Hence, the contention of the petitioner-Insurance Company, above is declined.

So far as the issue as regards the photocopies of the documents having been produced on record instead of originals is concerned, Section 22 D of the Legal Services Authorities Act, 1987 specifically holds that the provisions of the Civil Procedure Code, 1908 and the Evidence Act, are not strictly applicable to the proceedings of the Permanent Lok Adalat (Public Utility Services). The petitioner-Insurance Company had every opportunity to dispute validity or genuineness of the documents when they were placed before the authority especially when the petitioner-Insurance Company was duly represented before the authorities concerned. Having not disputed the said documents, at the time when the same were filed, such an objection

cannot be permitted to be raised at this stage. The validity of documents cannot be tested on the parameters/mode of proof as stipulated in the Evidence Act since the said provisions are not applicable to the proceedings under the Legal Services Authorities Act, 1987 and more-so when the bills of repairs were not disputed by the petitioner Insurance Company.

Adverting to the issue as regards the reliance on the Surveyor's Report appended with the present writ petition, the said report has undisputedly not been placed on record of the Permanent Lok Adalat (Public Utility Services), Gurugram since the defence of the petitioner-Insurance Company was struck off. Since the said Surveyor's report was never brought before the authorities, there was no occasion to examine the validity/genuineness thereof. However, insofar as the contention of the petitioner-Insurance Company that the insured is only entitled to depreciated value of the cost of repair on the IDV is concerned, the said argument has force in law. It cannot go unnoticed that the model of the vehicle-in-question was 2005 and that the IDV of the vehicle was Rs.5,40,000/- and the accident in question took place on 15.01.2011. A perusal of the bill as prepared and as noticed in the Surveyor's report shows that there were various charges/components on which the petitioner-Insurance Company may be entitled to claim depreciation in the IDV of the vehicle.

The Permanent Lok Adalat (Public Utility Services), Gurugram, failed to take into account the aforesaid aspect and there is also no record to show that the policy in question was a cashless policy entitling the insured to the full IDV. In the absence of any such contention and/or

documents referred to by the respondent himself, the award passed by the Permanent Lok Adalat (Public Utility Services), Gurugram, is modified only to the extent that the petitioner-Insurance Company would be liable to reimburse the loss sustained by the respondent No.1-applicant/insured to the extent of depreciated value of the loss that has been sustained by the respondent No.1-applicant.

The petitioner-Insurance Company shall furnish the amount, after depreciation, to which the respondent No.1-applicant would be entitled to on the basis of the repairs carried out to the vehicle in question, within a period of one month of receipt of a certified copy of this order along with specific reference to the applicable provisions for such reduction/depreciation value and the balance amount as determined after deduction of the depreciation shall be reimbursed and released to the respondent No.1-applicant within a period of 06 weeks thereafter. It is also been informed that a sum of Rs.1,00,000/- had been deposited by the petitioner-Insurance Company pursuant to the notice of motion order passed by this Court. The petitioner-Insurance Company would be entitled to seek set off of the amount which already stands deposited/released in favour of the respondent No.1-applicant.

With the above said modification, the present writ petition is disposed of.

January 16, 2024

raj arora

(VINOD S. BHARDWAJ

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No