2024:PHHC:104006

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

204 **CWP-23402-2015**
Date of Decision: 12.08.2024

NEW INDIA ASSURANCE CO. LTD.

... Petitioner

VERSUS

KRISHNA DEVI AND ANOTHER

... Respondents

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

****

Present: Mr. R.C. Gupta, Advocate
for the petitioner.

Mr. Parmod K. Parmar, Advocate
for respondent No.1.

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VINOD S. BHARDWAJ, J. (ORAL)

The petitioner-Insurance Company is seeking setting aside of the Award dated 05.08.2015 passed by the Permanent Lok Adalat (Public Utility Services), Hisar in case No.696 of 25.05.2009, whereby the application filed by respondent No.1-applicant under Section 22-C of the Legal Services Authorities Act, 1987 has been allowed and the petitioner-Insurance Company has been directed to pay an amount of Rs.2,00,000/- alongwith interest @ 9% per annum from the date of filing of the application till its realization besides certain ancillary reliefs.

Briefly summarized, the facts of the present case are that late Shri Bansal was the registered owner of car bearing registration No.HR-20G-5721, which was insured with the petitioner-Insurance Company vide policy No.353401/06/01/00000160 valid from 11.04.2006 to 10.04.2007. The said car

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met with an accident on 07.12.2006 while being driven by Jaibir alias Leela Ram. An FIR No.350 dated 07.12.2006 under Sections 279, 337 and 304-A of IPC was registered at Police Station Sadar, Narwana. The respondent No.1-applicant submitted the claim to the petitioner-Insurance Company for a sum of Rs.2,00,000/- on account of death of her husband in the said accident, being the registered owner of the said vehicle. A further prayer was also made that the petitioner-Insurance Company is also liable to pay the amount of Rs.1,40,000/- regarding the damage to the car since, as per the report of the surveyor, it was a case of a total damage. It was averred that the petitioner-Insurance Company only paid a sum of Rs.99,000/- towards the claim for the car and that the balance amount was not paid alongwith the benefits of Rs.2,00,000/- regarding the personal accident cover of her husband. The claim submitted by the respondent No.1-applicant was repudiated by the Insurance Company vide letter dated 31.05.2007 on the ground that the registered owner i.e. the husband of respondent No.1-applicant was not holding a valid Driving Licence at the time of accident. Aggrieved of the repudiation for the abovesaid reason that the husband of respondent No.1-applicant was not driving the car at the relevant point of time and that the same was being driven by one Jaibir @ Leela Ram son of Oma Dutt (who was holding a valid Driving Licence), the application under Section 22-C of the Legal Services Authorities Act, 1987 was preferred by respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Services), Hisar.

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The petitioner-Insurance Company entered appearance before the Permanent Lok Adalat (Public Utility Services), Hisar and filed its reply raising preliminary objections with respect to the maintainability of the claim. The application was also objected to on the ground that 'owner-driver' covered under the policy has to be registered owner of the vehicle in question and is required to hold an effective and valid Driving Licence, in accordance with Rule-3 of the Central Motor Vehicle Rules 1989, at the time of accident. Since the Driving Licence of the owner expired in the year 2004, hence, the claim of respondent No.1-applicant was rightly declined. It is immaterial whether he is driving the car in question or not. He further states that admissible damage on account of the loss caused to the car, as per the surveyor report, had already been released.

Terms of settlements were formalized by the Permanent Lok Adalat (Public Utility Services), Hisar and the same were put to the parties for exploring possibility of an amicable resolution of the dispute, however, on failure of parties to arrive at a mutual settlement, adjudication under Section 22-C(8) of the Legal Services Authorities Act, 1987 was undertaken.

The parties led their respective evidences and upon consideration thereof, the Permanent Lok Adalat (Public Utility Services), Hisar allowed the application filed by the respondent No.1-applicant and directed as under:-

> *"26. In view of the above discussion as petitioner nowhere states that insured was driving the vehicle so he does not come under the preview of term owner driver coined by the respondent. So, the respondent has wrongly repudiated the petitioner claim. Hence, petitioner has fully proved his case and the contention of the*

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respondent does not hold water. Hence this issue is decided in favour of the petitioner holding that petitioner is entitled to the claim of Rs.2 lac regarding the death of insured he is also entitled to interest at the rate of 9% per annum from the date of filing the petition till realization. However, the claim of the petitioner regarding damage of the car is declined. Not only this the petitioner has suffered a lot by not paying the payment of the claim by the respondent to her so petitioner is also entitled to compensation to the tune of Rs.20,000/ on account of harassment and mental agony.

27. In view of our discussion and issue wise findings with reasons the petition is accepted and an award for an amount of Rs.2 lac along with interest @ 9% per annum from the date of filing the petition till realization is passed in favour of the petitioner against the respondent directing the respondent to pay this amount within 2 months of this award. Petitioner is also entitled to a compensation of Rs. 20000/- to be paid by respondent to petitioner. However, the claim of Rs.40500/- being difference amount of damage of car in question is declined."

Aggrieved thereof, the present writ petition has been filed.

Counsel for the parties have reiterated their respective arguments raised before the Permanent Lok Adalat (Public Utility Services), Hisar. It is argued by the counsel for the petitioner-Insurance Company that as per the relevant conditions of the policy of insurance read with the provisions of Indian Motor Tariff Rules framed under The Insurance Act, 1938, the compulsory personal accident cover is applicable only in package policies and the owner of the insured vehicle ought to be holding an effective and valid Driving Licence

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to claim benefit as 'owner-driver' for availing of same. The cover is provided to the owner-driver while driving the vehicle including mounting into/responding from or traveling in the insured vehicle as well for driver. The relevant condition of policy of insurance with provisions of Indian Motor Tariff reads thus:

> *"Compulsory personal accident cover shall be applicable under both liability only in package policies. The owner of insured vehicle holding an 'effective driving licence' in terms as owner-driver for the purpose of this section. Cover is provided to the owner driver whilst driving the vehicle including mounting into/dismounting from or travelling in the insured vehicle as a co driver."*

It is contended that as the deceased was not holding a valid Driving Licence as on the date of accident i.e. 07.12.2006, the claim of the respondent No.1-applicant was liable to be repudiated.

Counsel for the respondent No.1-applicant, on the other hand, has relied upon the observations recorded by the Permanent Lok Adalat (Public Utility Services), Hisar and contends that the said objection has already been dealt with by the Permanent Lok Adalat (Public Utility Services), Hisar and that an equity having been exercised, there is no valid reason for interfering with the same.

No other argument has been raised and no judgment in support of any argument has been referred to by the counsel for the parties.

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I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

The case of the petitioner-Insurance Company is based solely on Section III of the Policy of Insurance which has already been extracted above. A perusal of the said condition shows that while the first part mandates the owner of the insured vehicle to hold an effective and valid Driving Licence, however, the second part thereof deals with the circumstances and situation for the total coverage. The said part, being clarificatory, deals with the fact that it is not necessary for the owner to be driving the vehicle at the time in question and that he may be mounting into/dismounting the vehicle or may be travelling in the insured vehicle as a co-driver to claim the benefit of compulsory personal accident cover under the package policy. To transpose the condition, stipulated in the earlier part of the Section, that the claimant ought to be holding a valid license inherently presumes that the owner was driving the vehicle and cannot be read into the circumstances where an owner claims the benefit when the owner is sitting in the vehicle driven by the driver holding a valid driving license as it would be improper and would amount to prescribing conditions that are unconscionable. The abovesaid benefit under the Insurance Policy is a matter of a personalized accident cover, which is compulsory by its very nature. The requirement of having a mandatory Driving Licence has to be read as an essential term for entertaining the claim only in case the insured owner was himself driving the vehicle at the relevant point of time. To contend that a

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person must be holding a valid Driving Licence at all times, even though he/she may not be driving the vehicle in question and the accident in question may have no concern with the owner sitting in a co-driver's seat or even in the capacity of a passenger sitting on the backseat while the vehicle is being driven by a driver holding a valid Driving Licence, would be a travesty of justice. It would defeat the very object behind seeking the personalized accident coverage.

The conditions of an insurance policy have to be read in the background of an intention behind seeking such a policy and are not to be read mechanically so as to deprive the family of the deceased/claimant of the benefits for which they are entitled to. Hence, such a technical interpretation, as is being proposed by the learned counsel for the petitioner-Insurance Company is based upon lack of objectivity or understanding the intent behind the clause. The requirement of holding a valid Driving Licence could have been material in case the accident in question had taken place at the time when the owner himself was driving the vehicle, but such aspect would not be relevant while considering the claim for release of the benefits under the personalized accident cover, when the car is actually being driven by a person who is duly authorized to drive the vehicle and is holding a valid Driving Licence as per the terms and conditions of the insurance policy and the owner has not been instrumental in driving the vehicle in violation of the terms and conditions of the policy of insurance. Where there is no overt act or omission attributed to the owner, which resulted in the accident, the admissible benefits to the owner under the personalized accident cover cannot be denied to him.

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The Permanent Lok Adalat (Public Utility Services), Hisar has already considered all the aspects and has concluded that the grounds of repudiation are not sustainable on a meaningful reading of the said clause. There has to be a direct co-relation between the clause and the objective behind the same. Invariably the necessity of holding a valid driving license is a condition for driving and not for owning a car or being a traveler therein. The interpretation as suggested by the petitioner neither appeals to reason nor conscience. The same is accordingly declined. I find that the interpretation is not only unacceptable but runs contrary to the aim. The requirement for allowing the said claim would rather be that for the personalized cover, the vehicle should be driven by a person holding a valid driving license when the owner is travelling in it. Such a person drives the vehicle under the authority and command of the owner.

The decision passed by the PLA (PUS) cannot be said to be suffering from any illegality, impropriety or misappreciation of evidence. Hence the same would not be ordinarily interfered with by this Court under Article 226 of the Constitution of India.

Being devoid of merits, the present writ petition is dismissed.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 12, 2024
rajender

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

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