IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

211 **CWP-20049-2018**
Date of decision: 05.08.2024

United India Insurance Co. Ltd. …Petitioner

Versus

High Flame Gas Service & anr. …Respondents

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

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

Mr. H.S. Saini, Advocate,
for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the petition is to award dated 01.03.2018 (Annexure P-11) passed by the Permanent Lok Adalat (Public Uitility Services), SAS Nagar, Mohali, in the application No.451 of 2016, titled 'M/s High Flame Gas Service Vs. United India Insurance Company Ltd.'.

2. Brief facts of the case are that respondent-applicant was insured with the petitioner-Insurance Company for the period from 20.02.2014 to 19.02.2015. During the currency of the aforesaid insurance policy, an incident occurred on 02.03.2014 at about 7.45 PM, when a sum of Rs.6,00,380/- was snatched by some unknown persons in front of the office of the applicant-respondent No.1 when he and an other employee namely Sukhbir Singh were locking the doors of the office i.e. SCF 50 (first floor),

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Phase IX, SAS Nagar (Mohali). The police was informed, which reached at the spot and FIR No.29, dated 02.03.2014 was registered at the Police Station Phase 8, SAS Nagar, Mohali, for the offences under Section 382, 506 IPC. The claim form was thereafter submitted by the respondent and all the relevant documents including copies of booking vouchers by the customers, confirmation of delivery of cylinders, copy of cash book entries and copies of documents giving details of all delivered gas cylinders along with denomination of currency notes and other necessary documents were supplied to the Investigator Mr. Rajan Sharda by respondent No.1-applicant. When said Rajan Sharda of the insurance company visited applicant-respondent No.1's office, besides collecting all the required documents he held a detailed discussion with respondent No.1 regarding the incident. Even though respondent No.1-applicant was assured that his claim has been processed, however, no action was taken thereupon for a substantial period and it was later informed that the claim stands rejected for a reason that incident of the loss was not covered under the policy. It was averred that as per the insurance policy purchased by the respondent No.1-applicant, the theft of money was insured only in an event of the amount being in the hands of an employee and that as the above said amount was in the hands of the insured himself at the time of incident, the loss is not covered as per the said policy. Aggrieved of the above reasons for denial of the claim, the respondent-applicant moved the Permanent Lok Adalat (Public Uitility Services), SAS Nagar, Mohali, for redressal of his grievance.

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3. Notice of the application was served upon the petitioner-Insurance Company, which raised various objections with respect to the maintainability of the application and also for justification of its decision. It was not disputed that the respondent No.1-applicant had obtained the LPG policy for the period in question. Reference was also made to the proposal form submitted by the insured pertaining to the money insurance, which the policy covered. The same is extracted as below:-

Sr. No.	Particulars	Sum Insured
1.	Money whilst in transit in the custody of Delivery boys (a) Any one accident (b) For policy period	 50,000/- 150000/-
2.	Money in Safe/Steel Cupboard/Cash box for policy period	75000/-
3.	Money elsewhere in premises for policy period	50000/-
4	Money whilst in transit in the custody of Godown Keeper/Employee from Godown to office and office to bank	600000/-

(emphasis supplied)

4. It was also averred that under the report of Surveyor & Loss Assessor nominated by the petitioner Insurance Company it was informed that at the time of incident, the money was in the custody of the insured and not in the hands of the employee, hence, the same could not be released.

Terms of settlement were supplied to the respective parties and on failure of the parties to arrive at an amicable resolution, adjudication of the dispute was undertaken by the Permanent Lok Adalat under Section 22-C (8) of the Legal Services Authorities Act, 1987.

5. On consideration of the evidence adduced by the respective

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parties and also the arguments advanced, the application was allowed and the petitioner-Insurance Company was directed to pay a sum of Rs.6,00,000/- along with interest @ 9% per annum from the date of deposit till realization and to pay Rs.1,00,000/- as a compensation apart from Rs.8,000/- towards litigation charges to the applicant along with interest @ 9% from the date of award till realization. Further the petitioner Insurance Company was directed to pay the said amount within a period of 45 days from the date of receipt of copy of award, till its realization, failing which the petitioner-Insurance Company was held liable to pay interest @ 15% per annum till its realization. Aggrieved thereof, the present writ petition has been filed.

6. Learned counsel for the petitioner has vehemently argued that at the time of submission of proposal form, the respondent-applicant never applied or sought insurance indemnification from any untoward incident like the money being taken away from the insured or from the custody of the insured. The said proposal form was accepted by the petitioner and premium was also paid in terms thereof. He submits that the proposal form was an integral part of the contract of insurance and that the terms and conditions provided thereunder would reflect on the cover of the respective liability of the parties. Once the respondent-applicant had not applied for or has sought the insurance cover in relation to the money in his own custody, the scope of the policy cannot be widened to cover even such an exigency as well. He has also placed reliance on the judgment of the Hon'ble

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Supreme Court in the matter of ***Vikram Greentech (I) Ltd. & anr. Vs. New India Assurance Co. Ltd.***, reported as ***(2009) 5 SCC 599***. Relevant paragraphs thereof and relied upon by the petitioner are extracted as under:-

> *"15. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberimma fides i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. [General Assurance Society Ltd. Vs. Chandumull Jain and another, Oriental Insurance Co. Ltd. Vs. Sony Cheriyan and United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal]*
>
> *16. Document like proposal form is a commercial document and being an integral part of policy, reference to proposal form may not only be appropriate but rather essential.*

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However, the surveyors' report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible.

7. He further contends that in matters governing insurance, there is no scope for equity and when such equity is in conflict with specific terms and conditions of the policy which is covered, the insurer cannot be burdened with financial liability under the garb of equity. Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Deokar Exports Pvt. Ltd. Vs. New India Assurance Company Ltd., 2009 AIR (SC) 2026***. Relevant paragraphs read as under:-

"11. A policy of insurance is a contract based on an offer (proposal) and an acceptance. The appellant made a proposal. The respondent accepted the proposal with a modification. Therefore, it was a counter proposal. The appellant had three choices. The first was to refuse to accept the counter-proposal, in which event there would have been no contract. The second was to accept either expressly or impliedly, the counter-proposal of the respondent (that is respondent's acceptance with modification) which would result in a concluded contract in terms of the counter proposal. The third was to make a counter proposal to the counter-proposal of the respondent in which event there would have been no concluded contract unless the respondent agreed to such counter-counter-proposal. But the appellant definitely did not have the fourth choice of propounding a concluded contract with a modification neither proposed nor agreed to by either party.

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If the appellant did not agree to the policy covering the period 26.8.1988 to 25.8.1989 instead of the period 12.3.1988 to 12.9.1989, the result would never create an insurance contract effective from 30.6.1989 or any other date.

12. The contention of the learned counsel for the appellant that an equitable view must be taken is untenable. In a contract of insurance, rights and obligations are strictly governed by the policy of insurance. No exception or relaxation can be made on the ground of equity."

8. He further contends that the Permanent Lok Adalat erred in awarding a very high rate of interest @ 9% per annum and 15 % on account of non-payment of the awarded amount within a period of 45 days. It is also alleged that the compensation of Rs.1,00,000/- as awarded towards mental harassment and agony was also not called for. He further submits that the direction to award interest on the compensation was also not called for and is not sustainable.

9. Responding to the above, learned counsel for the respondent-applicant submits that the incident in question took place on 02.03.2014, which was a Sunday and the office was being locked. In the said process, the cash collection was handed over by the employee to the insured when it was taken out and lock was being put. Hence, the custody should be deemed as a joint custody of the employee as well as the insured. It is also argued that the policy in question was sold by the petitioner-Insurance Company through their agent namely Lakhwinder Singh, who had filed his affidavit as an evidence before the Permanent Lok Adalat (Public Uitility

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Services), SAS Nagar, Mohali. He places reliance on the above said affidavit to contend that the said agent has himself stated that the Insurance Company was not justified in rejecting the insurance and that the applicant-respondent was fully insured under the said policy. Para 4 of the said affidavit reads thus:-*"4. That when the insurance Policy was purchased by paying an advance premium the whole working process of the Complainant's (working of the Gas Agency) was explained in detail to opposite party through deponent's agency. The daily working details as to when the office opens, closes and as to how the cash is carried out and brought in was explained. <u>That the theft occurred when complainant and Godown Keeper Mr. Sukhbir Singh who are both the employee of M/s High Flame Gas Agency were still present in the office corridor and about to pull down the shutter of the office and were locking the door of their office as per daily routine. That now Opposite Party have rejected the genuine claim of Complainant by simply giving a stereotype (pre-typed) reason that his claim is not covered by the policy without giving any justification or reason for such finding. That it is absolutely wrong on the part of the Opposite Party to reject the claim of the Complainant just by saying that insured Col Sardool Singh Sidhu (Retd.) i.e., the insured is not covered under the policy as he is not the employee of M/s High Flame Gas Agency as the Policy in question is a LPG Dealers Package Policy and covers all the employees of the Gas agency including the distributor himself as he is the part of the Gas agency</u>."*

(emphasis supplied)

10. No other argument has been raised.

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11. I have heard learned counsel for the respective parties and have gone through the documents appended along with the present petition as also the judgments cited by learned counsel for the respective parties.

12. Before the commencement of the arguments, a specific query was put as to whether there was any other rider/or distinct and separate insurance policy for covering the risk of an untoward incident of snatching of the property if it was held by the insured himself as against the employee, learned counsel for the petitioner could not refer to any such clause of the policy document. He has fairly accepted the terms of the policy document and Clause IV whereof reads as under:-

> *"**Section-IV Money Insurance***
> *The company will indemnify the insured in respect of*
> *a) Loss by accident or misfortune whilst the insured's money in the hands of the insured or the insurer's employees is in transit within a radius of 25 km, from the insured's premises as stated in the schedule."*

13. It is not disputed that the aforesaid policy document provides for indemnification by the insurer in respect of loss by accident or misfortune while the insured's money is in the hands of the insured or his employees within a radius of 25 kms. It is, thus, evident that the policy document did not create any distinction between the person who may be holding the money and instead focused on the property insured.

14. The reasons given by the petitioner to deny the claim may be on the basis of proposal form notwithstanding the understanding given by the agent of the respondent, which was specifically to the effect that all such

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exigencies would be covered is per se not tenable. The petitioner Insurance Company has laid much emphasis only on the submission of the proposal form and has not harmoniously construed the policy document itself. It would be highly unconscionable that even though the policy document prescribes necessary terms and conditions and the insurance company(ies) repeatedly rely upon the terms and conditions incorporated in the policy document to assert their rights but when such a document goes in favour of the insured, a hyper technical approach is adopted by the respondents. The law is well settled by the Hon'ble Supreme Court that if a document has the potential of extending favour towards the insured or has two possible views, the interpretation of the document has to be made against the author of the document. The Insurance company never created any distinct clause on the basis of the person holding property and policy was in fact only with respect to the loss caused by an accident or misfortune in relation to the money of the insured. Hence the subject of insurance was crucial for issuance of the policy and not the person holding the subject as it was an immaterial consideration for taking a decision as to whether the risk in question ought to be underwritten or not.

15. While not disputing the preposition of law laid down by the Hon'ble Supreme Court in ***Vikram Greentech (I) Ltd.'s case (supra),*** I find that the same is not applicable to the facts of the present case since the proposal form itself cannot bulldoze the specific terms and conditions contained in the policy document, which covered such an exigency and that

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such proposal form has to be read in the context of understanding given to the insured. The agent of the petitioner-Insurance Company has also specifically acknowledged that the petitioner-Insurance Company was liable to indemnify the respondent-insured for the said loss. Hence, considering from either of the perspective, the petitioner-Insurance Company had bound itself for indemnifying the said loss and would not be justified in repudiating the claim for such a reason as has been relied upon by them. To the said extent, I find myself in agreement with the award passed by the Permanent Lok Adalat and contention of the petitioner is rejected.

16. The same now leads to the issue as such to the rate of interest as awarded by the Permanent Lok Adalat. Now adverting to the argument advanced with respect to the rate of interest awarded, I am of the opinion that the insurance policy does not talk of award of any interest on a delayed release. The payment of interest has thus been awarded by taking aid to Section 34 of C.P.C, 1908 which provides for interest @ 6% per annum. Accordingly, interest @ 9% per annum ought not to have been awarded on the compensation towards mental agony and harassment that was caused since there was no prior existing right for compensation on account of repudiation of claim. But at the same time, the litigation expenses have been awarded to a tune of Rs.8,000/-. The petitioner-Insurance Company has dragged the insured to the High Court for seeking enforcement of a clause, which is unconscionable and does not find any force on the basis of their own policy document, I am of the opinion that the litigation expenses

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need to be enhanced.

17. The award passed by the Permanent Lok Adalat (Public Uitility Services), SAS Nagar, Mohali, in application No.451 of 2016, titled 'M/s High Flame Gas Service Vs. United India Insurance Company Ltd.' is, accordingly, modified as under:-

i. The petitioner-Insurance Company is directed to refund Rs.6,00,000/- to the respondent-applicant along with interest @ 6% per annum from the date of submission of the application before the Permanent Lok Adalat till its actual disbursement.

ii. Pay a sum of Rs.1,00,000/- as compensation for unnecessary harassment and mental agony.

iii. The litigation charges are enhanced from Rs.8000/- to Rs.25,000/-,to be paid to the respondent-applicant.

iv. Let the above said amount be released in favour of the respondents along with interest as calculated within a period of two months from the date of receipt of a certified copy of this order, failing which the respondent-applicant shall be entitled to interest @ 9% per annum on the entire amount as above till actual disbursement.

18. The writ petition is partly allowed accordingly.

05.08.2024 **(VINOD S. BHARDWAJ)**
monika **JUDGE**

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

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