2024:PHHC:131292

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-27001-2018
Date of decision: 27.09.2024

ORIENTAL INSURANCE COMPANY LTD AND ANOTHER

......Petitioners

VERSUS

RANJIT KAUR AND OTHERS

.......Respondents

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

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

Mr. Puru Gupta, Advocate for Mr. Vipul Dharmani, Advocate for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the ex-parte Award dated 26.10.2017 passed in Application No. 67 of 2017 by the Permanent Lok Adalat (Public Utility Services), Rupnagar.

2. Briefly summarized the facts of the present case are that Swaran Singh, husband of respondent No.1/applicant Ranjit Kaur alongwith other persons were travelling in car bearing Registration No. PB-12-R-4140 owned by her. On 23.07.2016, when they reached near Tax Barrier, Nangal Dam, another car driven by one Sushil Kumar, in a rash and negligent manner, came from the opposite side and struck the car in which Swaran Singh and others were travelling. Resultantly, Swaran Singh and other

occupants of the said car suffered injuries. Swaran Singh was referred to PGI, Chandigarh but was taken to Kailash Hospital, Anandpur Sahib for treatment considering his precarious condition.

3. The vehicle was insured with the petitioner Insurance Company vide Policy No. 231402/31/2016/2355 valid from 27.07.2015 to 16.07.2016 for IDV of Rs. 3,40,000/-. The respondent-insured claimed the IDV of Rs. 3,40,000/- since the vehicle was a total loss. The estimation for repairs as prepared by M/s Bhagat Ram Motorways, was to the tune of Rs. 4,94,884.94, hence, the claim for a total loss was lodged. An advance amount of Rs. 70,000/- was required to be deposited by the respondent No.1-applicant with the authorized Service Centre i.e. M/s Bhagat Ram Motorways to begin with the repairs. The said amount was not deposited by the respondent-applicant as she submitted a request to the petitioner-Insurance Company to release the estimated loss, as prepared, so that the repair of the vehicle could be started. It was also informed to the Insurance Company that a per day parking charge would be levied by the authorized Service Centre and that in the event of any delay, the petitioner-Insurance Company shall also be liable to defray the aforesaid expenses.

4. On failing to get any response, an application was filed before the Permanent Lok Adalat (Public Utility Services), Rupnagar under Section 22-C of the Legal Services Authorities Act, 1987. The parties were put to notice whereupon the petitioner-Insurance Company raised various objections to the maintainability of the claim. While admitting that the car in question was insured for the aforesaid IDV and also the factum of the

accident alongwith the same being a case of total loss, it was stated that the vehicle is on Superdari from the Court, since being a criminal case, an FIR had been registered into the incident. The petitioner-Insurance company also apprised that it had sent a letter dated 23.02.2017 treating it as a case of total loss and after deducting the salvage value and advised the respondent-applicant to furnish the requisite documents so that the payment could be released, however, the needful was not done. Thereafter, a letter was also sent on 15.06.2017, for the said documents so that the claims could be settled. He contends that there was no deficiency on the part of the petitioner, yet the respondent-applicant had approached the Permanent Lok Adalat (Public Utility Services) without even awaiting for the action being taken by the petitioner-Insurance Company.

5. After failure of the conciliation efforts, adjudication was undertaken by the Permanent Lok Adalat (Public Utility Services). Parties led their evidence before the Permanent Lok Adalat and advanced their arguments. On a consideration thereof, the claim of the respondent-applicant was allowed and the Permanent Lok Adalat (Public Utility Services) directed as under:-

> *"19.) In view of the above discussions, we are of the opinion that the present application succeeds and the same is accordingly allowed with costs with the following directions:*
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> *i. The respondent no. 1 shall pay a sum of Rs. 2,69,000/- to the applicant along with interest @ 9% p.a. w. e. f. 01.11.2016 till the date of payment.*

ii. *The respondent no. 1 shall pay Rs. 40,000/- as compensation to the applicant for harassment.*

iii. The respondent no. 1 shall pay parking charges @ 100/- per day to the applicant/ *respondent no. 3 w. e. f. 17.08.2016 till the vehicle is removed from t heir premises as per the directions referred to in para no. 18 above."*

6. Aggrieved thereof, the petitioner Insurance Company has preferred the instant writ petition.

7. Learned Counsel appearing on behalf of the petitioner has vehemently argued that there was no deficiency on the part of the petitioner-Insurance Company yet it has been held liable to pay the amount of Rs.2,69,000/- (i.e. the IDV less the salvage value) alongwith interest w.e.f. 01.11.2016 till the date of payment. He further contends that the petitioner-Insurance Company has also been held liable to pay the parking charges @ Rs. 100/- per day. Even though after the salvage value had been allowed to be deducted from the said amount, it was not the obligation of the petitioner Insurance Company to park the vehicle at any place and the obligation lay upon the respondent-applicant to park or dispose off the salvage. She having chosen not to remove the said vehicle, the liability of parking of the said vehicle at the authorized service centre lay entirely on the respondent-applicant herself.

8. He further contends that the Permanent Lok Adalat (Public Utility Services) has further ordered that the Insurance company would be

free to recover the amount of interest, compensation, parking charges and litigation expenses from the employees who delayed the payment of compensation. He contends that since there was no delay on the part of the employees, the operative part of the said award as recorded in para No. 21 casts aspersions on the employees of the petitioner-Insurance Company. He contends that the Permanent Lok Adalat (Public Utility Services) has also directed that the action against the said Officers be intimated to the company. He submits that their office and officials are not liable to pay any of the said expenses and had taken all steps in the best interest of the company.

9. Responding to the above, Counsel for the respondent contends that despite the accident having taken place on 23.07.2016, the spot survey of the vehicle in question was conducted on 17.08.2016. The report of the Surveyor was thereafter submitted on 31.10.2016. It was informed by the petitioner-Insurance Company that respondent-applicant is entitled to a sum of Rs. 3,39,000/- and after deducting the salvage amount of Rs. 70,000/-, the respondent-applicant was entitled to an amount of Rs. 2,69,000/-. It is contended that despite the submission of the surveyor report way back in October, 2016, the petitioner-Insurance Company did not process the claim of respondent No.1-applicant and hence she had to approach the Permanent Lok Adalat for seeking expeditious redressal of her grievance. He contends that as per the procedure, they had to allow the claim of the respondent-applicant but instead they sent a letter dated 23.02.2017 informing that the company is ready to settle the claim on net of salvage

settlement. Even the said letter was sent after seven months of the accident and about four months of submission of report by the Surveyor and more so after filing of the application before the Permanent Lok Adalat (Public Utility Services), Rupnagar. He further contends that the delay on the part of the Insurance company was inordinate and without any satisfactory explanation. The Award has thus rightly been passed by the respondent-authorities.

10. No other argument has been raised and no other judgments have been cited by the Counsel for the parties.

11. I have heard learned Counsel for the respective parties and have gone through the documents available on record.

12. The factum of the accident, the entitlement of respondent No.1 to demand of Rs. 2,69,000/- after deduction of the net salvage settlement remains undisputed. The primary bone of contention is the delay in settlement of the aforesaid claim and the consequential damages that have been occasioned and caused to the respondent-applicant.

13. The communication from the petitioner-Insurance Company with respect to the acceptance of the Surveyor's report and the settlement of the amount for Rs. 2,69,000/-, after deduction of the net salvage settlement, on 15.02.2017 remains undisputed. Certain documents were required to be submitted by the petitioner for processing the claim and to release the payment and that the needful was not done as a result whereof a subsequent reminder was sent on 15.06.2017 as well. No explanation has been put forth by the respondents as to what proceedings took place after receipt of letter

on 15.02.2017 and as to whether the respondent complied with the documentation required for processing the release of payment or not, hence, in the absence of any supporting claim/documents about the delay caused by the petitioner-Insurance Company and more so when receipt of the said letter dated 15.02.2017 is not disputed, it cannot be presumed that the delay in settlement of the claim, after the communication of letter dated 15.02.2017, can be attributed entirely to the petitioner-Insurance Company. However, so far as the aspect of compensation from the date of accident i.e. 23.07.2016 till 15.02.2017 is concerned, the said time was consumed by the petitioner-Insurance Company itself in processing the claim notwithstanding that the Surveyor had carried out preliminary Survey on 17.08.2016 and that the same was submitted in October, 2016 itself. Hence, the lapse was on the part of the petitioner-Insurance company and its agents in processing the claim. It is undisputed that the assessment, as done initially, was eventually awarded by the Permanent Lok Adalat. It also remains undisputed that the net salvage was assessed and deducted from the IDV as was required to be paid to the respondent-insured also stood communicated to her vide letter dated 15.02.2017. Hence, there was no further obligation on the part of the respondent-applicant to continue to park the vehicle at the authorized service centre. It was open to the respondent-applicant to have taken appropriate steps, as were permissible to her in accordance with law to remove the vehicle from the said place and to dispose it off. She having not taken any such steps to mitigate her losses, cannot claim indemnification for any increased cost with which she has been burdened for her failure to take appropriate and effective steps.

14. Accordingly, the present writ petition is partly allowed. Insofar as the claim awarded in Para No. 19 (iii) with respect to parking charges @ 100/- per day to the applicant/respondent No.2-Bhagat Ram Motorways Private Limited w.e.f. 17.08.2016 till the removal of the vehicle from the premises is concerned, the said relief is modified to the extent that the petitioner-Insurance Company is liable to pay the parking charges at the rate as ordered w.e.f. 17.08.2016 till 15.02.2017. The Insurance Company is thus exonerated of any further parking charges, that were levied, after the communication and acceptance of the claim.

15. In so far as the direction contained in Para 21 and 22 empowering the petitioner-Insurance Company to recover the amount from the employees and to take action against the employees is concerned, this Court accepts the submissions advanced by the petitioner-Insurance Company itself. Once the petitioner-Insurance Company is no more interested in pursuing the recovery of amount from its employees, I find that such an action would in any case have no bearing in so far as relief to the respondent-applicant is concerned. Hence, the directions that were issued in Para No.21 and 22 are ordered to be expunged.

16. Rest of the order remains as it is. The writ petition is disposed of as partly allowed.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 27, 2024
Vishal Sharma

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