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IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-20465-2022 (O&M).
Date of Decision: 26.09.2024.

HIMMAT SINGH

... Petitioner

Versus

THE ORIENTAL INSURANCE COMPANY LIMITED AND OTHERS

... Respondents

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

Present: Mr. Yogesh Gupta, Advocate,
for the petitioner.

Mr. Satpal Dhamija, Advocate,
for respondents No.1 to 2/Insurance Company.

VINOD S. BHARDWAJ, J. (ORAL)

1 Challenge in the present petition is to the award dated 24.09.2021 passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, in application No.231 of 2019 whereby the Permanent Lok Adalat (Public Utility Services), whereby despite the respondent-Insurance Company having been directed to pay Rs.21.85 lakhs but has awarded interest only for a sum of Rs.6.85 lakhs and declined award of

interest on Rs.15 lakhs which was ordered to be paid directly to the Finance Company.

2 Briefly summarized, the facts of the present case are that the petitioner is a registered owner of truck bearing registration No.PB08-CP-9371. The aforesaid truck was financed by Hinduja Leyland Finance Limited and was insured for the period from 07.08.2013 to 06.08.2014 for an Insured Declared Value of Rs.21,85,000/-. The premium for the said IDV was deposited by the petitioner with the respondent-Insurance Company.

3 During the currency of the insurance policy, the vehicle was stolen on 08.05.2014 along with its original documents and an FIR with respect to the incident of theft was also registered. The police officials investigated the matter and an untrace report was filed by the police on 03.02.2015.

4 The petitioner moved an application with the respondent-Insurance Company for the grant of benefits under insurance policy, however, the same was illegally repudiated by the respondent-Insurance company.

5 Aggrieved thereof, an application under Section 22-C of the Legal Services Authorities Act, 1987, was hence preferred by the petitioner before the Permanent Lok Adalat (Public Utility Services), U.T. Chandigrh. The notice was issued to the respondent-Insurance company which entered appearance and raised various objections with respect to the maintainability

of the claim of the petitioner. It was claimed by the respondent-Insurance company that as per the investigation report of the surveyor dated 18.05.2015, the petitioner was not the owner of the vehicle at the time of theft, on account of the said vehicle having been sold to one Param Gill, and there was no cause of action with the petitioner to claim anything. It was also submitted that the petitioner never pursued the claim with them except by way of filing an application under Section 22-C of the Legal Services Authorities Act, 1987 and that the version put forth by the petitioner is unworthy of acceptance. It was also claimed that on account of the non-transfer of the vehicle in the name of the registered owner in the registration certificate, there is no insurable interest that vests in the petitioner and that there is no deficiency on the part of the respondent-Insurance company.

6 Efforts for an amicable resolution of the dispute as mandated under Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987 had been undertaken by the Permanent Lok Adalat (Public Utility Services), however, the same did not mature, hence, adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was undertaken.

7 Upon consideration of the evidence led on behalf of the respective parties and submissions advanced in the application under Section 22-C of the Legal Services Authorities Act, 1987, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, directed the respondent-Insurance company to make payment of the IDV to the sum of Rs.21,85,000/- and that out of the said amount, an amount of Rs.15 lakhs

was directed to be paid directly to the Finance Company and the remaining amount of Rs.6,85,000/- was directed to be paid to the petitioner along with intertest @ 9% per annum from the date of theft till its realization. The operative part of the award reads thus:-

> "*Thus after careful consideration of the matter and perusal of the documents on record and discussion of the facts as above and guided by the judgment of Hon'ble Supreme Court (Supra), it is held that the applicant was the owner of the vehicle in question at the time of theft, his claim has been rejected/repudiated on flimsy grounds, which is based on conjuncture and surmises gathered by the surveyor and without any documentary proof to accept the plea of the respondents that said Param Gill was the owner of the truck, therefore, they have wrongly repudiated and rejected the claim of the applicant for payment of insured claim of the applicant.*
>
> *No iota of evidence is found on record to infer that the applicant had any intention to sell the vehicle to Sh. Param Gill.*
>
> *(A) Therefore, in nutshell it is held that respondents are liable to make the payment of insured claim of the vehicle Rs. 21,85,000/- (Rupees Twenty One Lakhs and Eighty Five Thousand only) as Insured Declared Value (IDV in short).*
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> *(B) Out of this amount of Rs.21,85,000/- (Rupees Twenty One Lakhs and Eighty Five Thousand only), Rs 15,00,000/- (Rupees Fifteen Lakhs only) is directed to be paid to the financer i.e.*

Hinduja Leyland Finance Ltd. from whom the loan was taken by the applicant for purchase of the said vehicle and remaining Rs.6,85,000/- (Rupees Six Lakhs, Eighty five Thousand only) 21,50,000/- Minus Rs 15,00,000/-) is directed to be paid to the applicant along with interest @ 9% p.a. on Rs.6,85,000/- (Rupees Six Lakhs Eighty five Thousand only) from the date of theft till its realization.

C) The applicant is held entitled for Rs 5,000/- (Rupees five Thousand only) as compensation for deficiency in services and unfair trade practice and mental harassment caused by the respondents.

(D) He is also held entitled to litigation charges amounting to Rs.5,000/- (Rupees Five Thousand Only) to be paid by the respondents.

The entire payment as above is directed to be paid by the respondents to the applicant & Financer as mentioned hereinabove within a period of one month from the date of receipt of certified copy of this order, failing which the amount at Sr.No. (B) above shall further carry penal interest 12% on entire amount of Rs. 21,85,000/- (Rupees Twenty One Lakhs and Eighty Five Thousand only) from the date of default i.e. after expiry of one month and amount at Sr. No.(C) and (D) shall carry interest @ 9% per annum from the date of default i.e. after expiry of one month.

The petition is, therefore, allowed to the extent as above and disposed of accordingly and the parties be sent the copy of this order free of cost. File be consigned to the record room."

8 The respondent-Insurance Company accepted the award and did not raise any challenge to the same while the petitioner has approached this Court feeling aggrieved of the said award.

9 Reply to the writ petition has been filed. A copy thereof has been handed over to the counsel for the petitioner. In the reply, the plea that had already been raised have been reiterated. It is also averred that the financer has a first hold on the vehicle which is taken on finance and that the Permanent Lok Adalat (Public Utility Services) was justified in first directing the payment to the respondent-Insurance Company to the tune of Rs.15 lakhs. It is submitted that petitioner is only required to be indemnified and cannot profit on account of the said loss.

10 Learned counsel for the petitioner has argued that the grievance is limited only to the extent that even though the entire claim of the petitioner with respect to the IDV has been accepted by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, however, the benefit of interest has arbitrarily been declined for the sum of Rs.15 lakhs. He contends that the vehicle in question had been got financed from the Finance company to the tune of Rs.19 lakhs in the year 2013 and that after the theft of the vehicle, the petitioner had entered into a one-time-settlement with the financer for a sum of Rs.15 lakhs as the same was a measure carved by the petitioner. It is contended that notwithstanding the settlement

by the petitioner, the liability of the insurance company was for the full amount of IDV since they received premium for the same and enjoyed benefit thereon by withholding the same. Accordingly, the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh ought to have calculated the interest on the entire amount and thereafter transferred the sum of Rs.15 lakhs as settled by the petitioner with the finance company and the differential amount ought to be released in favour of the petitioner. To substantiate his claim, he places reliance on the judgment of the Hon'ble Supreme Court in the matter of ***M/s Troikaa Pharmaceuticals Limited Vs National Insurance Co. Ltd. and others, dated 08.04.2024 passed in Civil Appeal Nos.9064-9065 of 2022***. The operative part of the order is extracted as under:-

> *"2. The only point raised by the counsel for the appellant is the rate of interest awarded by the NCDRC. In para 11 of the impugned order, which is reproduced below, the NCDRC has ordered as follows:*
>
> *"11. For the reasons stated hereinabove, I hold that the complainant is entitled to a sum of Rs.1,52,47,793/- inclusive of the interim payment made to him, pursuant to an interim order of this Commission. The complaint is therefore, disposed of with the following directions:*
>
> *(i) The insurer/OP shall pay a sum of Rs.1,52,47,793/- Rs.1,14,00,000/- = Rs.38,47,793/-to the complainant.*
>
> *(ii) The OP shall pay interest @ 9% per annum to the complainant on the entire amount of Rs.1,52,47,793/- w.e.f. six months from the lodgment of the claim till the date on which the amount of Rs.1,14,00,000/- was paid to the complainant.*

(iii) The OP shall pay interest @ 9% per annum to the complainant on the balance amount of Rs.38,47,793/- w.e.f. the date on which payment of Rs.1,14,00,000/- was made till the date on which the balance payment in terms of this order is made.

(iv) The entire payment shall be made by the insurer directly to the bank with whom the stock had been hypothecated by the complainant. The insurer will work out the amount payable to each bank and disburse payment accordingly. If however, the complainant is able to satisfy the insurer that all the outstandings of the banks stand paid and nothing remains payable to them, the entire payment in terms of this order shall be made directly to the complainant.

(v) The payment in terms of this order shall be made within three months from today."

3. As would be clear from the above-stated paragraph of the impugned order, the respondents were directed to pay interest @ 9% per annum to the appellant/complainant on the entire amount of Rs.1,52,47,793/- w.e.f. six months from the lodgment of the claim till the date on which the amount of Rs.1,14,00,000/- was paid to the appellant/complainant. Thereafter, the respondent-Insurance Company has been ordered to pay interest @ 9% p.a. to the appellant/complainant on the balance amount of Rs.38,47,793/- w.e.f. the date on which payment of Rs.1,14,00,000/- was made till the date on which the balance payment in terms of the order was made.

4. We are of the considered opinion that the order passed by the NCDRC is in consonance with the interest rates awarded by this Court in Kaushnuma Begum (Smt.) & Ors. vs. New

India Assurance Co.Ltd. & Ors., (2001) 2 SCC 9 which was followed in Sri Venkateswara Syndicate vs. Oriental Insurance Company Ltd. & Anr., (2009) 8 SCC 507."

11 While relying on the above order, it was submitted by the petitioner that the insured therein was held entitled to interest on the entire amount of the claim and that the payment was to be paid to the bank from the said amount and the balance amount was to be disbursed to the insured.

12 A reference is also made to an order passed in the matter of ***Sonia and another Vs. National Insurance Company Limited and others, dated 01.12.2019 passed in CWP-7571-2017***. The relevant extract reads thus:-

8. If the claim to insurance amount was due and payable on the date of death i.e. on 3.11.2012 and the repudiation of the claim is unjustified and for improper reasons, then the petitioners deserve to get interest on the delayed payment of the principal sum assured. Right to interest is based on the simple principle that money is legally due but is illegally withheld. The award of the Lok Adalat establishes that withholding of money was an illegal action and clearly unjustified and, therefore, interest must run till payment.

xxx xxx xxx

10. In the facts and circumstances, on hearing the parties that these petitions deserve to succeed. Consequently, I allow these petitions and direct that the petitioners will be entitled to interest at the rate of 7% per annum on the principal amount of Rs.1,00,000/- counted from three months after the date of

> *accident i.e. from 1.2.2013 till when the amounts were paid under the awards. The contention of the company that in case interest is awarded it should start from the date of presentation of the petition on 2.4.2014 is rejected since the right to insurance claim matured on the death by accident. Three months is found reasonable time to process the claim for payment. Hence, interest is ordered accordingly. The amount be calculated and disbursed within two months, failing which, interest will accrue @ 10% p.a. from the due date of maturity i.e. 3 months after the demise of the insured. Litigation costs will be in addition, payable within the same period."*

13 Reliance was also placed on the judgment in the matter of ***M/s Shree Ganesh Natural Fibres Vs. New India Assurance Co. Ltd., passed in Consume Case No.624 of 2018 decided on 14.09.2022***. The relevant extract of the same reads thus:-

> *"8. Under Regulation 9 of Insurance Regulatory and development Authority (Protection of Policyholder's Interest) Regulations, 2002, six months maximum time from the date of loss has been provided to the Insurer to settle the claim. If it is not settled within that period, then the Insured is entitled to interest, 2% above the market rate of the interest. Loss has occurred on 15.03.2017. Six months expired on 15.9.2017. There is no allegation that the Insured caused delay in supply of evidence.*
>
> *ORDER*

In the result, the complaint is allowed with cost of Rs.50000/- The opposite parties are directed to pay Rs.35812857/- along with interest 9% per annum from 15.09.2017 till the date of payment, within two months from the date of this judgement. While making payment, the opposite party shall adjust the amount already paid."

14 Learned counsel for the respondent-Insurance Company has reiterated the submissions as noticed in the written statement and contends that the petitioner having settled the loan account with the finance company, he cannot thus claim the benefit of interest on the said amount and has to claim it only towards the loss suffered.

15 No other argument has been raised.

16 Having heard the learned counsel appearing for the respective parties and going through the documents available on record, I am of the opinion that in so far as the contractual obligation of the respondent-Insurance company is concerned, the same is to satisfy the loss occasioned and the same is equivalent to the IDV for which the property had been insured. Any settlement by the petitioner with the financer or bank does not devaluate or depreciate the IDV. Hence, respondent-Insurance Company is not entitled to seek an exemption of the interest liability on account of the person/claimant having entered into one-time settlement with the Finance Company. For the insurance company, the value of the property is its IDV for which such value the premium had been received. The aspect can further be understood from the fact that the Insurance Company had never under-

written the loan liability and hence would not be liable to set off the interest liability of the borrower if it exceeded the IDV. The liability of the Insurance Company is to the insured and it is only that a charge of finance company is created on the amount payable to it. The person who is thus denied benefit is not the finance company but the insured.

17 I find that the controversy raised by the petitioner in the present case is rather nearer to the order passed by the Hon'ble Supreme Court in the matter of ***M/s Troikaa Pharmaceuticals Limited (supra)***.

18 I am hence of the view that the benefit of the IDV could not be made dependent to the settlement arrived at by the petitioner. So far as the respondent-Insurance company is concerned, its liability was for the IDV for which the vehicle is insured. The respondent-Insurance Company having denied the said benefit to the insured and having retained the said money wrongfully has taken benefit thereof and it cannot now contend that even though it may not have paid the entire amount, yet, it is entitled to retain the benefits that may have accrued on the amount that was wrongfully withheld/retained by them.

19 The present petition accordingly deserves to be partly allowed and the award dated 24.09.2021 passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, in application No.231 of 2019 deserves to be modified. The respondent-Insurance company is accordingly held liable to pay interest @ 9% per annum on the total IDV i.e. Rs.21,85,000/-. The amount of Rs.15 lakhs payable to the finance company

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was to be thereafter deducted from the such total amount and the differential amount is required to be disbursed in favour of the petitioner.

20 Let the respondent-Insurance company carry out the calculations within a period of 02 months of receipt of certified copy of this order and the admissible benefits, as calculated afresh, be released to the petitioner within a period of 04 weeks thereafter. In the event of the said benefits not being released, the respondent-Insurance company shall be liable to pay an additional interest @ 6% per annum from the date of filing of the present writ petition till the actual disbursement of the amount in favour of the petitioner.

21 The writ petition stands partly allowed accordingly.

September 26, 2024 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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