2024:PHHC:126846

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

223

CWP-22683-2021 (O&M)
Date of decision: 24.09.2024

Varinder Kumar

...Petitioner

VERSUS

United India Insurance Company Limited and another

...Respondents

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

Present :- Dr. Neha Awasthi, Legal Aid Counsel for the petitioner.

Mr. D.P. Gupta, Advocate for the respondents.

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VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for modifying the award dated 08.02.2021 passed by the Permanent Lok Adalat (Public Utility Services), Fazilka whereby the application filed by the petitioner under Section 22-C of the Legal Services Authorities Act, 1987 had been partly allowed and respondent No.1-Insurance Company had been held liable to release a sum of Rs.50,000/- only, instead of Rs.1,00,000/- to which the petitioner claims to be entitled.

2. Briefly summarized, the facts of the present case are that the petitioner is an account holder of "The Fazilka Central Coop. Bank Limited, Branch Maujgarh", having account No.1192/2000. The Bank had purchased a Group Insurance Policy namely "Group Janta PA" for the period from 29.05.2007 to 28.05.2008 from respondent No.1-Insurance Company vide

Policy No.200101/47/07/61/00000032.

3. Learned counsel for the petitioner contends that during the currency of the Policy, the petitioner met with an accident on 04.02.2008 while he was going from Gidderbaha to Bhanger on his TVS Motorcycle and he suffered multiple injuries. The petitioner remained admitted in Civil Hospital, Abohar wherefrom he was referred to PGI Chandigarh. He remained in ICU for a period of one month and also remained in Sir Ganga Ram Hospital, Delhi and due to the injuries sustained by him in the accident, his both legs were amputated on 11.04.2010. The intimation of the medical treatment of the petitioner was sent to respondent No.1-Insurance Company on 09.07.2010 raising a claim for the sum assured but the same was not released. The petitioner thereafter approached the Permanent Lok Adalat (Public Utility Services), Fazilka under Section 22-C of Legal Services Authorities Act, 1987 seeking release of the insured amount due to him. On the failure of the conciliation proceedings to arrive at a some mutual settlement amongst the parties, adjudication under Section 22-C(8) of Legal Services Authorities Act, 1987 was undertaken. The parties led their respective evidence and on consideration thereof, the Permanent Lok Adalat (Public Utility Services) directed respondent No.1-Insurance company to pay a sum of Rs.50,000/- as claim amount to the petitioner-applicant.

4. Aggrieved thereof, the preset writ petition has been filed.

5. Learned counsel for the petitioner has vehemently argued that the petitioner placed on record the disability certificate as Ex. C4 dated 16.10.2017. As per the Standard Format of the Certificate which is appended

with the present petition as Annexure P-2 issued by the competent authority, there was an amputation of both the right leg above the knee and there was disablement to the extent of 100%. Accordingly, the petitioner was entitled to complete compensation of Rs.1 lakh as per the insurance cover.

6. Learned counsel for respondent No.1-Insurance company on the other hand argued that the averments raised by the learned counsel for the petitioner are factually incorrect. As per the Insurance Policy i.e. "Group Janta PA", the risk cover was Group JPA risk for the total depositors-persons under the said account for a sum of Rs.1 lakh each. He contends that as per the terms and conditions of the said policy, if a person has sustained total or irrecoverable loss of use of a hand or a foot, 50% of the capital sum insured was to be paid to the insured. Since the right leg of the petitioner had been amputated, hence, 50% of the amount as against the sum insured to the tune of Rs.1 lakh has been rightly awarded. The relevant Clause relied upon by respondent No.1-Insurance Company reads thus:-

> ***"(c) If such injury shall within calendar months of is occurrence be the sale and direct cause of the total and Irrecoverable loss of sight of one eye, or total and irrecoverable loss of use a hand or a foot, (50%) of the capital sum insured stated in Schedule here*."**

7. A further reference is made to the physically handicapped certificate (Annexure R1/2) issued by the Civil Hospital, Abohar as per which there was an amputation of the right lower limb, he contends that it is not a case of amputation of both the feet and rather, it was a case of

amputation of one lower limb and that on the strength thereof, the compensation as admissible under the policy in terms and conditions incorporated thereunder has already been ordered to be released. He further contends that the reading of the certificate dated 16.10.2017 nowhere suggests that it was in relation to amputation of both the legs, rather, the said certificate specifically deals with the amputation of the right leg above the knee. He contends that the medical certificate for the treatment including the treatment at Sir Ganga Ram Hospital, Delhi was within the possession of the petitioner-claimant and if both the feet had been amputated, the burden lay upon the petitioner to produce such medical record. Having chosen not to produce the same, the petitioner cannot claim the compensation on the basis of facts that have not been established on record.

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

9. Before proceeding further in the matter, it would be appropriate to refer to the operative part of the award dated 08.02.2021 passed by the Permanent Lok Adalat (Public Utility Services), Fazilka, which reads thus:

> ***"After the close the evidence of the parties this Adalat heard the arguments of the counsel for the parties. Representative for applicant argued that in the evidence produced by the applicant along with documents exhibited, the version of the applicant regarding occurrence of the accident and fact of suffering of injuries by the applicant are***

duly provide and on the other hand there is no evidence of the respondent. On the other hand counsel for the respondent argued that even from the copies of the evidence produced by the applicant, it is clear on the file that there is a long and unexplained delay, firstly in got lodging FIR regarding the alleged accident and further there is long delay in informing the respondent regarding the alleged occurrence. He pointed out that alleged accident sated to had occurred on 04.02.2008, but the alleged FIR, cop of which is Ex. –C3, was lodged on 05.02.2009 i.e. after about one year. Further the intimation of the occurrence was given to the respondent even after about two and half year after the occurrence i.e. on 09.08.2010. As per the terms and conditions of the policy, copy of which is Ex.-C8, the insured should have given intimation/notice of the occurrence within one calendar month. He further argued that due to above said delay, valuable right of the respondent of got conducting investigation of the occurrence of the spot stands defeated. Ld. Counsel for respondent argued that in this way on account of breach of terms and conditions of the policy, claim of the applicant is not maintainable. He further argued that claim of the applicant in not genuine.

This Adalat paid a considerable thought to the above said arguments of the representative for the applicant and Ld. counsel of the respondent and have gone through the file

carefully. On careful perusal of evidence of the applicant that is his affidavit as Ex-C1 as well as other documentary evidence, it is apparently evident on the file that he suffered injuries in the said accident, he remained lying admitted in different hospitals for treatment i.e. in Civil Hospital, Abohar, where from he was referred to PGI, Chandigarh and further he remained under treatment in Sir Ganga Ram Hospital, from where he was discharged on April, 2010. Due to these circumstances that applicant/injured remained under treatment lying admitted in different hospitals for different periods, he informed the insurance company on 09.07.2010, after discharging from hospital. Moreover both legs of the applicant were fractured in the accident and later on during treatment the legs were amputated. From all these circumstances it can be said that regarding delay in lodging the FIR and further giving information to respondent, there is the reasonable and genuine explanation of the nature of the injuries and the circumstances that applicant remained admitted in hospitals for treatment. So the contention of counsel for respondent that there is delay in lodging the FIR and giving the information to respondent, cannot be said to be in any manner effecting the case of the applicant. Moreover the fact of suffering of injuries in the accident as stated by the applicant in his application and version from the FIR fully

find support from the treatment record of hospitals, produced by the applicant. Further contention of the Ld. Counsel for respondent that claim is not genuine also have no force and not acceptable.

Further the contention representative of the applicant that as per the insurance policy copy of which is Ex-C8, applicant is also entitled to claim of amount of Rs.1,00,000/- which is risk covered under the policy and further also entitled to the amount, which he incurred on his medical treatment.

This Adalat paid a considerable thought to the above said contention of representative of the applicant and ld. counsel for the respondent and have gone through the policy copy as Ex C8. It is a group insurance, namely Group Janta Insurance Policy, which is a personnel accident policy purchased by The Fazilka Central Co-op. Bank Ltd. for its account holders. The policy was for the period from 29.05.2007 to 28.05.2008. The applicant is a account holder with the bank, as is clear from the statement of account copy of the account of the applicant i.e. Ex-C11 and Ex-C12. The occurrence of the accident took place on 04.02.2008 i.e. within the validity period of the policy of Insurance (Ex-C8). Further the material term of the policy, as mentioned in the policy in clause (c), in which it is mentioned that if the injury

shall within the 12 of calendar months of its occurrence be the sole and direct cause of total irrecoverable loss of sight of one eye, or total an irrecoverable loss of use of hand or a foot, 50% of the capital sum insured stated in the schedule in the policy. In the schedule risk covered is mentioned as Rs.1,00,000/-. As such in view of above said terms and nature of the injury stated to have been suffered by the applicant on his legs, which had to be amputated due to the said injury, the applicant can be said to be entitled for claim of the amount of 50% of the risk covered, which means applicant is entitled to the claim for a sum of Rs.50,000/- from the respondent. The contention of the representative of applicant that he may also be granted claim of medical expenses suffered by him in his treatment, can not be said to be acceptable, as in the policy of insurance copy of Ex-C8, such type of medical expenses are not covered. Further contention of representative of applicant that for loss of income to applicant some compensation be given, also not acceptable as the policy is Group Insurance Policy covering the risk of injuries of personnel accident. As such these contention of the representative of the applicant regarding claim of medical expenses and compensation for loss of income is rejected.

In view of whole above discussion this Adalat, unanimously pass the following award u/s 22 C(8) of the

Legal Services Authorities Act, 1987:-

The respondent is directed to make the payment of Rs.50,000/- as claim amount to the applicant of the policy of insurance namely Group Janta PA, Policy No.200101/47/07/61/00000032, purchased by The Fazilka Central Coop., Ltd. Bank, on 29.05.2007, from United India Insurance Company Limited/respondent. Respondent is given time of three months for making above said the claim/award from the date of receipt of copy of this award. If respondent will fail to make the payment of the claim/award, within above said period of three months, then applicant will be entitled to recover the award/claim, amount with interest @6% per annum from date of passing of award till realization of award amount, by filing execution accordingly to law.

Accordingly this case is disposed off. Copy supplied to the parties as per rules. File be consigned to the record.".

10. It is evident from a perusal of the award dated 08.02.2021 that the Permanent Lok Adalat (Public Utility Services), Fazilka has considered terms and conditions as also the certificate issued by the Hospital produced by the petitioner before it. It was thus held that since there was amputation of only one foot and that irrecoverable loss was caused in lieu of same, hence, the petitioner was entitled to compensation only to the extent 50% of the risk covered. Accordingly, a sum of Rs.50,000/- was awarded.

11. Even though the learned counsel for the petitioner has

vehemently argued that both the legs of the petitioner had been amputated, however, there is no evidence that has been brought on record by the petitioner on the basis whereof amputation of both the legs can be established. The version of learned counsel for the petitioner is self-sustaining and he himself is only stating that injuries on both the legs are there but there can be no presumption that both the legs have been amputated as a result of the above said accident. The certificate attached as Annexure P-2 dated 16.10.2017 does not suggest on a plain reading that it is a case of amputation of both the legs and rather it is a specific certificate to the effect that the amputation is of the right leg above the knee itself. The petitioner, if he so intended to prove his case of amputation of both the legs, he is required to led evidence of the hospital treatment extended to him and moreso the record of the treating hospital i.e. Sir Ganga Ram Hospital, Delhi where the amputation was undertaken. For the reasons best known, the said primary evidence that could have established the case of the petitioner has not been produced. A factual aspect cannot be presumed in favour of the petitioner who has chosen to withhold the best evidence despite being in possession thereof. A factual finding recorded by the Permanent Lok Adalat (Public Utility Services) which is based upon the appreciation of the certificate adduced by the parties including the petitioner herein which only establishes amputation of the right leg and does not establishes amputation of both the legs. I find that under the given circumstances, the terms and conditions of the policy entitled the petitioner to the benefit of 50% of the capital sum insured which has already been ordered to be released to the petitioner. The certified copy of the aforesaid certificate dated 16.10.2017 also shows that the amputation is only of right leg and not of the left leg. Hence, only one leg of the petitioner has been amputated and the case pleaded before this Court about amputation of both the legs is disputably incorrect. Under the given circumstances, I find that there is no illegality, impropriety or perversity in the award passed by the Permanent Lok Adalat (Public Utility Services), Fazilka in awarding 50% of the capital sum insured to the petitioner due to the injuries sustained by him in the said accident.

12. The present writ petition is accordingly **dismissed**. The award dated 08.02.2021 passed by the Permanent Lok Adalat (Public Utility Services), Fazilka is affirmed.

(VINOD S. BHARDWAJ)
JUDGE

24.09.2024
Mangal Singh

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