IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

217

CWP-23790-2021 (O&M).
Date of Decision: 19.01.2024.

SH. RANJIT SINGH

... Petitioner

Versus

THE NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS

... Respondents

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

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

Mr. Surinder Singh Sidhu, Advocate, for respondent No.1.

None for respondent No.2.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 23.08.2021 passed by the Permanent Lok Adalat (Public Utility Services), Bathinda whereby the application of the petitioner for grant of insurance claim on account of damage caused to the vehicle due to accident has been rejected.

Learned counsel for the petitioner contends that the petitioner is owner of the vehicle bearing registration No.PB-03-U-7433 which was comprehensively insured with respondent No.1-insurance company vide Insurance certificate No.36060431140100002960 for the period commencing from 17.11.2014 to 16.11.2015. The said vehicle met with an accident near Dhuri on the intervening night of 2nd/3rd July, 2015 at about 3:45 A.M. The vehicle in question was hypothecated with the respondent No.2-Bank and the loan was still outstanding. A power of attorney was given by the petitioner to one Sukhdeep Singh to look after the vehicle on 24.01.2015. The policy was not issued by the respondent No.1against the Insurance Certificate. Jagsir Singh was the driver of the vehicle at the time when it met with an accident as one tralla hit the vehicle. Intimation of the accident was sent to the respondent No.1-Insurance Company which appointed a Surveyor to visit the spot. The Surveyor confirmed the accident as well as the loss. The vehicle was taken to M/s Gobind Motors, Rampura Phul which is an authorized Service Centre of the manufacturer under the instructions of the Surveyor for the repair. The respondent No.1-Insurance Company deputed new Surveyor from Bathinda and under his supervision the repair was carried out and an amount of Rs.3,50,000/- was spent. Signatures of the power the attorney of the petitioner were obtained by the Surveyor on claim form and other documents. It is submitted that an agreement to sell, in the shape of affidavit with power of attorney although had been executed with Sukhdeep Singh, however, as the vehicle was hypothecated, the sale could not take place and the petitioner continuous to be the registered owner. The claim of the petitioner was, however, wrongly declined by the respondents.

On notice, the respondents appeared and submitted their reply wherein the aspect of the accident and other factors were not disputed, however, it was submitted that the petitioner had no insurable interest in the vehicle since the vehicle in question had been sold through an affidavit to

Sukhdeep Singh. Consequently, the amount of compensation and indemnification could not be paid to the petitioner.

Efforts for an amicable resolution of the dispute were undertaken by the Permanent Lok Adalat (Public Utility Services), Bathinda, however, the same failed to fructify in settlement. Adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was hence initiated by the Permanent Lok Adalat (Public Utility Services), Bathinda.

Upon consideration of the rival submissions advanced and evidence brought on record by the learned counsel for the parties, the Permanent Lok Adalat (Public Utility Services), Bathinda, dismissed the application by accepting the contention of the respondent No.1-Insurance Company about the petitioner having no insurable interest in the vehicle and having transferred the same by virtue of a power of attorney and the agreement to sell by way of an affidavit.

Aggrieved thereof, the present writ petition has been filed.

Learned counsel for the petitioner has argued that the award suffers from failure to consider the position in law. The petitioner was the registered owner of the vehicle in question and no sale in question had fructified. A mere execution of document/submission of the claim form by the Special Power of Attorney cannot be deemed as transfer of ownership since the Motor Vehicles Act, 1988, does not recognize any such contract. The respondent-Insurance Company, thus, cannot take refuge on the strength of the above said special power of attorney and repudiate the claim. It is further submitted that the respondents did not dispute that the vehicle in question was duly insured when it met with an accident and the repairs thereof had been carried out. Hence, the petitioner was entitled to the payment of the amount.

The contention of the petitioner are, however, controverted by the counsel for the respondent No.1-Insurance Company by placing reliance on the findings recorded by the Permanent Lok Adalat (Public Utility Services), Bathinda and to hold that the above said affidavit and the special power of attorney established that the petitioner had transferred his ownership rights in favour of the 3rd party and thus he was in breach of the terms and conditions of the Motor Vehicles Act, 1988. He cannot claim any indemnification since there is no loss that had been suffered by the petitioner, having transferred the vehicle to a third party.

No other argument has been raised.

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

The moot question which arises for consideration by this Court is as to whether the execution of the affidavit/special power of attorney can be construed as a document of transfer of title over the vehicle in question and to deem that the power of attorney holder is the registered owner as per the Motor Vehicles Act, 1988 so as to uphold repudiation of claim.

The above said aspect has already been considered by the Hon'ble Supreme Court in the matter of ***Surendra Kumar Bhilawe Vs. The New India Assurance Company Limited, reported as (2020) 18 SCC 224*.**

While considering the above said issue, the Hon'ble Supreme Court has held as under:-

> *"30. In our considered opinion, Sections 19 and 20 of the Sale of Goods Act, 1930, which deal with the stage at which the property in movable goods passes to the buyer, is of no assistance to the Insurer. There can be no doubt that property in a specific movable property is transferred to the buyer at such time as parties to the contract intend it to be transferred, provided such immovable property is free to be transferred, and/or in other words capable of being transferred.*
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> *31. If there is an impediment to the transfer, as in the instant case, where 'No Objection' of the financier bank was imperative for transfer of the said truck, there could be no question of transfer of title until the impediment were removed, for otherwise the contract for transfer would be injurious to the financier bank, immoral, unlawful and void under Section 10 read with Sections 23 and 24 of the Contract Act, 1872.*
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> *32. It was thus, an implicit condition of the agreement for transfer of the said truck, that the transfer would be complete only upon issuance of 'No Objection" by the financier bank and upon compliance with the statutory requirements for transfer of a motor vehicle.*
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> *33. The contract in this case, could not possibly have been an unconditional contract of transfer of movable property in deliverable state, but a contract to transfer, contingent upon 'No Objection" from ICICI Bank, and compliance with the statutory provisions of the Motor Vehicles Act, 1988 and the Rules framed thereunder. Sections 19 and 20 of the Sale of Goods Act are not attracted.*

> *34. The National Commission overlooked the definition of 'owner' in Section 2(30) of the Motor Vehicle Act, 1988. In Section 2(30) 'owner' has been defined to mean "a person in whose name a motor vehicle stands registered and, where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement". Even assuming that Mohammad Iliyas Ansari was in possession of the said truck at the time of the accident, such possession was not under any agreement of lease, hire purchase or hypothecation with ICIC Bank."*

It is apparent that the Hon'ble Supreme Court noticed the change in the definition of owner of a motor vehicle under the Motor Vehicles Act, 1988, as compared to the definition of owner in the Motor Vehicles Act, 1939. The word "registered owner" has been incorporated in the Motor Vehicles Act, 1988, as against the 'owner' to mean a person in possession of a motor vehicle under the old Act. Hence, the record in relation to the motor vehicle maintained by the Registering Authority has been given preference and any private arrangement executed between the parties as regards transfer of the vehicle has not been given any legal acceptance by the Hon'ble Supreme Court.

The respondent No.1-Insurance Company is not in a position to controvert that the vehicle still stands registered in the name of the petitioner himself and that there has been no transfer of title, so far as the record of the Registering Authority is concerned. Hence, the contention that the petitioner has no insurable interest, by placing reliance on a mere execution of a special power of attorney, is untenable and is in conflict with the judgment of the Hon'ble Supreme Court in the matter of ***Surendra Kumar Bhilawe*** (*supra*).

I feel that to the said extent, the Permanent Lok Adalat (Public Utility Services), Bathinda, has failed to appreciate the legal position which has gone to the root of the matter and that the award passed by it is liable to be set aside.

The question which next arises is as to what is the amount of compensation to which the petitioner is entitled. Even though the learned counsel for the petitioner contends that the petitioner is entitled to claim compensation to the extent of amount spent i.e. Rs.3,50,000/- on repair of the vehicle. However, counsel for the respondent No.1-Insurance Company contends that the Surveyor has assessed the loss and liability of the Insurance Company at Rs.1,98,891/- after carrying out deductions.

The above said assessment having not been disputed, the petitioner cannot claim the entire cost of repair.

Counsel for the petitioner does not dispute that it was not a case of comprehensive bumper to bumper policy or a cashless policy. Hence, the depreciation/deductions would be applicable as against the repair bill prepared by the authorized repair Centre. The assessment of total loss having been done at Rs.1,98,891/- after deduction of depreciation on the metal parts as well as rubber parts, such deductions are legally tenable. The respondent No.1-Insurance Company is accordingly held liable to pay an amount of Rs.1,98,891/- along with interest @ 6% per annum from the date of moving the application before the Permanent Lok Adalat (Public Utility Services), Bathinda, till its final disbursement.

The present writ petition is allowed accordingly.

Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

January 19, 2024 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

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