IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

214 **CWP-25224-2019**
Date of Decision: 29.01.2024

THE ORIENTAL INSURANCE COMPANY LIMITED AND ANR.
... Petitioners

VERSUS

SANJEEV KUMAR AND ANOHER
... Respondents

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

Present: Mr. Satpal Dhamija, Advocate
for the petitioners.

Mr. R.S. Longia, Advocate
for respondent No.1.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the impugned order dated 12.03.2019 (Annexure P-1) passed by respondent No.2- Permanent Lok Adalat (Public Utility Services), Kurukshetra.

Briefly summarized, the facts of the present case are that respondent No.1-applicant- Sanjeev Kumar is the owner of a car bearing registration No.HR-78A-6326 and the same was insured with the petitioner-Insurance Company vide policy No.231200/31/2017/1681 for a sum of Rs.5,02,207/- w.e.f. 22.07.2016 to 21.07.2017 on payment of a premium of Rs.16,677/-. The said car met with an accident on 29.10.2016 at about 11:00 PM in the area of village Binjalpur near Sadhaura, District Yamunanagar due to sudden appearance of stray animal (Nil Gai) on the road in front of the car. As a result of the said accident, the car suffered total damage, beyond repair. Information regarding the said accident was sent to the petitioner-Insurance

Company on the very next day and the respondent No.1-applicant claimed to have been directed for sending the vehicle to authorized workshop i.e. Velocity Volks Wagen Agency near Jandali Bridge, Ambala. The surveyor of the petitioner-Insurance Company assessed the damages on 06.11.2016 and expressed his opinion regarding total loss of the vehicle. It is averred that the surveyor had obtained signatures of the respondent No.1-applicant on various blank papers for processing the claim which was however not released by the petitioner-Insurance Company. Numerous representations were submitted by respondent No.1-applicant, however, the petitioner-Insurance Company did not respond to the same. The claim was eventually repudiated vide letter dated 22.03.2017 on the grounds that the vehicle in question was not being driven by the driver Mahavir Singh on the day of incident and that there was a breach of terms and conditions of the policy and the vehicle in question was also not being driven by a person holding a valid Driving Licence. Aggrieved of the said repudiation, an application under Section 22-C of the Legal Services Authorities Act, 1987 was preferred by respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Services), Kurukshetra.

The petitioner-Insurance Company entered appearance pursuant to the notice issued in the said application and raised various objections on merits as well as with respect to the maintainability of the said application before the Permanent Lok Adalat. It was stated that the respondent No.1-applicant has suppressed material facts on record and has not approached the Permanent Lok Adalat with clean hands. It was informed that as per information furnished by the respondent No.1-applicant, the vehicle in question was claimed to have been driven by Mahavir Singh. The abovesaid version of the respondent No.1-

applicant was contradicted by his own affidavit dated 03.12.2016 wherein he claimed that he was driving the vehicle in question at the time of incident; whereas Satish Kumar- brother of the respondent No.1- applicant has stated that on the date of incident, he was driving the vehicle in question. Hence, the true genesis of the occurrence has been concealed. Reliance is placed on the Driving Licence of one Mahavir Singh; whereas even as per the affidavit filed by respondent No.1-applicant and his brother Satish Kumar, Mahavir Singh was not stated to be driving the vehicle in question and was being driven by both of them. None of the persons i.e. either respondent No.1-applicant - Sanjeev Kumar or his brother Satish Kumar have placed any valid Driving Licence on record.

Efforts were made for amicable resolution of the dispute, however, the same failed to culminate in any amicable settlement. Hence, adjudication under Section 22-C(8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), Kurukshetra.

After considering the evidence led by the respective parties, the application of the respondent No.1-applicant was allowed and the petitioner-Insurance Company was directed to pay insurance amount of Rs.5,02,207/- alongwith compensation and litigation expenses with interest at the rate of 7% per annum.

Aggrieved thereof, the present petition has been filed.

Learned counsel for the petitioner-Insurance Company has vehemently argued that the Permanent Lok Adalat (Public Utility Services), Kurukshetra has fell in a gross error in failing to notice the defence of the petitioner-Insurance Company to the effect that the vehicle in question was not being driven by an authorized person holding a valid Driving Licence and also that the respondent No.1-applicant was in breach of the material terms and conditions of the policy. It is further contended that the damage to the vehicle was further escalated on account of transportation of the vehicle without any instructions issued by the petitioner-Insurance Company.

Controverting the arguments advanced by the petitioner-Insurance Company, counsel for the respondent No.1-applicant contends that the present petition is misconceived and that all contentions of the petitioner-Insurance Company were duly considered by the Permanent Lok Adalat (Public Utility Services), Kurukshetra and an Award has been rightly passed. Such an Award ought not to be interfered with by this Court in exercise of its power of judicial review since there is no illegality, perversity or impropriety noticed in the impugned Award. The name of 'Satish Kumar' was inadvertently mentioned by the respondent No.1-applicant at the time of submission of the application form. The vehicle in question was owned by the joint family, however, it stood registered in the name of respondent No.1-applicant. It is further contended that the brothers were holding valid Driving Licences on the date of accident and no purpose would be served by concealing any information and that there was no occasion for them to have submitted erroneous information with the petitioner-Insurance Company.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

A perusal of the impugned Award passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra clearly shows that an objection had been raised by the petitioner-Insurance Company that the respondent No.1-applicant himself pleaded that the car in question was driven by Mahavir Singh whereas in his affidavit dated 03.12.2016, he claimed to be driving the vehicle in question himself. It is also stated by him that when the investigator of the petitioner-Insurance Company recorded the statements, Satish Kumar-brother of Sanjeev Kumar made a statement that he was driving the vehicle in question at the time of accident. Hence, now there are three versions w.r.t. the persons driving the vehicle in question at the time of accident. While the stand of the respondent No.1-applicant in his reply filed before this Court is to the effect that Sanjeev Kumar-insured was himself driving the vehicle in question, in the application submitted with the petitioner-Insurance Company, the Driving Licence of Mahavir Singh had been appended to make a case that Mahavir Singh was infact driving the vehicle in question at the time of accident; while statement of Satish Kumar is to the effect that he was actually driving the vehicle in question at the time of accident.

Further, the report of the surveyor also shows that no person sustained any injury in the accident and there were minor damages to the car, which remained at the site during the night and the same was lifted with the help of a crane on the next date. The damages, as assessed by the investigator, were caused by the crane and not on account of the impact of accident with the Nil Gai, as alleged. He further submits that the site was also inspected by the investigator as per which it was revealed that the car infact had struck against a mile stone, which was also lying there in a damaged condition. Thus, a suspicion was cast with respect to the manner and nature of accident in which it has been claimed to have taken place by respondent No.1-applicant.

Another argument has also been advanced that the car in question was financed from the bank and that no amount of insurance can be released in favour of the respondent No.1-applicant, since the lien is that of the bank, which had financed the vehicle in question.

It would also be necessary to advert to the findings recorded by the Permanent Lok Adalat (Public Utility Services), Kurukshetra and the same are extracted as under:

> *"Point No.1- In support of this point the case of the applicant as pleaded by him in the application and as argued by his learned Counsel is that the Car HR-78A-6326, is owned by him and it had been insured by him for a sum of Rs.5,02,207/- vide policy No.231200/31/2017/1681, with effect from 22.07.2016 to 21.07.2017, with the respondents. The further contentions of the applicant are that this vehicle had met with an accident at about 11 PM on 29.10.2016, in the area of Binjalpur near Sadhaura, Yamunanagar and that it was totally damaged in the accident and that this vehicle was being driven by one Mahaveer Singh, at that time. It is also further case of the applicant that the intimation of this accident and total loss of the vehicle was given to the Insurance Company immediately and claim was lodged, but the respondents had not settled the insurance claim, rather they repudiated the claim on 22.03.2017, on the ground that the vehicle at the time of accident was not being driven by Mahaveer Singh. The further case of the applicant is that his claim was wrongly been repudiated by the respondents which has caused financial loss to him. The learned Counsel for the respondents on the other hand submitted that the accidental vehicle though was insured with the respondents, but at the time of accident the vehicle in question was not being driven by Mahaveer Singh rather it was being driven by the applicant himself and wrong information was supplied by the applicant to the Insurance Company. He has also*

submitted further that for suppression of this material fact the claim of the applicant has been rightly repudiated vide order/letter dated 22.03.2017.

We have gone through the record of the case in the light of the aforesaid contentions raised by the learned Counsels appearing for the parties. So far as the applicant being owner of the accidental vehicle and its having met with an accident on 29.10.2016, during night is concerned, these facts have not been disputed by the respondents. Moreover, the insuring of the vehicle is independently proved on record from the copy of insurance Ex P3, Ex R1 and Ex R1/A. The vehicle having been damaged beyond repairs that fact is admitted by the respondents in their reply of course with the rider that the extensive damage was caused to the vehicle by the applicant himself when it was removed from the spot. These allegations of damaging the insured vehicle extensively by the applicant himself are without any proof on record In other words there is no independent evidence led by the respondents to prove this fact. The best possible evidence that could have been led by the respondents in this regard would have been the evidence of the person who had removed this vehicle from the place of accident, but that person has not supported the case of the respondents. Had it been true that the vehicle was extensively damaged by the applicant himself then the Insurance Company would have reported the matter to the police so as to prove the allegations in order to extract the truth. The respondents are laying much stress on the statement of Rameshvar, Ex.R10, which is a photocopy. Who has written this statement is absent on the file. Affidavit of this person in original should have been placed on record by the respondents. His affidavit Ex R12, is also a photocopy and, therefore, both these documents cannot be relied upon. Even the statement of Rampal, Ex.R3, being photocopy cannot be relied upon. The report of the surveyor Ex.R4, which is document of the respondents itself shows that the vehicle in *question was extensively damaged. In this report it has also been mentioned that the Car was damaged by the applicant with the help of the crane in order to get more compensation, but the driver of the crane has not supported the case of the respondents in this regard. So from the evidence discussed herein above, it is amply proved on record that the car of the applicant was damaged extensively in the accident on the night of 29.10.2016, during the subsisting period of insurance and, therefore, the applicant is entitled to insured amount of Rs.5,02,207/ and his claim which he had lodged with the Insurance Company within time has wrongly been repudiated by the Insurance Company as reflected in Ex R14. The point is accordingly decided in favour of the applicant and against the respondents.*

Point No.2- *In the light of our findings on point No 1 for determination, it has been proved on record that the insured vehicle of the applicant HR-78A 6326 had been totally damaged in the accident on 29.10.2016 and he had lodged the loss with the Insurance Company (respondents) as reflected in Ex R2, and despite that the claim of the applicant had not been settled and released by the respondents. Even the applicant had served notice Ex P4, on the respondents and despite that his genuine claim had not been settled by the respondents All this amount to deficiency in service on the part of the respondents towards the applicant and his claim has wrongly been repudiated by the respondents which has caused harassment, mental agony and paid to the applicant and, therefore, he is certainly entitled to compensation. In the given facts and circumstances of the case, we quantify the amount of compensation to be paid by the respondents to the applicant to the tune of Rs. 15,000/ and it shall be paid by the respondents to the applicant. Secondly, the applicant has to come to the Court for claiming his genuine insurance amount which was wrongly denied to him as already discussed herein above and for this purpose he engaged Lawyer to establish his claim in the Court for which he* *has spent money and, therefore, he is also entitled to litigation expenses from the respondents which are quantified to the tune of Rs. 11,000/- and this amount shall also be paid by the respondents to the petitioner. The point is accordingly decided in favour of the applicant/petitioner and against the respondents.*

Final order-*In the light of our aforesaid findings on the aforesaid points Nos. 1 and 2 for determination, the application of the applicant succeeds and is hereby allowed with costs by passing this Award under Section 22C(8) of the Legal Services Authorities Act, 1987. The respondents are directed to pay insurance amount of Rs.5,02,207/-, compensation amount of Rs.15,000/- and litigation expenses to the tune of Rs. 11,000/- to the petitioner with interest @ 7% per annum from the date of application till the date of actual payment. This award shall not be called in question in any Civil Court by any of the parties and this award is executable by any Civil Court of competent jurisdiction at Kurukshetra, as if it is a decree passed by such executing Court. Copies of this award be supplied to both the parties free of charges and the file thereafter be consigned to the record room."*

It is evident from a perusal of the abovesaid finding that the Permanent Lok Adalat (Public Utility Services), Kurukshetra has not examined the argument advanced by the petitioner-Insurance Company as to who was driving the vehicle in question at the time of accident. Once the petitioner-Insurance Company had placed the relevant documents on record showing that the true genesis of the occurrence was being concealed and the vehicle in question was being driven in violation of the terms and conditions of the insurance policy, the burden lay upon the respondent No.1-applicant to establish that the vehicle in question was being driven in compliance of the mandatory terms and conditions and that the person driving the said vehicle was holding a valid Driving Licence at the time when the accident had taken place.

Besides, there is nothing on record on the basis whereof the surveyor's/ investigator's report has been discarded.

Insurance Company does not become liable to indemnify a person merely on account of damage; rather it is also required to be established that the damage in question had occurred without violation of the essential terms and conditions of the Insurance Policy. It is mandatory as per the terms and conditions of the Insurance Policy that the vehicle in question is required to be driven by a person holding a valid Driving Licence and that every such step is required to be taken by the insured that would mitigate the consequential losses as well.

The respondent No.1-applicant has failed to adduce any trustworthy evidence on the basis whereof it can be held that the vehicle was actually being driven by a person holding a valid Driving Licence and that they had taken adequate steps to prevent the consequential losses. The relevant extract of the statement of respondent No.1-applicant, as recorded by the investigator, is extracted as under:

> *"I, Sanjeev Kumar son of Shri Bal Swaroop, am resident of Village Naraingarh Tehsil Shahbad M. District Kurukshetra. I do work of building lifting and the same is joint of me and my brother. We are having one white Bokswagon car No. HR78A 6326. This car is on my name. This car has been brought through loan by Induslind Bank in the year 2014, installments of which have been completed till today. Usually this car is being used by my brother On 28.10.2016 he along with his partner Mahavir Singh went to Rajasthan Nagaur. They returned from there on 29.10.2016 and he went to Village Mohdi Bilaspur to drop Mahavir from where he was returning at night. On the way around Sadhaura due to coming of Neel Cow, accident of car has occurred. My brother was*

alone in the car. He did not receive any injury. The car got badly damaged. On the next day, we stationed the - car at Ambala Showroom with the help of crane."

While statement of Satish Kumar is extracted as under:

"I, Satish Kumar son of Shri Bal Swaroop, am resident of Village Naraingarh Tehsil Shahbad M. District Kurukshetra. I do work of building lifting. I am having one Bokswagon car No. HR78A 6326. This car was purchased by me in the year 2014. This car was got financed by me through Indusind Bank. The car is in the name of my brother Sanjeev Kumar son of Shri Bal Swaroop. We are having joint work. The car has run around 76000 kilometers. Service of car is being done through car showroom. Every time I used to get car's service done. Last time service was conducted in September October of 2016. I use my car for my personal work. On dated 28.10.2016, 1 along with my working partner Mahabir Singh son of Shri Ram Singh resident of village Mohri Bilaspur went from my village to Jayal District Nagaur (Rajasthan). I went there to meet Bajag Lal. His house's linter was to be uplifted. After meeting him and getting earnest money etc. from him, I started departure on 29.10.2016 and we started around 11 AM. Mahabir Singh after dropping him to village was returning to his village. I was alone in the car. When I reached near Bijalpur from Sadhaur then Neel Cow came at that time it was 11 PM at night. In order to save the Neel Cow, I turned car to one side. The car struck against the pillar of milestone standing on the edge of road on which Shahabad 33 kilometer was written. Two passerby pulled me out and I called my friend Mahabir. Mahabir came to me. I had internal injuries. He came there in car and dropped me at my house. On the next day i.e. 30.10.2016 I got the car straighten through calling Crane from Dosadka and by the same crane the car was made stationed at Bolsbagon Ambala Showroom. I did not make any police report of this incident. My car is stationed at

showroom, which is totally damaged. No one has received any injury in this accident."

Further, reference is also made to the statement of Mahavir Singh, as per which Satish Kumar was driving the vehicle in question at the time of accident. The same reads thus:

> *"I, Mahabir Singh son of Shri Ram Singh, am resident of Village Mohri District Yamuna Nagar. I do work of building lifting. I am doing this work jointly with Satish Kumar son of Shri Bal Swaroop from the last four years. I along with Satish Kumar went to Rajasthan Nagaur District on dated 28.10.2016. We went there to meet Bajrang Lal. We returned to village after meeting him. Satish Kumar went to my village to drop me. After dropping me at around 9 O' Clock he was coming back to his village on 29.10.2016. On the way near Bijalpur village his accident has occurred. He has called me on my mobile No.9896339912 to reach at the spot. He has called from his mobile No. 9813942103. I took him from the spot and dropped him at house. On the morning of 30.10.2016, we took the car from the spot and stationed the same at someone's house at stand of village Bijalpur and on that day the car was stationed there and on the next day, we stationed the car at Ambala through Crane and the crane by which the car was pulled out has stationed the same at Ambala.*
>
> *Sd/- Mahabir Singh*
> *21/12/16*
> *9896339912"*

As against the same, the affidavit sworn by the respondent No.1-applicant reads thus:

"AFFIDAVIT

> *I, Sanjeev Kumar son of Shri Bal Swaroop, am resident of Village Naraingarh Tehsil Shahbad M. District Kurukshetra do hereby solemnly affirm and state as under:*

1. *That the deponent is owner and possessor of one car Bolswagon No.HR78/A/6326 having Chassis No. WVWA1460XET055853 Engine No.CFW433478 of 2014 Model, insurance of which has been issued by your Oriental Insurance Company Limited, Chandigarh on dated 22.07.2016 and the same was valid till 21.07.2017.*

2 *That the accident of above mentioned car of the deponent was occurred on dated 29.10.2016 at 11 PM in night, we were going from Village Sadhaura to home then suddenly a Neel Cow came and to save the same I turned the car due to which after hitting the pillar of milestone the same fell into ditch and my car got damaged from all the sides.*

3. *That except damage to the above said vehicle, no third party damage has been caused and my driver Mahavir Singh's licence No. is HR7120090017363, which has been issued on dated 11.08.2009 by the Bilaspur Authority and is valid till 10.08.2029.*

4. *That in future if something is found to be wrong then it would be responsible.*

5. *That the statement of deponent is true and correct."*

It is also significant to quote herein that the statement of the crane driver was also recorded by the surveyor, wherein it has been mentioned that the car had turned over after being struck with a milestone. The relevant extract of the said statement reads thus:

> *"I, Manjit Singh son of Jarnail Singh, am resident of Village Dheen, Tehsil Barara, District Ambala. I do work of driving the Crane at Singh Crane Service. I drive their Hywa Crane No.HR68A/1412. On the evening of Deewali at 3 PM, I had lifted one over turned white coloured Volkswagen Car from road side at Village Bijalpur near Sadhaura. That was 3-4 feet below the road. The car had over turned after being struck with the milestone*

wherein not much damage has occurred. I placed the car on the road after lifting through my Crane and came to my office. I had taken Rs.2,500/- for lifting the same. I had not seen any blood etc. in that car."

The statements of other persons were also recorded as per which the damage to the car had been caused extensively on account of lifting of the same through crane.

It is evident from a perusal of the aforesaid essential aspects that the respondent No.1-applicant has not only concealed the manner in which the accident had taken place but has also failed to establish that as to who was driving the vehicle at the time of the accident in question. Even though the respondent No.1-applicant has averred in his written statement filed before this Court that he as well as his brother Satish Kumar were holding valid Driving Licences, however, he has chosen, for the reasons best known to him, not to append the said Driving Licences in the proceedings of the PLA or alongwith the written statement filed before this Court as well.

In either case, the very fact that the respondent No.1-applicant has been changing his stands with respect to the persons driving the vehicle in question at the time of accident, the version of the respondent No.1-applicant deserves to be disbelieved. Further, the report of the investigator, which is based upon not only the statement of crane driver but also on spot inspection, suggests that the vehicle in question had infact struck against the milestone and that the accident did not take place on account of collision with a *Nil Gai*, as claimed. The statements of Rameshwar and other persons were disbelieved by the Permanent Lok Adalat (Public Utility Services), Kurukshetra only on the ground that a mere photocopy of the same had been filed, however, the mandate of Section 22-C of the Legal Services Authorities Act, 1987 does not require burden of proof to be discharged by leading evidence as per the provisions of the Evidence Act, 1872 since applicability of the provisions of Civil Procedure Code, 1908 as well as Evidence Act, 1872 have been dispensed with in the proceedings before the Permanent Lok Adalat (Public Utility Services) under the Legal Services Authorities Act, 1987. In any case, the statement of Rameshwar is not in reference to the person driving the vehicle and/or the manner in which the accident had taken place and the said aspect could only have been in relation to consequential loss that had been caused. However, as the primary issue as to who was driving the vehicle and whether he had a valid Driving Licence at the time of accident in question itself is not substantiated, corroborated and established by the respondent No.1-applicant.

The Permanent Lok Adalat (Public Utility Services), Kurukshetra erred in disbelieving the version of the petitioner-Insurance Company and overruling the said objections without any valid cause. The impugned Award does not give any reasons as to why the said objections were liable to be disregarded/discarded and has chosen to ignore the vital discrepancies in the statements of the respondent No.1-applicant, Mahavir Singh- the claimed driver as well as Satish Kumar-brother of respondent No.1-applicant- Sandeep Kumar.

Considering it from any perspective, the respondent No.1-applicant was apparently in breach of the terms and conditions of the Insurance Policy and an inference, which validly flows from a consideration of the said evidence and pleadings, is that the vehicle in question was not being driven by a person holding a valid Driving Licence at the time of accident in question.

I am of a view that the impugned Award passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra failed to take note of the crucial aspect of the case. The award thus suffers from misreading and misappreciation of the evidence available on record. The same is accordingly liable to be set aside.

Consequently, the present petition is allowed.

The Award dated 12.03.2019 passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra in Application No.39 of 2017 titled as 'Sanjeev Kumar Versus The Oriental Insurance Company and another' is hereby set aside.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 29, 2024.
rajender

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