2024:PHHC:163095

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-27562-2019 (O&M)
Date of decision: 03.12.2024

JAGMOHAN MOTORS LTD. ......Petitioner

VERSUS

SONIA TAGRA AND OTHERS ....Respondents

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

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Present: - Mr. N.K. Malhotra, Advocate
for the petitioner.

Mr. Ankur Dua, Advocate
for respondent No.1.

Mr. Deepak Jindal, Advocate for respondent No.2.

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<u>VINOD S. BHARDWAJ, J. (Oral)</u>

Challenge in the writ petition is to the Award dated 20.05.2019 passed by the Permanent Lok Adalat (Public Utility Services), Rohtak by which the claim of respondent No.1-applicant for a sum of Rs. 51680/- has been allowed and the petitioner has been directed to pay the above said amount.

2. Learned Counsel appearing on behalf of the petitioner-Agency contends that it is an authorized dealer of Maruti Suzuki Motors in Rohtak and is also providing Insurance Broking services under the name of 'Maruti Insurance Broking Pvt. Ltd.'. The respondent No.1-applicant, being owner

of a Car Model No. MARUTI VITARA BREZZA ZDI bearing registration No. HR 12-AE-5424, had purchased the insurance policy from the National Insurance Company for the period from 19.10.2018 to the mid night of 18.10.2019 under Policy No. 42160031181142545763 for the said motor car. The premium amount of Rs. 21,300/- was paid by the respondent No.1-applicant through cheque bearing No. 227803 of Axis Bank Ltd. for the total IDV of Rs. 6,96,000/-. The said car, however, met with an accident on the Faridabad Road, Gurugram on 04.01.2019 whereafter it was brought for repair to the petitioner-dealer. The repair charges were demanded by the respondent No.1-claimant from the Insurance Company, to be reimbursed, however, the same was declined by it against which the instant application under Section 22 (C) of the Legal Services Authorities Act, 1987 was filed before the Permanent Lok Adalat (Public Utility Services), Rohtak seeking a prayer to the respondents to grant insurance claim for the repairs and other charges as per the insurance policy and also to pay compensation for mental agony and litigation expenses.

3. The respondent-Insurance Company entered appearance before the Permanent Lok Adalat and filed its written statement specifically pointing out that when the cheque No. 227803 drawn on Axis Bank, issued by the respondent No.1-applicant towards payment of premium against the said policy was presented to the Bank, the same was dishonored. An intimation about the dishonor of cheque and cancellation of the policy vide endorsement No. 105954232 dated 12.11.2018 was sent through registered post to the address of the respondent No.1-applicant. No insurance premium

was thereafter deposited by the respondent-applicant, hence, the Insurance Policy was no more enforceable or in existence as on January, 2019 when the car met with the accident. It was averred that the policy and the schedule have to be read together in one contract and once the premium amount has not been paid, the indemnification for the accident loss, under the contract, cannot be sought for.

4. The petitioner Jagmohan Motors Ltd. also filed its short reply to the said application and it was specifically said that it was only an authorized agent on behalf of the company and had sold the vehicle. It has not entered into any contract or received premium for indemnifying any loss/damage that may be caused to the vehicle on account of an accident and as such the claim was not maintainable against the Agency.

5. The conciliation proceedings failed to culminate into a settlement whereupon an adjudication under Section 22 (C) (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat.

6. Vide its Award dated 20.05.2019, the Permanent Lok Adalat observed that the petitioner agent, being the broker company, was under an obligation to arrange deposit of the premium amount in cash from the applicant-respondent No.1 by contacting him personally or telephonically for maintaining goodwill of the company and as it failed to do so, therefore it was liable to pay the amount towards repair and damages of the vehicle to the tune of Rs. 51,680/-. The operative part of the Award passed by the Permanent Lok Adalat reads thus:-

"Perusal of the documents placed on file and pleadings put forward by all the parties, it is observed that Annexure A1 is the copy of Registration Certificate, Annexure A2 is the copy of Certificate-Cum-Policy Schedule, Annexure A3 is the copy of receipt issued by J.J Impex Pvt. Ltd. A 4 is the copy of bill issued by Mukesh and Ganga Crane Service, A 5 is the copy of Saini Crane Services, A 6 is the copy of Aadhaar Card of the petitioner. Ex. PW/1 is the copy of Private Car (General Insurance), Ex. P2 is the copy of driving licence of Sh. Naveen Tagra, Ex. P3 is the copy of account statement of AVGrow Health Care issued by Axis Bank, Rohtak, Ex. P4 is the copy of estimate issued by Chetan Motors, Ex. P 5 is the copy of photographs of the damaged vehicle, Ex. P6 is the copy of partnership deed between Sh. Naveen Tagra and Sh. Satish Bajaj, Ex. P 7 is the copy of affidavit dated 23.4.2018 sworn by the applicant Sonia Tagra and Ex. P 8 is also the affidavit dated 2.3.2018 sworn by the petitioner Sonia Tagra. Ex. RW2/A is the copy of cheque dated 18.10.2018 issued by AVGrow Health Care in favor of National Insurance Company Ltd, Ex. RW 2/B is the copy of registered mail dated 12.11.2018 sent by National Insurance Company to the petitioner, Ex. RW 2/C is the copy of track report of the consignment issued by Head, Post Office, Rohtak. Ex. RW2/D is the copy of letter issued by the Bank regarding returning of the cheque uncashed.

Perusal of all the above discussed documents placed on file reveals that the petitioner arranged cheque of premium amount from the firm of her husband. AVGrow Health Care and this cheque was returned back uncashed in spite of the fact that sufficient balance was *available in the account of the firm as evident in the account statement exhibited as P3 by the petitioner. As a matter of fact, JagMohan Motors being broker of the Insurance Company was required to ensure encashment of the cheque by pursuing the petitioner in person are telephonically informing about the return of cheque uncleared but the Broker Company did not take any action to ensure payment of the Insurance Policy to the Insurance Company, resulting which the petitioner was deprived of the legitimate right of her damaged vehicle, within the purview of the insurance policy. The petitioner has also placed on record the affidavit stating that she did not receive any kind of notice/intimation from the Maruti Broker Company and National Insurance Company regarding the cancellation of the insurance policy before the date of accident and she received E mail from Maruti Insurance Company after the filing of the present suit on dated 23.01.2019 and by that time it was not possible for her to get the policy renewed by presenting a fresh cheque or making cash payment against that policy. However she got her vehicle insured again vide Policy No. 20900015640/00/000000/0 dated 07.03.2019 for the period 08.03.2019 to 07.03.2020, as evident from Ex. 1 exhibited by the petitioner which clearly indicates that after knowing about the cancellation of the earlier insurance policy cover of her vehicle, she took a fresh insurance cover for the said vehicle after getting the damaged vehicle repaired. Hence, it clearly appears that there was no intention on the part of the petitioner to save premium amount for the said insurance policy. The respondent-have furnished on record the copy of track report issued by Head, Post*

Office, Rohtak showing that the intimation letter/article was received by some Jyoti at the residential address, as given by petitioner in the policy cover but the petitioner in her affidavit fumished on file as Ex. P7 has stated that she does not know any person named Jyoti. The petitioner in her affidavit exhibited as P8 has also stated that the Axis Bank had also not given any kind of written information about presentation of the disputed cheque and about the return of the cheque and neither such information is mentioned in the account statement issued by the Bank, exhibited on file by the petitioner as Ex. P9 and petitioner has also exhibited Ex. P10 regarding the expenditure incurred for repairing of car through bills amounting to Rs. 19,395+32,285 = 51,680/-. The respondent exhibited RW2/D showing the copy of the Registered letter dated 12.11.2018 sent to the petitioner intimating that the policy stands cancelled as the premium cheque has been unpaid by the Banker due to alt in dt/fig/wrd req draw full sig but the petitioner denied about any such mail received by her. In view of the above discussions, we are of the considered view that there is no mala fide intention at the part of the petitioner to delay the payment of the premium of the policy cover and it was the duty of the Broker Company i.e. JagMohan Motors to ensure that payment is either encashed through cheque or is made in cash through the petitioner to ensure the validity of the insurance cover of the vehicle. However, the Insurance Company cannot be held responsible for the cancellation of the policy cover because the cheque forwarded by the Broker Company was not encashed and was returned back by the Banker to the Broker Company and under the circumstances it was the duty of the Broker

Company to ROV arrange deposit of premium amount in cash from the petitioner by contacting her personally or telephonically for maintaining goodwill of the Company. Hence, we direct JagMohan Motors Ltd. to pay the amount of repair of the damaged vehicle for Rs. 51,680/- (fifty one thousand six hundred eighty only) to the petitioner within one month of the passing of this order. If the respondent No. 2 JagMohan Motors Ltd. fails to pay within stipulated period then 9% interest will be levied on awarded amount from the date of award till realization of amount."

7. Aggrieved thereof, the present writ petition has been filed by the authorized dealer.

8. Learned Counsel appearing on behalf of the petitioner has vehemently argued that the Award passed by the Permanent Lok Adalat suffers from gross mis-appreciation of the statutory provisions and has failed to take into consideration that the petitioner-authorized agency was nowhere liable to indemnify for damage to the vehicle. There was neither any privity of contract nor any risk had been undertaken by the petitioner Agency. He submits that the hypothesis adopted by the Permanent Lok Adalat (Public Utility Services) in holding that in order to maintain a goodwill, it should have collected the amount in cash from the insured and remitted the same to the Insurance Company, is not based upon any duty that had been cast upon the petitioner under any agreement. In the absence of any duty or obligation cast upon the petitioner agency to have collected the due premium on account of dishonor of the cheque, the liability towards the loss suffered on

account of damages to the vehicle in an accident could not have been fastened against the petitioner-Agency.

9. Counsel for the respondent No.2-Insurance Company on the other hand has referred to the written statement filed before this Court and has argued that the cheque dated 18.10.2018 (wrongly written as 18.10.2019) in the name of the Insurance company was returned dishonoured/uncashed. Accordingly, the Insurance Company cancelled the policy vide endorsement No. 105954232 on 12.11.2018 and sent an intimation through the registered post with a request to return the original insurance policy. A copy of the same was also sent to the petitioner-Agency as well and to the RTO. Notwithstanding the dispatch of the communication about cancellation and the reasons for the same, the premium was not deposited by the respondent No.1-applicant and as such, the contractual relationship of the insured and the insurance company ceased to exist. It was thus no more liable to indemnify for the damages suffered by respondent No.1. He also makes a reference to the tracking report of the intimation letter by the same and contends that the same was received by one 'Jyoti' on 11.12.2018.

10. Counsel for the respondent No.1-applicant refers to his reply and contends that the cheque in question was issued on 18.10.2018 and that as per the IRDAI guidelines on Motor Insurance, it was specifically stated that the maximum period for processing of the proposal and communication of the decision including requirement/issuance of policy/cancellation shall be 15 days whereas the cheque in question had bounced on 12.11.2018 i.e.

after a period of more than 15 days. He further submits that the intimation letter which was sent by the respondent-Insurance Company was received by one 'Jyoti' but the same was never delivered to the petitioner. Rather, it was in the process of the delivery when some postal persons received the bag containing the communication and the same was in no way connected to the petitioner. Hence, the petitioner remained uninformed about the dishonor of the cheque as also the cancellation of the Insurance policy. Hence, the Award had been rightly passed by the Permanent Lok Adalat (Public Utility Services), Rohtak.

11. Emphatic reliance has been placed upon the hand book on motor insurance issued by the Insurance Regulatory and Development Authority of India.

12. No other argument has been advanced nor any judgment cited.

13. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

14. Certain facts remain undisputed which are as under:-

i) That the vehicle in question was sold by the petitioner, who was an authorized agent of the Maruti Suzuki Motors India Pvt. Ltd.

ii) It was only a broker agent and that the insurance policy in question had been issued by the respondent No.2-National Insurance Company Ltd. The premium amount was paid by the respondent-applicant vide cheque bearing No. 227803 drawn on

Axis Bank Ltd. to the tune of Rs. 21,300/-.

iii) That the said cheque was dishonoured by the Bank on presentation and was returned to the respondent-Insurance Company on 12.11.2018.

iv) The accident in question took place on 04.01.2019.

15. While the respondent-applicant has been justifying his entitlement to the indemnification on the ground that he was not in receipt of communication as regards the dishonor of the cheque and the consequential cancellation of the policy, the question which primarily arises before this Court is as to whether the petitioner authorized agent, from whom the vehicle had been purchased and who was the broker for the insurance obtained at the time of sale of the vehicle, could be held liable to pay the damages suffered on account of an accident that took place at the time when the vehicle did not have a subsisting insurance policy.

16. It is not in dispute that the petitioner agency is not under any contractual agreement with the respondent-applicant to indemnify him for any loss and there was no privity of contract or underwriting of any risk or loss to the vehicle. The liability has been fastened on the petitioner-Agency solely on a hypothesis that being a broker, it ought to have intimated the respondent-applicant about the dishonor of the cheque and should have made efforts to collect the premium in cash and thereafter, forwarded the same to the Insurance Company. However, there is no basis for such hypothesis and fastening of a liability. It could equally also be stressed that there was a parallel responsibility upon the insured to keep a track as to

whether the insurance premium stood paid or not. It is evident that no steps were taken by the respondent-applicant to check from his bank as to whether the premium amount has been cleared or not. Liability against a person can be enforced on a proven breach of a duty. A desirability cannot be held sufficient to affix a liability. In the absence of any duty cast in mutual relationship, giving rise to an enforceable obligation, a mere desirability of conduct in a particular manner is not sufficient to hold a person liable to indemnify for the loss so occasioned. Needless to mention that an Account statement would have also been generated during the said period and the respondent-applicant would also have been informed by the Bank about the dishonor of the cheque that had been issued by him. Even the respondent-applicant had not taken any steps to keep himself insured against any risk/damages. It would be inappropriate to thus hold a broker liable to indemnify when he had a limited role.

17. As far as reliance placed upon the guidelines issued by the IRDAI about a period of 15 days prescribed for taking a decision as to whether the policy is to be availed or not is concerned, the said argument is based upon fallacious reading of the provisions. The same merely gives a time frame to the respective parties to study the policy document carefully and thereafter, to take a conscious decision as to whether it wants to continue with the contractual relationship or not. The same cannot be held to construe that even if the premium is not paid, the vehicle would be deemed to be duly insured on expiry of a period of 15 days. The obligation to indemnify for the loss accrues on payment of premium against an insurance

coverage and that the respondent-applicant cannot claim any indemnity from payment of the premium after an expiry of period of 15 days. Further, the respondent-applicant also cannot claim that she should not be held in default solely for the reason that even though the cheque in question was issued on 18.10.2018 but the same was dishonoured in November, 2018 i.e. after more than a period of one month. The same could have been an argument/defence available to the respondent-insured in case the accident in question would have taken place prior to the deposit of the cheque by the respondent-Insurance Company with the Bank. Under such a circumstance the respondent-applicant may have validly argued that he cannot be held to be at fault since the delay in presentation of the cheque lay on the part of the respondent-Insurance Company itself. The proposition in the case in hand is entirely different and the event of claim is after the dishonor of the cheque. Now adverting to the issue as regards the delivery of the orders cancelling the policy and calling upon the respondent-insured to return the policy document dated 12.11.2018. Even the argument of the petitioner about the tracking report has to be seen in the context that at one point of time i.e. on 11.12.2018, the document was received by one 'Jyoti', the same being in the process of a transit, the subsequent tracking report having not been put-forth would not in any way defeat the factual aspect that the communication about rejection of policy was sent through registered post. Section 27 of the General Clauses Act, 1897 presumes effecting of service once communication is sent through a registered post. The said statutory presumption has not been rebutted by the respondent-applicant in any manner.

18. Hence, taking the facts of the present case by any of the perspective including that there was complete lack of privity of contract, I find that the Permanent Lok Adalat (Public Utility Services), Rohtak fell in error while fastening the liability upon the authorized service center/agency to indemnify for the loss that had occasioned as a result of accident caused in January, 2019.

19. For the foregoing reasons, I find that the Permanent Lok Adalat (Public Utility Services), Rohtak committed an error in appreciating the factual as well as legal aspects involved in the present case and thus committed an error. The impugned Award dated 20.05.2019 suffers from an illegality, impropriety and failure to appreciate the facts and circumstances of the present case in its true perspective, scope and application. The present writ petition is accordingly allowed and the Award dated 20.05.2019 passed by the Permanent Lok Adalat (Public Utility Services), Rohtak in ***Petition No. 163 of 2019*** titled as ***"Sonia Tagra versus Manager, National Insurance Company and another"*** is set aside.

20. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)

DECEMBER 03, 2024 **JUDGE**

Vishal Sharma

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