IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-22794-2024 (O&M)
Date of decision: 09.09.2024

The New India Assurance Company Ltd. and others
...Petitioners

VERSUS

Permanent Lok Adalat (Public Utility Services), Camp Court at Narnaul and others
...Respondents

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

Present :- Mr. Suman Jain, Advocate with
Mr. Rishabh Jain, Advocate for the petitioners.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 22.01.2024 passed by the Permanent Lok Adalat (Public Utility Services), Camp Court at Narnaul, whereby the application No.280 of 2019 filed by respondent No.2-insured/applicant has been allowed and the petitioner-insurance company has been directed to pay a sum of Rs.30 lakhs (IDV of the vehicle) along with interest @9% per annum from the date of filing of the application till realization alongwith compensation of Rs.31,000/- on account of harassment and litigation expenses to respondent No.2-applicant.

2. Learned counsel appearing on behalf of the petitioners contends that respondent No.2-insured had preferred the above application before the Permanent Lok Adalat (Public Utility Services) pleading that he was the registered owner of vehicle Trailer bearing registration No.HR-66B-2617, which was insured with the petitioner-Insurance Company vide insurance policy No.33180131180100002794 valid w.e.f. 17.06.2018 to

16.06.2019 and had paid the premium of Rs.28,208/- at Narnaul. One of the tyres of the vehicle got punctured in the night on 15.01.2019 and that respondent No.2-applicant left the vehicle parked at the place, where the tyre was punctured, so as to get the tyre repaired. When respondent No.2 reached back on the spot at about 1.40 AM, he found that the vehicle was missing. He gave information in this regard to the Police on number 100 and an FIR No.15 dated 16.01.2019 under Section 379 IPC was registered immediately at Police Station Kasola, Rewari. The Insurance Company was also informed regarding theft of the vehicle. The said FIR was investigated into and an untrace report was eventually submitted by the Investigating Agency. The petitioner-insurance company however repudiated the claim of respondent No.2 on the ground of breach of terms & conditions of the Policy for having left the vehicle unattended. The application was thus filed before Permanent Lok Adalat (Public Utility Services), Narnaul.

3. Upon notice, the petitioner-insurance company also filed its reply reiterating the facts and claimed that the repudiation of the claim of claimant-respondent No.2 was appropriate and in accordance with the essential terms & conditions of the Policy.

4. On failure of the parties to arrive at an amicable settlement before the Permanent Lok Adalat (Public Utility Services), adjudication under Section 22C(8) of the Legal Services Authorities Act, 1987 was undertaken.

5. The parties led their respective evidence before the Permanent Lok Adalat (Public Utility Services) and produced the necessary documents

including the copy of the FIR No.15 dated 16.01.2019 and the copy of the untrace report as Ex. P-3 and P-4 respectively. On consideration of the same, the Permanent Lok Adalat (Public Utility Services) allowed the said application in favour of respondent No.2-insured and recorded as under:-

> ***"14. In the present case it is the admission of respondents No.1 to 3 that the applicant is the owner of the vehicle bearing registration No.HR-66B-2617. It is also the admission of the respondents No.1 to 3 that the aforesaid vehicle was got insured by the applicant from the respondents No.1 & 2 through respondent No.3 for Rs.30,00,000/- and had paid the premium amount of Rs.28,208/-. It is also not disputed by respondents No.1 to 3 that at the time of theft of the vehicle the insurance was in existence.***
>
> ***15. The claim case of the applicant was closed by the respondents No.1 & 2 on the fact that the applicant had withdrawn his claim case and, therefore, the same was closed as 'No claim' and this fact is mentioned in the letter Ex.P8 issued by the respondents No. 1 & 2 to the applicant.***
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> ***16. We have perused the letter Ex.P8 wherein the date of the alleged letter written by the applicant to the respondents No.1 & 2 is nowhere mentioned. The date is blank. No other documentary evidence has been produced by the respondents No.1 & 2 to substantiate the fact that the applicant had withdrawn his claim application. Rather from the perusal of***

the letter Ex.P8 it reveals that the applicant had submitted his claim with respondents No.1 & 2. There was no occasion for the applicant to withdraw his claim. All this shows that the respondents No.1 & 2 have closed the claim case of the applicant unnecessarily and without any reason.

17. The argument of the learned counsel for the respondents No.1 to 3 that the applicant had left the vehicle unattended and, therefore, the applicant is not entitled for any claim, is also not convincing. In the letter Ex.P8 by virtue of which the claim case of the applicant was closed. It is nowhere mentioned that the claim of the applicant was closed because of the reason that the applicant had left his vehicle unattended. Rather from the perused of the documents produced by the applicant it is proved on file that one of the tyre of the vehicle got punctured and the applicant had left the vehicle at the spot and went to get the tyre repair of puncture. There was no occasion for the applicant to take the vehicle alongwith him. There was no negligence on the part of the applicant to left the vehicle at the spot. The applicant had informed the police just after the theft on 100 number which is proved from the perusal of Ex.P6 and in this regard a F.I.R. was also registered in the Police Station, Kasola, Rewari. It is also proved on file from the perusal of the document Ex.P4 that the police could not trace the vehicle

and had submitted an untrace report. All this shows that the vehicle in question had been stolen without any fault on the part of the applicant and the police could not trace out the vehicle, therefore, the respondents No.1 to 3 are liable to pay the insured amount to the applicant but instead of paying the insured amount to the applicant the claim case of the applicant was closed by respondents No.1 & 2 illegally and un- authorizedly. This act and conduct on the part of the respondents No. 1 & 2 comes within the ambit of deficiency in service.

18. The applicant has already repaid the entire loan amount to respondent No.4 and in this regard the respondent No.4 had issued 'No Objection Certificate' in favour of the applicant and this fact is proved from the perusal of the letter Ex.P10.

19. In view of our above discussion and observation the present application, filed by the applicant, is hereby allowed against the respondents No.1 & 2 and dismissed against the respondents No.3 & 4. The respondents No.1 & 2 are directed to pay Rs.30,00,000/- (IDV of the vehicle) to the applicant alongwith interest @ 9% per annum from the date of filing of the present application till realization and to pay an amount of Rs.31,000/- to the applicant as compensation on account of harassment and litigation expenses. The

respondents No.1 & 2 are further directed to pay the aforesaid amount to the applicant within three months from today positively failing which the respondents No.1 & 2 shall be liable to pay the aforesaid amount to the applicant alongwith interest @ 12% per annum from the date of filing of the present application till realization. The applicant is directed to hand over all the original documents of the vehicle to respondents No.1 & 2 if any.

20. This award is passed accordingly. File be consigned to the record-room after due compliance."

6. Aggrieved thereof, the present writ petition has been filed.

7. Learned counsel for the petitioner-insurance company has vehemently argued that the award passed by the Permanent Lok Adalat (Public Utility Services) suffers from failure to appreciate the facts and the position in law. He contends that respondent No.2-insured violated the essential terms and conditions of the policy and had left the vehicle unattended which facilitated the occurrence of theft of the vehicle. The second argument which has been raised by the learned counsel for the petitioner is that during the course of assessment of the claim, respondent No.2-insured had agreed to accept a sum of Rs.26,66,400/- as full and final settlement of all the claims. He contends that the said evidence has also not been taken on record by the Permanent Lok Adalat (Public Utility Services) while allowing the application of respondent No.2-insured. No other

argument has been raised or judgment cited by him.

8. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record and also the award passed by the Permanent Lok Adalat (Public Utility Services).

9. So far as the first contention with respect to respondent No.2-insured being in breach of the essential terms & conditions of the insurance policy is concerned, the Policy's condition No.5 had been extracted in the repudiation letter dated 02.08.2019 which read thus:-

> "***xxxx***
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> ***the insured shall take all responsible (reasonable) steps to safeguard the vehicle from loss or damage and to maintain it in efficient condition. In the event of any accident or breakdown, the vehicle insured shall not be left unattended without proper precautions being taken to prevent for the damage or loss***.
>
> ***xxxx***"

10. I find that the obligation of an insured is only to take all reasonable steps and not an extreme precautionary step. The reasonable steps have to be seen from the facts of each case. The surrounding circumstances and events are essential to determine what would be a reasonable precaution. The parameters of normal circumstances cannot be applied in odd or emergent circumstances for applying the test of "reasonableness". It was a specific case of respondent No.2-insured that the tyre of the vehicle had been

punctured and that the same had to be repaired. The same being a heavy multi-axle trailer, it could not have been taken to any other place in punctured condition. The Driver, at late hours in the intervening night, had to take the tyre all by himself for getting it repaired. It could not be expected at that hour of night that he would arrange for some person, from a third place, to stand by the vehicle till such time he could search for the puncture shop and is able to come back after getting the tyre repaired. It appears from the sequence of facts that the puncture to the tyre happened in the late hours at night, after the vehicle had been hired for delivery of a consignment, and that he could come back at the spot only at 1.40 A.M., which is well past mid-night. Under the said circumstance, a hyper technical enforcement of condition No.5 of the policy would be nothing more than a travesty of justice and only a means to deny the benefits for what an insurance policy was actually purchased. So far as the second contention of respondent No.2-insured having agreed to settle all the claims for a sum of Rs.26,66,400/- is concerned, learned counsel for the petitioner-insurance company is not in a situation to rebut that such evidence had not been led by the petitioner-insurance company before the Permanent Lok Adalat (Public Utility Services). He fairly concedes that the insurance company never accepted the above offer. Having chosen not to accept such consent given by the insured, it would not be permissible for the petitioner-insurance company to now claim that respondent No.2-insured has to still accept the initial settlement which he proposed.

11. In view of the observations recorded above and noticing the findings recorded by the Permanent Lok Adalat (Public Utility Services), Camp Court at Narnaul, I find that there is no illegality, impropriety, perversity or mis-appreciation of the evidence led by the parties. High Court, in exercise of its powers of judicial review, does not sit as a Court of appeal against the decision taken by the competent authorities and substitute its own opinion for that of the competent Court. **The present writ petition is accordingly dismissed in limine**. The award dated 22.01.2024 passed by the Permanent Lok Adalat (Public Utility Services), Camp Court at Narnaul is **affirmed**.

(VINOD S. BHARDWAJ)
JUDGE

09.09.2024
Mangal Singh

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