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

Civil Writ Petition No.2873-2022

Reserved on: 24.07.2024

Pronounced on:02.08.2024

THE NATIONAL INSURANCE COMPANY LIMITED

.....PETITIONER

VERSUS

OM PATI AND OTHERS

......RESPONDENTS

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

Present: Mrs. Swatantar Kapoor, Advocate,
for the petitioner.

Mr. Sagar Aggarwal, Advocate,
for respondent Nos.1 and 2.

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VINOD S. BHARDWAJ , J.

Challenge in the writ petition is to the award dated 25.10.2021 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra in Case No.126/KKR/2019 of 24.08.2019, whereby the petitioner-Insurance Company has been directed to pay personal accident claim to the tune of Rs.15 lakhs.

Succinctly, the facts of the case are that Deepak (since deceased) was owner of the motorcycle bearing registration No.HR-83-9896 which was insured with the petitioner-Insurance Company vide Policy No.39010231186202205718 valid for the period from 25.10.2018 to 24.10.2023, as per the policy document (however, the period has been mentioned in the application as well as impugned award from 25.10.2018 to 24.10.2019). Deepak along with his brother Rakesh had gone to village Chosala, on the said motorcycle, for offering prayers on the occasion of “Chavan Rishi Fair” on 10.03.2019. On the way back to their village Mator, Deepak(since deceased) was driving the motorcycle. They reached in between village Chosala and Mator at around 03.00 PM when their motorcycle was hit by a Tractor-Trolley bearing registration No.HR-90-6407. Deepak sustained multiple fatal injuries in the said accident and consequently, he died. Post-mortem of the dead body was conducted in the Civil Hospital, Kaithal on 10.03.2019 and FIR No.47 of even date was registered at the Police Station Kalayat, District Kaithal. It was claimed that Deepak (since deceased) was having a valid and effective driving license on the date of incident, he was unmarried as well as the only earning source of income in the family. The Insurance Policy of the motorcycle covered the personal accident claim for the “owner driver” for a sum of Rs.15 lakhs as an extra premium of Rs.750/- had been paid and that the applicants were entitled to the same. A claim was accordingly lodged with the petitioner-Insurance Company, but the same was not processed. An application under Section 22-C of the Legal Services Authorities Act, 1987 was accordingly filed.

The petitioner-Insurance Company entered appearance before the Permanent Lok Adalat and contested the claim. Apart from raising objections with respect to the *locus standi,* misjoinder of parties and non-joinder of necessary parties, it was submitted that the deceased was not holding a valid and effective driving license at the time of incident. The copy of driving license provided by the applicants did not authorize him to drive a motorcycle, which the deceased was undisputedly driving, at the time of accident in question.

The Permanent Lok Adalat (Public Utility Sevices) allowed the application after considering that a separate MACT claim case had been filed by respondent Nos.1 and 2-parents of the deceased-Deepak and that the Motor Accident Claims Tribunal, Kurukshetra had passed an award in favour of Om Pati and another for the death of their son Deepak and the awarded sum of Rs.14,04,448/- has already been disbursed. Since death of Deepak in the said accident had already been proved, the petitioner-Insurance Company was held liable to pay the sum assured.

Aggrieved thereof, the present writ petition has been filed.

Learned counsel for the petitioner-Insurance Company has argued that the award passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra, is bad and liable to be set aside, *inter alia,* for the following reasons:-

i) That the deceased Deepak was not holding a valid driving license for the class of vehicle i.e. motorcycle which he was driving at the time of his death. The Insurance Policy covered the "owner driver" but subject to fulfilment of the conditions. She refers to the terms & conditions of the policy document pertaining to the 'Two Wheeler Package Policy' as well as the specific clause under the Personal Accident Cover for the "owner driver" falling in Section III thereof which mandated that the vehicle in question has to be used in accordance with limitation as to its use. She contends that as the deceased was not holding a valid driving license, he committed a breach of the essential terms & conditions of the policy and as such, the petitioner-Insurance Company is not liable to meet out the liability. She further contends that the license tendered by the applicants of deceased Deepak specifically carried pictures of the class of vehicles for which it was valid. Since he was not authorized to drive the motorcycle, which is a different class of vehicle in terms of Section 10 of the Motor Vehicles Act, 1988, hence, the deceased-insured being in breach of the policy terms & conditions for which the petitioner-Insurance Company is not liable to pay the sum assured.

ii) It is argued that the Permanent Lok Adalat (Public Utility Services), Kurukshetra has not gone into the terms & conditions of the policy and/or provision of law and has simply passed the award by placing reliance on the award passed by the Motor Accident Claims Tribunal, Kurukshetra. She contends that the reasoning given by the Motor Accident Claims Tribunal cannot be adopted outrightly for awarding of this claim as the factum of death of Deepak was never in dispute. The issue which was required to be examined by the Permanent Lok Adalat (Public Utility Services), Kurukshetra was as to whether the petitioner-Insurance Company is justified in not disbursing the claimed benefits under the Personal Accident Cover, as per the terms & conditions of the policy, in light of the fact that the deceased was not holding a valid driving license. She contends that the claim before the Motor Accident Claims Tribunal was a third-party claim and not a Personal Accident Claim. The guiding principles of third-party claim are at variance than the parameters for deciding the personal claim. The legality and validity of the claim as well as the justification of the petitioner-Insurance Company had to be seen in the light of terms & conditions of the specific policy under which the claim had been made.

iii) She further contends that the Permanent Lok Adalat (Public Utility Services), Kurukshetra did not take any steps for an amicable settlement of the dispute as required in law, and straight-away proceeded to pass the award. The process having been undertaken without following the procedure as provided under Section 22-C(4) to 22-C(7) of the Legal Services Authorities Act, 1987 renders the award liable to be set aside.

Learned counsel for respondent Nos.1 and 2, on the other hand, has submitted that the policy extends Personal Accident Cover to the tune of Rs.15 lakhs on payment of additional payment of Rs.750/-. The said premium had been duly paid and as such, the petitioner-Insurance Company cannot deny its liability. He further submits that the Permanent Lok Adalat (Public Utility Services), Kurukshetra is governed by the guiding principles of Section 22-D of the Legal Services Authorities Act, 1987 and that when the discretion has already been exercised, such discretion should not ordinarily be interfered with.

He also argues that the issue as regards the negligence has already been considered by the Motor Accident Claims Tribunal and that the same was not required to be agitated as the process would have only wasted the precious judicial time.

I have heard learned counsel for the respective parties and have gone through the documents available on record.

I am of the considered opinion that the award passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra is liable to be set aside as the Permanent Lok Adalat (Public Utility Services), Kurukshetra has failed to follow the procedure mandated under Section 22C(4) to 22(7) of the Legal Services Authorities Act, 1987. The Hon'ble Supreme Court, in the matter of ***Canara Bank Versus G.S. Jayarama***, **(2022) 7 Supreme Court Cases 776,** has specifically held that the above procedure is mandatory before initiating adjudication under Section 22-C(8) of the Legal Services Authorities Act, 1987. The impugned award does not make a reference to any efforts made by the Permanent Lok Adalat (Public Utility Services), Kurukshetra for carrying out any conciliation.

Further, the claim for Personal Accident Cover had to be decided on the basis of the applicable terms & conditions of the policy under which the claim was being preferred. There has been no discussion by the Permanent Lok Adalat (Public Utility Services), Kurukshetra on the said aspect.

Additionally, the Permanent Lok Adalat (Public Utility Services), Kurukshetra has also failed to take into consideration the objection raised by the petitioner-Insurance Company with respect to the authorization of the deceased to drive the motorcycle and as to whether he was in breach of the essential terms & conditions of the policy by driving a motorcycle, without having a valid license. No discussion or consideration thereof is reflected in the award.

Since the award fails to deal with any of the said issues, it cannot be said to be a reasoned and speaking award and based upon the proper appreciation of facts brought before it. Such an award cannot be upheld solely because a discretion has been exercised. Exercise of a discretion has to be guided by the legal principles and can be held to be valid only if the facts of the case, on appreciation and application of the position in law, justify for such exercise of discretion. Where the award fails to reflect consideration of the facts in issue or their appreciation before adjudication, exercise of such a discretion cannot be upheld in a mechanical manner.

This Court thus feels that the award in question is unsustainable and is liable to be set aside for a fresh consideration by the Permanent Lok Adalat (Public Utility Services), Kurukshetra. The other aspects on merit are not being dealt with in detail, at this stage, considering that the matter is being remanded to the Permanent Lok Adalat (Public Utility Services), Kurukshetra for fresh appreciation and consideration and any observation recorded may have a pre-judicial impact on the final outcome.

The present Civil Writ Petition is accordingly allowed and the award dated 25.10.2021 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra, is set aside.

The matter is remanded to the Permanent Lok Adalat (Public Utility Services), Kurukshetra for its fresh consideration in accordance with law.

The parties shall appear before the Permanent Lok Adalat (Public Utility Services), Kurukshetra, on 25.09.2024, wherefrom further proceedings shall be undertaken in accordance with the provisions of the Legal Services Authorities Act, 1987.

August 02, 2024 **(VINOD S. BHARDWAJ)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No