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IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-35-2019 (O&M).
Date of Decision: 07.05.2024.

ORIENTAL INSURANCE COMPANY LIMITED

... Petitioner

Versus

NIRMAL SANKHLA AND ANOTHER

... Respondents

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

Present: Mr. S.S. Sidhu, Advocate,
for the petitioner-Insurance Company.

Mr. M.S. Tewatia, Advocate, for
Mr. A.S. Tewatia, Advocate, for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 01.08.2017 passed by the Permanent Lok Adalat (Public Utility Services), Gurugram, in application No.1797 of 2016, filed by the respondent No.1-applicant under Section 22-C of the Legal Services Authorities Act, 1987, whereby the application was allowed and the petitioner-Insurance Company was directed to pay a sum of Rs.4,20,000/- to the respondent No.1-applicant.

2 Briefly summarized, the facts of the present case are that the respondent No.1-applicant is proprietor of M/s Nirmal Filling Station, Tauru Road, Mendla. It was claimed that the respondent No.1-applicant had got the aforesaid filling station insured for a sum of Rs.4,50,000/- vide Policy No.215300/48/2014/1903 having the validity period w.e.f. 23.09.2013 to 22.09.2014. It was averred that on the intervening night of 9th/10th December 2013, a theft took place at the premises and a sum of Rs.4,20,000/- was taken from the locked safe regarding which an FIR No.489 dated 10.12.2013 under Sections 457 and 380 of the Indian Penal Code, 1860 was registered at Police Station Tauru. An untraced report was submitted by the police on 12.06.2014. The claim was thereafter lodged by the respondent No.1-applicant with the petitioner-Insurance Company, however, the same was repudiated by the petitioner-Insurance Company on the ground that the Investigator hired by the petitioner-Insurance Company reported that theft is not established and that the same was also not possible in the manner as is alleged by the respondent No.1-applicant. The petitioner-Insurance Company had taken a specific defence by relying on the report of the Investigator and disputed the occurrence of theft in the premises for the following reasons:-

(i) That it was improbable that despite a sum of more than Rs.6 lakhs lying in the safe any burglar would decamp only with a sum of Rs.4,20,000/- and

(ii) That the lock of the safe was not broken.

3 Efforts for an amicable resolution of the dispute as mandated under Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987 were undertaken by the Permanent Lok Adalat (Public Utility Services), Gurugram, however, on failure of the reconciliation, adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was initiated by the Permanent Lok Adalat (Public Utility Services), Gurugram.

4 Parties led their respective evidence and upon consideration of the rival submissions and evidence brought on record by the learned counsel for the parties, the Permanent Lok Adalat (Public Utility Services), Gurugram, allowed the application and the petitioner-Insurance Company was directed to reimburse the loss to the extent of Rs.4,20,000/- suffered by the respondent No.1-applicant.

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

6 A written statement was filed by the respondent No.1-applicant reiterating his submissions as made in the application which are not required to be reproduced at this juncture.

7 Learned counsel for the petitioner-Insurance Company has argued that the insurance policy supra was issued and as per the description of the risk/cash covered, the same was as under:-

Section	*Description of cash covered*	Limit of any one loss
1A	*Money for the payment of wages, salaries and other earning or for petty cash in direct transit from the bank to the insured's premises from*	4,50,00,000

	the time the cash is received at the bank by the Insured or the authorised employee's of the Insured until delivered at the promises or other place of disbursement and whilst there unlit paid out provided that out of business hours such cash shall to secured in locked safe or strong room on the premises. Cheques drawn by the Insured to provide for such cash are covered in transit from the premises to the bank	
1B	*xxx xxx xxx*	
1C	*xxx xxx xxx*	
	xxx xxx xxx	
	xxx xxx xxx	

8 He submits that the policy covered loss upto Rs.4,50,000/- in respect of the money for the payment of wages, salaries and other earnings of petty in direct transaction from the bank to the premises of the insured. <u>He submits that with respect to the cash other than one mentioned above, Clause II covered the risk of burglary, house-breaking, robbery or hold-up</u>. The relevant clauses read as under:-

xxx xxx xxx

Section	*Description of cash covered*	Limit of any one loss
I	*xxx xxx xxx*	
1B	*xxx xxx xxx*	
1C	*xxx xxx xxx*	

	xxx xxx xxx	
	xxx xxx xxx	
II	*Cash (other than described in Section 1 A above) whilst on the premises during the business hours or whilst secured in locked safe or locked strong mom on the Insured's promises out of business hours against the risk of burglary, housebreaking and hold-up*	***2,50,000***

(Emphasis supplied)

9 He submits that the insurance cover extended to the respondent No.1-applicant was only to the tune of Rs.2,50,000/-. He further makes a reference to the insurance policy and the exclusions contained therein. The Clauses relied upon by the counsel to contend that there was no liability of the insurance company are clause 3, clause 4 and clause 7 which are extracted as under:-

xxx xxx xxx

"3. Loss of money where the Insured or his employee is involved as principal or accessory, except loss due to fraud or dishonesty of the cash-carrying-employee of the Insured, occurring whilst in transit and discovered within 48 hours.

4. Loss occurring on the premises, after business hours, unless the money is in a locked safe or strong room

xxx xxx xxx

7. Loss of money from safe or strong room following use of the key to the safe or strong room or any duplicate thereof *belonging to the Insured, unless this has been obtained by threat or by violence."*

10 Reliance is also placed on the FIR as authored by the respondent No.1-applicant wherein it was stated that the complainant reached the petrol pump on receipt of information about suspicious theft and they did not see anything on a physical inspection of the safe. The safe was opened in the presence of the police with a key when cash of Rs.4,20,000/- was found missing. The locks of the Safe were found to be intact and also three Salesmen were sleeping there.

11 By referring to the above, counsel contends that manner in which the theft had taken place does not suggest of a burglary and it seems that some employee of the respondent No.1-applicant had got prepared a duplicate key and he opened the safe with said key and has taken away the money. Hence, the theft would fall within the exclusion terms and conditions of the insurance policy and the respondent No.1-applicant is not entitled to reimbursement. He alternatively asserts that in any case payment of an amount of Rs.4,20,000/- could not have been ordered since the maximum insurance liability for a burglary was Rs.2,50,000/-. It is submitted that the entire amount, however, has since been released to the respondent No.1-applicant as the stay initially granted could not be extended on the later date.

12 Counsel for the respondent No.1-applicant, on the other hand, reiterates his submissions and contends that all the aspects had already been noted by the Permanent Lok Adalat (Public Utility Services), and after

noticing that the insurance cover was to the tune of Rs.4,50,000/- and the loss suffered was assessed at Rs.4,20,000/-, the entire amount was ordered to be reimbursed. He submits that there is no error or illegality in passing of the said award.

13 No other argument has been raised.

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

15 So far as the contention of the petitioner-Insurance Company that report of the Investigator conclusively establishes that the theft has not taken place in the premises is concerned, the said issue at this stage cannot be given much weight-age. Even though the facts argued by the counsel hereinabove about the safe having been opened by some person who was in possession of the key and relocked the said safe after decamping with the money may appear to be probable, however, the material available on record is not sufficient to conclude that the safe was opened in connivance with any employee. At best, the argument raised is suggestive of a suspicion. It is well settled position in law that suspicion cannot take partake proof. An FIR into the incident had been registered by the police and even the dogs had been called at the spot to sniff out the participation of any insider including the three salesmen who were sleeping there but the offence remained untraceable. The police has not concluded or reported that that the incident of theft never took place or that the amount of Rs.4,20,000/- had not been taken away from the safe. Thus, the plea which

is at best a suspicion or a probability expressed by the petitioner-Insurance Company cannot travel any beyond. The mode and manner of a burglary cannot be determined on the basis of a suspicion and that in the event any burglar had been smart enough to remove the money and lock the safe, the same cannot be presumed that either the key of the safe was not well stacked or kept at a secured premises or that some employee himself had removed the money from the safe.

16 In the said background, the exclusions of the policy become significant. So far as the exclusion No.3 relied upon by the petitioner-Insurance Company is concerned, the said clause deals with the issue where the principal or the employee himself is involved as an accessory. The submission of the petitioner-Insurance Company in the present case is only one of the probable theories and there is nothing on record on the basis whereof the involvement of any employee or the principal can be said to have orchestrated the burglary at the premises.

17 So far as exclusion clause No.4 is concerned, the same exempts the petitioner-Insurance Company from the liability in an event where the money is not kept locked in a safe or a strong room. It is nobody's case that the money was not kept locked in a safe or in a strong room, rather, the case set up by the respondent No.1-applicant is specifically to the effect that the money had been kept in safe and had been taken out from the said safe by the burglars.

18 The same next leads to exclusion No.7 which relates to loss of money from safe or strong room following use of key to the safe or strong

room or any duplicate key thereof belonging to the insured unless this has been obtained by threat or by violence. So far as the above said exclusion is concerned, it is also not the case established that the theft in question took place on account of use of a duplicate key belonging to the insured. The exclusion operates in a very restricted sphere i.e. where more than one key to the safe is available with the insured and one of his keys gets missing or is not properly secured. There is no finding recorded either by the Investigator or the police that the duplicate keys of the insured were missing, hence, where a burglar had succeeded in forging a key or making a duplicate key without the removal of the key of the insured, the said clause would not stand to the exclusion of the liability undertaken to be indemnified by the petitioner-Insurance Company. Hence, the contention in this regard cannot be accepted at this juncture.

19 However, clause II referred to in the insurance policy deals with the issue of burglary, housebreaking and hold up. Considering that the specific case of the respondent No.1-applicant is to the effect that the premises were trespassed over night and theft had taken place and the FIR was specifically registered for commission of offences under Sections 357 and 480 of the IPC, the loss in question would not fall in Part I-A of the risk covered and would rather fall in Part II of the policy document where the maximum risk coverage extended to the respondent No.1-applicant is Rs.2,50,000/- only. The Permanent Lok Adalat (Public Utility Services), Gurugram, thus clearly fell in an error in awarding compensation beyond the total risk covered by the petitioner-Insurance Company.

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20 Taking into consideration the facts noticed above, the petition is partly allowed and the award passed by the Permanent Lok Adalat (Public Utility Services), Gurugram is modified. The petitioner-Insurance Company is held liable only to the extent of loss undertaken by it i.e. at Rs.2,50,000/-. The petitioner-Insurance Company would be entitled to seek a refund of the excess amount already released in favour of the respondent No.1-applicant.

21 Counsel for the respondent No.1-applicant undertakes that the amount of Rs.1,70,000/- shall be returned to the petitioner-Insurance Company within a period of 04 weeks from the date of receipt of copy of the order.

22 In the event, the amount is not returned to the petitioner-Insurance Company within the period as undertaken today, the petitioner-Insurance Company shall be entitled to interest @ 6% per annum on the excess amount from the date the amount was released in favour of the respondent No.1-applicant till its actual deposit.

23 The present writ petition is accordingly partly allowed.

May 07, 2024 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

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