IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-29913-2024 (O&M)
Date of decision: 13.11.2024

IFFCO TOKIO General Insurance Company Limited

...Petitioner

VERSUS

Tanwar Poultry Farm and another

...Respondents

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

Present :- Mr. Yogesh Gupta, Advocate for the petitioner.

Mr. Randeep Tanwar, Advocate for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the impugned award dated 16.08.2024 passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra.

2. Learned counsel appearing on behalf of the petitioner-Insurance Company contends that respondent No.1-applicant had obtained an insurance policy from the petitioner-Insurance Company bearing Policy No.12470336, valid for the period from 19.06.2022 to 18.06.2023, for a total sum assured of Rs.51,50,000/- for building /superstructure of two sheds and Rs.3,72,400/- for Furniture and Fixtures and other equipments and Rs. 2,50,000/- for office and godown. On account of heavy rains on the intervening night of 23.09.2022 and 24.09.2022, one of the two sheds fell down and the construction was badly damaged. Respondent No.1-applicant

claimed to have suffered a loss of Rs.26,50,000/-. A General Diary No.13 dated 25.09.2022 was registered at Police Station Jhansa about the incident and an intimation was also sent to the petitioner-Insurance Company. A surveyor was also appointed by the petitioner-Insurance Company to carry out the spot inspection for undertaking an assessment of the loss. A report was furnished by him assessing the loss as well as the salvage value. However, on account of certain objections including an absence of an insurable interest of respondent No.1-applicant, the claim was declined by the petitioner-Insurance Company. An application under Section 22 C of the Legal Services Authorities Act, 1987 was filed by respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Services), Kurukshetra.

3. The petitioner-Insurance Company entered appearance and raised objections pertaining to lack of insurable interest of respondent No.1-applicant since it is a partnership firm while a partner is the owner of the building and that the capitalized cost of land and building was shown as nil in the books of account of respondent No.1-applicant partnership firm and as such the loss could not be indemnified.

4. Efforts were made for effecting settlement/conciliation between the parties as envisaged under Section 22-C(4) of the Legal Services Authorities Act, 1987, however, the same failed to culminate into a settlement, consequently, adjudication under Section 22C (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services).

5. The parties led their respective evidence and upon consideration

thereof, the Permanent Lok Adalat (Public Utility Services) partly allowed the application preferred by respondent No.1-applicant and directed the petitioner-Insurance Company to pay a sum of Rs. 26,25,779/- to respondent No.1-applicant along with interest thereon at the rate of 6% per annum with effect from the date of filing of the application till actual payment and also to pay a sum of Rs. 20,000/- towards compensation/litigation expenses to respondent No.1-applicant. The operative part of the relief granted to respondent No.1-applicant reads thus:-

> ***"22. In view of the observations made above, the present application is hereby allowed partly. An Award is passed in favour of the applicant and against the respondent IFFCO TOKIO General Insurance Company Limited directing the respondent insurance company to pay a sum of Rs. 26,25,779/- to the applicant along with interest thereon at the rate of 6% per annum with effect from the date of filing of the present application till actual payment. The respondent insurance company is also directed to pay a sum of Rs. 20,000/- towards compensation/litigation expenses to the applicant. This award shall be deemed to be decree of Civil Court under Section 22-E (2) of the Legal Services Authorities Act and shall be executable by the Civil Court at Kurukshetra as if it is a decree passed by such Executing Court. The application stands disposed off accordingly. Copy of this award be supplied to both the parties free of charge***

and file thereafter be consigned to the record room.”.

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

7. Learned counsel appearing on behalf of the petitioner has vehemently argued that the Permanent Lok Adalat (Public Utility Services) failed to take into consideration the independent survey and loss assessment report submitted vide reference dated 25.11.2022. As per the said report, the salvage value of the material at the spot was assessed as Rs. 7,01,520/- as against the self assessment of respondent No.1-applicant to the tune of Rs.5,72,700/-. He contends that the petitioner was entitled to claim/set-off the benefit of the salvage value, as determined, but the Permanent Lok Adalat (Public Utility Services) directed payment of the entire gross loss as assessed towards the loss to building, without giving such benefit. He further contends that on account of the building value being shown nil, there was no occasion for the petitioner-Insurance Company to be directed to pay any compensation and as such the claim was rightly declined. A further argument has also been raised that the petitioner-Insurance Company is entitled to claim a depreciation @2.5% per annum and that the said benefit has also not been extended to the petitioner-Insurance Company. No other argument has been raised or judgment cited.

8. Learned counsel appearing on behalf of respondent No.1-applicant on the other hand contends that the arguments advanced by the learned counsel for the petitioner-Insurance Company for repudiation of the claim are fallacious. At the time when the Insurance Policy was issued to respondent No.1-applicant, valuation of both the sheds, including the

basement, had been assessed @Rs.51,50,000/- and premium at above assessment had been duly accepted by the Insurance Company. Once the Insured Declared Value of property insured was accepted by the Insurance Company, they cannot later claim that the building would nonetheless be deemed to be of 'nil' value. He also submits that the damage to the said structure/building is not disputed and even as per the report of the surveyor, a gross loss to the tune of Rs.28,82,780/- against the building had been assessed and a further loss of Rs.34,752/- was assessed to the plant and machinery taking the total assessed loss to Rs.29,17,532/-. Hence, respondent is entitled to be indemnified.

9. He further contends that the petitioner-Insurance Company cannot seek deduction @2.5% per annum for the entire duration period of 09 years from the date of construction of building considering that the evaluation of Rs.51.5 lakhs had been accepted by them, for charging the premium, at commencement of the insurance policy and, therefore, any such demand about re-determining the value of building from the date of its initial construction and claiming depreciation cannot be accepted at this juncture. Having accepted the Insured Declared Value (IDV) as the correct valuation of the building and having accepted the premium for the said amount, it does not lie with the petitioner-Insurance Company to dispute the evaluation of the property (sheds).

10. It is also argued by the counsel for respondent No.1-applicant that the value of the salvage had been assessed by respondent No.1-applicant himself and the same was for a sum of Rs.5,72,700/- and that the

assessment of Rs.7,01,520/- was factually incorrect. He further submits that all partners have an unlimited liability in a partnership firm and once the sheds had been given to the partnership for running of the business, it cannot be said that partnership has no insurable interest in the property. As per basic rule, a property contributed to the partnership goes back to the partner, after settlement of dues.

11. It was further argued that all the objections raised by the petitioner-Insurance Company have been duly dealt with by the Permanent Lok Adalat (Public Utility Services), Kurukshetra and that upon consideration thereof including the report of the surveyor, the award has been passed. No other argument has been raised by the respondent.

12. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

13. I do not find myself in agreement with the argument advanced by the learned counsel for the petitioner-Insurance Company that the petitioner-Insurance Company is entitled to the depreciation @2.5% per annum from the date of construction of the building and that the valuation of the building having been assessed ‘nil’ in the partnership, there is no liability to indemnify. The fact that the petitioner-Insurance Company specifically accepted the declared value of the property and accepted premium thereof, debars the petitioner-Insurance Company from disputing the valuation of the property. Thus it becomes liable to indemnify the partnership for the loss so occasioned on the declared value for which an insurance policy had been obtained by respondent No.1-applicant.

14. So far as the argument of the Insurance Company about partnership having no insurable interest is concerned, the same is devoid of merit and is based upon lack of understanding of the relationship between the partners and the partnership. The identity of partnership is the same as that of the partners and there is an unlimited liability against all partners so far as third parties are concerned and assets, on demolition of partnership, go back to the partner, in the value as contributed and agreed, after settlement of liabilities. Hence, the partnership is liable to return the asset to the partner in the same condition. Besides, all documents were duly deposited about title of the partnership over properties when Insurance Policy was obtained. There is no change of any circumstance later.

15. In so far as the contention of the learned counsel for the petitioner-Insurance Company that it is entitled to claim benefit/set-off of the salvage value as assessed by the surveyor and that the Permanent Lok Adalat (Public Utility Services), Kurukshetra erred in arbitrarily determining the salvage value @10% is concerned, I find that the said argument has some merit. The Permanent Lok Adalat (Public Utility Services) did not discuss the assessment of salvage undertaken by the surveyor and did not find any fault with such assessment. There has been no discussion by the Permanent Lok Adalat (Public Utility Services) as to why the assessment of salvage undertaken by the surveyor was erroneous or not based on correct accounting principles. In the absence of any error or defect, the value has been capped @10%.

16. Under the given circumstances, a non-standardized deduction

@10% towards the salvage as well as the depreciation is unacceptable. Learned counsel for respondent No.1-applicant has also not been able to dispute as to why such assessment of salvage undertaken by the surveyor be not accepted. He further informs that respondent No.1-applicant has already disposed of such material and therefore, it cannot even now be returned to the petitioner-Insurance Company at the value so assessed by them.

17. Since the salvage cannot be returned, hence, any such argument of the learned counsel for respondent No.1-applicant that the valuation was much less cannot be sustained at this juncture. He could have sought return of the salvage value to the Insurance Company and sought entire loss if valuation of salvage was higher than the actual value. But the same was not done

18. The present petition is accordingly **partly allowed**. The salvage value to the tune of Rs.7,01,520/- is allowed to be deducted by the petitioner-Insurance Company from the value of gross loss to the building assessed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra. **The rest of the award shall remain intact**.

19. Further, as the insurance claim had been in relation to the first shed, for which an insurance cover was to the tune of Rs.26,50,000/-, the value of loss is thus kept at the IDV of the shed @ Rs.26,50,000/- and the salvage is permitted to be deducted from the said amount.

(VINOD S. BHARDWAJ)
JUDGE

13.11.2024
Mangal Singh

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