IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

219 **CWP-8776-2021**
Date of Decision : **January 31, 2025**

THE ORIENTAL INSURANCE COMPANY LIMITED

.....Petitioner

VERSUS

SURESH PAL SAINI AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

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

Mr. Vinay Saini Advocate
for respondent No.1.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, as cast under Articles 226/227 of the Constitution of India, challenge is thrown to the award dated 4.2.2021 passed by the Permanent Lok Adalat concerned wherethrough the claim raised by respondent No.1 was accepted and the petitioner-Insurance Company is directed to pay Rs.6,24,129/- plus Rs.800/- as fire fighting charges alongwith interest @6% per annum from the date of filing of the claim till the date of award (supra). In case of failure in payment of award, the interest is to be increased to 9% per annum.

2. Learned counsel for the petitioner in order to throw challenge to the award (supra), submits that the vehicle was insured as a private vehicle, whereas the same was registered as Heavy Goods Vehicle and was being used

as a goods carrier vehicle on hire. This fact is reflected from Ex.R-8, which is not under dispute. She further submits that the route permit of the vehicle was authorized to carry goods on hire, throughout the State of Haryana, as a public carrier, whereas respondent No. 1 got the vehicle registered as a private vehicle, therefore, the petitioner is not liable to indemnify respondent No.1-insurer. She also submits that at the time of calculating the total loss, though the report of the surveyor was relied upon and the amount of Rs.6,02,810/- was awarded by the Permanent Lok Adalat concerned, whereas the amount assessed by the surveyor, was infact to the value of Rs.3,85,047/-, as per the report of the surveyor, which is also annexed with the instant petition as Annexure P-4, therefore, the award is based upon erroneous facts and requires interference. Finally, she submits that the instant case is purely a breach of contract of policy, as the vehicle was insured as a private vehicle, however, it was registered as a goods carrier on hire basis.

3. The submissions made by the learned counsel for the petitioner have been refuted by the learned counsel for respondent No.1. He submits that on the fateful day, the vehicle was being plied for filling earth on his plot, and respondent No.1, was undertaking his private work, therefore, there is no breach of contract of the policy, and there is no error or illegality in the award passed by the Permanent Lok Adalat concerned. He also submits that the bills were duly produced before the learned Permanent Lok Adalat concerned, and on the basis of the actual bills, the impugned award was passed, therefore, there is no error apparent in the award passed by the Permanent Lok Adalat concerned. He finally submits that so far as the fact that on the fateful day the vehicle was being plied only for the purpose of private work, has not

been refuted by the Insurance Company concerned, therefore, now in the instant petition they cannot agitate with regard to the same.

4. This Court has considered the rival submissions made by the learned counsel for the parties concerned and is of the view that the instant petition is amenable to be allowed for the hereinafter extracted reasons:-

> i) It is not under dispute that the policy cover for the vehicle in question was for a private vehicle, whereas, the vehicle was registered as a public carrier and the specific purpose has been prescribed under Ex.R-8 'to carry goods on hire', therefore this aspect was required to be considered by the Permanent Lok Adalat, but the same has been ignored.
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> ii) The submission made by the learned counsel for respondent No.1, that the vehicle was plied on the fateful day for the private purpose, does not substantiate by any evidence except the sale-deed of a plot. He has nowhere placed on record any bill from where he has loaded the earth for the purpose of filling his plot plinth. In the absence of any positive evidence led by respondent No.1 being the complainant, the submission is without any legal force, therefore, the same is rejected.
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> iii) So far as the assessment is concerned, the issue of assessment does not arise, since there is a clear cut breach of contract on the part of respondent No.1, therefore, the petitioner-Insurance Company is not liable to indemnify.

5. In view of the above discussion, the instant petition is **allowed** and the impugned award dated 4.2.2021 passed by the Permanent Lok Adalat concerned is **set-aside**.

6. So far as the deposit of 50% amount, which has been deposited with the Registry of this Court vide order dated 22.4.2022 is concerned, the

same can be withdrawn by the Insurance Company (petitioner) by filing an application before the Registrar concerned.

7. **Disposed** of accordingly.

(KULDEEP TIWARI)
JUDGE

January 31, 2025
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No