2025:PHHC:023623

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

CWP-9298-2019
Date of Decision:**18.02.2025**

United India Insurance Company Limited and another ...Petitioners

Versus

Mann Singh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Satpal Dhamija, Advocate
for the petitioners.

Mr. Vijay Rana, Advocate and
Ms. Shreya Rana, Advocate, for respondent No.1.

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KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition prayer has been made for quashing of the impugned award dated 14.12.2018 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), Patiala whereby, the learned Permanent Lok Adalat partly allowed the application preferred by respondent No.1 and directed the petitioners to pay Rs.4,00,000/- as compensation to respondent No.1 within a period of two months from the date of the award, failing which respondent No.1 was held liable to get awarded amount along with interest @ 6% per annum w.e.f. filing the application till its realization. Apart from that, a compensation of Rs.10,000/- for harassment and mental agony and Rs.2000/- for cost of litigation, has also been awarded.

2. The facts which are not under dispute that respondent No.1 purchased a tanker bearing registration number HR-37-C-4640. He also got carrier's legal liability insurance from the petitioners vide cover note

No.928546 for the period from 24.06.2012 to 23.06.2013. The sum insured was Rs.4,00,000/- against the premium of Rs.3595. As per facts of the present case, the said tanker made a journey on 06.11.2012, from Ambala Cantt. to Leh (J&K), and was being driven by respondent No.1, and it was loaded with 9000 litres of kerosene oil. When it reached near 'Kiling Sarai Lahual Spiti' on Keylong Leh Road, which is at 18000 feet height, the engine of the said vehicle, got seized, and stopped functioning due to extreme cold conditions. Respondent No.1, left his attendant/cleaner at the spot for taking care of the said vehicle and himself went back to Manali, which is about 400 Kms toward down from the point where the vehicle was parked, to bring a mechanic for repairing. When respondent No.1 was going towards stranded vehicle then heavy snow fall (about 45 feet) suddenly started there. As a result of which, the vehicle was completely covered under the snow. Even, the attendant, who came back to Manali, in order to save his life. The road remained closed till May, 2013, and finally, in the first week of June, 2013, when it became feasible to reach the spot of the vehicle, the respondent No.1 went there, and came to know that the vehicle was badly damaged on account of snow avalanche and found that the vehicle was completely empty as the entire kerosene oil, leaked due to the damage. The estimated loss of the amount, was alleged to be Rs.5,98,470/-. The intimation with regard to the loss was given to the petitioner-insurance company, on dated 13.06.2013. A DDR No.13(A) dated 10.06.2013 in this regard was also registered with the concerned police station. The claim of the insurance, as raised by respondent No.1 was repudiated (Annexure P-4), by the petitioner-insurance company with the following observations:-

"I). The date of loss was on 6.11.2012 and intimation was given on 13.6.13, which violates the policy terms & conditions as per policy

terms & condition, immediate information should be given to insurance company after the loss.

II). The vehicle had remained unattended from 6.11.12 for approximately 7 months, whereas as per policy terms & conditions the vehicle should not be remain unattended after loss.

III). You have concealed the name of driver.

IV). Police information was given on 6.6.13 under DDR 13(a) dt. 6.6.13 whereas loss was 6.11.2012 (after 7 months).

V). Loss of stocks had occurred due to mechanical breakdown of vehicle and not because of gross negligence. Please refer wording of the policy that company hereby agree to indemnify the insured against his legal liability for actual physical loss or damage to goods or merchandise directly caused by fire and or accident to vehicle registered under Number HR-37C-4640 while such goods or merchandise are actually transported in the said vehicle provided that the fire or accident has arisen on account of negligent criminal act of the servants."

3. Having aggrieved with the repudiation of the claims, respondent No.1 filed an application under Section 22 (C) of the Legal Services Authorities Act, 2002 before the PLA concerned, for payment of carrier's legal insurance claim of vehicle, which was subsequently allowed, and award as mentioned above has been passed, and the same caused grievances to the present petitioners-Insurance Company, and propelled it to file the instant writ petition under Article 226 of the Constitution of India.

4. The learned counsel for the petitioners, in an attempt to challenge the award, draws the attention of this Court towards the insurance policy (Annexure P-2), which contained the agreement clause, and submits that the petitioners, was only agreed to be indemnified the insured against legal

liability for actual physical loss of or damage to goods or merchandise while such goods, or merchandise are actually transported in the said vehicle, provided that same is caused by fire, or accident has occurred on account of negligence or criminal act of his servants. In the instant case, no accident has occurred, or any fire has taken place, entitling respondent No.1 to claim the insurance amount. The relevant of the same is reproduced as under:-

> ***"NOW THIS POLICY WITNESSETH that during the currency of this policy and any further period(s) for which it may be in force, subject to the limits, terms, provisions, exclusions, exceptions and conditions contained herein or endorsed hereon or otherwise expressed hereon, the Company hereby agrees to indemnify the Insured against his legal liability for actual physical loss of or damage to goods or merchandise directly caused by fire and/or accident to the vehicle registered under No.HR-37-C-4640 whilst such goods or merchandise are actually transported in the said vehicle provided that the fire or accident has arisen on account of negligence or criminal act of his servants."***

5. To strengthen his arguments, learned counsel for the petitioners draws attention of this Court towards the surveyor report (Annexure P-3), to submit that the entire tanker was in fact intact. The entire tanker body, suffered no damages on account of any accident or fire, rather all the caps of the filling pipes of the tanker were opened, and there was no seal available (which are clamped by the Indian Oil Corporation depot, and is only removed by the consigner). The relevant of the same is extracted for an apt adjudication of the instant matter:-

> ***"During survey it is observed that outer damage sustained are out of snow avalanche which had damaged cabin of the vehicle & tanker***

body pressed at one end, but it had not leaked at any of the places However on examination of Filling pipes of tanker it is observed that all caps were open & there was No Seal available (which are clamped by The Indian Oil Corporation depot & is only removed by the consigner) and on checking drain valves it was observed that all the drain valve were in open position due to which oil in all chambers had spilled out & nothing was available in the Chambers of captioned Tanker lorry. (Detailed photographs were arranged by the undersigned & & enclosed with the report."

6. Learned counsel for the petitioners finally submits that this report, and the agreement clause have not been considered by the Permanent Lok Adalat, while passing the impugned award.

7. The submissions made by the learned counsel for the petitioners were strongly opposed by the learned counsel for respondent No.1. He submits that this issue has never been raised before the Permanent Lok Adalat concerned, by filing reply to the application. He further submits that the facts which are not under dispute clearly demonstrate that it is a case of accident, on account of heavy snowfall/avalanche, which has fallen on the tanker, due to which, it has suffered damages, and the entire kerosene oil which was carried by tanker was lost.

8. I have heard the submissions made by the learned counsel for both the parties.

9. The issue arises for consideration is as to whether in the given circumstances, the insurer is bound to indemnify respondent No.1. As reflects from the perusal of the condition of the policy, the insurer was only agreed to indemnify the insured for actual physical loss, which caused damaged to the goods or merchandize transported in the vehicle of respondent No.1. Provided

that, same is caused by fire or accident, has arisen on account of negligence or criminal act of his servant. What clearly reflects from the surveyor report, which has not been refuted by bringing on record any contrary evidence by respondent No.1, that the tanker body though pressed at one end but it had not leaked at any of the place. However, cap of the filling pipes of the tanker was found to be opened and there was no seal available which are clamped by the Indian Oil Corporation Depot. Therefore, the loss to the merchandize was not actually caused on account of damage to the tanker but on account of the opening of cap of filling pipes, which can either be removed by the owner or any other miscreants. In that eventuality, the petitioner-insurer is not under legal liability to indemnify the insured i.e. respondent No.1. This aspect has not been considered by the Permanent Lok Adalat concerned. Therefore, this Court is of the view that the impugned award dated 14.12.2018 (Annexure P-1) passed by the Permanent Lok Adalat, Patiala requires an interference and accordingly, the same is hereby set aside and the instant petition is ordered to be **allowed**.

(KULDEEP TIWARI)
JUDGE

18.02.2025
Parveen kumar

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