

(2018) 04 P&H CK 0437
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7599 Of 2018

Bajaj Allianz General Insurance Company Limited	APPELLANT
Vs	
Jaspreet Rehal And Others	RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22C(8), 22C(2), 22C(1), 22C, 22D

Citation : (2018) 04 P&H CK 0437

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Vishal Aggarwal

Final Decision : Dismissed

Judgement

The prayer in the present petition is for setting aside the impugned order dated 22.09.2017 (Annexure P-7) passed by the Permanent Lok Adalat (Public Utility Service), Rupnagar (here-in-after referred to as 'the PLA').

Briefly, the facts of the case, as made out in the present petition, are that respondent No.1-Jaspreet Rehal was owner of Swift Car, which was duly insured with the petitioner-Insurance Company against policy, which was valid from 29.08.2014 to 28.08.2015. During the period of the policy, said car met with an accident on 31.03.2015. Claimant submitted an application for claim of compensation alleging therein that the said car was being driven by one Jamail Singh. Respondent no.1 and his younger brother Inderpreet Singh were also travelling in the same car. Suddenly, a cow came in front of the car and while saving the cow, the car met with an accident as it was turned turtle and fell in the fields, due to which, a loss was caused to the vehicle. As per case of the claimant, it was a case of total loss and full compensation was sought by the claimant. The claim petition was allowed by the PLA vide order dated 22.09.2017. It was directed to pay an amount of Rs.5,00,190/- within a period of 30 days from the date of receipt of certified copy of the order along with an amount of Rs.10,000/- as cost of litigation. It was also directed that in case, the

amount was not paid within said period, the claimant would also be entitled for interest @ 9% p.a from the date of repudiation i.e 18.08.2015 till the payment was released.

Petitioner-Insurance Company has challenged the impugned order passed by the PLA dated 22.09.2017 by raising various grounds.

Learned counsel for the petitioner submits that as the PLA was not having jurisdiction to adjudicate the matter in dispute as it was a case of fraud and the disputed question of facts cannot be decided by the PLA. As per report of the Investigator, who visited the house of the claimant and also the hospital, sufficient evidence was gathered/collected that in the accident, Inder Preet Singh had sustained injuries and he was taken to hospital for treatment. A news item was also published in the Daily Newspaper. Learned counsel also submits that Inder Preet Singh had sustained multiple injuries as he was driving the vehicle. Inder Preet Singh was not having valid driving licence. On the basis of false averments, the claim petition was filed. The DDR was lodged after a gap of one week stating therein that the car was being driven by Jamail Singh to create evidence and claimed compensation. Learned counsel also submits that the claimant did not file reply to the explanation sought by the petitioner-Insurance Company with regard to driving of the offending vehicle. Learned counsel further submits that the PLA without appreciating the facts and evidence on record, overlooked the survey report and the assessment made by the Insurance

Regulatory and Development Authority, allowed the claim of respondent No.1. At the end, learned counsel for the petitioner submits that respondent No.1- Jaspreet Rehal did not produce any medical record of Inder Preet Singh, which clearly shows that the offending vehicle was being driven by Inder Preet Singh at the time of accident and no claim was admissible in view of terms and conditions of the policy.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order passed by the PLA as well as other documents available on the file.

Admittedly, the car, in dispute, was owned by Jaspreet Rehal and the same was insured with the petitioner-Insurance Company for a period from 29.08.2014 to 28.08.2015. The accident occurred during said period of insurance i.e on 31.03.2015. The claim petition was filed by owner of the vehicle-Jaspreet Rehal before the PLA, which was allowed on 22.09.2017. The relevant portion of the order passed by the PLA is reproduced as under :-

" 15. When we go through the documents produced by the respondents, we find that none of these documents can be relied upon to hold that the car was being driven by Inderpreet Singh. Ms. Sarpreet Kaur Ahluwalia, Assistant Manager, who submitted her affidavit Ex. R1 on behalf of respondent No.1 was not an eye witness to the accident and, therefore, her contention as to who was driving the car is hearsay which cannot be believed. Similarly the report Ex.R15 of the

investigator is also based on the information he claims to have "collected from near the spot" and the person(s) who are alleged to have given this information to him have not been produced in the witness box nor their affidavits were tendered. In its absence the report Ex. R15 cannot be considered to hold that the car was being driven by Inderpreet Singh. Needless to mention that the newspaper item Ex.R16 cannot be relied upon in the absence of the affidavit of the reporter who has given the news. Ex.R18 is the photocopy of the OPD slip but no address of Inderpreet Singh has been mentioned in it nor the identification marks of the patient have been given and therefore it cannot be connected with the driver of the car. Otherwise also, the Doctor who may have issued this OPD slip has not been examined. As regard the damage to the vehicle, that also does not prove the presence of Inderpreet Singh in the said car because in the OPD slip even the injured was reported to be having minor injuries. No such person has been examined by the respondents who may have been present at the spot and had seen the driver of the vehicle. On the basis of these documents/evidence, it cannot be said if the car was being driven by Inderpreet Singh and not by Jatinder Singh."

While allowing the claim petition, it was specifically mentioned that the vehicle was under the Insurance Company when it was damaged in the accident and the Insurance Company was liable to pay compensation for damage of the vehicle. The provisional Survey Report (Exhibit R7) was produced by the Insurance Company. By considering the estimate amount for the repair of the vehicle, the claim was accepted treating the same to be a case of total loss.

In the present case, the order passed by the PLA has been challenged only on the ground that the PLA was not having jurisdiction as disputed question of facts were involved. The driver of the vehicle was not having a valid driving licence, whereas, Jamail Singh has been shown to be driving the vehicle, who was having a driving licence. The alleged driver of the vehicle did not receive any injury and it was a case of fraud. The question of power and jurisdiction of PLA to decide the cases was before the Division Bench of this Court in case Tata Teleservices Limited vs Kulwinder Singh and another 2016(5) RCR (Civil) 220, wherein, it was held that the PLA is an innovative mechanism. In ordinary course, the PLA decide the matters on the basis of compromise or settlement between the parties but the PLA has additional powers also. Sub-section (8) of Section 22C of the 1987 Act Stipulates that where the parties fail to reach at an agreement/settlement, the PLA shall, if dispute does not relate to any offence, decide the dispute on merit. Meaning thereby, that while conducting conciliation proceedings or deciding a dispute on merit, the PLA is expected to be guided by the principles of natural justice, objectivity, fair play and equity.

Like any other Lok Adalat, the award passed by the PLA either in terms of settlement or on merits, is final and binding on all the parties and is deemed to be a decree of a Civil Court.

In ordinary course, Lok Adalats decide the disputes both at pre-litigative and

post-litigative stages. However, the PLA has the jurisdiction only at prelitigative stage, meaning thereby that the dispute should not be pending in any Court before it is brought before the PLA. To say in other words, the purpose of setting up of the PLA is to resolve/decide the disputes relating to specified public utility services even before the aggrieved parties approach the regular courts and thereby redress grievance of the parties without any delay and prevent such disputes from adding to the burden of already overburdened courts as is clear from sub-section (2) of Section 22C of the 1987 Act, which says that after an application is made under sub-section (1) of Section 22C of the 1987 Act to the PLA, no party to that application shall invoke jurisdiction of any court in the same dispute. Sections 22C and 22D of the 1987 Act, lays down the procedure to be adopted by the PLA.

From the said provisions as provided under Sections 22C and 22D of the 1987 Act, it comes out that powers to adjudicate the disputes relating to public utility services have been entrusted to the PLA only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of the PLA. The PLA has power to adjudicate the dispute and once the parties approach the PLA, they are precluded from raising the same dispute before any other forum.

The arguments raised by learned counsel for the petitioner has no merit as to say that the PLA has no jurisdiction to decide the dispute like the present case.

The second argument which has been raised to challenge the award passed by the PLA is that the driver of the car was not having any valid licence, whereas, another person, who was travelling in the same car, received injuries. No evidence was produced on record in this regard. In absence of any oral or documentary evidence on record, it cannot be said that the driver of the car was not driving the car. Only an inference was drawn that the person, who was travelling in the same car, received injuries and he was driver of the car but because of the reason that he was not having a driving licence, the another person was shown to be driving the vehicle.

In the end, it can safely be said that the present petition has been filed by the petitioner-Insurance Company by raising the technical grounds without having any evidence and as such, there is no merit in the submissions made by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.