

(2013) 12 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 26425 and 26474 of 2013

Oriental Insurance Company Ltd.

APPELLANT

Vs

Baljinder Singh

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2013) 12 P&H CK 0096

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—This order will dispose of two identical writ petitions bearing CWP No. 26425 of 2013 and CWP No. 26474 of 2013 filed by the same insurance company against the same owner-claimant about two incidents pertaining to the same vehicle at different points of time. However, for the facility of reference, facts are being culled out from CWP No. 26425 of 2013.

Facts first.

A Tata Indigo car bearing registration No. HR-42B-1847 owned by the claimant was insured with the petitioner-insurance company. The insured vehicle met with an accident on 9.10.2012. The incident was immediately reported. The respondent-claimant claimed to have incurred loss of Rs. 70,000/- on repair of the vehicle. The petitioner-company appointed its Surveyor to assess the loss, who submitted his report assessing the loss to the tune of Rs. 37,684/-. Since the respondent-claimant was not being paid any amount, he approached the learned Permanent Lok Adalat (Public Utility Services), u/s 22-C of the Legal Services Authorities Act, 1987 ("Act of 1987" for short).

2. Efforts were made to bring the parties to an amicable settlement. When the parties could not arrive at an amicable settlement, the learned Permanent Lok Adalat proceeded further to decide the case on merits. Parties led their respective evidence. After hearing the parties and appreciating the evidence

brought on record, the learned Permanent Lok Adalat came to the conclusion that the respondent-claimant was not entitled for Rs. 70,000/-. He was held entitled for Rs. 54,820/- for which he produced receipts from Paras Motors and Verma Motor Garage. The amount was directed to be paid alongwith interest @ 10% per annum from the date of filing the petition till its realization, vide impugned award dated 4.10.2013 (Annexure P-1). Hence this writ petition.

3. Learned counsel for the petitioner submits that the learned Permanent Lok Adalat proceeded on an erroneous approach, while not appreciating the Surveyor's report in the right perspective. He further submits that the respondent-claimant was entitled only for Rs. 37,684/-, as assessed by the Surveyor. He next contended that the learned Permanent Lok Adalat has exceeded its jurisdiction while granting an amount of Rs. 54,820/-. The claim of the respondent-claimant was repudiated by the petitioner-company and after failure of conciliation proceedings, no consent was given by the petitioner-company for deciding the case of merits. To buttress his arguments, he relies upon the judgments of the Hon''ble Supreme Court in United India Insurance Co. Ltd. v. Roshan Lal Oil Mills Ltd. and others, (2000)10 SCC 19, United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal, Sikka Papers Limited Vs. National Insurance Company Ltd. and Others, and Suraj Mal Ram Niwas Oil Mills (P.) Ltd. Vs. United India Insurance Co. Ltd. and Another, He finally prays for setting aside the impugned award by allowing the present writ petitions.

4. Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the cases and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation, no interference is warranted at the hands of this Court, while exercising its writ jurisdiction under Article 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

5. It is an undisputed matter of record that vehicle of the respondent-claimant was insured with the petitioner-insurance company. The accident took place during the validity of the insurance policy. There was no delay on the part of the respondent-claimant in reporting the matter. Efforts were made to bring the parties to an amicable settlement. However, having failed, the learned Permanent Lok Adalat rightly proceeded further to decide the case on merits.

6. So far as the argument raised by the learned counsel for the petitioner that no consent was given by the petitioner for deciding the case on merits is concerned, the same has been found to be without any force. The reason is that the petitioner-company did not deny the claim of the claimant as either being bogus or fraudulent. The dispute between the parties was only about the quantum of amount. The claimant-respondent was claiming Rs. 70,000/- whereas the petitioner-company was admitting its liability to the extent of Rs. 37,684/-, as assessed by the Surveyor.

7. Once the claim of the respondent-claimant was not being denied in toto either

as bogus or based on fraud, the learned Permanent Lok Adalat was having the jurisdiction to decide the case on merits, particularly when the petitioner-insurance company submitted to its jurisdiction, produced its evidence and the argued the case on merits. In such a situation, it is too late for the insurance-company to say that it did not give its consent for deciding the case on merits. Having said that, this Court feels no hesitation to conclude that the learned Permanent Lok Adalat rightly proceeded further while deciding the case on merits and the impugned awards deserve to be upheld. Although the respondent-claimant claimed an amount of Rs. 70,000/-, yet the learned Permanent Lok Adalat rightly appreciated the evidence brought on record by both the parties. Only that amount was awarded to the respondent-claimant for which he produced receipts on account of purchase of spare parts to the tune of Rs. 42,820/- from Paras Motors and Rs. 12,000/- paid to the Verma Motor Garage as labour charges. The argument which is stated to have been raised on behalf of the petitioner-company before the court below that as per the terms and conditions of the insurance policy, some amount was liable to be deducted on account of depreciation, was never raised before the learned Permanent Lok Adalat.

Further, difference of amount between the admitted claim and the award is only about Rs. 15,000/-. Out of this amount of Rs. 15,000/-, an amount of Rs. 12,000/- was paid by the claimant for labour charges, vide receipt dated 22.12.2012. Thus, hardly a difference of Rs. 3,000/- is there, which is negligible. Since the learned Permanent Lok Adalat has considered and rightly appreciated true facts of the case and the claim put forth by the claimant was found to be genuine, it committed no error of law, while passing the impugned awards and the same deserve to be upheld for this reason, as well.

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein, but the same are of no help to the petitioner, being clearly distinguishable on facts. In the Roshan Lal Oil Mill's case (supra), damage was caused on account of fire and the claim was not found entertainable. However, in the present case, the dispute is only on account of difference of amount, as pointed out hereinabove. Similarly, in Sikka Papers' case (supra), the facts were entirely different. The judgment in Suraj Mai's case (supra) and Harchand Rai's case (supra), lay emphasis on the terms and conditions of the insurance policy. In the present case, the petitioner-insurance company failed to point out any violation of any of the terms and conditions of the insurance policy at the hands of the claimant-respondent. In this view of the matter, it is unhesitatingly held that the learned Permanent Lok Adalat rightly granted the genuine amount, which was actually spent by the claimant-respondent, thereby causing no prejudice to the insurance company.

Similar was the position in the second case. Relevant observations made by the learned Permanent Lok Adalat in para 10 of the impugned award in CWP No. 26747 of 2013, read as under:--

"Now the question arises whether the insured is entitled to claim damages to the tune of Rs. 1,25,000/- or not. The petitioner produced bill receipt dated 12.12.2012 and 13.12.2012 regarding the payment to the tune of Rs. 98,290/- for repair of the vehicle in question through Paras Motors & Verma Motors Garage Safidon respectively. There is no evidence on the record that the petitioner has spent Rs. 1,25,000/- on the repairs of the vehicle damaged in accident. Whereas, the plea of the respondent is that loss of vehicle in question was assessed by the surveyor Sh. Ajay Mahajan to the tune of Rs. 51055.12 paise vide report Ex. R8. This plea of the respondent is not tenable because as per Ex. R8 the cost of spare parts and labour charges have been assessed by the surveyor as Rs. 1,11,720.19 paise and after deduction of the amount of Rs. 51055.25 paise was assessed by the surveyor. The bills produced by the petitioner amounting to Rs. 98,290/- cannot be disbelieved. So in view of the circumstances, the petitioner is entitled to claim the amount of Rs. 98,290/- as repair charges etc. of the vehicle in question."

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judge made law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon"ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others,

During the course of arguments, learned counsel for the petitioner could not point out any patent illegality or jurisdictional error apparent on the record of the case, so as to convince this Court to take a different view than the one taken by the learned Permanent Lok Adalat. Further, no prejudice has been shown to have been caused to the petitioner by passing of the impugned award by the learned Permanent Lok Adalat. In this view of the matter, the impugned awards passed by the learned Permanent Lok Adalat deserve to be upheld.

No other argument was raised

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in the given fact situation of the cases, both these writ petitions are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

Resultantly, both the writ petitions stand dismissed, however, with no order as to costs.