

(2010) 12 P&H CK 0512

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 18990 of 2008

National Insurance Co. Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Dec. 17, 2010

Acts Referred:

- Legal Services Authorities Act, 1987 - Section 21

Citation: (2013) 1 RCR(Civil) 434

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Advocate: D.K. Dogra, for the Appellant; Sachin Mittal, Advocate and Mr. R.D. Sharma, D.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

Permod Kohli, J.

This petition has been preferred by National Insurance Company Ltd against the award dated 29.5.2008 passed by the Permanent Lok Adalat (P.U.S.), Gurgaon allowing the claim of respondent No. 3, the insured in respect to theft of the vehicle Truck/dumper bearing registration No. HR-55-B-3222 with a cut of 25% on the insured value. Facts leading to the filing of the present petition are being noticed hereunder:-

Respondent No. 3 was the owner of the Truck Number, referred to herein above. He got this vehicle insured with the petitioner-company vide policy cover No. 350506143773 at the I.D. Rs. 6,40,000/-. The policy was in operation for the period 1.1.2006 to 31.12.2006. Respondent No. 3 had engaged one Ratan Singh as driver of the vehicle. The said vehicle was allegedly stolen on the intervening night of 30.11.2006/1.12.2006. The case projected by respondent No. 3 was that the driver of the vehicle parked it at village Indri on 30.11.2006 and went to his house to sleep. In the morning when he went to the place, where vehicle was parked, he found the

same missing. After making search, an FIR No. 476 dated 26.12.2006 was registered with Police Station Sohna. The police could not trace the vehicle and filed the untraced report on 18.5.2007. The respondent No. 3, thereafter, lodged the report with the insurance company. Insurance company repudiated the policy vide its letter dated 10.9.2007. Respondent No. 3 filed a complaint/application No. 13 with the Permanent Lok Adalat (P.U.S.), Gurgaon on 11.1.2008 which has been decided vide the impugned order dated 29.5.2008 (Annexure P-4). Insurance company on being summoned to appear before the Permanent Lok Adalat opposed the claim of respondent No. 3 by filing detailed objections. It was stated that report of missing vehicle was made to the insurance company after 275 days of the alleged theft and even FIR was registered on 26.12.2006 i.e. after delay of 26 days. It was further stand of the petitioner before the Permanent Lok Adalat that after receipt of the application an Investigator was appointed but due to inordinate delay in lodging the claim and on the report of the Investigator the contract was repudiated and claim of the petitioner was closed. Insurance company also disputed the jurisdiction of the Permanent Lok Adalat in such cases and pleaded that the matter can only be considered by the civil court. To support the action of repudiation of the claim reliance has been placed on condition No. 1 of the terms and conditions of the policy.

2. The Permanent Lok Adalat, however, passed the impugned award, awarding the claim of respondent No. 3 with 25% cut which is under challenge in the present petition.

3. I have heard learned counsel for the parties.

4. Factum of insurance is not disputed. It is also admitted case of respondent No. 3 that FIR was lodged after 26 days of the alleged occurrence of theft and report/intimation was given to insurance company after 275 days. Respondent No. 3 has also admitted that insurance company repudiated the contract and intimated to him vide letter dated 10.9.2007. The Permanent Lok Adalat did not decide the question of delay in intimation to the insurance company or lodging the FIR or the validity of the repudiation letter except observing as under:

In theft cases the delay in reporting the matter to the police is material but it is not so in reporting the matter to the insurance company. So to be fair to both the parties and in the hope of giving finality to the matter, the claim can be allowed as non-standard claim.

5. Finally the Permanent Lok Adalat allowed the claim with 25% cut. It is contended on behalf of the petitioner that the terms and conditions of the insurance policy which is a bilateral contract between the parties is binding upon the insurance company and the insured. Any contravention of the conditions of the policy rendered the contract void. Petitioners have relied upon condition Nos. 1 and 8 of the policy, which reads as under:

1. Notice shall be given in writing to the Company immediately upon the occurrence of any accidental loss or damage and in the event of any claim and thereafter the insured shall give all such information and assistance as the company shall require. Every letter claim with summons and/or process or copy thereof shall be forwarded to the company immediately on receipt by the insured. Notice shall also be given in writing to the company immediately and insured shall have knowledge of any impending prosecution inquest or fatal inquiry in respect of any occurrence which may give rise to a claim under this policy. In case of theft or criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and cooperate with the company in securing the conviction of the offender.

8. The due observance and fulfillment of the terms conditions and endorsements of this policy in so far as they relate to anything to be done or completed with by the insured and the truth of the statements and answers in the said proposal shall be condition precedent to any liability of the company to make any payment under this policy.

6. Condition No. 1 imposes obligation upon the insured to intimate the company immediately on happening of the event and also to report the matter to the police in case of theft or criminal act, wherever the occurrence gives rise to a claim against insurance. Admittedly, FIR was lodged after 26 days and intimation was given to the insurance company after 275 days. No reasons, whatsoever have been given by the Permanent Lok Adalat in condoning such an inordinate delay in lodging the FIR and reporting the matter to the insurance company. The Permanent Lok Adalat by one line observation proceeded to award the claim. The impact of the delay both in lodging the FIR and intimation to the insurance company has not been examined and considered at all. Immediate intimation to the police and the insurance company is intended to know the bona fides of the claimant and also to enable the insurance company to get the matter investigated at its own level and even by the police. Respondent No. 3 seems to be negligent on all these counts. How can a claimant remain silent in intimating the matter to the insurance company when he has suffered loss of lacs of rupees. The first requirement in case of theft was to report the matter to the police when the driver found the vehicle missing on the next morning and also to the insurance company by the insured. There is a clear violation of condition No. 1 of the insurance policy and in view of condition No. 8 the insurance company was fully within its rights to repudiate the contract.

7. It is settled law that terms of the policy are to be construed in its apparent meaning. In [National Insurance Co. Ltd. Vs. Laxmi Narain Dhut](#),)the Hon"ble Supreme Court has held as under:

18. It is also to be noted that the terms of the policy have to be construed as it is and there is no scope for adding or subtracting something. However liberally the policy may be construed, such liberalism cannot be extended to permit substitution of

words which are not intended.

A similar view has been expressed by the Hon"ble Supreme Court in case of [United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal](#), ., wherein following observations have been made:

Therefore, it is settled law that the terms of the contract has to be strictly read and natural meaning be given to it. No outside aid should be sought unless the meaning is ambiguous.

8. Apart from the fact that delay has not been explained, there is another important aspect of the matter. Admittedly, the insurance company repudiated the claim, repudiation is not under challenge. The jurisdiction of the Permanent Lok Adalat u/s 21 of the Legal Services Authority Act cannot be invoked to decide disputed questions of facts. The family of respondent No. 3 should have approached the civil court.

9. For the above reasons, this petition is allowed. Impugned award dated 29.5.2008 of the Permanent Lok Adalat is hereby set aside with liberty to the respondent No. 3 to seek his remedy before the civil court. At the time of issuance of notice of motion on 6.11.2008 petitioner-insurance company was directed to deposit a sum of Rs. 3 lacs as a condition for stay of the execution of the impugned award. The amount is lying with the High Court. The said amount shall be released in favour of the petitioner-insurance company.