

## The Divisional Manager, New India Assurance Co. Ltd. Vs Urmila Devi and Others

**Court:** Jharkhand High Court

**Date of Decision:** April 23, 2010

**Acts Referred:** Legal Services Authorities Act, 1987 â€” Section 7  
Motor Vehicles Act, 1988 â€” Section 140, 22C

**Citation:** AIR 2010 Jhar 133

**Hon'ble Judges:** D.G.R. Patnaik, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

The petitioner in this writ application, has challenged the Award passed by the Permanent Lok Adalat in PLA Case

No. 4 of 2004 whereby in purported exercise of its powers u/s 22C of the Legal Services Authority Act, 1987, the Permanent Lok Adalat has

held that the petitioner Insurance Company is liable to pay interim compensation to the claimant u/s 140 of the Motor Vehicles Act on account of

the premature death of Satya Narayan Tanti @ Sayid Tanti which had occurred in a road accident involving a motor vehicle (Truck) belonging to

the respondent No. 6.

2. Respondents 1 to 5 have appeared through their lawyer Sri S. Kumar by executing vakalatnama, but they did not offer any contest either by

filing any counter-affidavit or by appearance of their lawyer. Accordingly, this application was taken up for hearing on the merits of the petitioner"s

writ application.

3. The petitioner has assailed the impugned Award of the Tribunal on the following grounds:

i. That the permanent Lok Adalat had exceeded its jurisdiction in deciding the case on merits.

ii. The petitioner Insurance Company had contested the claim of the claimant and had never consented for the dispute to be referred to and

decided by the Permanent Lok Adalat on merits of the dispute.

iii. Before passing the Award, the Permanent Lok Adalat did not formulate or offer any terms of settlement, as required under the provisions of

Section 22C(8) of the Legal Services Authorities Act.

4. Learned Counsel for the petitioner in support of the grounds, has relied upon the following judgments:

1. Eastern Central Railways and Anr. v. Ashok Kumar Verma and Ors. 2009 (4) JLJR 129

2. State of Punjab and Another Vs. Jalour Singh and Others,

3. United India Insurance Co. Ltd. Vs. Ajay Sinha and Another,

4. Bharat Sanchar Nigam Limited v. The State of Jharkhand 2008 (3) JLJR 513

5. National Insurance Company v. Kartik Gorain and Ors. WPC 1168/2009

5. As it appears from the pleadings in the writ application as also from the submissions made by the learned Counsel for the petitioner, and also

from the documents available on record, the respondents 1 to 5 had filed their application before the Motor Vehicle Claims Tribunal, claiming

compensation for the premature death of the deceased husband of the petitioner No. 1, which had occurred in a road accident involving a motor

vehicle belonging to the respondent No. 6. The Tribunal referred the dispute to the Permanent Lok Adalat for settlement.

6. The petitioner Insurance Company filed its written statement, denying and disputing the entire claim of the claimants on several grounds, inter-

alia that the owner of the vehicle had violated the terms of the insurance contract in as much as, though the owner had obtained the policy of

insurance in respect of the mini truck and had opted for insurance coverage of cleaner and driver only. There was no coverage under the policy for

any other person traveling on the truck except the driver and cleaner. The vehicle at the relevant time, was carrying passengers other than the

driver and cleaner. The deceased who was one such passenger and such other passengers being not covered under the policy of insurance, the

insurance company was not liable to indemnify the owner of the vehicle for any loss, death or any injury caused to the person other than those for

whom the policy of insurance was covered premium was paid.

7. Learned Counsel for the petitioner informs, by referring to the several paragraphs of the written statement filed by the Insurance Company, that

a categorical declaration was made by the Insurance Company before the Permanent Lok Adalat that since the Insurance Company cannot be

held liable for payment of any compensation, there was no question of any compromise by way of any out of court settlement by way of

conciliation. Learned Counsel submits that by such declaration, Insurance Company had expressed that it did not give any consent for adjudication

of the dispute relating to the claim for compensation through the process of permanent Lok Adalat. Yet, the Permanent Lok Adalat proceeded to

decide the dispute on merits and even without formulating and offering any terms of settlement to the parties. This grounds, according to the

learned Counsel, is contrary to the provisions of Section 22C of the Legal Services Authority Act, 1987.

Learned Counsel adds further that even otherwise, the liability to pay interim compensation under the provisions of Section 140 of the Motor

Vehicles act, is primarily on the owner of the offending vehicle and not upon the Insurance Company.

8. The question as raised by the petitioner is, whether the Permanent Lok Adalat could have decided the claim for compensation on merits of the

case even in absence of specific consent given by the parties concerned agreeing for adjudication of the dispute by the Permanent Lok Adalat and

even without formulating and offering the terms of settlement to the parties?

9. In the case of Bharat Sanchar Nigam Limited (Supra), a division Bench of this Court had occasion to consider the similar issue and after making

elaborate discussion on the scope and extent of the provisions of Section 23C of the Legal Services Authority Act, 1987, has observed as follows:

From perusal of the provisions of Section 22C(3), it is manifestly clear, if an application is filed before a Permanent Lok Adalat, it shall first call

upon the parties to file written statement disclosing the nature of the dispute, points or issues of such disputes and produce the documents and

evidence in order to prove their case. Section 22C(4) casts a mandate upon the Lok Adalat to conduct conciliation proceeding between the

parties and make an endeavour for amicable settlement of the dispute. Section 22C(7) further casts a mandate upon the Permanent Lok Adalat to

first form an opinion as to whether there exists element of settlement in such proceeding, which may be acceptable to the parties. It may formulate

the terms of possible settlement of dispute and give to the parties concerned for their observation. In case the parties reach to an agreement on the

settlement of dispute, they shall sign the settlement agreement and then the Permanent Lok Adalat pass an Award in terms thereof. It is only when

the mandatory requirement as contemplated u/s 22C(7)(3), is complied with and when parties fail to reach at an agreement, the Permanent Lok

Adalat can decide the dispute u/s 22C of the Act.

10. The law relating to the scope and extent of the jurisdiction of the Lok Adalat under the provisions of Section 22C has now been well settled.

Before invoking its powers u/s 22C of the Act for deciding upon the dispute referred to it, the Permanent Lok Adalat must ensure fulfillment of two

essential conditions. The first being, the parties should give consent for their dispute to be decided by the Permanent Lok Adalat and secondly,

before deciding the dispute on merits, the permanent Lok Adalat should first formulate and offer the terms of settlement to the disputing parties and

make an endeavour to resolve the dispute through conciliation. The statutory power conferred upon the Permanent Lok Adalat for deciding the

dispute on merits, can be exercised only as a residuary power, subject to the provisions of sub-section 4 of Section 7 of 22C and cannot be

exercised directly/or in violation of the statutory provisions. In the facts of the present case, it appears that after the dispute was referred to the

Permanent Lok Adalat by the Motor Vehicle Claims Tribunal, the petitioner Insurance Company had made a categorical declaration before the

Permanent Lok Adalat that since it has no legal liability to pay any compensation to the claimant in the admitted facts and circumstances of the

case, there is no occasion for any out of court settlement for payment of compensation by it by way of compromise between the claimant and the

Insurance Company. The declaration implies therefore that the Insurance Company had not consented for the dispute to be settled by the

Permanent Lok Adalat. Furthermore, it appears that no terms of settlement was formulated or offered by the Permanent Lok Adalat to the parties.

Even though, the direction in the Award relates to payment of interim compensation under the provisions of Section 140 of the Motor Vehicles

Act, but in the light of the petitioner's stand that no liability whatsoever could be imposed on it for payment of compensation under any of the

provisions of the Motor Vehicles Act, the Permanent Lok Adalat could not have proceeded to decide the dispute on merits without first observing

the mandatory requirement as laid down under the law.

11. Relying upon the ratio decided by the Division Bench of this Court in the case of Bharat Sanchar Nigam Limited (Supra), and upon

consideration of the fact that the ratio as decided in the aforesaid case squarely applies to the facts of the present case, I hereby quash and set

aside the impugned Award of the Permanent Lok Adalat. Accordingly, I direct that the case be remitted back to the Motor Vehicle Claims

Tribunal for passing decision on merits.