

(2012) 09 JH CK 0092

Jharkhand High Court

Case No: Writ Petition (C) No. 3628 of 2007

New India Assurance Company
Ltd.

APPELLANT

Vs

Smt. Chandni Mukhi and Others

RESPONDENT

Date of Decision: Sept. 17, 2012

Acts Referred:

- Legal Services Authorities Act, 1987 - Section 22(C), 22(C)(8)

Citation: (2012) 4 JLR 562

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Manish Kumar, for the Appellant;

Final Decision: Allowed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the petitioner. The order and award dated 08.03.2007 and 09.03.2007 passed by the Permanent Lok Adalat, Jamshedpur in PLA Case No. 72 of 2006 is under challenge wherein it has been awarded a sum of Rs. 1,44,000/- as compensation to claimants/respondent nos. 1 to 4 and directed the petitioner to pay the same within one month failing which the same shall be realised through process of law with interest @ 14 % per annum.

2. The claimants/respondent nos. 1 to 4 were issued and served notices earlier, but no one has entered appearance on their behalf. However, respondent no. 5, owner of the vehicle, has entered appearance through his counsel, but no one appeared on his behalf when the case is called out.

3. Contention of the petitioner is that in a Motor Vehicle Claim Case wherein the claim petition was preferred by the claimants before the Permanent Lok Adalat, Jamshedpur seeking compensation of Rs. 6,24,000/- on account of death of one

Jethu Mukhi, who died in a road traffic accident on 27.07.2005 involving vehicle bearing registration no. JH05J-5082, the petitioner-Insurance Company was asked to appear. It is submitted by counsel appearing on behalf of the petitioner that the petitioner-company did not agree for conciliation, as according to the petitioner, the deceased was gratuitous passenger and for the same accident another injured namely Dilip Soren instituted an F.I.R. and stated that he and the deceased had boarded the offending vehicle and were sitting atop the slag when it overturned, therefore it is clear that the deceased was not a third party rather a gratuitous passenger.

4. The grievance of the petitioner is that the Permanent Lok Adalat, has proceeded to hear the dispute on merit without following the procedure prescribed u/s 22(C)(4) to (7) of the Legal Services Act, 1987 and also interpreted by the judgment of this Court in the case of State Bank of India, Dhanbad Vs. State of Jharkhand & Anr, passed in W.P. (C) No. 1449 of 2008 vide order dated 09.04.2009 by the Single Bench of this Court and in the case of Oriental Insurance Company Limited, Kutchery Road, Ranchi Vs. Bodya Oraon and Anr. passed in W.P. (C) No. 1975 of 2007 dated 30.04.2012 by the Division Bench of this Court.

5. From the submission of the petitioner and averment made in the writ petition, it appears that the claim petition related to the dispute in respect of Motor Vehicle Accident Case for which the duly constituted Tribunal is already functioning under the Motor Vehicle Act, 1988 and the claim was contested on merit questioning the status of the deceased itself as being third party or as gratuitous passenger. Moreover, it appears from the submission of the petitioner that no attempt for conciliation was made on the part of the Permanent Lok Adalat or the terms of settlement were framed and offered to the rival parties to agree at a compromise over the same and only upon failure to do so, the Permanent Lok Adalat could have proceeded to adjudicate the dispute on merit u/s 22(C)(8) of the Act. The jurisdiction of Permanent Lok Adalat to entertain a claim petition is no longer res-integra as the instant issue has already been settled by the judgment of the this Court passed in W.P. (C) No. 1449 of 2008 vide order dated 09.04.2009 in the case of State Bank of India, Dhanbad Vs. State of Jharkhand & Anr. and in the case of Oriental Insurance Company Limited, Kutchery Road, Ranchi Vs. Bodya Oraon and Anr. passed in W.P. (C) No. 1975 of 2007 dated 30.04.2012 by the Division Bench of this Court. The Permanent Lok Adalat can adjudicate the dispute but only upon failure of the parties to arrive at a compromise and/or to agree to the terms of settlement framed and offered to the rival parties by the Permanent Lok Adalat. Therefore, it appears that the Permanent Lok Adalat has gone beyond its jurisdiction and acted contrary to the law laid down by this Court under the statute under which it is created. The impugned award cannot be sustained in law and is, accordingly, quashed.

6. However, it is left open to the claimants to pursue their claim, if permissible in law, before appropriate Forum or Tribunal instituted under the Motor Vehicle Act,

1988, which shall consider the same in accordance with law. This writ petition is allowed in the aforesaid terms.