(2014) 09 OHC CK 0015

In the Orissa High Court

Case No : W.P. (C) No. 7060 of 2013

Bajaj Allianz Life Insurance Co. Ltd. — APPELLANT

Vs

Golekh — RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2014) 09 OHC CK 0015

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Biswanath Rath, J.—This writ petition is filed by the petitioner-Bajaj Allianz Life Insurance Co. Ltd. (Private Insurance Company) assailing the award dated 30.11.2012 under Annexure-5 passed by the opposite party no. 2 in the Permanent Lok Adalat Case No. 1 of 2012 in allowing the claim of the claimant on account of death of the policy holder bearing no. 0079276610. The petitioner assails the award on the ground that the policy was repudiated on suppression of material fact to the effect that there was physical ailment with the victim before entering into the policy. The petitioner-company further alleges that the company has filed documents in xerox copies in proof of its allegation confirming the previous physical ailment of the victim but, for non-cooperation of Medical Authorities in spite of repeated summons, who neither produced the originals in the Court nor made it available for evidence purpose and it is only on this basis the Permanent Lok Adalat has disbelieved the case of the Insurance Company and has passed the impugned award in favour of the claimants.

On the other hand, the opposite party-claimants on appearance submitted that the allegation regarding previous ailment of the victim is false. The Insurance Company even though cooked-up such a story, miserably failed to establish its allegation and there is no illegality committed by the Permanent Lok Adalat in passing the impugned order.

2. Perusal of the impugned order, clearly discloses that considering the allegation of the Insurance Company the Permanent Lok Adalat has framed two vital issues vide issue nos. III and IV, which are quoted herein below:-

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"III. Whether the deceased insured Smt. Indumati Mohanty had suppressed or not disclosed material facts pertaining to her health condition in the proposal form?

IV. When admittedly the policy was issued after medically examining the deceased by the Doctor of Insurance Company can the Insurance company take a defence that the deceased insured had prior ailment and the Insurance Company is not liable to pay the sum assured?"

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In deciding these issues, the Permanent Lok Adalat gave sufficient chance to the Insurance Company for establishing the allegation to arrive at findings. Since the documents in proof of such allegation, were xerox copies and remain inadmissible, the Permanent Lok Adalat on the application of the Insurance Company for summoning the Administrative Officer, S.C.B. Medical College and Hospital, Cuttack issued summons for production of original Discharge Certificate and the Bed-head Ticket of the deceased. In spite of summons and fixing the case for a particular date, no one appeared with the desired documents. The respondent-Insurance Company failed to lead evidence to the above regard and orally submitted that it does not want to examine any other witnesses or to file any other documents. Recording the statement of the Insurance Company, the Permanent Lok Adalat closed the evidence. But on a subsequent stage, considering the submissions of both the parties and in the interest of justice, the Permanent Lok Adalat suo motu issued fresh summons for production of documents on 24.11.2012. In spite of fresh summons, nobody also either appeared or produced any document coming to the aid of the Insurance Company. In cross-examination, the D.W.1 even though submitted that the xerox copies of the Bed-head Ticket and Discharge Certificate were obtained by their investigators, it could not say the name of particular investigator who was not even also examined. The Tribunal further finding that as required in the matter of entering into the policy, the victim was also examined by doctor of the company and a report indicating that the victim was not suffering in any way was obtained by the company it is based on which, the policy in relation to the victim was entertained.

It is on this ground, the Permanent Lok Adalat has rejected the plea of the Insurance company and allowed the claim of the claimants.

3. During the course of argument, learned counsel for the Insurance Company has brought citations to my notice perusal of which I find none of them had any application to the present case. Facts remain that since the petitioner-Insurance

Company raised the objection regarding material suppression by the deceased during entering into the policy agreement, law is well settled that it is incumbent on the part of the Insurance Company to ensure positive evidence in its favour in establishing such allegation, this burden cannot be shifted to other side. The Insurance Company admittedly has filed xerox copies of the documents and failed to bring the documents to validate its allegation. It has failed in bringing the concerned officer or the agent establishing the objection of the Insurance Company, it even also failed examining its own agent, i.e., investigator through who it has received xerox copies of the documents.

4. Under the above facts, submissions and the admitted position in the evidence particularly to the extent that the victim was physically examined by the doctor of the Insurance Company before entertaining the policy, I find that the Permanent Lok Adalat committed no error of law or facts. Consequently, I find no merit in the writ petition and as such while dismissing the writ petition at the instance of the Insurance Company, I confirm the award passed by the Permanent Lok Adalat. However, there shall be no order as to costs.