

(2012) 09 JH CK 0017
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1920 of 2007

Dilip Kumar Verma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A

Legal Services Authorities Act, 1987 — Section 22, 22(C)(4), 22(C)(8), 22A, 22A(b)

Citation : (2013) 1 JLJR 59

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Saurav Arun and Deepak Kr. Dubey, for the Appellant; Shankar Lal Agrawal, for the Respondent

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner is aggrieved by the order dated 28.02.2007(Annexure-8) passed by the Permanent Lok Adalat, Jamshedpur, Singhbhum East in PLA Case No. 35 of 2006 which was preferred by the respondent No. 5, directing him to pay the amount of award of Rs. 2,25,000/- within two months failing which the same shall be realised alongwith interest @ 14% per annum in accordance with law.

2. The order impugned is challenged on behalf of the petitioner on the following ground:-

(i) that the petitioner does work under the subcontract executed by the J.S.E.B. or J.U.S.C.O with the Respondent No. 3 and thus, petitioner does not fall under the Public Utility Service u/s 22A(b) of the Legal Services Authority Act, 1987, as such the Permanent Lok Adalat has no jurisdiction to entertain the dispute.

(ii) the Permanent Lok Adalat has to follow the procedure prescribed u/s 22(C) (4) to (7) of the Act and only upon failure of the parties to arrive at compromise and/or agree on the terms of settlement offered by the Permanent Lok Adalat to

the rival parties, can proceed to adjudicate the dispute on merit, which has not been done in the present case.

(iii) one of the grounds raised by the petitioner is that the instant cause of action lies under the provisions of Fatal Accident Act, 1855 wherein Section 1A provides that the family of a person can make a claim for loss occasioned to it by death or by actionable wrong, by invoking remedy of the suit; therefore, the instant proceeding was also without jurisdiction.

(iv) that the accident on account of which the claimants have made the claim before the Permanent Lok Adalat also gave rise to a criminal case in which petitioner was made an accused and chargesheet was also submitted against him, therefore, under the provision of Section 22(C)(8) of the Legal Services Act, the Permanent Lok Adalat cannot decide the dispute as it is in relation to an offence.

3. According to the petitioner he was under an agreement with respondent No. 3, M/s. Subhash Projects and Marketing Ltd. for repair of certain electric conductor in connection with the work allotted to the respondent No. 3 by the Jharkhand State Electricity Board and J.U.S.C.O. It is submitted on behalf of the petitioner that the private respondents have not impleaded the Jharkhand State Electricity Board and J.U.S.C.O. as party in their claim petition despite it being brought to the notice to the Permanent Lok Adalat in the written statement filed on behalf of the petitioner (Annexure-6).

4. The contention of the petitioner is that the deceased was neither the employee of the petitioner nor the petitioner had any knowledge as to how he came into contact with the electric wire which caused accident. It is submitted on the basis of the post-mortem report (Annexure-7) that the cause of death has been found on account of head injury. Based on these aforesaid facts, it is submitted that the claim of the claimants involved complicated issues of fact and law and the Permanent Lok Adalat is not supposed to decide the dispute in the nature of a regular court of law where in only such a claim can be adjudicated upon.

5. Learned counsel for the respondents-Claimants, on the other hand, submitted that petitioner falls within the definition of Section 22A of the Public Utility Services Act specially Section 22A (iii) which relates to supply of power, light or water to the public by any establishment. However, learned counsel for the respondent is also not able to dispute that before adjudicating the claim on merit, the Permanent Lok Adalat made no attempt to conciliate or frame any terms of settlement, neither offered to the rival parties to come to a compromise on the terms of settlement agreed and/or only upon failure of the same, proceeded to adjudicate the dispute on merit. It is not denied that relating to the same accident, F.I.R. has been instituted and charge sheet has been submitted against the present petitioner.

6. After having heard learned counsel for the parties at length and gone through the relevant materials on record, in the first place, it appears that the claim of

the claimants do not fall within the definition of Public Utility Service u/s 22A of the Legal Services Authority Act, 1987 specially Section 22A sub-Section (b) Clause (iii) is relied upon by the claimants. Section 22A (b) of the Legal Services Authority Act, 1987, is quoted hereinbelow:-

22A.(b) "public utility service" means any-

- (i) transport service for the carriage of passengers or goods by air, road or water; or
- (ii) postal, telegraph or telephone service; or
- (iii) supply of power, light or water to the public by any establishment; or
- (iv) system of public conservancy or sanitation; or
- (v) service in hospital or dispensary; or
- (vi) insurance service,

and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

7. Bare perusal of the aforesaid Public Utility Service at clause (iii), it appears that it relates to supply of power, light or water to the public by any establishment. The petitioner was not engaged in supply of power, but he is a petty contractor under subcontract with Respondent No. 3 contractor of the Jharkhand State Electricity Board engaged in certain civil/mechanical work under the contract. The petitioner is also not an establishment which falls within the definition of Public Utility Service u/s 22A(b)(iii) of the Act, 1987. From the submissions of the parties and the averments on record, it appears that the Permanent Lok Adalat straightway proceeded to adjudicate the dispute on merit, which is contrary to the provision of 22(C)(4) to (7) of the Legal Services Act and law laid down by 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, Kutcheri 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, which clearly stipulates that the Permanent Lok Adalat is required to follow the procedure prescribed u/s 22 to (7) of the Act by making an attempt to conciliate and/or frame terms of settlement offered to the parties to arrive at compromise or agreed settlement and only upon failure to do so, could proceed to adjudicate the dispute on merit.

8. However, it also appears that the dispute raised by the claimants related to the accident and for the same accident, petitioner has been charge sheeted. Section 22(C)(8) of the Act clearly provides that if parties fail to reach an agreement under sub-Section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute. Obviously, dispute raised was

also in relation to an offence.

9. Moreover, the Jharkhand State Electricity Board or J.U.S.C.O. was not impleaded as party. From the claim made by the claimants itself, it appears that it requires adjudication on complex issue of facts as well as law, which is ordinarily required to be decided in a proper suit before competent Court under the provision of Fatal Accident Act. In the facts and circumstances of the case, it appears that the Permanent Lok Adalat has gone beyond its jurisdiction in the matter and without following the procedure of law as also laid down by this Court in respect of Section 22(C)(4) to (7) proceeded to adjudicate the dispute on merit and imposed award of Rs. 2,25,000/- against the petitioner.

10. For these facts and circumstances, the award cannot be sustained and is, accordingly, quashed. It will be open to the claimants to make the claim in accordance with law if permissible in law before competent Court/Authority, which may consider the same in accordance with law.