

(2010) 03 JH CK 0072
In the Jharkhand High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Arti Banerjee and Others		RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 39A
Legal Services Authorities Act, 1987 — Section 22
Motor Vehicles Act, 1988 — Section 165, 22C, 22D, 22E

Citation : (2010) 03 JH CK 0072

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred mainly for challenging the order, passed by the Permanent Lok Adalat Dhanbad, dated 14th September, 2007, in Permanent Lok Adalat Case No. 1312 of 2004 (Annexure-1 to the memo of petition), whereby, the Permanent Lok Adalat had decided the claim, on merits in favour of the respondents.

2. Learned Counsel for the petitioner has vehemently submitted that the Permanent Lok Adalat, Dhanbad has no power, jurisdiction and authority to decide the dispute of motor accident claim, on merits. Predominant role to be played by the Permanent Lok Adalat is of Conciliator and not of an adjudicator.

3. Secondly, it is submitted that no written consent was given by the petitioner to the Permanent Lok Adalat, Dhanbad for deciding the dispute, on merits, and, therefore, also looking to the decision, rendered by this Court, in the case of Eastern-Central Railway and Anr. v. Ashok Kumar Verma and Ors. as reported in 2009(4) JLR 129, the Permanent Lok Adalat Dhanbad had no power, Jurisdiction and authority to decide the dispute, on merits, and hence, the said impugned order deserves to be quashed and set aside.

4. It is also submitted by the learned Counsel for the petitioner that looking to

the decision rendered by the Hon''ble Supreme Court in Chairman, thiruvalluvar Transport Corporation Vs. Consumer Protection Council, (especially looking to the Paragraph-6 thereof), whenever a Motor Accident Claim Tribunal is working, Consumer Protection Forum/Commission, cannot decide Motor Accident Claim matters, because of existence of Motor Accident Claim Tribunal and, therefore, in this case also the Permanent Lok Adalat cannot decide the dispute, on merits, because there is already an existence of Motor Accident Claim Tribunal under the Motor Vehicles Act, 1988.

5. It is also submitted by learned Counsel for the petitioner that looking to the written statement, filed by the present petitioner in Permanent Lok Adalat Case No. 1312 of 2004 (Annexure-1 of the supplementary affidavit filed by the petitioner), the present petitioner has never contested the case before the Permanent Lok Adalat, on merits and it is stated in Paragraph No. 2 of the written statement that the claim of the original applicant before the Permanent Lok Adalat is maintainable neither on facts nor on law. There are also further Paragraphs in the written statement like Paragraphs No. 23, 26, 27 etc., whereby, the present petitioner was apposing the claim of the original claimant by teeth and nail. Never any consent has been given by the present petitioner before the Permanent Lok Adalat for arriving at a decision, on merits.

6. It is also submitted by the learned Counsel for the petitioner that the role of the Permanent Lok Adalat is not of an adjudicator, but, is of a conciliator. Never any terms of settlement were offered by the Permanent Lok Adalat, as required under Sub-section (7) of Section 22C of the Legal Services Authority Act 1987 and therefore, also the impugned order deserves to be quashed and set aside.

7. It has been held by a Division Bench of this Court in the case of Bharat Sanchar Nigam Ltd. v. State of Jharkhand and Anr. as reported in 2008(3) J.L.J.R. 513, that it is prime duty of the Permanent Lok Adalat to offer terms of settlement under Sub-section (7) of Section 22C of the Act, 1987. Thus, the Motor Vehicle Accident Claim Tribunal being in existence, the Permanent Lok Adalat, Dhanbad cannot decide the dispute, on merits, and, therefore, the order at Annexure-1 deserves to be quashed and set aside.

8. I have heard learned Counsel for Respondent No. 1, who has submitted that the present petitioner had given consent before the Permanent Lok Adalat, Dhanbad and therefore. the dispute has been decided, on merits. This aspect of the matter has also been referred in internal Page No. 5 of the impugned order (Annexure-"1"), passed by the Permanent Lok Adalat, Dhanbad.

9. It is also submitted by the learned Counsel for Respondent No. 1 that looking into the written statement, it has never been stated by the present petitioner (original defendant) that they are not giving consent for decision, on merits, by the Permanent, Lok Adalat, Dhanbad.

10. It is further submitted by the learned Counsel for Respondent No. 1 that order, passed by the Permanent, Lok Adalat, Dhanbad, is absolutely, in

accordance with facts and law, especially, under Sub-section (8) of Section 22C of the Act, 1987 and, therefore, this petition deserves to be dismissed.

11. Having heard learned Counsels for both the sides and looking into the facts and circumstances of the case, I thereby, quash and set aside the order, passed by the Permanent Lok Adalat, Dhanbad dated 14th September, 2007, in Permanent Lok Adalat Case No. 1312 of 2004 (Annexure-1 to the memo of petition), mainly for the following facts and reasons:

(i) it appears that the present respondent No. 1 is an original applicant before the Permanent Lok Adalat, Dhanbad, who has applied for damages arising out of the Motor Vehicle Accident being Permanent Lok Adalat Case No. 1312 of 2004.

(ii) it also appears that the present petitioner is an original defendant in Permanent Lok Adalat case, Looking to the written statement, filed by the Insurance Company, they are denying the claim of the original claimants.

(iii) it has also been stated in Paragraph No. 2 of the written statement, the claim is not tenable at law. There are further Paragraphs in the written statement like paragraph Nos. 23, 26, 27 and other paragraphs, which lead to a conclusion that never the present petitioner was ready and willing for inviting decision, on merits, from the Permanent Lok Adalat, Dhanbad.

(iv) Looking into the provisions of Motor Vehicle Act, 1988, Motor Accident Claims Tribunal, is already in existence, which is fully empowered to decide the motor accident claims. Motor Vehicle Act, 1988 is a Central Act, which is a special Act, meant for these types of accident claims, It has been held by the Hon"ble Supreme Court in Chairman, thiruvalluvar Transport Corporation Vs. Consumer Protection Council, , Paragraph 6 thereof reads as under

The question which then arises for consideration is whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of Shri K. Kumar caused by the use of a motor vehicle. Clearly the Claims Tribunal constituted for the area in question, had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim application would clearly fall within the ambit of Section 165, of the 1988 Act. The 1988 Act can be said to be a special Act in relation to claims of compensation arising out of the use of a motor vehicle. The 1986 Act being a law dealing with the question of extending protection to consumers in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use of motor vehicles found in Chapter-XII of the 1988 Act. Ordinarily the general law must yield to the special law. Besides, the complaint in question cannot be said to be in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided to the deceased. The expression "service" as defined by the 1986 Act means service of any description which is made available to potential users and includes the provision of facilities inter alia in connection with transport. The accident that occurred had nothing to

do with service provided to the deceased. This becomes obvious when one reads the provision along with the definition of complaint in Section 2(c), and service in Section 2(o), of the 1986 Act. Complaint according to Section 2(c), means any application in writing in relation to an unfair trade practice or as a restrictive trade practice adopted by any trader or in relation to goods bought by him or agreed to be bought by him. Both these clauses have no application whatsoever. The third clause relates to the services hired or availed of or agreed to be hired or availed of by a consumer. Therefore at best it can be said the complaint in question related to the service hired or availed of by the deceased. The complaint in the instant case cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the fatal injury was the direct result of the accident on account of which he was thrown out of his seat and dashed against an iron handle or the ship in front of him. We have, therefore, no manner of doubt that this case squarely fell within the ambit of Section 165 of the 1988 Act and the Claims Tribunal constituted thereunder for the area in question had jurisdiction to entertain the same. As pointed out earlier, the 1988 Act and, in particular, the provisions in Chapter XII thereof creates a Forum before which the claim can be laid if it arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the 1986 Act but in the instant case even that question does not arise for the simple reason that the dispute in question did not attract the jurisdiction of the National Commission, whatsoever, and the National Commission has not shown how it had jurisdiction. The issue was pointed raised and for reasons best known to the National Commission it failed to come to grip with it. Surprisingly, there is no discussion whatsoever in the order of the National Commission in this behalf. We are, therefore, of the opinion that the National Commission did not have jurisdiction and as counsel for the appellant put it this was a case of unwarranted exercise of jurisdiction.

(Emphasis Supplied)

In view of the aforesaid decision also it appears that once the Motor Accident Claim Tribunal is in existence and is empowered by the Central Act of 1988 to decide the dispute, on merits in Motor Accident Claims, Consumer Commission/ Forum cannot decide the dispute, on merits.

(v) If the terms of settlement are not offered by the Permanent Lok Adalat under Sub-section 7 of Section 22C of the Act, 1987 and if no consent is given in writing, the Permanent Lok Adalat has no power, jurisdiction and authority to decide the dispute, on merits in the facts of the present case

(vi) It has been decided by this Court in case of *Bharat Sanchar Nigam Ltd. v. State of Jharkhand and Anr.* as reported in 2008 (3) JLJR 513, at Paragraph No. 18, which reads as under:

... In our opinion, instead of exercising adjudicatory role, the Permanent Lok

Adalat ought to have acted in such a manner to bring the parties into a settlement. The duty of Permanent Lok Adalat is to bring the parties to a settlement and to pass award instead of adjudicating a dispute and pass an award without taking notice of the Act and the rules under which the claim was entertainable. In our considered opinion. Permanent Lok Adalat has no jurisdiction to directly invoke the provisions of Sub-section (8) of Section 22C and decide the dispute on merit against the will of the party. As the basic object and power of enacting Chapter VIA is to get the disputes settled at the prelitigation stage the provision of Sub-section (8) becomes redundant where the Permanent Lok Adalat failed to apply the provisions of Sub-section (4) to (7) of Section 22C of the Act.

(Emphasis Supplied)

(vii) In another case this Court in case of Eastern-Central Railway and Anr. v. Ashok Kumar Verma and Ors. reported in 2009 (4) JLJR 129 in Paragraph No. 5, which reads as under:

... It should be kept in mind that the provisions of the CPC are not applicable as per Section 22D of the Act, 1987. Likewise, the provisions of the Evidence Act, 1872 are also not applicable as per the said Section. Moreover, as per Section 22E of the Act, no appeal could be preferred against the Award passed by the Permanent Lok Adalat. In this set of circumstances, a written consent of the parties to the dispute is a must prior to taking the matter on their hand for delivering decision on merit. Once a consent is given in writing by the parties to dispute, to decide the issue on merits, by the Permanent Lok Adalat under Sub-section 8 of Section 22C of the Act, 1987, they are working like arbitrators, and therefore, they can decide the issues on merit, otherwise, they do not have any power to decide the dispute on merit.

(Emphasis Supplied)

In view of the aforesaid decision also it is the prime duty vested in the Permanent Lok Adalat to supply the terms of settlement under Sub-section-7 of Section 22C of the Act, 1987, looking to their wisdom and experience. In the facts of the present case, no such terms of settlement have been offered by the Permanent Lok Adalat, Dhanbad and thus, there is a gross violation of Sub-section-7 of Section 22 of the Act, 1987.

(viii) It has also been decided by this Court in the case of State Bank of India v. State of Jharkhand and Anr. as reported in 2009(2) JLJR 684, that whenever any dispute is to be adjudicated under Sub-section-8 of Section 22C of the Act, 1987, the Permanent Lok Adalat is required to inform the parties that if they are inviting decision, on merits, provisions of the Code of Civil Procedure, 1908 will not be applicable to the proceedings before the Permanent Lok Adalat, likewise, provisions of the Evidence Act, 1872 are also not applicable. Looking to Section 22E of the Act, 1987, against the decision given by the Permanent Lok Adalat, no appeal is tenable in law. This information must be given in advance and

thereafter, also if the parties are giving consent in writing then only the Permanent Lok Adalat can decide the dispute on merits under Sub-section -8 of Section 22C of the Act, 1987, otherwise, not. Looking to the decision, rendered by this Court in the case of Eastern-Central Railway and Anr. v. Ashok Kumar Verma and Ors. as reported in 2009 (4) J.L.J.R. 129, it appears that prior written consent of the parties before the Permanent Lok Adalat for inviting decision, on merits, is a must. Once such type of consent is given, the Permanent Lok Adalat is empowered like an arbitrator. Likewise, once the written consent is given to a Permanent Lok Adalat the Permanent Lok Adalat can decide the dispute, on merits, like an Arbitrator and the Award passed by the Arbitrator will not be appellable. Likewise, here also the Award passed by the Permanent Lok Adalat is not an appellable, but, then also on limited grounds like bias etc. which is given in Section 34 of the Arbitration Act, 1996. It can be questioned. Once consent is given by the parties to the dispute, in writing, the Permanent Lok Adalat would decide the dispute, on merits, like an Arbitrator. The Arbitrator is a Judge privately appointed by the parties and the decision rendered by the Arbitrator is an, "Award" and only on a limited ground it can be challenged and not by way of an appeal. The Award, passed by the Permanent Lok Adalat can not be challenged. Thus, looking to the Provision of Section 22(2) will not be applicable, in the facts of the present case because, the Permanent Lok Adalat had no power, jurisdiction, authority to decide the disputes, on merits. The Award, passed by the Permanent Lok Adalat is a non est order/Award and is, therefore, quashed. A bar created by Sub-section 2 of Section 22E of the Act, 1987 and, therefore, is not appealable.

(ix) The Permanent Lok Adalat must keep in mind that it cannot wear the robe of the Court, without the consent of the parties in writing. The predominant role of the Permanent Lok Adalat is of a Conciliator and not of an Adjudicator. The members of the Permanent Lok Adalat may be retired District Judges, but, their capacity to decide the dispute, on merits, is not to be checked, but the Act, 1987 expects settlement between the parties. The retired Judges must be slow in deciding a dispute, on merits, when they are working as members of the Permanent Lok Adalat. They are not sitting in the Court. It has been held by this Court in State Bank of India, Dhanbad v. State of Jharkhand and Ors., as reported in 2009 (2) JLR 684 especially in Sub-paragraph No. 6(iv), which reads as under:

(iv) It ought to be kept in mind by the Permanent Lok Adalat that they must take all possible steps of settlement of the dispute. It should not bear a robe of the Court from the very beginning. Predominant role to be played by Permanent Lok Adalat is of conciliator and not of an adjudicator. Members of Permanent Lok Adalat may be retired District Judges or retired members of Judiciary, but, their ability to decide a dispute, on merits, is not at the touchstone or to be checked. What is expected under the Act. 1987, is full use of wisdom and experience of members of Permanent Lok Adalat for arriving a settlement of dispute. It is prime duty vested in Permanent Lok Adalat to offer, terms of settlement, on its

own, using all its common sense and knowledge, clarity of law and facts, worldly wisdom and enormous experience, as per Sub-section (7) of Section 22C of the Act, 1987....

(Emphasis Supplied)

Thus, it has been held in the aforesaid decision that even though the members of the Permanent Lok Adalat are the retired Judges, they should not decide the dispute, on merits, because they are not working as Judges in the Court, but, they are serving as members in the Permanent Lok Adalat. Their experience and wisdom ought to be utilized for the settlement between the parties. This is the goal to be achieved by the Legal Services Authority Act, 1987 which is enacted under Article 39A of the Constitution of India, otherwise as stated here-in-after by the Hon'ble Supreme Court, the parties will not come to the Lok Adalat, on the contrary, they will not go away from the Lok Adalat. The primary role of the Permanent Lok Adalat has been lost sight of, looking to the impugned order by the Permanent Lok Adalat, Dhanbad (Annexure-1 to the memo of petition)

(viii) It has also been held by the Hon'ble Supreme Court in the Case of State of Punjab and Another Vs. Jalour Singh and Others, , in Paragraph No. 9, which reads as under:

9. But we find that many sitting or retired Judges, while participating in the Lok Adalats as members, tend to conduct the Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through the Lok Adalats, will drive the litigants away from the Lok Adalats. The Lok Adalats should resist their temptation to play the part of Judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims.

(Emphasis Supplied)

(x) Thus, there is no written consent given by the parties to decide the disputes, on merits, as stated in the aforesaid decision. I am keeping a question open, to be decided in future whether motor accidents claim can be decided even by consent also by the Permanent Lok Adalat or not? This question is left open, if the decision can be quashed on one ground and several grounds are agitated by the parties, generally, Court should keep the other issues open for their adjudication, in future. In the facts of the present case, no written consent was given by the present petitioner for inviting a decision, on merits and, therefore, as per the aforesaid decisions, I hereby, quash and set aside the order/Award of the Permanent Lok Adalat, Dhanbad, dated 14th September, 2007, at Annexure-1 and another legal argument, canvassed that in existence of the

Motor Accidents Claim Tribunal, working under the Motor Vehicle Act, 1988 whether even by consent also of the parties to the dispute, the Permanent Lok Adalat can decide the disputes, on merits or not. This question is left open to be decided in future.

12. In view of the aforesaid facts, reasons and judicial pronouncements, order/Award, passed by the Permanent Lok Adalat, Dhanbad, dated 14th September, 2007, at Annexure 1 to the memo of petition, the Permanent Lok Adalat Case No. 1312I2004 is hereby, quashed and set aside. Liberty is reserved with the original claimants to approach the proper forum under the proper Act.

13. Accordingly, this writ petition is allowed and disposed of.