

(2007) 11 GAU CK 0003
In the Gauhati High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Member Secretary, Asls Authority and Others		RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Citation : (2007) 4 GLT 737

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Judgement

Hrishikesh Roy, J.—Heard Mr. S.S. Sharma, learned senior counsel representing the petitioner-Insurance Company. Also heard Ms. D. Borah, learned Counsel representing the Respondents No. 2, 3 and 4 (the claimants).

2. This writ petition has been filed to challenge the settlement purportedly arrived at on 4.9.2004 in the Lok Adalat held at Nagaon between the parties. It is contended that the Insurance Company was not at all agreeable to arrive at the aforesaid settlement and the Branch Manager of the Insurance Company, who was present during the proceeding of the Lok Adalat, vehemently protested at the manner in arriving at the alleged settlement.

It is further contended that the identification of the vehicle involved in the accident leading to filing of the claim, is also in dispute and accordingly, the representative of the Insurance Company expressed strong reservation to resolve the matter through Lok Adalat and wanted adjudication of the claim against the Insurance Company.

The further contention made by the writ petitioner is that the representative of the Branch Manager was not competent to agree to a settlement for an amount of Rs.5,27,000/-, which was beyond the amount that could be agreed to at the level of the Branch Manager.

It is contended that despite the aforesaid protest made and also the lack of competence of the representative of the Insurance Company to agree for a settlement for an amount of Rs. 5,27,000/-, the impugned settlement on

4.9.2004 was recorded forcibly by the Secretary of the Assam Legal Service Authority, who was conducting the Lok Adalat.

3. Mr. S.S. Sarma, learned senior counsel for the applicant submits that the Lok Adalat can dispose of a matter by way of compromise or settlement between the parties only by consent of parties and such settlement cannot be reached forcibly without consent of the parties.

In support of the said contention, the learned Counsel has referred to a Supreme Court decision reported in (2004) SCC 555 (State of Punjab and Ors. v. Phulan Rani and Anr.), where the Supreme Court held as follows:

7. The specific language used in Sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in Sub-section (3) and (5) of Section 20 are "compromise" and "settlement". The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per *Termes de la Ley*, "compromise" is a mutual promise of two or more parties that are at controversy". As per *Bouvier* it is "an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon". The word "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender. (See *N.F.U. Development Trust Ltd. (1973) 1 All ER 135 (Ch.D)*). A compromise is always bilateral and means mutual adjustment. "Settlement" is termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed of by the Lok Adalat. If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Therefore, the disposal of Writ Petition No. 13555 of 1994 filed by Respondent 1 is clearly impermissible.

4. By citing the aforesaid decision, it is contended that in the instant case, there was no consented compromise or settlement of the dispute and accordingly, it cannot be said that a compromise of the dispute was arrived at on 4.9.2004 in the Lok Adalat held at Nagaon.

5. Ms. D. Borah, learned Counsel appearing for the respondent-claimant submits that the claim was filed because of the accidental death of the sole bread earner of the family, who was employed as a Forest Guard under the Forest Department. Following the death of Birchand Mili, the sole bread earner, the family of the deceased are living through extremely difficult times for lack of resource.

It is contended that the claimants are yet to receive a single farthing by way of compensation for the death of the bread earner of the family. It is further contended that any delay in resolving the dispute would cause further difficulty for the claimants.

6. I have given my anxious consideration to the rival submissions. I am of the

opinion that although by the very nature of the method, some amount of pressure are usually applied for resolving/compromising the disputes amongst the parties during a Lok Adalat, but such pressure should not be to such an extent that settlements are thrust forcibly on an unwilling party.

In the instant case, the representatives of the writ petitioner, apart from, expressing unwillingness to agree to compromise because of the doubt on the identity of the vehicle involved in the accident vis-a-vis the vehicle insured with the Insurance Company, have also refused to agree to the compromise on account of his incompetence to reach a settlement for an amount, which was not authorized to be settled by the Branch Manager. But despite serious protests, his signature was obtained through coercion under threat of proceeding in contempt by the Secretary of the legal Service Authority.

7. Lok Adalats are held to expeditiously resolve disputes, when parties are willing to compromise voluntarily to settle their disputes out of Court through a process of conciliation carried out in the Lok Adalat. Lok Adalats are not meant to threat and force unwilling litigant to agree to settlement, that too, beyond their financial competence. If such procedure is followed, the entire system of resolving disputes through Lok Adalat would be put to jeopardy inasmuch as, the success of the system of Lok Adalats would largely depend upon on the faith and confidence of the litigants in the functioning of the Lok Adalats.

8. In the instant case, it is seen that there was no willing compromise on 4.9.2004 between the Insurance Company and the claimants and the settlement was forcibly thrust upon the writ petitioner, who was totally unwilling to compromise the matter during the Lok Adalat proceeding.

The signature of the Branch Manager representing the writ petitioner was obtained through coercion. It appears from the remarks given by the Branch Manager that--"subject to confirmation from regional office" that not only the Branch Manager was unwilling to compromise, but he had also made it clear that he did not have the requisite authority to reach a settlement for an amount of Rs. 5,27,000/-.

9. In view of the above, I am of the opinion that the impugned settlement dated 4.9.2004 has not been arrived at bona fide, but has been arrived at through coercion. Accordingly, the said impugned settlement dated 4.9.2004 is hereby interfered with.

10. Considering that the claimants have not received any amount by way of compensation so far, this matter needs to be expeditiously adjudicated and disposed of.

11. Therefore, this claim is remanded back to the learned Motor Accidents Claims Tribunal, Nagaon with a request to adjudicate the claim expeditiously.

12. For this purpose, let the representative of the writ petitioner and claimants appear before the learned MACT on 16.11.2007. On their appearance, the

learned Tribunal would proceed to take up the matter i.e. M.A.C. Case No. 98/2003 and dispose off the same as expeditiously as possible and preferably, within 4 (four) months from the date of appearance of the parties before the learned Tribunal.

13. With the above direction, this writ petition stands disposed of.