(2009) 10 JH CK 0032

In the Jharkhand High Court

Oriental Insurance Co. Ltd. — APPELLANT

Vs

Baby Devi and Others
 The Branch Manager, Oriental Insurance Co. Ltd. Vs Tizan Devi and Others
 National Insurance Co. Ltd. Vs Tara Devi and Others — RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22A, 22B
Motor Vehicles Act, 1988 — Section 166, 22C, 22D, 22E

Citation : (2009) 10 JH CK 0032

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Challenge in these writ applications is to the Awards of the Permanent Lok Adalats on the dispute between the parties relating to the claim put forth by the individual applicants/respondents, for payment of compensation under the Motor Vehicles Act, in respect of the piemature death of persons, who died in road accidents involving motor vehicles and on whose earnings the applicants were dependant.

2. The petitioners in these writ applications are the insurers, who have challenged the Awards of the Permanent Lok Adalat on inter alia the following grounds:

(i) that the Award of the Permanent Lok Adalat on merits of the case in purported in exercise of the powers u/s 22C(8) of the Legal Services Authorities Act, 1987 (in short the ''Act''), is without jurisdiction and in excess of its authority vested under the law.

(ii) The petitioners/insurers, in each of the cases had contested the claims of the applicants and had never consented for the dispute to be referred to and decided by the Permanent Lok Adalat on merits.

(iii) Before passing the Awards, the Permanent Lok Adalat did not formulate or offer any terms of settlement, as required under the provisions of Section 22C(8) of the Legal Services Authorities Act.

3. On the basis of the aforesaid mentioned grounds, the petitioners have raised a pertinent question as to whether a Permanent Lok Adalat established under Chapter VI- A of the Legal Services Authorities Act, 1987 can adjudicate and decide upon and pass an Award in disputed cases.

4. Learned Counsel for the petitioners in each of these cases, have commonly relied upon the following judgments in support of their contentions:

(I)Bharat Sanchar Nigam Ltd. v. The State of Jharkhand 2008 (3) JLJR 513,

(II) State of Punjab and Another Vs. Jalour Singh and Others,

(III) United India Insurance Co. Ltd. Vs. Ajay Sinha and Another, ,

(IV) Oriental Insurance Co. Ltd. v. Manju Devi and Ors. W. P. (C) No. 836 of 2008,

(V) National Insurance Co. v. Kartik Gorain fit Ors. W.P. (C) No. 11168 of 2009.

5. The facts in these cases are almost identical in as much as, the applicants/ respondents have claimed payment of compensation under the provisions of Section 166 of the Motor Vehicles Act, 1988 for the death of deceased persons occurring on account of road accident involving different motor vehicles, each of which is claimed to be covered under policies of insurance with the present petitioners/insurers.

6. The dispute was referred to by the concerned Motor Vehicle Tribunals to the Permanent Lok Adalats for disposal.

7. It also appears from the Written Statements filed on behalf of the insurers/ petitioners in each of the cases, that having denied their liability to pay any amount of compensation on the respective claims, they had also refused to consent for the dispute to be adjudicated upon and decided by the Permanent Lok Adalat.

8. The Permanent Lok Adalat adjudicated and decided upon the disputes on merits directing the insurers to pay the amount of compensation as declared in the individual Awards.

9. It further appears that in each of the cases, before passing the Award, the concerned Permanent Lok Adalat did not offer any terms of settlement to the disputing parties nor were they called upon to agree upon any terms of settlement.

10. Refuting the grounds advanced by the petitioners, learned Counsel for the respondents/applicants would want to support the impugned Awards of the Permanent Lok Adalats, on the ground that the Permanent Lok Adalat, constituted under the provisions of Section 22A of the Legal Services Authority Act, have been vested with the power and jurisdiction under the provisions of

Sections 22B, 22C, 22D and 22E of the Act, to decide the issues involving the disputes on merits and to pass an Award and that such Award is final and can not be subject to any appeal or judicial interference. In support of their arguments, learned Counsel for the respondents would want to refer to and rely upon a judgment of a Single Bench of this Court passed in the case of National Insurance Company Ltd. and Ors. v. Smt. Sanjori Devi reported in 2009 (3) JLJR 167.

11. An identical issue came up before a Division Bench of this Court in the case of Bharat Sanchar Nigam Ltd. (supra), wherejn the fact was that before passing the Award deciding the disputed issues on merits, the Permanent Lok Adalat did not offer any terms of settlement to the disputing parties on its own and - furthermore, had proceeded to pass the Award even though one of the parties, namely, the Insurer did not consent for the settlement of the dispute by the Permanent Lok Adalat on merits. After making an elaborate discussion on the scope and extent of the provisions of Section 22C of the Legal Services Authority Act, the Court has observed as follows:

From perusal of the provisions of Section 22C(3), it is manifestly clear, if an application is filed before a Permanent Lok Adalat, it shall first call upon the parties to file Written Statement disclosing the nature of the dispute, points or issues of such disputes and produce the documents and evidence in order to prove their case. Section 22C(4) casts a mandate upon the Lok Adalat to conduct conciliation proceeding between the parties and make an endeavour for amicable settlement of the dispute. Section 22C(7) further casts a mandate upon the Permanent Lok Adalat to first form an opinion as to whether there exists element of settlement in such proceeding, which may be acceptable to the parties. It may formulate the terms of possible settlement of dispute and give to the parties concerned for their observation. In case the parties reach to an agreement on the settlement of dispute, they shall sign the settlement agreement and then the Permanent Lok Adalat pass an Award in terms thereof. It is only when the mandatory requirement as contemplated u/s 22C(7)(3), is complied with and when parties fail to reach at an agreement, the Permanent Lok Adalat can decide the dispute u/s 22C of the Act.

Upon such observations, the Court had held that the Permanent Lok Adalat has no jurisdiction to directly invoke the provisions of Section 22C(8) and decide the dispute on merit against the will of the party. In arriving at the aforementioned findings, the court had referred to and relied, upon the Supreme Court judgments in the case of State of Punjab v. Jalour Singh and Ors. (supra) and also in the case of United India Insurance Co. Ltd. v. Ajay Sinha (supra).

12. More recently, a Single Bench of this Court, in the case of National Insurance Company v. Kartik Gorain and Ors. (supra) and also in the case of Oriental Insurance Co. Ltd. v. Manju Devi and Anr. (supra), had, by relying upon the Division Bench judgment of this Court in the case of Bharat Sanchar Nigam Ltd. (supra), also held that the Permanent Lok Adalat can not take decision on

merits; without first offering the terms of settlement to the disputing parties and without making any endevour to resolve the dispute through conciliation and particularly when the parties had not mutually agreed to consent to the dispute being resolved on merits by the Permanent Lok Adalat.

13. The judgment cited by the respondents in the case of National Insurance Company (supra), in my view, would not strictly apply to the facts of present case, as because in the aforesaid case, the Permanent Lok Adalat had initiated a process for conciliation and had offered terms of settlement to the disputing parties and only after the parties had failed to arrive at an agreement in terms of the settlement offered, the Permanent Lok Adalat proceeded to decide the dispute on merits. Even in the case of National Insurance Company (supra), the Single Bench has observed that from perusal of the provisions u/s 22C of the Legal Services Authorities Act, it would be evident that powers u/s 22C(8) of the Act, can be invoked by the Permanent Lok Adalat to decide the dispute, but the aforesaid statutory power conferred upon the Permanent Lok Adalat, can be exercised only as residuary power, subject to the provisions of sub-Section (4) to sub-Section (7) of Section 22C and can not be exercised directly and/or in violation of the statutory provisions.

14. Having heard learned Counsel for both the sides and relying upon the ratio decided by the Division Bench of this Court in the case of Bharat Sanchar Nigam Ltd. (supra), I hereby quash and set aside the orders impugned in each of these cases passed by the concerned Permanent Lok Adalats.

15. It shall be deemed that the parties have not been able to resolve their disputes amicably through mutual settlement. Accordingly, the cases are remitted back to the concerned Motor Vehicles Tribunals for appropriate decision on merits.