

(2022-1)205 PLR 269

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Lisa Gill.

AVIVA LIFE INSURANCE COMPANY INDIA LIMITED – Petitioner,

versus

PERMANENT LOK ADALAT, MOHALI and others – Respondents.

CWP-17167-2021

(i) Legal Services Authorities Act, 1987 (39 of 1987), Section 22C – No merit in the arguments that Permanent Lok Adalat could not have adjudicated on merits of the matter – In case parties fail to reach an amicable settlement/reconciliation, it is open to the learned Permanent Lok Adalat to proceed and decide the matter on merits. [Para 10]

(ii) Legal Services Authorities Act, 1987 (39 of 1987), Section 22C (1) –Provides “Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute” – Complaint on the same cause of action filed under the Consumer Protection Act before filing application before the Permanent Lok Adalat – Was dismissed as withdrawn with liberty and permission to file a fresh case – Would not stand in the way of the applicant. [Para 10]

(iii) Legal Services Authorities Act, 1987 (39 of 1987), Section 22C – Insurance – Uberrimae Fidei – Repudiation of claim on the ground that details of the insurance policies of the family members have been wrongly mentioned – Plea of fraud – Permanent Lok Adalat held that even if it is presumed that the applicant has wrongly disclosed that certain Life Insurance Policies are in operation in the name of this father, mother, brother and sister, how does it matter because the applicant has not disclosed any such fact that he has got other insurance policies effected either on himself or any of his family members – Family members under the law means wife and children – No such insurance policy has been in operation either on the applicant or in the name of his family members – The mere fact that he has disclosed about his father, mother, brother and sister certainly cannot by any stretch of imagination be said to fall under the ambit of “Uberrimae Fidei” – Further held that applicant has signed this form in Hindi and there is categorical statement on oath of the applicant through his duly sworn affidavit that he simply could signed in Hindi and is illiterate person and he does not understand English language – It is correctly held by the learned Permanent Lok Adalat that there is nothing on record to indicate that the applicant played any kind of fraud or made any misrepresentation before the authorities. [Para 9]

Er. Sandeep Suri, for the petitioner.

Lisa Gill, J. - (3rd September, 2021) - This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

2. Petitioner – Aviva Life Insurance Company India Limited has filed this writ petition for setting aside award dated 23.01.2017 passed by the learned Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali.

3. Brief facts necessary for adjudication of this matter are that respondent No. 2 filed an application under Section 22C of the Legal Services Authority Act, 1987 (for short – ‘the Act’) with the averments that insurance company through their agents/representatives alongwith officials of IndusInd Bank Limited (respondent No. 3 in this writ petition as well as in application under Section 22C of the Act) approached the applicant in March, 2012 and advocated various life insurance policies before the applicant. Applicant out of love and affection for his daughter chose to assure her life and took insurance policy, accordingly. Number of papers were required to be signed for issuance of the policy. Documents were handed over to agent of the insurance company, who is stated to have filed the form himself. Applicant, it is stated, supplied all the information as sought by the agent of the insurance company without suppressing any facts. Applicant claimed to be an illiterate person while being able to sign his name in Hindi. It is pleaded that the applicant did not understand English and had signed the documents in Hindi in good faith while trusting the agent of the insurance company. It is further stated that agent of the insurance company filled in wrong information in column 8.2 of the proposal form. Entire transaction took place at village Manauli with premium of the policy being paid at village Manauli. Premium of the policy was Rs.1,00,000/- with its duration being 15 years. Policy was to mature either in the event of death of insured person or a period 15 years. Unfortunately, applicant’s daughter died on 03.09.2012 at PGI, Chandigarh.

4. Intimation thereof was immediately sent to the insurance company through IndusInd Bank Limited and original documents submitted as well. Representative of the insurance company is stated to have come to the house of the applicant at village Manauli and conducted required inquiries, however, applicant received only cheque dated 05.04.2013 for a sum of Rs.1,00,224/- through post. When officials at IndusInd Bank were contacted, applicant was told that his claim was rejected and premium amount was returned by the petitioner – company. Applicant represented against rejection. His matter was put up before the Review Committee which also declined applicant’s claim. Consequently, application under Section 22C of the Act was filed.

5. Insurance company in the reply filed before the learned Permanent Lok Adalat stated that cheque of Rs.1,00,224/- stood encashed by the applicant without any protest, therefore, he is not entitled for any further amount as relationship between the applicant and insurance company came to an end therewith. Moreover, applicant is stated to have wrongly stated about his insurance policies with other insurance companies in the proposal

form. It is stated therein that information given in Clause 8.2 of the proposal form was incorrectly given inasmuch as details of the insurance policies in the name of the brother, sister and other family members of the applicant had been given. Thus, this amounts to serious non-disclosure of material facts, which justified repudiation of the applicant's claim. Furthermore, application under Section 12 of the Consumer Protection Act was stated to be barred by Order 2 Rule 2 [CPC](#) because the applicant had earlier filed a complaint before the District Consumer Disputes Redressal Forum, Chandigarh. Learned Permanent Lok Adalat framed the terms of settlement and attempted conciliation between the parties but on failure thereof, the matter was adjudicated on merits and it was decided that applicant's claim has been incorrectly repudiated and the insurance company was directed to pay amount of Rs. 15,75,000/- alongwith Rs.1,00,000/- on account of mental agony, harassment besides Rs.20,000/- as litigation charges. Aggrieved therefrom, present writ petition has been filed.

6. Learned counsel for the petitioner argues that learned Permanent Lok Adalat has no power to adjudicate on merits and furthermore incorrect statement was made in the proposal form, which is clearly fraudulent, therefore, petitioner was justified in repudiation of the claim. Furthermore, having first filed complaint under Section 12 of the Consumer Protection Act, application under Section 22C of the Act was not maintainable. Last but not the least, it is argued that sum of Rs.1,00,224/- received by the applicant should have been adjusted qua the awarded amount. It is, thus, prayed that this writ petition be allowed and the impugned award be set aside. Consequently, application 22C of the Act be dismissed.

7. I have heard learned counsel for the petitioner and have gone through the file with his assistance.

8. Sole reason for repudiation for the applicant's claim is that details of the insurance policies of the family members have been wrongly mentioned in clause 8.2. Learned Permanent Lok Adalat in this respect has specifically observed as under:-

“ Even the facts of the authorities relied upon by the learned counsel for the respondent are not applicable to the facts of the present case because even if for the sake of arguments it is presumed that the applicant has wrongly disclosed that certain Life Insurance Policies are in operation in the name of this father, mother, brother and sister, how does it matter because the applicant has not disclosed any such fact that he has got other insurance policies effected either on himself or any of his family members. Family members under the law means wife and children. No such insurance policy has been in operation either on the applicant or in the name of his family members. The mere fact that he has disclosed about his father, mother, brother and sister certainly cannot by any stretch of imagination be said to fall under the ambit of “Uberrimae Fidee” i.e. utmost good faith rather on the contrary the applicant has disclosed all the facts which were known to him. It is to be borne in mind that this applicant has signed this form in Hindi and there is categorical statement on oath of the applicant through his duly sworn affidavit Ex.AW1/A that he simply could signed in Hindi and is illiterate person and he does not understand English language. All the papers were filled in by the agent/representative of respondents No. 1 and 2 who simply told the applicant to sign the same and this fact stands

corroborated from the statement of Sh. Hardeep Sharma, Assistant Manager, IndusInd Bank Manauli Branch who has deposed on solemn affirmation through his affidavit Ex.AW2/A that the proposal form was filled in by the Agent of respondents no. 1 &2 in his presence and applicant has signed in Hindi on blank proposal form at that time and this statement completely falsifies the tall claim of respondents No. 1& 2 that applicant did not disclose the correct information rather the entire information was provided by the applicant himself and this entire transaction took place in village Manauli and the premium was also paid in village Manauli. Here is a case where the applicant has got the insurance in the name of his minor daughter Priyanka Shukla out of love and affection and the period of this policy was 15 years and the premium was one lac.”

9. It is correctly held by the learned Permanent Lok Adalat that there is nothing on record to indicate that the applicant played any kind of fraud or made any misrepresentation before the authorities. Similarly, there is no merit in the arguments raised by learned counsel for the petitioner that learned Permanent Lok Adalat could not have adjudicated on merits of the matter. Section 22C of the Act reads as under:-

“ 22C. Cognizance of cases by Permanent Lok Adalat.—

(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute: Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law: Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees: Provided also that the Central Government, may, by notification, increase the limit of ten lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it—

(a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;

(c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

10. It is, thus, clearly provided that in case parties fail to reach an amicable settlement/reconciliation, it is open to the learned Permanent Lok Adalat to proceed and decide the matter on merits. Insofar as the objection, that filing of proceedings under the Consumer Protection Act would stand in the way of the applicant is devoid of any merit for the simple reason that the said complaint was withdrawn on 08.04.2014 by the applicant with liberty and permission to file a fresh case.

11. Learned counsel for the petitioner has argued that the sum of Rs.1,00,224/- should in any case be adjusted qua the awarded amount. At this stage, I do not find it justified to issue notice only qua the said amount for the reason that the claim in this case has admittedly been settled and the awarded amount released. For the said amount, it would be unjust to call upon the applicant, at this stage, solely for this reason. It is apparent that such a request was not even addressed before the learned Permanent Lok Adalat..

12. Keeping in view the facts and circumstances as above, I do not find any ground whatsoever to interfere in this writ petition filed in January, 2020 for challenging award dated 23.01.2017 passed by the learned Permanent Lok Adalat (Public Utility Services), SAS Nagar, Mohali.

13. No other argument has been addressed.

14. Present writ petition is, accordingly, dismissed with no order as to costs.

R.M.S.

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Petition dismissed.