

RAJASTHAN HIGH COURT

Life Insurance Corporation of India

Vs.

State of Rajasthan

D.B. Civil Spl. Appeal (W) No. 578 of 2004
(Anil Dev Singh, CJ. and Krishan Kumar, J.)

22.09.2004

JUDGMENT

Anil Dev Singh, CJ.

1. (Oral) - This appeal is directed against the order of the learned Single Judge dated 7th July, 2004 rendered in S.B. Civil Writ Petition No. 1497/2004, whereby the writ petition against the award of the permanent LokAdalat was dismissed summarily. Before we take up the determination of the issue involves in the appeal, few facts need to be noticed.

2. The husband of the third respondent, Nawal Kishore Mittal, had taken a policy of Life Insurance from the Life Insurance Corporation of India. The insured failed to pay the premium with the result that the policy was not renewed w.e.f. 28th April, 1997. Subsequently, the insured made the requisite payment and the policy was renewed by the appellant, Life Insurance Corporation of India w.e.f. March, 2000. Subsequently, on 12th May, 2002, the insured died. The appellant insurer did not entertain the claim of the widow on the ground that the insured had concealed the fact that he was suffering from diabetes at the time of renewal of the Insurance Policy. The dispute between the third respondent and the appellant was determined by the permanent LokAdalat. The permanent LokAdalat, on considering the matter, allowed the claim of the third respondent. Aggrieved by the award passed by the permanent LokAdalat, the appellant filed a writ petition. The writ petition was dismissed by the learned Single Judge, holding that the appellant was not entitled to repudiate the claim of the third respondent on the ground that once upon a time the insured was suffering from diabetes. The learned Single Judge also held that the policy could not be repudiated by the Insurance company after two years of it being effected. The appellant, not being

satisfied, has preferred the instant appeal.

3. We have heard learned counsel for the appellant.

4. The learned counsel submitted that the permanent LokAdalat passed the award in favor of the third respondent even though the parties had not arrived at a compromise. According to the learned counsel, since the parties had not arrived at a compromise, the award passed by the permanent LokAdalat is without jurisdiction.

5. We have considered the submissions of the learned counsel for the appellant.

6. The submission of the learned counsel for the appellant overlooks the provisions of Chapter VI-A of the Legal Services Authority Act, 1987 (for short 'the Act of 1987'). This Chapter deals with pre-litigation conciliation and settlement, which provides for establishment of Permanent LokAdalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified by the State Authority by means of a notification. Section 22-B provides for establishment of permanent LokAdalats. 'Public Utility Service' has been defined under Section 22-A(b) of the Act of 1987 which reads as under :-

"22-A. In this Chapter and for the purposes of Sections 22 and 23, unless the context otherwise requires, -

(a)

(b) "public utility service" means any

(i)

(ii)

(iii)

(iv)

(v)

(vi) insurance service"

7. It is clear from the definition that the public utility service includes insurance service.

8. As per sub-section (8) of Section 22 the Permanent LokAdalat can decide the

dispute relating to public utility service even where the parties failed to reach at an agreement. Sub-Sections (7) and (8) of Section 22 need to be quoted :

"22-C. Cognizance of cases by Permanent LokAdalat -

(7) When a Permanent LokAdalat, 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 LokAdalat 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 LokAdalat shall, if the dispute does not relate to any offence, decide the dispute."

9. Thus, is so far as the dispute arising from a public utility service is concerned, permanent LokAdalat can pass an award even without a compromise having been arrived at between the parties.

10. Therefore, we reject the contention of the learned counsel for the appellant that the Permanent LokAdalat was not competent to decide the dispute without a compromise having been reached between the parties.

11. In the instant case while passing the award the Permanent LokAdalat kept in view the fact that the policy was renewed by the appellant w.e.f. March, 2000. It also took note of the fact that the claimant had categorically stated in her claim that at the time of his death the insured was in good health. This submission of the respondent was not traversed by the appellant. It has not been denied by the appellant that the policy was not repudiated by the appellant within two years of its renewal. In case the insured was not in good health and was suffering from some disease there was no reason why the appellant did not call in question the policy within two years of its being effected.

12. The Permanent LokAdalat in view of Section 45 of the Insurance Act, came to the conclusion that the policy of life insurance was not liable to be questioned by the insurer on the ground that the insured concealed the fact that he was suffering from diabetes since within two years of its being effected it was not repudiated. The learned Single Judge also took the same view while dismissing the writ petition. We may

examine Section 45 of the Insurance Act, 1958 as the order of the LokAdalat and the learned Single Judge are based on it. Section 45 reads as under :

"45. Policy not to be called in question on ground of mis-statement after two years - No policy of life insurance effected before the commencement of this Act shall, after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement (was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made) by the policy-holder and that the policy-holder knew at the time of making it that the statement was false (or that it suppressed facts which it was material to disclose :

[Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal]."

13. Thus, it is apparent that the policy of insurance could not have been called in question after a period of two years of it being effected. Therefore, the learned Single Judge and the permanent LokAdalat were right in holding that the appellant herein was not entitled to repudiate the claim of the respondent.

14. Learned counsel for the appellant relied upon the decision of the Supreme Court in *MithoolalNayak v. Life Insurance Corporation of India*,¹ wherein it was held to the effect that a policy of insurance cannot be called in question after the expiry of two years from the date it was effected on the ground that the statement made in the proposal for insurance or in any report of a medical officer, or referee or friend of the insured, or in any other document leading to the issue of the policy was inaccurate or false, unless the insurer shows :

(i) That such statement was on a material matter or suppressed facts which it was material to disclose.

(ii) that such statement was fraudulently made by the policy holder; and

(iii) That the policy holder knew at the time of making of the statement that it was false or that it suppressed facts which it was material to disclose.

15. The appellant has not been able to show that the aforesaid three conditions existed. It is not shown by the Insurance Company that the time of renewal of the policy, the insurer was suffering from diabetes. In case the appellant had known that the insured had been suffering from diabetes at one point of time, it should have subjected the insured to a medical examination by a qualified medical practitioner before renewing the policy. It has failed to satisfy the LokAdalat, the learned Single Judge and us that the insured had fraudulently suppressed facts.

16. In the circumstances, the appeal fails and is hereby dismissed.

Appeal allowed.

Cases Referred

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1. AIR 1962 SC 814