

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9521 OF 2014

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United India Insurance Co.Ltd.,
Through it's Divisional Manager,
Smt. S.V.Devbhankar,
age 58 years, Occ. Service,
Ahmednagar Divisional office,
Kisan Kranti Building, Market Yard,
Station Road, Ahmednagar-414 001.
District Ahmednagar.

..Petitioner..

VERSUS

1.Shaikh Akbar Najir,
age 32 years, Occ. Labour Work,
R/o Barabhabhali Tq. Nagar,
District Ahmednagar.

..Resp. No.
1- Orig claimant.

2.Rauf Babumiya Shaikh,
age major, Occ. Business,
R/o 4414, MR Houshing Hospital,
Juna Mangalwar Bazzar, At and Post
and District Ahmednagar.

..Resp. No.2 orig.
..opponent No.1..

....

Mr. Atul B. Gatne, Advocate for Petitioner.
Respondents No.1 and 2 served - absent.

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CORAM : R. M. BORDE & V.K. JADHAV, JJ.

Dated: March 26, 2015

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JUDGMENT :- (Per V.K. Jadhav, J.)

1. Rule. Rule made returnable forthwith. Heard finally.

2. The petitioner is seeking issuance of writ or order quashing and setting aside the compromise recorded below Exh.16, by the Lok-Adalat held on 3.3.2013 at Ahmednagar in Motor Accident Claim Petition No.365 of 2012 and consequential Award below Exh.18 dated 12.3.2013 passed by the Chairman, Motor Accident Claims Tribunal, Ahmednagar.

3. Brief facts giving rise to the present writ petition, are as under :-

The Respondent no.1/original claimant had filed Motor Accident Claim Petition No.365/2012 in the Court of Motor Accident Claims Tribunal, Ahmednagar, claiming compensation of Rs.6,00,000/- (Rs. Six lacs) for the injuries sustained by him in a motor vehicular accident on 9.4.2012 against the owner, rider and the present petitioner, who is the insurer of the said motorcycle. The Respondent No.1/original claimant was the pillion rider on the motorcycle at the time of alleged accident. According to the petitioner, the insurance policy of the said motorcycle was "Act Only Policy" and said policy covers the liability to pay compensation only to Third Party in case of an accident and it did not cover the liability of the occupant of the vehicle. However, relying on the opinion given by the Advocate on the

panel of the petitioner, the petitioner has given consent to place the said Motor Accident Claim Petition for settlement before the Lok Adalat scheduled to be held on 3.3.2013. On the day of Lok-Adalat, concerned Divisional Manager could not verify the documents on account of death of her uncle and further she could not attend the Lok-Adalat on 3.3.2013. However, the Divisional Manager of the petitioner Company has deputed one Senior Advocate Shri. A.B.Kothari to remain present only on behalf of the petitioner Company to mark the presence in the said Lok-Adalat proceeding. However, his presence was misunderstood in Lok-Adalat and said Authority letter was treated as delegation of powers. Consequently, the settlement/compromise came to be recorded below Exh.16 between the parties and signed by said Advocate Shri Kothari for the petitioner. Said Motor Accident Claim Petition was finally settled for an amount of Rs.5,75,000/- (Rs. Five Lacs Seventy Five Thousands only). On realizing the mistake, the petitioner had filed Review Application bearing Misc. Civil Application No.148/2013. However, on 28.8.2014 said Review Application also came to be dismissed on the ground that the Motor Accident Claims Tribunal has no jurisdiction to entertain the prayers made in the application. Hence, this Writ Petition.

4. Learned counsel for the petitioner submits that, the then Divisional Manager has deputed Advocate Shri A.B.Kothari to remain present in the Lok-Adalat proceedings to mark the presence of the petitioner Company and in no way the powers of the Divisional Manager to enter into a compromise in the Lok-Adalat were delegated to said Advocate. Learned counsel further submits that, since the so called compromise effected in the Lok-Adalat was not signed by the petitioner, the award passed on the basis of said compromise is not an award in the eyes of law.

5. The learned counsel for the petitioner further submits that, policy in the said claim petition could not be verified before according the consent for placing the said Motor Accident Claim Petition before the Lok-Adalat. In fact, the Insurance Policy of the motorcycle involved in the accident was "Act Only Policy" and it did not cover the liability of the occupant of the vehicle. Respondent No.1/original claimant has come with a case that he was the pillion rider of the motorcycle at the time of the accident. Under these circumstances, it would have been wise on the part of the counsel not to act on the said authorization which authorizes him to make appearance in the proceedings before the Lok-Adalat to mark the presence of the petitioner-Company and not to

compromise the matter on behalf of the petitioner company and accord consent for settlement of the claim.

6. Respondents No.1 and 2 though duly served, remained absent.

7. As per the provisions of Section 20 of The Legal Services Authorities Act, 1987 (hereinafter referred to as 'the Act of 1987') that the Lok-Adalat shall proceed to dispose of the case or matter on the basis of the compromise or settlement arrived at by the parties. Lok-Adalat is guided by the principles of justice, equity, fair play and other legal principles. The provisions of Section 20 of the Act of 1987 are reproduced below :-

20.Cognizance of cases by Lok Adalats :-

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19, -

(i) (a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such Court is prima facie satisfied that there are chances of such settlement; or

(ii) the Court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat,

the Court shall refer the case to the Lok Adalat :

Provided that, no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such Court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organizing the Lok Adalat under sub-section (1) of Section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination :

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between

the parties, the record of the case shall be returned by it to the Court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a Court.

(7) Where the record of the case is returned under sub-section (5) to the Court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1)."

8. On perusal of the copy of the said authority letter dated 2.3.2013 at Exh.'D' (page No.28), it appears that, the then Divisional Manager has only requested the counsel to be present on behalf of him/her on that day for cases as per the list attached, as the Divisional Manager is unable to attend the proposed Lok Adalat on account of sad demise of his/her uncle. Thus, the counsel for the petitioner was authorized only to make an appearance and not to settle or compromise the matter on behalf of the petitioner company.

9. The National Legal Services Authority (Lok Adalats) Regulations, 2009 (hereinafter referred to as 'the Regulations

of 2009') prescribes the procedure for organizing the Lok-Adalats, allotment of cases to Lok-Adalats, procedure in Lok-Adalats, jurisdiction of Lok-Adalats and the award passed therein. Regulation No.10 reads as under :

“10.Reference of cases and matters :-

(1) Lok Adalat shall get jurisdiction to deal with a case only when a Court of competent jurisdiction orders the case to be referred in the manner prescribed in section 20 of the Act or under section 89 of the Code of Civil Procedure, 1908.

(2) A mechanical reference of pending cases to Lok Adalat shall be avoided and the referring Court shall, prima facie satisfy itself that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat :

Provided that matters relating to divorce and criminal cases which are not compoundable under the Code of Criminal Procedure, 1973 (2 of 1974) shall not be referred to Lok Adalat.

(3) In a pending case where only one of the parties had made application to the Court for referring the case to Lok Adalat, or where the Court suo motu satisfied that the case is appropriate to take cognizance by

Lok Adalat the case shall not be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the parties.”

10. Sub-regulation No.2 of Regulation 10 directs that, mechanical reference of a pending cases to Lok Adalat shall be avoided and the reference Court shall, prima facie satisfy about the chances of settlement of such a case through the Lok-Adalat and further satisfy that the case is appropriate to be referred to Lok-Adalat.

11. In the instant case, even though statutory defence was available to the petitioner company, matter was referred to Lok-Adalat. In our opinion, greater responsibility is fixed upon the Courts to avoid mechanical reference of a case.

12. It appears from the provisions of Regulation No.17 of the Regulations of 2009 that, the award is to be drawn in terms of settlement or compromise agreed by the parties under the guidance and assistance from Lok-Adalat. It has specifically provided in sub-regulation no.2 of Regulation 17 that, when both the parties signed or affixed their thumb impression and the members of Lok-Adalat countersign it, it becomes an award. Regulation No.17 thus reads as under :-

Regulation no.17. **Award :-**

- “(1). Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by the parties under the guidance and assistance from Lok Adalat.*
- (2). When both the parties sign or affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an award. Every award of the Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local Courts or in English. It shall also contain particulars of the case, viz., case number, name of Court and names of parties, date of receipt, register number assigned to the case in the permanent register (Maintained as provided under regulation 20) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signature.*
- (3) In cases referred to Lok Adalat from a Court, it shall be mentioned in the award that the plaintiff or petitioner is entitled to refund of the Court fees remitted.*
- (4) Where the parties are not accompanied or represented by counsel, the members of Lok Adalat shall also verify the identity of parties before recording the settlement.*

(5) *Member of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement arrived at and recorded. The members of the Lok Adalat shall also satisfy themselves about the following before affixing their signatures:-*

(a) that the terms of settlement are not unreasonable or illegal or one sided ; and

(b) that the parties have entered into the settlement voluntarily and on account of any threat, coercion or undue influence.

(6) *Members of the Lok Adalat should affix their signatures only in settlements reached before them and should avoid affixing signatures to settlement reached by the parties outside the Lok Adalat with the assistance of some third parties, to insure that the Lok Adalats are not used by unscrupulous parties to commit fraud, forgery, etc.*

(7) *Lok Adalat shall not grant any bail or a divorce by mutual consent.*

(8) *The original award shall form part of the judicial records (in pre-litigation matter, the original award may be kept with the legal services authority or committee, concerned) and a copy of the award shall be given to each of the parties duly certifying them to be true by the officer designated by the Member*

Secretary or Secretary of the High Court Legal Services Committee or District Legal Services Authority or, as the case may be, the Chairman of Taluka Legal Services Committees free of cost and the official seal of the Authority concerned or Committee shall be affixed on all awards.

13. Thus, the con-joint reading of Section 20 of the Act of 1987 and the Regulation no.17 of Regulations 2009 indicates that, the Lok-Adalats shall while determining any reference, act with utmost expedition to arrive at a compromise or settlement between the parties and such a compromise or settlement if it is signed by both the parties and countersigned by the Members of Lok Adalat, becomes an award. If the parties are represented by counsel, they should also be required to sign the settlement or award before the Members of Lok-Adalat, affix their signatures on it.

14. In view of sub-section 2 of Section 22 of the Act of 1987, the Lok Adalats shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it. The Regulations of 2009 prescribes the procedure for organizing the Lok Adalats, allotment of cases to Lok Adalats and the procedure to be followed in Lok Adalats at all levels. It has prescribed in Regulation No.13,

more particularly in sub-regulation Nos.3 and 4 of Regulations 2009 that, the Members of the Lok Adalat shall discuss the subject matter with the parties for arriving at a just settlement or compromise and such members of the Lok Adalat shall assist the parties in an independent and impartial manner in an attempt to reach amicable settlement of their dispute. In that process, the members of the Lok Adalat shall be guided by the principles of natural justice, equity, fairplay, objectivity, giving consideration to, among other things, the rights and obligations of the parties, custom and usages and the circumstances surrounding the dispute. The relevant Clause Nos. 3 and 4 of Regulation No.13 reads as under :-

“13. Procedure in Lok Adalats :-

(1).....

(2).....

(3). In a Lok Adalat the members shall discuss the subject matter with the parties for arriving at a just settlement or compromise and such members of Lok Adalat shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute :

Provided that if it found necessary the assistance of an independent person or a trained mediator may also be availed by the Lok Adalat.

(4) Members of Lok Adalat shall be guided by principles of natural justice, equity, fairplay, objectivity, giving consideration to, among other things, the rights and obligations of the parties, custom and usages and the circumstances surrounding the dispute.”

(5).....

(6).....

It thus appears that, prime importance is given to the participation of the parties to the litigation in the Lok Adalat process and an attempt to reach amicable settlement of their dispute can only be possible if the parties are arriving at a settlement or compromise.

15. In a case **Byram Pestonji Gariwala, Vs. Union Bank of India and others, Reported in AIR 1991 Supreme Court 2234**, the question arose for consideration as regards to the construction of Order 23 Rule 3 of Code of Civil Procedure. The Hon'ble Apex Court has observed that the words “in writing and signed by the parties” inserted in Order 23 Rule 3 of Code of civil Procedure necessarily mean and include duly authorized representative and counsel. It is also held that, a compromise in writing and signed by counsel representing the parties, but not signed by the parties in person, is valid and binding on the parties and is

executable even if the compromise relates to matters concerning the parties, but extending beyond the subject matter of the suit. The Hon'ble Apex Court, however, in paragraph no.37 of the Judgment has also made following observations :-

“37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession.”

16. In the instant case, the learned counsel had no express authority in writing to compromise or settle the matter on behalf of the petitioner company. The provisions of the Act of 1987 and the Regulations of 2009 contemplates participation of parties to the litigation in the Lok Adalat process. The Lok Adalats are being constituted and organized for disposal of the matters through the process of settlement between the parties. In view of this, parties presence before the Lok Adalat is essential and only after signing the compromise or settlement and countersigned by the Members, such compromise becomes an award. However, in case of any extreme hardship, or if it is warranted by the exigency of circumstances, the Counsel may settle or compromise the matter on behalf of his client only after procuring an express authority in writing from his client in this regard.

17. In view of this, we do not think that said compromise and consequential award passed on its basis is in terms of the provisions of Section 20 of the Act of 1987 read with Regulation No.17 of Regulations 2009. Thus, said compromise and consequential award passed on its basis is nullity and not an award in the eyes of law.

18. In view of this, following order is passed.

ORDER

1. Writ petition is hereby partly allowed.
2. The compromise recorded below Exh.16 dated 3.3.2013 before the Lok Adalat and consequential award passed by the Chairman, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No.365/2012 at Exh.18 on 12.3.2013 are hereby quashed and set aside.
3. Motor Accident Claim Petition No.365/2012 shall be restored to its original number and the Chairman, Motor Accident Claims Tribunal, Ahmednagar, shall dispose of the same on its own merits, in accordance with law.
4. Since the respondents No.1 and 2 remained absent in this matter, after the Motor Accident Claim Petition No.365/2012 is restored in the files of Motor Accident Claims Tribunal, Ahmednagar, fresh notices shall be issued to them.
5. An amount of Rs.5,75,000/- (Rs. Five lacs Seventy Five thousand) deposited by the petitioner before this Court shall be transferred to the Motor Accident Claims Tribunal, Ahmednagar forthwith. Needless to say that the amount so transferred shall be subject to the decision in M.A.C.P. No.365/2012, on merits.

6. Writ Petition is accordingly disposed of. Rule is made absolute in above terms.

7. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

(R. M. BORDE, J.)

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aaa/-