

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WA.No. 839 of 2010

AGAINST THE JUDGMENT DATED 17-02-2010 IN WP(C) 8776/2009 .
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APPELLANT/PETITIONER:

**UNITED INDIA INSURANCE COMPANY
LIMITED, MENJERI NOW REPRESENTED
BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, "SHARANYA",
HOSPITAL ROAD, KOCHI-11.**

**BY SRI.MATHEWS JACOB (SENIOR ADVOCATE)
ADV. SRI.P.JACOB MATHEW**

RESPONDENT(S)/RESPONDENTS:

- 1. MALAPPURAM DISTRICT LEGAL SERVICE
AUTHORITY, MANJERI.**
- 2. AYISHABEEVI, W/O.ABOOBACKER,
CHELANGOTTIL HOUSE, VALIYAPARAMBA
PULIKKAL P.O., MALAPPURAM DISTRICT.**
- 3. SULIKHA,W/O.ABDUL SHAFEEQUE, -DO-, -DO-**
- 4. LABEEB C.(MINOR), S/O.ABDUL SHAFEEQUE, -DO-**
- 5. BAHEEBA BINCY (MINOR), D/O.ABDUL SHAFEEQUE, -DO-.**
- 6. UMMUSALMA,(MINOR),D/O.ABOOBACKER,-DO-**
- 7. SHAHEELA(MINOR),D/O.ABOOBACKER.-DO-.**
- 8. ABDULLA, S/O.MUHAMMED, VENNARATHODI HOUSE,
VALIYAPARAMBA PULIKKAL P.O., MALAPPURAM DIST.**
- 9. KHADEEJA,W/O.ABDULLA -DO-**

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**10. ASMABEEVI (MINOR),D/O.ABDULLA,
VENNARATHODI HOUSE,
VALIYAPARAMBA PULIKKAL P.O., MALAPPURAM DIST.**

11. UBAID RAHMAN (MINOR),S/O.ABDULLA, -DO-

12. MUHSEENA (MINOR),D/O.ABDULLA,-DO-

**(MINOR RESPONDENTS 4 AND 5 ARE REPRESENTED BY
THEIR MOTHER 3RD RESPONDENT, MINOR RESPONDENTS 6
AND 7 ARE REPRESENTED BY THEIR MOTHER 2ND RESPONDENT
AND MINOR RESPONDENTS 10 TO 12 ARE REPRESENTED BY THEIR
FATHER 8TH RESPONDENT.**

BY ADV. SRI. BABU S.NAIR

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

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W.A.No.839 of 2010

Dated this the 11th day of February 2015

J U D G M E N T

Ashok Bhushan, Ag.CJ

Heard Sri.Mathew Jacob, learned counsel appearing for the appellant.

2. This writ appeal has been filed against the judgment dated 17/02/2010 in W.P.C.No.8776/2009. The appellant is the petitioner in the writ petition which was filed to seek quashing of Ext.P2, the settlement award entered into in the Lok Adalath on 13/12/2008. The motor accident claims being O.P.(M.V) No.155/2005 and 253/2005 filed by the respondents came up before the Lok Adalath, Manjeri and on an agreement between the parties, the Lok Adalath passed an award of settlement for an amount of Rs.4,55,000/- and 3,55,000/- respectively. The appellant filed an application before the Tribunal to review the settlement. The Tribunal rejected the said application,

against which a writ petition was filed.

3. The learned Single Judge, after hearing the learned counsel for the appellant herein dismissed the writ petition taking the view that an award of the Lok Adalath under the consent of the parties is a decree of the Civil Court and no appeal shall lie from the said award under Section 96 of the Code of Civil Procedure, as was laid down by the Apex Court in **Thomas v. Thomas Job** [2005(3) KLT 1042 S.C].

4. The learned counsel for the appellant submits that it was only a mistake on the part of the Officers of the company to enter into the settlement. It is submitted that the motor accident claim filed was not liable to be allowed since insurance was not a comprehensive insurance. He has placed reliance on the judgment of the Apex Court in **United India Insurance Co.Ltd v. Rajendra Singh and Others** [2000 ACJ 1032] and the judgment of this Court in **New India Assurance Co.Ltd v. Ponnamma Thomas** [2007(4) KLT 519]. There is no dispute between the parties that, in the Lok Adalath, with the consent of the parties, the award was passed. Present is not a case of any fraud or

misrepresentation being practised by the claimant. The judgment in **Rajendra Singh** (supra) lays down that the Tribunal can review its award on the ground of fraud or misrepresentation. The following was laid down in paragraphs 10, 11 and 15 of the judgment.

“10. Thus the Tribunal refused to open the door to the appellant Company as the High Court declined to exercise its writ jurisdiction which is almost plenary for which no statutory constrictions could possibly be imposed. If a party complaining of fraud having been practised on him as well as on the Court by another party resulting in a decree, cannot avail himself of the remedy of review or even the writ jurisdiction of the High Court, what else is the alternative remedy for him? Is he to surrender to the product of the fraud and thereby become a conduit to enrich the imposter unjustly? Learned single Judge who indicated some other alternative remedy did not unfortunately spell out what is the other remedy which the appellant Insurance Company could pursue with.

11. No one can possibly fault the Insurance Company for persistently pursuing the matter up to this Court because they are dealing with public money. If they have discovered that such public fund, in a whopping measure, would be knocked off fraudulently through a fake claim, there is full justification for the

Insurance Company in approaching the Tribunal itself first. At any rate the High Court ought not have refused to consider their grievances. What is the legal remedy when a party to a judgment or order of Court later discovered that it was obtained by fraud?

15. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

5. There cannot be any dispute to the proposition that if it is discovered that fraud was played, the Tribunal has every jurisdiction to review the order. Present is not a case of any fraud or misrepresentation nor any such ground has been alleged in the appeal. In the event the settlement entered into in the Lok Adalath is permitted to be reopened on the ground that the claim was not admissible, the very purpose of settlement in the Lok Adalath shall be frustrated.

6. In **Ponnamma Thomas** (supra), a Division Bench of this Court has held that once the settlement of the award

has become final, it could not have been reviewed by the Tribunal. The Division Bench also observed that the remedy was to approach the High Court under Article 226 of the Constitution of India, if any. The learned counsel for the appellant has fairly submitted that the award has already been satisfied, we are of the view that no case has been made out to interfere with the impugned judgment.

7. The learned counsel for the appellant lastly contended that the insurance company has right to take appropriate proceedings against the owner of the vehicle. We express no opinion on the said submission. It is always open for any party to take such proceedings as permissible under law.

With these observations, this writ appeal is dismissed.

(sd/-)

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

