

CWP-7344-2011

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-7344-2011 (O & M)

Judgment Reserved on : 19.08.2015

Date of Decision: 14.10.2015

Sewa Singh

... Petitioner(s)

Versus

The Daily Lok Adalat (Bench No.1), Punjab and Haryana High Court,
Chandigarh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. G.S.Bhatia, Advocate,
for the petitioner.

Mr. A.S.Salar, Advocate,
for respondent No.3.

Mr.Vinod Gupta, Advocate,
for respondent No.4.

Paramjeet Singh, J.

Instant writ petition has been filed under Article 226 of the Constitution of India for quashing the impugned Award dated 09.12.2010 (Annexure P-3) passed by respondent No.1 whereby FAO No.3884 of 2010 titled 'Sewa Singh vs. Rajinder Bali and others', was disposed of in terms of alleged full and final settlement dated 09.12.2010 (Annexure P-4) between the present petitioner and respondent-Insurance

CWP-7344-2011

Company.

Brief facts relevant for disposal of the present petition are to the effect that the petitioner filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation on account of multiple injuries sustained by him in a motor vehicular accident with a Tata Tempo bearing registration No.PB-11AB-2224 which was being driven by respondent No.2 herein rashly and negligently. The petitioner became disabled due to the injuries received in the accident. Vide award dated 31.10.2009 (Annexure P-1), the petitioner was granted compensation to the tune of ₹3,22,000/- alongwith interest @ 6% per annum from the date of filing of claim petition i.e. 17.10.2006 till its realization. Against that award, FAO No.1000 of 2010 and FAO No.3884 of 2010 were preferred by insurance company and the petitioner, respectively. FAO No.1000 of 2010 preferred by the insurance company was disposed of vide order dated 25.08.2010 and following order was passed:

- “1. The insurance company is on appeal on the question of liability, pointing out to the fact that the driver did not have a valid driving licence on the date of the accident. Learned counsel appearing for the insurer points out that even the driver has admitted that renewal of his driving licence was done only subsequent to the accident and also beyond 30 days from the date when the licence had earlier expired.*
- 2. The liability of the insurance company to satisfy the claim shall not be in any way fettered in view of the decision of the Hon'ble Supreme Court in New India*

CWP-7344-2011

Assurance Co. Shimla vs. Kamla (2001) 4 SCC 342, and it will have a right of recovery against the insured.

3. *The award of the Tribunal is modified and the appeal is allowed to the above extent.*

4. *There is also an application filed for withdrawal of Rs.25,000/- deposited by the insurance company. The application is also allowed and the amount shall be permitted to be withdrawn by the claimant, which shall be in part satisfaction of the award granted already and affirmed in appeal by this judgment.”*

However, FAO No.3884 of 2010 preferred by the petitioner herein was put up before the Daily Lok Adalat, Bench No.1 of this Court and following statement was got recorded by learned counsel for the parties:

“Statement of Shri Vinod Gupta, Advocate, for New India Assurance Company Limited.

OnSA.

We agree that over and above the amount awarded by the Tribunal, a sum of Rs.40,000/- (Rs. Forty Thousand Only), more may be awarded to the appellant/appellants with the undertaking to pay the same within a period of two months, failing which, interest at the rate of 9% per annum shall follow on this amount.

*RO& AC Sd/- xx (A.L.Bahri) President
Signatures Sd/-xx SD/- xx (R.C.Kathuria) Member*

For New India Assurance Company Ltd. 09.12.2010

Statement of Shri Lalit Garg, Advocate for the appellant/appellants

I have heard the statement of representatives of

CWP-7344-2011

the insurance company and accept the same, I will accept Rs.40,000/- (Rs.Forty thousand only), orders may be passed accordingly.

RO & AC SD/- xx A.L.Bahri, President.
SD/- xx (Lalit Garg) Sd/-xx (R.C.Kathuria), Member.
Advocate for the appellant(s)

Chandigarh
Dated: 02.12.2010.”

Thereafter, respondent No.1-Daily Lok Adalat, Bench No.1 of this Court disposed of FAO No.3884 of 2010 preferred by the petitioner vide impugned Award dated 09.12.2010 (Annexure P-3) which reads as under:

“As agreed, as per statement of learned counsel for the Insurance Company and counsel for the appellant, separately recorded, a sum of Rs.40,000/- (Rs.Forty Thousand Only) over and above the amount awarded by the Tribunal is allowed to the appellant in full and final settlement of the claim. Two months time is allowed to the Insurance Company to deposit the amount before the MACT, failing which, interest at the rate of 9% per annum shall follow on this amount till payment from the date of this order. As suggested, the enhanced amount would be paid to the appellant and would be disbursed to him in cash by the Motor Accident Claims Tribunal.

The appeal is disposed of accordingly.

Copy of the order be supplied/sent to the counsel/parties and file be returned to the High Court.

09.12.2010 Sd/- xx (A.L.Bahri) President
SD/- xx (R.C.Kathuria) Member”

CWP-7344-2011

The petitioner has filed the present petition challenging the impugned Award dated 09.12.2010 (Annexure P-3) on the ground that the same has been passed without the consent of the petitioner herein and his statement was not recorded under Regulation Nos.13 and 17 of the National Legal Services Authority (Lok Adalats), Regulations, 2009 (for short, 'NLSA, Regulations, 2009'). The statements of parties are required to be recorded and on the basis thereof, an order can be passed by the Lok Adalat. The Award (Annexure P-3) has also been challenged on the ground that the same has been passed on the basis of statement of learned counsel for the petitioner, in fact, an advocate is not authorized to make such a concessional statement and, therefore, any statement made by learned counsel for the petitioner herein before the Daily Lok Adalat regarding compromise is not binding on the petitioner.

Upon notice, respondent Nos.3 and 4 put in their appearance, however, no reply has been filed by any of the respondents.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that respondent No.1-Daily Lok Adalat has exceeded the jurisdiction vested in it. Without recording compromise between the parties, Lok Adalat cannot pass any Award. Section 20 of the Legal Services Authorities Act, 1987 (for short, 'the 1987 Act') provides that Lok Adalat can only dispose of the matter by way of compromise or settlement

CWP-7344-2011

between the parties. The petitioner has suffered 55% disability and he has been awarded less/meager compensation. The impugned Award (Annexure P-3) passed by the Daily Lok Adalat is based on the statement of learned counsel for the petitioner which is not binding on the petitioner and the aforesaid statement cannot be taken into consideration for passing the award. Otherwise also, mutual concession given by learned counsel for the petitioner on the question of law is not binding on the petitioner.

Per contra, learned counsel for respondent No.3 and learned counsel for respondent No.4 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned Award. They contended that the impugned Award (Annexure P-3) was passed on the basis of statements of learned counsel for the parties.

I have considered the rival contentions of learned counsel for the parties.

Before proceeding further, it would be appropriate to reproduce relevant provisions. Section 20 of the 1987 Act reads as under:

“Section 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

CWP-7344-2011

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 organising 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 sub-section (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, 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 advice 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).”

Regulation Nos.13 and 17 of the NLSA, Regulations, 2009

read as under:

“13. Procedure in Lok Adalats:

(1) Members of Lok Adalat have the role of statutory conciliators only and have no judicial role and they, mutatis mutandis, may follow the procedure laid down in sections 67 to 76 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Members of Lok Adalat shall not pressurize or coerce any of the parties, to compromise settle cases or matters, either directly or indirectly.

(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 the Lok Adalat shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute.

CWP-7344-2011

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 usage and the circumstances surrounding the dispute.

(5) The Lok Adalat may conduct the proceedings in such a manner as it considers appropriate taking into account the circumstances of the case, wishes of the parties including any request by a party to the Lok Adalat to hear oral statements, and the need for a speedy settlement of the dispute.

(6) The Lok Adalat shall not determine a reference, at its own instance, but shall determine only on the basis of a compromise or settlement between the parties by making an award in terms of the compromise or settlement arrived at:

Provided that no Lok Adalat has the power to hear the parties to adjudicate their dispute as a regular court;

Provided further that the award of the Lok Adalat is neither a verdict nor an opinion arrived by any decision making process.

17. Award -

(1) Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by parties under the guidance and assistance from Lok Adalat.

(2) When both parties sign or affix their thumb

impression and the members of the Lok Adalat countersign it, it becomes an award. (see a specimen at Appendix-I). 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 the 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 signature;

- (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 not on account of any threat, coercion or undue influence.*

(6) Members of the Lok Adalat should affix their

CWP-7344-2011

signatures only in settlement 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 ensure that the Lok Adalat 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 Taluk Legal Services Committees free of cost and the official seal of the Authority concerned or Committee shall be affixed on all awards.”

While issuing notice of motion, following order was passed by this Court:

*“Learned counsel for the petitioner while placing reliance on the judgment of Hon'ble the Supreme Court in the case of **Afcons Infrastructure Ltd. & Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. & Ors.**, reported in 2010 (4) Civil Court Cases 756, has argued that Court is not bound to formulate the terms and conditions of the proposed compromise before making reference to the Lok Adalat nor Court is required to record his satisfaction that in the opinion of*

CWP-7344-2011

Court there are elements of the compromise. Learned counsel has further stated that if Court finds that matter may be settled with the intervention of the Lok Adalat that is sufficient for sending the reference to Lok Adalat. Learned counsel while referring to Regulations 13 and 17 of the National Legal Services Authority (Regulations) 2009 has vehemently argued that settlement in the Lok Adalat on a reference made under Section 20 of the Legal Services Authorities Act, 1987 should be signed by the parties themselves and not by the Advocates.

Argument needs consideration as to whether terms used in Regulations 13 and 17 would include Advocates and Attorneys of the parties or not or in other words as to whether only parties shall sign the settlement arrived at before the Lok Adalat?

Notice for the limited purpose for 26.04.2012.”

Now the question arises whether respondent No.1-Daily Lok Adalat has passed the impugned Award (Annexure P-3) on the basis of statement of parties including learned counsel representing the petitioner before the Daily Lok Adalat. Admittedly, statements of learned counsel for the parties have been recorded and not by the parties themselves. Section 20 (3) of the 1987 Act makes it clear that Lok Adalat shall proceed to dispose of a case or matter and arrive at a compromise or settlement between the parties. Section 20(4) of the 1987 Act provides that while arriving at a compromise or settlement between the parties, Lok Adalat shall be guided by the principles of justice, equity,

CWP-7344-2011

fair play and other legal principles. The material terms of sub-sections (3) and (5) of Section 20 of the 1987 Act are “compromise” and “settlement”. The term “compromise” implies some accommodation on each side and is bilateral in nature and means mutual agreement and it is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands whereas term “settlement” means termination of legal proceedings by mutual consent.

In *State of Punjab vs. Ganpat Raj* 2006(4) RCR (Civil) 497 while reiterating the earlier view taken in *State of Punjab vs. Phulan Rani* 2004 (3) RCR(Civil) 729, the Hon'ble Supreme Court has held that no order can be passed by the Lok Adalat, if there is no compromise or settlement between the parties. It has also been held that such compromise or settlement has to be arrived at by taking consent of the parties to the litigation and the Lok Adalat has to verify about the genuineness of the consent so given by the parties. However, in the present case, the aforesaid material aspects appear to be totally lacking as parties were never called and statements of parties were never recorded, rather statements of learned counsel for the parties were recorded. It is expected of the lawyers to obtain necessary instructions from the clients or the authorized agent before making any concession/statement before the Court for and on behalf of the client.

Rules 15 and 19 of the Bar Council of India Rules, 1975 (for short, 'the BCI Rules') provide for duties of an advocate towards his

CWP-7344-2011

client which read as under:

“15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

19. An advocate shall not act on the instructions of any person other than his client or his authorised agent.”

The *Privy Council in Sourendra Nath Mitra vs. Tarubala*

Dasi, AIR 1930 PC 158 has made the following two observations:

“Two observations may be added. First, the implied authority of counsel is not an appendage of office, a dignity added by the Courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief.”

CWP-7344-2011

A client is not bound by a statement or admission which he or his lawyer was not authorized to make. An advocate shall not make any compromise or concession without the proper and specific instructions of his/her client in view of Rule 26 of the Bar Council of India Rules, 1975.

In *Himalayan Cooperative Group Housing Society vs. Balwan Singh* 2015 (3) R.C.R. (Civil) 394, the Hon'ble Supreme Court of India while noticing the famous statement of Lord Brougham has held as under:

“32. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred him by the client. It is always better to seek appropriate instructions from the client or his authorized agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the Court and conducts proceedings on behalf of the client. He is the only link between the Court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.

33. Generally, admissions of fact made by a counsel is binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the Court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not

authorised to make. Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the Court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

“an advocate, in the discharge of his duty knows but one person in the world and that person is his client.”

In view of above discussion, it is clear that Lok Adalat can only pass an award if consent is given by the parties. Regulation No.13 (5) of the NLSA, Regulations, 2009 provides that Lok Adalat may conduct the proceedings in such a manner as it considers appropriate taking into account the circumstances of the case, wishes of the parties including any request by a party to the Lok Adalat to hear oral

CWP-7344-2011

statements, and the need for a speedy settlement of the dispute. The words “compromise” or “settlement” arrived at between the parties as envisaged in Section 20 of the 1987 Act clearly indicate that the parties shall appear before the Court and get their statements recorded and thereafter award should be passed. This has not been followed by respondent No.1-Daily Lok Adalat, Bench No.1 of this Court in the case in hand. In the present case, parties did not appear and get their individual statements recorded before passing the award by the Lok Adalat, which is the basic requirement of law.

In view of above discussion as well as statutory provisions and in view of law laid down by the Hon'ble Supreme Court in *Himalayan Cooperative Group Housing Society's case (supra)*, the instant petition is allowed; the impugned Award is set aside and FAO No.3884 of 2010 is ordered to be restored to its original number and be put up as per roster after obtaining orders from Hon'ble the Acting Chief Justice.

14.10.2015
parveen kumar

(Paramjeet Singh)
Judge