

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No. 448 of 2012**

(Arising out of judgment/order dated 11.04.2012 in Case No.26 of 2012 of the learned Permanent Lok Adalat)

- Bajaj Allianz Life Insurance Company Limited, Branch Office Jagdalpur / Kanker at present Shivmohan Bhawan, Vidhan Sabha Road, Pandri Raipur (C.G.)

---- **Petitioner****Versus**

- Dr. Manisha Goyal, W/o Late Dr. Naresh Goyal, aged about 35 years, R/o Jagdalpur, District – Bastar (C.G.)

---- **Respondent**


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| For Petitioner | : | Shri Sachin Singh Rajput, Advocate |
| For Respondent | : | Shri C. Jayant K. Rao, Advocate    |

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**Hon'ble Thottathil B. Radhakrishnan, Chief Justice**  
**Order on Board**

**05.12.2017**

1. This writ petition is filed under Article 227 of the Constitution of India challenging an Award passed by a Permanent Lok Adalat; for short, 'PLA'; under the provisions of the Legal Services Authority Act, 1987; hereinafter referred to as 'Act'.
2. The Petitioner, who is an insurer, issued a policy on 26.09.2007 covering the life of Dr. Naresh Goyal, the husband of the Respondent for an amount of Rs.1,00,000/-. The insured, then aged around 37 years, died on 03.11.2008.
3. The Respondent applied to the PLA seeking direction to the Petitioner – insurer to pay the amounts covered by the policy. The insurer responded contending that the application is not filed by Manshi Goyal, the daughter of the insured, who is the nominee under the policy. Going by the policy document, she was around 6 years old in 2007. The next contention was that the insured had suppressed material facts in relation to the condition of his health and therefore, the policy of insurance fails since it stands breaching the *uberrima fides* foundation of the said contract of insurance.

4. The learned Counsel for the Petitioner – insurer argued that the finding of the PLA that the insurer is bound to pay the amount covered by the policy and the issuance of the Award in favour of a person other than the nominee are unsustainable. Making reference to the decision of the Apex Court in **Mithoolal Nayak v. Life Insurance Corporation of India; 1962 AIR (SC) 814** and the decision rendered by the Kerala High Court in **Sarojam v. Life Insurance Corporation of India; 1986 AIR (Ker) 201**, it is argued that material facts were suppressed by the insured while making the proposal and this has vitiated the policy and has thereby discharged the insurer of the liability to satisfy it. He accordingly argued that the insurer is entitled to stand by the forfeiture of the policy attributable to the suppression of material facts committed by the insured at the time of issuance of the insurance policy. To buttress the plea that the insured was suffering from ailments including hypertension and epilepsy at the time of availing the policy, the learned Counsel for the insurer referred to the statement given by the widow of the insured, who herself is a doctor. It is pointed out that in answer to a suggestion made on behalf of the insurer that the insured had been suffering from hypertension and epilepsy for about 9 years, the reply of his widow, though in the negative, was to the effect that he had been suffering from certain health issues relatable to epilepsy and blood pressure for about 2 years. Strong reliance was also placed by the insurer's learned Counsel on the testimony of the doctor who treated the insured immediately before he died. He is stated to have been told by the near relatives of the insured while he was brought to the hospital, that the insured had been hypertensive and had also suffered from epilepsy.
5. Per contra, the learned Counsel for the Respondent argued that the findings of the PLA and the consequential Award do not warrant interference in exercise of power under Article 227 of the Constitution. He also relied on the various factors emanating out of the materials which were available before the PLA to argue that there is nothing to hold that there was any suppression of relevant

facts and materials by the insured while he submitted the policy proposal. It is further argued that the facts clearly show that there was no scrutiny whatsoever by the insurer before issuing the policy, as is required by law. The principle of due care and caution of an insurer is also called to aid in support of the impugned Award.

6. Section 22E of the Act excludes any appeal or other proceedings of ordinary nature and gives a statutory finality to the Awards passed by the PLAs. It is therefore that the insurer's challenge to the Award of the PLA is sought to be sustained invoking Article 227 of the Constitution.
7. There is, rightly, no challenge levied on the ground that the PLA did not have jurisdiction to entertain the matter. This, obviously, is because of inclusion of 'insurance service' in the definition of "public utility service" in Section 22A of the Act.
8. Section 22B of the Act which provides for establishment of PLAs provided for the establishment of a three member body as the PLA, of which the Chairman shall be a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than that of a district judge. The other two members ought to be persons having adequate experience in public utility service to be nominated by appropriate Government on the basis of the recommendation of the Central Authority of the National Legal Services Authority or the State Legal Services Authority, as the case may be. The power of the PLA to decide a dispute under Section 22C (8) is required to be exercised in the light of the provisions of Section 22D of that Act, which provides that the PLA shall, while, *inter alia*, deciding a dispute on merit under the Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice and shall not be bound by the Code of Civil Procedure and the Indian Evidence Act. The objects sought to be achieved by the provision in the Act commanding the establishment of PLAs and the

statutory prescription regarding the composition of a PLA, as well as the nature of adjudication envisioned by Section 22C (8) read with Section 22D of the Act underscores that the finality that is statutorily ordained on the award is to be honoured unless it becomes impossible to do so. It cannot but be held that though the Award by the PLA may be subjected to an application under Article 227 of the Constitution, that would be permissible only as a last resort and exercise of such authority by the High Court would be carried out only in exceptionally exceptional and glaring instances of miscarriage and negation of justice at the hands of the PLA. This principle emanates out of a holistic consideration of the superlative supervisory authority of the High Court to wield the sword on the fact of specific situations of manifest miscarriage of justice and to hold the requisite cushioning shield to navigate a litigation, taming the unruly tides in its legitimate course. The power of superintendence under Article 227 of the Constitution is not to be exercised to correct an error of fact or even of law which does not amount to an error of law apparent on the face of record, unless such error affects the jurisdiction of the inferior Court or Tribunal, involving interpretation of the law. The High Court will not, under Article 227, reappreciate the evidence or allow itself to be converted into a Court of pure questions of fact, whether jurisdictional or not, which would require appreciation of evidence. Except in cases where the finding of fact arrived at by the subordinate Court or inferior Tribunal is not based on any evidence whatsoever or is based on the manifest misreading of the evidence, the High Court would not interfere in exercise of the power of judicial superintendence under Article 227 of the Constitution. Such power cannot be used to upset conclusions of fact, however erroneous they may be, unless such findings are so perverse and unreasonable that no Court or authority bestowed with adjudication could ever have reached. See for support : **Provincial Transport Service v. State Industrial Court**; AIR 1963 SC 114, **State of Orissa v. Murlidhar**; AIR 1963 SC 404, **India Pipe v. Fakruddin**; AIR 1970 SC 45, **Babhutmal v. Laxmibai**;

AIR 1975 SC 1297, **Trimbak v. Ramchandra**; AIR 1977 SC 1222, **Achuthananda Baidya v. Prafulla Kumar Gayen**; AIR 1977 SC 2077, **Gopal v. Narendradeo**; AIR 1978 SC 347, **Mohan Amba Prasad Agnihotri v. Bhaskar Balwant Ahar**; AIR 2000 SC 931, **Estralla Rubber v. Dass Estate (P) Ltd.**; (2001) 8 SCC 97. Having regard to the purpose and objects sought to be achieved by the Act and the quality of jurisdiction that is bestowed on the PLA, in terms of that Act, it has to be necessarily taken that an Award passed by the PLA ought not be disturbed unless, of course, it is demonstrated to be one which has resulted in manifest miscarriage of justice and is one which ought not have been ever made.

9. Bearing the aforesaid principles in mind, analyzing the materials on record and the appreciation of facts and materials by the learned PLA, it needs to be noted that the decision of the PLA reflects due and adequate consideration of the oral and other evidence tendered before it. It was live to the situation regarding the statement made by the doctor who treated the insured before his death. It had also before it the testimony of the widow of the deceased-insured. It also had the policy document before it. The fact of the matter remains that though the insurer had attempted to build up a defence on the basis of the pleadings of the applicant and the materials on record, it did not have with it any independent assessment, regarding the health status of the insured, made by it at any point of time before the controversy between the parties arose. This becomes abundantly important because the insurer does not have a case that at any time prior to issuance of the policy covering the life of the individual, there was medical examination or other assessment carried out at the instance of the insurer. It is as if the insurer stands to say that the doctrine of *uberrima fides* is so powerful enough that the insurer is not required to make even such enquiry as is normally expected from an ordinarily prudent insurer, having regard to the nature of transactions in the realm of insurance contracts. The appreciation of evidence by the PLA cannot be treated as one where the conclusions arrived at

by it are impermissible, impossible or unavailable on the basis of the materials on record. Under such situation, it will not be possible for this Court to interfere with the findings of the PLA in exercise of the supervisory jurisdiction under Article 227 of the Constitution.

10. Be that as it may, the surviving question that is to be decided is whether the application could have been instituted by the widow of the insured without impleading the nominee under the policy. As already noted above, the nominee under the policy is admittedly the daughter of the insured. She was around 6 years of age when the policy was availed towards the end of September, 2007. She lost her father in November, 2008. It is the settled position of law that a nominee under the insurance policy is one who is duly authorised to collect the amount due under policy and such amount could be collected by the nominee on behalf of all persons entitled to share in the estate of the insured. It is not in dispute that the application before the PLA was filed by Dr. Manisha Goyal, who is widow of the insured-Dr. Naresh Goyal. It is not in dispute that she is the mother of the nominee. It is also not in dispute that the Dr. Manisha Goyal would have a share in the estate of Dr. Naresh Goyal. Under such circumstances, an application by one of the legal representatives of the deceased-insured was maintainable before the PLA. Hence, the plea of the insurer to the contrary fails.
11. For the aforesaid reasons, there is no ground to interfere with the impugned order in exercise of authority under Article 227 of the Constitution.
12. In the result, this petition is dismissed with costs fixed at Rs.2,500/-.

Sd/-  
**(Thottathil B. Radhakrishnan)**  
 Chief Justice