# IN THE HIGH COURT OF ORISSA AT CUTTACK

**WP(C) No.11327 of 2016**
(Through Hybrid mode)

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| ***The Branch Manager, India First Life Insurance Company Ltd. and another*** | .... | ***Petitioners*** |

Mr. M. Sinha, Senior Advocate
Mr. Manmaya Ku. Dash, Advocate

*-versus-*

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| ***Raj Kishore Nayak and another*** | .... | ***Opposite Parties*** |

Mr. S. Sharma, Advocate

**CORAM: JUSTICE ARINDAM SINHA**

**ORDER**
**12.07.2022**

**Order No.**

09. 1. Mr. Sinha, learned senior advocate appears on behalf of petitioners (Insurance Company). He had moved the writ petition on 24th June, 2022 and submitted, impugned is award dated 18th May, 2016 made by the Permanent Lok Adalat (PLA). The dispute could not have been adjudicated since his clients had repudiated the death claim. There could not be a question of how much his clients were to pay under the policy, in settlement of the dispute, where there was outright repudiation. According to him purported attempt at settlement was misconceived and, therefore, the PLA did not derive jurisdiction to at all adjudicate.

2. He submits, facts were, there was omission to disclose that the Deceased Life Assured (DLA) had obtained other life insurance policies. The PLA erroneously found in favour of private opposite party that the DLA was illiterate and the proposal form being in English, the DLA could not be faulted for having omitted to supply the information she held other life insurance policies. He relies on judgment of the Supreme Court in **Reliance Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod**, reported in **AIR 2019 SC 2039,** paragraphs 29 and 31.

3. On 28th June, 2022 Mr. Panigrahi, learned advocate had appeared on behalf of the beneficiary and submitted, the PLA has jurisdiction to attempt settlement between the parties and on failure thereon, adjudicate and dispute. This because the repudiation by petitioners was not duly made. As such, there was no repudiation at all. He relies on sub-section (4) in section 45 of Insurance Act, 1938 to submit, when the claim was repudiated on ground of suppression and not fraud, the insurance company was liable to refund the premium collected along with the repudiation. This the insurance company did not do.

4. Today Mr. Sharma, learned advocate appears on behalf of the beneficiary and submits, in event Court holds following paragraphs 29 and 31 in **Rekhaben** (supra), there should be direction upon the insurance company to refund the premium along with appropriate interest and cost. He submits further, first premium of Rs.14,319/- was paid on 11th January, 2013 and in the next year too premium was paid. Mr. Sinha hands

up print of mail sent by Senior Associate-Litigation of his clients, in which there is mention that repudiation in this case was under old regulation and hence, premium need not be refunded. On query from Court Mr. Sinha is unable to produce regulation referred to in the mail.

5. Impugned award dated 18th May, 2016 is set aside and quashed. Accompanying this direction, petitioners are put on terms. Petitioners will refund total premium received along with interest thereon calculated at simple interest of 6% per annum on the total amount from 1st May, 2014 till date of payment. In event petitioners do not comply with these terms within three weeks of communication, the writ petition will be deemed to have been dismissed.

6. The writ petition is disposed of.

***(Arindam Sinha)***
***Judge***

*RKS*