IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.8555 Of 2014
(Through hybrid mode)

Reliance Life Insurance Company Ltd.	....	***Petitioner***
		Ms. S. Biswal, Advocate

-versus-

Pradeep Kumar Padhy	....	***Opposite Party***
		Ms. D. Mohapatra, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
22.03.2022

Order No.	
8.	**1.** Ms. Biswal, learned advocate appears on behalf of the insurance company and submits, challenge is against award dated 16th December, 2013 made by the Permanent Lok Adalat (PLA). She submits, inspite of requirement in the form, on details of other policies availed by the deceased life assured (DLA), she had not disclosed having taken seven other policies. This amounted to suppression and misrepresentation. Hence, the repudiation was good.
	2. Ms. Mohapatra, learned advocate appears on behalf of opposite party (award holder) and draws attention to paragraph-9, wherefrom relied upon passage is reproduced below.

"Moreover, no pinch of evidence produced on behalf of the respondent-RLIC in respect of other policy details enumerated in the table to show that the DLA had suppressed "material fact" about those previous policies. Thus, there is absolutely no material on record that preceding 13.04.2010, the date on which DLA had taken her first life insurance policy, she had taken other policies embedded in the table of the written statement in quick succession."

3. She relies on judgment of the Supreme Court in **Bar Council of India v. Union of India** reported in **AIR 2012 SC 3246**, paragraphs 31 to 33 to submit, the PLA is empowered to adjudicate and it has adjudicated. The adjudication was upon hearing the parties. Principles of natural justice were adhered to. Reasons have been given in the award. There is no case for interference on judicial review.

4. It appears on face of impugned award that the DLA had clearly omitted to mention details of policies she held, in the proposal form of petitioner. It will appear from below extract from paragraph-8 in the award.

"It is contended that omission to incorporate all such previous policies in the proposal form (Annexure-A & B) is a "material fact" for the RLIC to decide whether to accept the proposal for last insurance policy at all, in this connection, the learned counsel has invited our attention to the

> *proposal form for the admitted insurance policies giving rise to death claim where under item no.17 of the form of the proposal, viz., "details of life insurance policies held/proposal applied with life insurance companies, (including the existing policies with the RLIC)", Mamata Kumari Padhy has put tick over the word "NO". In other words, she clearly omitted to mention the details of the policies entered in the table given above."*

The Tribunal thereafter in paragraph-11 in the award also said

> *"Even if the DLA in concerned proposal froms in questionnaire-29 had given answers in negative that does not amount to any suppression of **"material fact"**. We repeat, that the factual matrix does not appear to be a case of suppressing information of "material fact" within the meaning of Sec.45 of the Insurance Act, 1938."*

5. Petitioner is the insurer in insuring life of the assured. Petitioner was to take the risk. Petitioner formulated the query regarding other life insurance policies held by the DLA, to be declared. The PLA held, the omission to mention that the DLA already held other life insurance policies, in putting tick against 'no' did not amount to suppression of material fact. The PLA appears to have adjudicated that such a query cannot be said to be probe of a material fact.

6. On closer perusal and scrutiny of the award, Court was unable to come across a finding of denial by opposite party. On query from Court Ms. Mohapatra submitted, her client did hold subsisting life insurance policies at the time she had filled out the proposal form for obtaining insurance policy from petitioner. It is true that misrepresentation, when alleged by petitioner, had to be proved by it. Petitioner had demonstrated, as appearing from face of the award, the DLA had indicated she did not have subsisting insurance policies at the time she filled out the proposal form. Petitioner wanted information that was in the personal knowledge of the DLA. Section 106 in Evidence Act, 1872 says burden of proving fact especially within knowledge is upon him who has the knowledge. Petitioner could not have known regarding existing policies held by the DLA. In assessing whether it would take the risk it posed, inter alia, the question regarding existing policies. The DLA said she did not have existing policies. A clear question was put in the proposal form, against which the DLA put answer contrary to special knowledge of fact she had with her. Some evidence was there before the Permanent Lok Adalat for it to find that there was suppression but it went on to say the suppression was not of a material fact.

7. Impugned award is found to be perverse and is set aside.

8. The writ petition is allowed.

(Arindam Sinha)
Judge

Sks