IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.11329 of 2016
(Through hybrid mode)

Authorized Signatory and another	....	***Petitioners***

Mr. M. Sinha, Senior Advocate

-versus-

Surendra Das and another	....	***Opposite Parties***

Mr. S. Sharma, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
13.09.2022

Order No.

08. **1.** The writ petition was moved on 4th August, 2022. On behalf of petitioners (insurance company) submission was, by impugned award dated 13th May, 2016 of the Permanent Lok Adalat (PLA), there was, inter alia, direction to pay out on the life insurance policy in respect of the Dead Life Assured (DLA). This could not have been done since, there was repudiation of the claim. Investigation had revealed that the DLA was over aged at the time of taking the policy. The award is also bad because mandatory procedure for settlement was not followed by the PLA.

2. Today Mr. Sinha, learned senior advocate appearing on behalf of petitioners submits, his clients have filed additional affidavit, as required by Court, disclosing accepted standard and non-standard age proofs. However, that has nothing to do with his clients' challenge. Investigation caused by his client was under authority of provision in sub-section (5) in section 45 in

Insurance Act, 1938. The investigation revealed that electoral roll prepared in year, 2015 had entery in it bearing particulars of the DLA. Age shown as on year, 2015 was 83. Second irrefutable piece of evidence unearthed by investigation were old age pension papers, in respect of pension drawn by the DLA. The PLA awarded in favour of opposite party no.1 on perversity, as not based on relevant evidence.

3. Mr. Sinha relies on views of a learned Single Judge of this Court in **Raghunath Behera Vs. Balaram Behera**, reported in **AIR 1996 Orissa 38**, paragraph 9. Relied upon passage from said paragraph is reproduced below.

> *"9. ... ... Electoral roll being a public document is admissible evidence and it is not necessary to prove source of information on the basis of whereof facts stated in the roll were recorded, nor is it necessary that the person who prepared electoral roll has to be examined. They are entitled to the extraordinary degree of confidence partly because they are required by law to be kept, and partly because their contents are of public interest and notoriety; but principally because they are made under the sanction of oath of office, or at least under that of official duty by accredited agents appointed for that purpose. ... ..."*

He seeks interference in judicial review.

4. Mr. Sharma, learned advocate appears on behalf of opposite party no.1. He submits with reliance on accepted standard and non-standard age proof disclosed by petitioners that PAN card is standard proof of age as accepted by the insurance company. This was the document relied upon by the DLA in filling up the proposal form and, inter alia, disclosing her age at the time of taking the policy. He submits, the age matches with age of the DLA given at 40 years as on 1st January 2002 in her Voter ID card issued by the Election Commission of India. Thus there is overwhelming likelihood for inference that age 83 entered in the electoral roll was by mistake. Furthermore, there is no relevance of old age pension papers to the controversy since, the DLA produced standard age proof by PAN card, as required by the insurance company on acceptable standard age proof.

5. He also relies on final order dated 12th April, 2016 issued by Insurance Regulatory and Development Authority of India in the matter of Bharati AXA, from which following passage under the decision is extracted and reproduced below.

> *"The life insurer shall note that Cetegorization of age proofs is as "Standard Age proof" and "Non-Standard Age Proof" and a list of standard and non-standard age proofs are generally prescribed by the Life Insurer himself.* ***Hence, if a standard age proof is submitted, there shall not be any question as to how it has been obtained and it is none of the company's business to check what was underlying age proof submitted to obtain the same****."*
>
> (Emphasis supplied)

6. The PLA, on above points in controversy, held, inter alia, as reproduced below.

> "*To sum up, we are convinced that when the age was admitted on the basis of entries made in the PAN card, Anx-IV and that document when not proved to be fake or fraudulent and when the age entered in the Electoral Roll, the BPL card or the Old age Pension paper are not better age proof document as discussed above, the correct age of the DLA is what incorporated in the Proposal Forms as the insurer signally failed to establish that what is incorporated in the proposal forms and admitted by the insurer on the basis of Pan card is not the correct age of the DLA. The age in the electoral roll as well as the old age pension paper when not to be treated as proof of age/DOB and when the age admitted in the PAN card is not proved to be fake, the order of repudiation is unsustainable in law as well as in fact.*"

7. For purpose of adjudicating the controversy on misrepresentation by the DLA, in disclosing her age at the time of taking the life insurance policy, there was direction upon petitioners to disclose their accepted standard and non-standard age proof. Disclosure in the additional affidavit clearly shows that PAN card is acceptable standard age proof. PAN card of the DLA was issued more than 1 year before the proposal. Thus, the PLA on failing to cause settlement was well within its jurisdiction and duly adjudicated the controversy to find that the insurance company could not discredit the PAN card. There was no ground for petitioners to repudiate the claim on allegation of misrepresentation on age. **Raghunath Behera** (supra) has no application to the case as what was under consideration therein regarding the electoral roll was its admissibility in evidence. The case decided in the PLA did not turn on admissibility of the electoral roll relied upon by the insurance company. It is just that the evidence considered cogent was the PAN card. The PLA did not say that the electoral roll is inadmissible in evidence before it. Only that the PLA did not rely upon it since the PAN card of the DLA satisfied accepted standard age proof required by the insurance company itself. In the circumstances, the PLA not being drawn into examining relevance, materiality or weight of the electoral roll as evidence for purpose of adjudicating the controversy, acted legally.

8. Sub-section(5) in section 45 is reproduced below.

> "*(5) Nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal*"

This provision is inapplicable for reliance to support the repudiation. The provision is for purpose of the insurance company calling for proof of age during subsistence of the policy and thereupon, if necessary, adjusting terms of it. In this case claim on the life insurance policy was made upon the insured having died. This provision is of no aid to petitioners in seeking to source authority for their investigation, the life insurance policy having been continued by the DLA for more than three years.

9. On same reasoning as above, there was no necessity for the PLA to consider relevance, materiality or weight of evidence by production of old age pension papers. Standard age proof could not be impeached by the insurance company and as such the PLA did not commit any illegality nor acted with material irregularity in making impugned award.

10. For reasons aforesaid, no order can be made on the writ petition. Opposite party no.1 will be entitled to proceed for execution of the award on the amount directed less the premium, if refunded by petitioners.

11. The writ petition is disposed of.

(Arindam Sinha)
Judge

Prasant