

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.16294 Of 2019
(Through hybrid mode)**

***Claims Review Committee, Bajaj
Allianz LIC Ltd. and another***

....

Petitioners

Mr. S. Pattanaik, Advocate

-versus-

Bagiredala Someya and another

....

Opposite Parties

CORAM: JUSTICE ARINDAM SINHA

**ORDER
30.03.2022**

**Order No.
05.**

1. Mr. Pattanaik, learned advocate appears on behalf of petitioners (Insurance Company).
2. None appears on behalf of opposite party though on 7th March, 2022 they were represented and time obtained to file counter.
3. Mr. Pattanaik submits, award dated 5th July, 2018 of the Permanent Lok Adalat (PLA) is illegal and made with material irregularity. Though the PLA was satisfied that there was misrepresentation made by the insured in declaring her age but purportedly relying on inserted by amendment section 45 in Insurance Act, 1938, it ordered payment of the sum assured and Rs.1000/- and cost.

4. He submits, inserted section 45 was substituted by Act 5 of 2015 with retrospective effect from 26th December, 2014. The policy was taken up prior to 26th December, 2014. As such, the amendment does not apply to it. There should be interference.

5. Section 45 is clear in mandating that no policy of life insurance shall be called in question on any ground whatsoever after expiry of three years from date of policy, meaning thereby date of commencement of the risk. Petitioner has not disputed finding of the PLA on facts that the risk commenced on 11th June, 2012 and for the first time there was repudiation on 3rd June, 2017. The repudiation came on questioning the policy, more than three years after commencement of the risk.

6. Petitioners' contention that because the policy was issued prior to the amending Act, it is not covered by the amendment is unacceptable. Earlier section 45 had, in respect of policies, two years period given to the insurer to call it in question. That section provided for both, policies issued before commencement of the Act and after. The two year period was made applicable also to policies issued before commencement of the Act, the period of two years from commencement also given to them. By the inserted by amendment

substituted section 45, the mandate is applicable to all policies. The retrospective effect given thereto must cover all policies existing on the date of effect of the substituted section. The conscious intent of Parliament to cover all policies by the substituted provision, taking into account existing policies, therefore, is clear.

7. There is no reason for interference. The writ petition is dismissed.

Prasant



(Arindam Sinha)
Judge