

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2009
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 19995 OF 2007)

National Insurance Company Limited ...Appellant(s)

- Versus -

J. Maheshwaramma

...Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.
2. This appeal has been filed impugning the judgment and order dated 3.9.2007 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'the National Commission').

3. The said National Commission in exercise of its revisional jurisdiction refused to interfere with the concurrent findings of both the District Forum and the State Commission.
4. The facts which were alleged in the complaint filed before the District Forum, Mehboob Nagar, are as follows:
5. The husband of the complainant late Beesana, obtained policy bearing No.6200001644/2005 from the National Insurance Company Limited for Rs.1,00,000/-. The policy covers the risk of accidental death of insured. The legal heir of the insured will get Rs.1,00,000/- under the policy. The policy holder died on 24.11.2005 in a road accident while he was proceeding on his motorcycle bearing No. AP 22-J278 from Gadwal to Veerapoor. On the way in the limits of PJP Colony, where the tractor bearing No. AP 22 C 3422 which was coming from

the opposite side, came at a high speed in a rash and negligent manner and hit the motor cycle of Beesanna and Beesanna sustained fatal injuries. The doctors advised to shift him to Kurnool hospital. While on the way to Kurnool hospital, Beesanna succumbed to the injuries.

6. Thereafter, the complainant submitted Claim Form of the appellant herein along with all other relevant documents.
7. The main contention raised by the appellant before the District Forum was that the deceased had no valid licence at the time of accident. The fact that late Beesanna obtained the policy to cover a risk to the third parties, own damages and personal accident is not disputed by the appellant. It is also not in dispute that at the time of accident, the insurance policy was valid.

8. It is not in dispute that as per the terms of the policy, the nominee will get Rs.1,00,000/- if the policy holder dies in a motor accident .
9. The stand of the appellant is that the driving licence of the deceased which was sent for verification is found to be fabricated. Their further stand is that the policy holder had got driving licence to drive Tractor Trailer (Transport) but had no licence to drive motorcycle with gear.
10. Before the District Forum, the stand of the appellant was that Exhibit B-1, the licence of the deceased purports to be a fabricated one created in favour of the deceased for the purpose of wrongful gain.
11. The District Forum observed that they are unable to appreciate the said stand because of the reason that the contents of Exhibit B-2

have not been challenged before it by the insurer by way of affidavit of the authority which issued the certificate.

12. The District Forum came to a finding that the burden wholly lies on insurance company to establish the defence raised by it in such a proceeding and also to establish the breach on the part of the insured.

13. In support of its contention the District Forum has quoted the judgment passed by the National Commission in National Insurance Co. Ltd. Vs. Swaran Singh and Ors. - (2004) 3 SCC 297; wherein it has been clearly laid down that the breach of policy condition has to be proved by the insurance company and it is very clear that the burden of proof is on them.

14. In **National Insurance Co. Ltd.** (supra) it has been held that the burden is on the insurer to prove that the insured is guilty for willful

breach of conditions of insurance policy or the contract of insurance. (See para 92, page 337) .

15. In coming to the said conclusion the learned Judges relied on the decision in the case of United India Insurance Co. Ltd. Vs. Lehru and Ors. - (2003) 3 SCC 338 and held if a person has been given a licence for driving a particular type of vehicle, it cannot be said that he has no driving licence. In this case it is an admitted fact that the victim had licence to drive a tractor with trailer, but the allegation of the appellant is that victim's licence to drive the motorcycle with gear is fabricated. In any event it cannot be said that the victim had no driving licence. In such a case, it has to be found on the basis of evidence laid before the fact finding body whether the driver licenced to drive one type of vehicle but driving

another type of vehicle was the main or the contributory cause of the accident.

16. If such a case is not made out, the insurance company cannot avoid its liability merely on the basis of technical breach of licencing conditions. [See para 89, page 336 of the report in National Insurance (supra)].

17. In view of the aforesaid legal position, the District Forum held that the insurance company before it failed to establish valid grounds on which they can repudiate the claim. As such the repudiation of the claim by the insurance company was held arbitrary and unreasonable.

18. On this finding the District Forum held that the complainant-wife of the deceased is entitled for the sum assured of Rs.1,00,000/- together with interest thereon @ 9% per annum from the date of repudiation of the claim i.e, 28.2.2006.

19. Against the said judgment of the District Forum, an appeal was filed by the appellant before the State Commission. The State Commission also accepted the finding of the District Forum in view of the fact that there is no dispute with regard to the complainant's husband having a valid insurance policy and also in view of the fact that there is no dispute that the accident occurred and the insured died during the validity of the said policy.

20. In view of such concurrent finding, the National Commission did not interfere with the same. The State Commission also came to a finding that the burden is on the Insurance Company to show that the driving licence of the deceased was fabricated and the said burden has not been discharged.

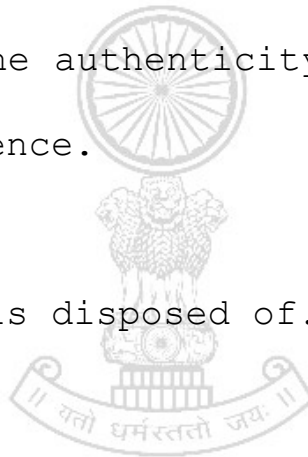
21. The basic issue in the case was whether the deceased had a valid driving licence to drive the vehicle i.e. motor cycle with gear which was involved in the accident. The District Forum, State Commission and National Commission were of the view that since the deceased had a valid insurance policy and there was no dispute that the accident had taken place and the insured died during the validity of said policy, the stand that the driving licence of the deceased was fabricated was of no consequence. It was held that the insurance company had not discharged the burden to prove that the driving licence of the deceased was fabricated. The District Forum observed that no affidavit of the authority who issued the certificate (Ex.B-2) has been filed. The view was endorsed by the State Commission and by the National Commission. Additionally, the National Commission held that the licence produced clearly indicated that the deceased was having

licence to drive motor cycle also. This finding cannot be maintained because there was a dispute about the genuineness of the licence failed to show that the deceased had licence to drive motor cycle. Additionally after Exh. B-2 was filed, there was no material brought on record by the complainant to show that the certificate dated 27.2.2006 issued by transport authorities was not authentic. Therefore the question of the insurance company having not discharged the burden, does not arise. In addition the decision in **Swaran Singh's case** (supra) was considered in **National Insurance Co. Ltd.** Vs. **Laxmi Narain Dhut** [2007 (4) SCALE 36]. In **Laxmi Narain's case** (supra) this Court observed that the said decision is applicable to only third party claim cases and even had no application to own damage cases i.e. cases of contractual liability. The present case is not a third party case and is a case of contractual

liability and therefore **Swaran Singh's case** (supra) was not applicable.

22. In the circumstances we think that it would be appropriate to remit the matter to the National Commission to consider the matter afresh in the light of **Laxmi Narain's case** (supra). The National Commission shall permit the parties to place material on record regarding the authenticity or otherwise of the driving licence.

23. The appeal is disposed of.



JUDGMENT

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi
May 08, 2009