

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1825 OF 2009
(Arising out of SLP (C) No.13873 of 2008)

M/s. United Insurance Co. Ltd.

....Appellant

Versus

Sukh Deo Yadav

....Respondent

J U D G M E N T

DR. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New Delhi, (in short 'National Commission') dismissing the revision petition filed by the appellant (hereinafter referred to as the 'insurer'). The National Commission upheld

the order passed by the Jharkhand State Consumer Redressal Commission, Jharkhand (hereinafter referred to as the 'State Commission').

2. Background facts in a nutshell, as projected by the appellant, are as under:

Jeep No.JH-02-4827 was the subject matter of insurance with the appellant from 23.7.2003 to 22.7.2004. The vehicle in question met with an accident on 9.6.2004 and 14 persons were traveling in the Jeep, and four persons including the driver died on the spot and 10 persons received injuries. The jeep was permitted to carry 10 passengers, but it was carrying 14 passengers. The news of the accident also flashed in Hindi Daily 'Hindustan' at the front page where the driver of jeep was shown as Amitabh alias Munna Singh aged about 25 years. Claim was lodged by Sukhdeo Yadav for damage of his vehicle and in survey report the Surveyor/Investigator has mentioned in para 4 and 5 of the report that the driver of the jeep at the time of accident was Amitabh Singh. The claim was repudiated. The claim was repudiated on the basis of fraud played by respondent as well as violation of terms and conditions of Insurance Policy.

Aggrieved by the said repudiation the respondent had filed a complaint before the District Consumer Dispute Redressal Forum, Koderma (in short 'District Forum') for insurance claim of his own damaged vehicle thereby stating that Amitabh Singh was a cleaner in the vehicle, not driver and the jeep was being driven by Sanjeev Kumar. As per survey report Amitabh was not holding a valid driving license and to evade the third party claims for 4 dead and 10 injured, the respondent has substituted his son Sanjeev Kumar as driver. The District Forum has passed an order, accepting the claim which was confirmed by the State Commission and directed the petitioner to pay a sum of Rs.2,70,000/- plus 10% interest towards compensation.

Aggrieved by the said order the petitioner had filed revision petition before the National Commission which was dismissed in limine thereby endorsing the order passed by State Commission. According to the appellant the National Commission did not deal with the plea of fraud played by respondent in this case.

3. According to the appellant the records including the case diary clearly show that the vehicle was being driven by Munna Singh who did not have a

valid driving license. When the vehicle was being driven on 9.6.2004 by the aforesaid Munna Singh it was involved in a head on collision. The District Forum and the State Commission did not consider the evidentiary value of the case diary which was produced. In several documents it was clearly noted that the vehicle was being driven by Munna Singh and not by Sanjeev Kumar as claimed. Sanjeev Kumar is the son of the owner of the Jeep. Particular reference is made to the case diary wherein it has been stated as follow:

“In the accident deceased Amitabh Singh Alias Munna Singh S/o Late shri Muzzafar Singh R/o Vill. Simar Sol. P.S. Rajelly. The post mortem report of deceased is below:

ii) Name of the deceased, Sub-name, Father's name, Residence, age, sex: Deceased **Amitabh alias Munna Singh S/o** Late Shri Muzafar Singh R/o Vill. Simar Kol P.S. Rajauli Distt. Nawada at present driver of jeep No.JH02-A-4827 age about 22 years Male, Hindu.”

4. Similarly, in the post-mortem report it has been stated as follows:

“2. Name of the deceased, surname Father name, Age, Sex.	Deceased Amitabh Singh Alias Munna Singh S/o Late Shri Muzaffir Singh S/o Simar Kaul P.S. Rajauli, Distt. Nawada at present Driver Commander jeep No.JH-02A-4827 Age 22 yrs. Male, Hindu.”
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5. Learned counsel for the appellant highlighted these facts to submit that they were completely ignored by the District Forum, State Commission and the National Commission.

6. Learned counsel for the respondent on the other hand submitted that there are several documents including the claim petition filed by the legal representatives of the deceased Amitabh Singh and Munna Singh showing that the vehicle was being driven by Sanjeev Kumar.

7. From a bare perusal of the orders passed by the District Forum, State Commission and the National Commission it is clear that the

relevance of the entries in the case diary and the post-mortem report have not been considered in the proper perspective.

8. In the peculiar facts of the case it would be appropriate for the District Forum to reconsider the matter after taking into account the various documents and materials placed by the parties. Accordingly we set aside the impugned order and remit the matter to the District Forum to adjudicate the matter afresh. Since the matter is pending for long, the District Forum is directed to dispose of the matter within three months from the date of receipt of order after due notice to the parties. We make it clear that we have remitted the matter because of non-consideration of certain materials and documents. But we have not expressed any opinion on the merits of the case.

9. Appeal is accordingly disposed of. No costs.

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

.....J.

(ASOK KUMAR GANGULY)

New Delhi,
March 24, 2009