

HEM RAJ

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v.

THE NEW INDIA ASSURANCE CO. LTD.

(Civil Appeal No. 4642 of 2023)

JULY 25, 2023

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[B. V. NAGARATHNA AND UJJAL BHUYAN, JJ.]

Consumer Protection – Appellant-insured is the owner of the vehicle covered by an insurance policy issued by respondent-insurer – Vehicle met with an accident – Medical expenses were borne by the appellant in the treatment of the injuries sustained by the injured – Indemnification of – Held: Evidence in the form of Exhibits C-19 to C-28 issued by the Hospital were on record, as per which the appellant had incurred expenditure in the medical treatment of the injured – The insurance company did not dispute these documents, instead, the contention of the insurer before the NCDRC was that there is no evidence on record to show that the payment was made – The stand of the insurer in this case is not fair and just – Appellant was not only deprived of the amount spent by him towards medical expenses owing to the injuries sustained by the injured in the accident in respect of which there is a third-party insurance coverage, but has also been constrained to approach this Court – The portion of the order of the NCDRC disallowing indemnification of the amount spent towards medical expenses by the appellant, set aside – Respondent to pay Rs.4,09,000/- in terms of the Exhibits with interest at the rate of 7% p.a from the date of filing of the complaint before the District Forum till its realization – Cost of Rs.30,000/- be paid to the appellant – Insurance.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.4642 of 2023.

From the Judgment and Order dated 25.07.2019 of the National Consumer Disputes Redressal Commission, New Delhi in RP No.2363 of 2017.

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Ritesh Khatri, Adv. for the Appellant.

Rameshwar Prasad Goyal, J. P. N. Shahi, Advs. for the Respondent.

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A The Judgment of the Court was delivered by

NAGARATHNA, J.

Leave granted.

B 2. This appeal has been filed by the insured seeking indemnification of the total amount of INR 10,36,500/- from the respondent-insurance company, being aggrieved by the Order passed by the National Consumer Disputes Redressal Commission ('NCDRC' for short).

C 3. Briefly stated the facts are that the appellant is the owner of a Mahindra Pick-up Vehicle bearing registration no. PB-19H-2461 which is used by him for his personal use. That the appellant had purchased an insurance policy No.36060231130100003910 by paying the premium on the policy to the respondent-insurer covering the territory of India initially and later Nepal also. The period of the policy was from 21.03.2014 to 20.03.2015. On 11.09.2014, the vehicle was driven by Amritpal alongwith other people who visited Nepal to attend a *satsang*. Just prior to entry into Nepal i.e., before crossing the border, the appellant had got extended the insurance policy in the territory of Nepal. On 11.09.2014 at 10.00 am, at Gorhi Chowk, Ward No.4, Gram Vikas Samiti, District Bardia Belva (Nepal), the vehicle met with an accident. FIR No. 21 dated 14.09.2014 was duly registered in this regard. In this accident, Smt. D Santliya Tharu, wife of Ram Parshad Tharu, resident of Ward no.7, Gram Vikas Samiti, District Banke Titeeherea (Nepal) died and Ram Parshad Tharu was injured. He was referred to Charak Hospital and Research Centre, Lucknow (India) for medical treatment. According to E the appellant, the medical expenses of Rs.4,09,000/- (Nepalese Rupee) were borne by him. This fact is admitted in the document dated 01.11.2014 F executed in the office of District Incharge, Crime Investigation Branch, Home Ministry, Government of Nepal, duly signed by Jeet Bahadur Tharu, son of Ram Parshad Tharu.

G 4. According to the appellant, a sum of Rs.5,00,000/- (Nepalese Rupee) was paid by him owing to the death of Smt. Santliya Tharu through Rajinder Kumar, representative of the appellant and Rs.24,000/- (Nepalese Rupee) was received by Bhagat Bahadur Tharu towards the fare of vehicles used for transporting the dead body and other funeral rituals of Smt. Santliya Tharu. According to the appellant, a sum of H Rs.5,24,000/- (Nepalese Rupee) (INR 3,27,500/-) was paid to Jeet Bahadur Tharu, the only son of Ram Parshad Tharu and Smt. Santliya

Tharu and Bhagat Bahadur Tharu on a claim for death as well as vehicle charges and expenses for funeral rituals of Smt. Santliya Tharu. Medical expenses totalling to Rs. 6,54,000/- (Nepalese Rupee), equal to Rs 4,09,000/- (Indian Rupee) were also incurred for the treatment of the injured Ram Prashad Tharu. Moreover, on 01.11.2014, there was a consensus arrived at between the parties and an amount of Rs.4,80,000/- (Nepalese Rupee) being Rs.3,00,000/- (Indian Rupee) was paid by the appellant through his representative Sukhdeep Singh to Jeet Bahadur Tharu as full and final settlement of all claims. Thus, according to the appellant, Rs.16,58,400/- (Nepalese Rupee) equal to Rs.10,36,500/- (Indian Rupee) was expended with compensation on account of the death of Smt. Santliya Tharu being Rs.5,24,000/- (Nepalese Rupee) equal to Rs.3,27,500/- (Indian Rupee) + hospital expenses towards the treatment of Ram Prashad Tharu being Rs 6,54,000/- (Nepalese Rupee), equal to Rs.4,09,000/- (Indian Rupee) + the full and final settlement amount being Rs.4,80,000/- (Nepalese Rupee) equal to Rs. 3,00,000/- (Indian Rupee).

5. The components of the claim, excluding interest and costs, made by the Appellant before the District Forum can be summarised in the tabular form, as under:

Claim Component	Nepalese Rupee (NPR)	Indian Rupee (INR)
Death Claim	Rs.5,24,000/-	Rs.3,27,500/-
Hospital	Rs.6,54,000/-	Rs.4,09,000/-
Final Settlement	Rs.4,80,000/-	Rs.3,00,000/-
Total as per claim	Rs.16,58,400/-	Rs.10,36,500/-

6. The appellant, thereafter, submitted the original documents to the respondent-insurer seeking indemnity/reimbursement but the respondent-insurer refused to pay the said amount. Contending that there had been deficiency in service by the respondent-insurance company, the appellant filed a complaint before the District Consumer Disputes Redressal Forum, Tehsil Complex, Mansa ("District Forum") seeking reimbursement of Rs.10,36,500/- (INR) along with interest @ 18 % per annum as compensation, Rs.50,000/- for mental agony and Rs.20,000/- as litigation expenses.

A 7. On receipt of notice from the District Forum, the respondents
herein appeared and filed their version and sought for certain documents
while admitting that the appellant is the owner of the vehicle which was
covered by an insurance policy issued by them but denying the other
details of payments made by the appellant herein. Both the parties let in
B their evidence in the matter as well as filed their written arguments.

 On consideration of the same, the District Forum held in favour
of the appellant herein, directed the respondent herein to settle the claim
as per the terms and conditions incorporated in the insurance policy and
to release only the payments which are legally found payable to the
C appellant in terms of the insurance policy. Further, cost and compensation
of Rs.10,000/- was awarded to the appellant herein.

 8. Being aggrieved by the Order of District Forum, the respondent-
insurer preferred First Appeal No. 839 of 2016 before the State Consumer
Disputes Redressal Commission, Punjab Sector 37-A, Dakshin Marg,
D Chandigarh (“State Commission”). The State Commission did not find
any merit in the appeal and dismissed the same. The State Commission
observed that the respondent-insurance company had deposited an amount
of Rs.25,000/- before the State Commission at the time of filing the
appeal and had further deposited a sum of Rs.5,75,000/- in compliance
with an Order of the Commission and directed that the same shall be
E released to the appellant herein within a period of forty-five days of the
said judgment.

 9. Being aggrieved by the Order of the State Commission, the
respondent-insurer preferred Revision Petition No.2363 of 2017 before
the NCDRC. The NCDRC held that a sum of Rs.3,27,500/- was paid
F by the appellant to the son of the deceased Smt. Santliya Tharu. That a
sum of Rs.6,27,500/- apart from Rs.10,000/- towards cost, is payable to
the appellant herein. Accordingly, the Revision Petition was disposed of.
As against the said Order, there is no appeal filed by the insurance
company. However, the insured-appellant herein has sought for the
G payment of Rs.6,54,000/- (Nepalese Rupee) towards the medical
expenses for the treatment of Ram Prashad Tharu. The NCDRC has
observed that there is no evidence on record to show that the said
payment was made by the appellant herein. In this regard, an application
has been filed by the appellant herein seeking to bring on record three
documents being medical bill receipt dated 16.09.2014, 17.09.2014 and
H detailed inventory i.e., statement of expenditure provided by the hospital

from 27.09.2014 to 01.11.2014 as Annexure P-9, in order to establish that a sum of Rs.4,39,318.99/- was paid by the appellant herein to Charak Hospital and Research Centre, Lucknow towards the treatment of Ram Prashad Tharu who had sustained injuries in the accident. A

10. We have heard learned counsel for the appellant and learned counsel for the respondent-insurer and perused the material on record. B

11. The main grievance of the appellant pertains to the reimbursement of the medical expenses incurred by him towards the medical treatment of Ram Prashad Tharu at Charak Hospital and Research Centre, Lucknow. In that regard, appellant's counsel drew our attention to the Orders passed by the District Forum, State Forum as well as the NCDRC and contended that the evidence regarding the reimbursement of medical expenses was on record in the form of Exhibits - C19 to C28 which are medical bills on account of the medical treatment given to Ram Prashad Tharu. The District Forum categorically directed that the opposite party i.e., respondent-insurer herein had to settle the claim as per the terms and conditions incorporated in the insurance policy and to release the payment which was legally payable to the appellant herein and to indemnify as per the insurance policy. However, the insurer has failed to do so. In fact, the observations of the State Forum are to a similar effect i.e. to release the amount found admissible, to the extent of the insured's entitlement after the expiry of forty five days. C D E

12. However, the learned counsel for the insurer submitted before the NCDRC that there was "no evidence on record" to show that the payment was made. Therefore, on the said submission, the amount of Rs.6,54,000/- (Nepalese Rupee) towards medical bills has not been ordered to be disbursed to the appellant, hence, the appellant has filed this appeal by way of special leave petition. F

13. In this regard, our attention was also drawn to the copies of the said Exhibits by way of filing an application for filing additional documents. Learned counsel for the respondent-insurer did not dispute the fact that the evidence in the form of Exhibits C-19 to C-28 were on record. We have perused the said Exhibits (Annexure P9 to P28) which have been issued by Charak Hospital and Research Centre, as per which appellant had incurred expenditure of Rs.6,54,000/- (Nepalese Rupee) equivalent to Rs.4,09,000/- (Indian Rupee) in the medical treatment of Ram Prashad Tharu. Learned counsel for the insurance company has G H

A not disputed these documents, instead, the contention of the insurer before the NCDRC was that “there is no evidence on record” to show that the payment was made. This is not a correct submission or statement made on behalf of the insurer.

14. NCDRC has also noted that since the appellant herein did not
B assail the Order of the District Forum regarding disallowing of the said amount, the same had been disallowed. We do not think that is a correct reading of the Order of the District Forum inasmuch as the District Forum had specifically referred to medical bills at Exhibits C-19 to C-28 and had directed the insurance company to release the amount found
C admissible to the complainant-appellant. The appellant herein was naturally under the impression that the amounts covered under the medical bills would also be payable. Even, the State Commission had stated to the same effect that the claims as per the terms and conditions incorporated in the insurance policy had to be released if found admissible and to the extent of entitlement of the insured.

D However, the NCDRC, on the basis of the submission of the learned counsel for the insurer, disallowed the disbursement of the medical bills on the premise that there was no evidence on record and that the appellant herein had not contested the Order of the District Forum before the State Commission. As a consequence, the appellant had to approach
E this Court for seeking reimbursement of the medical bills paid by the appellant for the treatment of Ram Prasad Tharu.

15. We observe that the submissions made on behalf of the insurance company before the NCDRC are contrary to the evidence on record as a result of which the appellant herein has been not only deprived
F of the aforesaid amount spent by him towards medical expenses owing to the injuries sustained by the injured Ram Parshad Tharu in the accident in respect of which there is a third-party insurance coverage, but also has been constrained to approach this Court. We find that the stand of the insurer in this case is not fair and just.

G 16. In view of the aforesaid discussion, we allow this appeal and set aside that portion of the Order of the NCDRC disallowing indemnification of the amount spent towards medical expenses by the appellant-insured. We direct the respondent-insurance company to pay the amount, Rs.4,09,000/- (Indian Rupee) in terms of Exhibits P-9 to P-28 with interest at the rate of 7% per annum from the date of filing of
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HEM RAJ v. THE NEW INDIA ASSURANCE CO. LTD.
[B. V. NAGARATHNA J.]

1193

the complaint before the District Forum till its realisation. We also impose A
a nominal cost of Rs.30,000/- payable to the appellant herein. The
aforesaid amounts shall be disbursed to the appellant within a period of
one month from today.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.