

Sr.No.	CASE-LAW	Page No
1.	NATIONAL INSURANCE LTD. COMPANY vs. STATE OF JHARKHAND MADHUSUDAN DAS [Negligence(1)]	1-3
2.	vs. SMT. NARAYANI BAI & OTHERS	4-6
3.	MUNICIPAL BOARD, JAUNPUR vs. BRAHM KISHORE [Negligence-2]	7-10

* CASE LAW *

NATIONAL INSURANCE LTD COMPANY
V/S
STATE OF JHARKHAND

Citation 2008 (2) JCR 521 Jhr

Parties National Insurance Ltd. Company V/S
State of Jharkhand

Court Jharkhand High Court

Judgment on 1 April, 2008
Date

Judges M.R. Vinayagam, D. Patnaik

Fact of the Case :- The only ground urged by the learned Counsel for the petitioner is that as the president of the state commission has not participated in its proceeding, the order passed by the Commission is not valid.

How did a matter first come in court? Learned Counsel appearing for the petitioner, referring to section 14(2-A) of the Consumer Protection Act, 1986 (hereinafter referred to as the Act), would submit that every order made by the district Forum under sub-section (1) shall be signed by its ~~President~~ ^{Secretary} member.

or members who conducted the file proceedings & that similarly section 18 of the Act, which deals with procedure applicable to state commission, provides that the provision of section 12, 13 & 14 of the Act have to be invoked, while the case is being disposed of by the state. Acc. to the learned counsel for the petitioner, though the District Forum consisting of its president and members has given the verdict with reference to the award, the state commission only consisting of its members has passed the order and not consisting of the president, i.e. the order passed by the commission is invalid.

Court observation :- "The facts are similar to the case law National insurance ltd company v/s state of Jharkhand, in which the court opinion that, we have heard the learned counsel for the parties. we are not impressed with the point raised by the learned counsel for the petitioner because section (29A) of the Act provides that no act or proceeding of the District Forum, the state commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof. As a matter of fact, the District Forum consisting of its president has passed the award, therefore, the same has not been challenged. The state commission only consisting of its members has passed the order. As indicate above, section (29A) of the Act explicitly provides that

on account of existence of & vacancy amongst its members or any defect in the constitution thereof, no order can be said to be invalid. Further section 16 (1-B) (i) of the Act provides as follows.

16(1-B)(i) (i) The jurisdiction powers & authority of the State Commission may be exercised by Benches thereof.

- (ii) A Bench may be constituted by the President with one or more members as the President may deem fit.
- (iii) If the members of Bench differ in opinion on any point the points shall be decided acc. to the opinion of the majority ; if there is a majority ; but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points by one or more the other members and such point or points shall be decided according to the opinion of the majority of the members who had heard the case, including those who first heard it.

Decision of Courts— In view of the above specific provisions quoted above, it is not necessary that the President shall be the member of the Bench of the State Commission. Therefore, we do not find any merit in this application. However, it is open to the petitioner to approach the National Commission by filing an appropriate appeal, raising all the points on merit.

(4)

CASE-LAW
OF
NEGLIGENCE
II)

MADHUSUDAN DAS
VS.

SMT. NARAYANI BAI AND OTHERS

Citation	1983 AIR 114 1983 SCC (1) 35	1983 SCR (1) 851 1982 SCALE (2) 1083
Parties	Madhusudan Das VS. Narayani BAI & Others.	
Court	Supreme Court of India	
Judgment	25 November 1982	
Date		
Judges	Pathak, R.S., Tulzapurkar, V.D.	

Fact of the Case :- Jagannathdas & his wife has no children. Premwati suffered from tuberculosis & died on September 24, 1951. Thereafter Jagannathdas created a trust in respect of his estate which comprised of properties falling to his share in a family partition. The appellant filed a suit claiming that he had been adopted by Jagannathdas & Premwati as their son on September 24, 1951, that the trust was void & that he was entitled to a half share in the estate.

Issue Under Consideration :- The trial court decreed the suit after finding that the appellant had in fact been adopted by Jagannathdas and Premwati & that the adoption was valid. On appeal by the trustees the High Court reversed the finding of the trial court taking a different

view of the evidence on record and dismissed the suit. Allowing the appeal against the order of the High Court. after died Premwati ; Jagannathdas died on October 7, 1957 during the pendency of the suit ; in consequence the appellant claimed a $\frac{1}{3}$ 14th share of estate , with the remaining $\frac{1}{4}$ being conceded to Narayanibai the mother of Jagannathdas.

Court Observation — An appeal by the trustee was allowed by the High Court by its Judgment a decree dated Sept. 30, 1967 & suit has been dismissed. The High Court has reserved the finding , taking a different view altogether of the evidence on the record. It was not disputed that such a document was in fact signed by Jagannathdas & Premwati on Sept 24, 1951, & the trial court repelled the case of respondent the Jagannathdas was compelled to sign it without a knowledge of its contents & that Premwati also did so in ignorance of what he set forth. The High Court has taken the view that Jagannathdas was in averse to adopting the appellant & it has relied on the evidence of Motilal, a witness of respondents. In the circumstances the decision of Jagannathdas & Premwati to abandon their intention to adopt his son. we have referred to some of the errors which vitiate the judgment of the High Court. it is not necessary ; we think , to advert to all of them. It is sufficient to say that there was no adequate ground for High Court to interfere with the finding of trial court. we are of opinion that finding of the High Court that the appellant had not adoption must be aside & that of the trial court restored.

It is urged by the contesting respondent that in the event of the court holding that the appellant is adopted son of Jagannathdas & Premwati he can be found entitle to a half share only in the properties. The submission is based on a recital in the trust deed executed by Jagannathdas & Premwati that if the adoption deed is declared valid by the highest court then, in the present case there is no evidence whatever to show the intention to separate was communicated by which the appellant contends that the declaration of separation in the trust deed is wholly ineffective, but we consider it necessary to consider them here. It may be pointed that the High court also repelled the plea raised by the contesting respondent that pursuant to a compromise effected by Marayani Bai in a suit filed by her against the trust it was not open to her to claim from the trust a 1/4 share in the estate. The High court rightly pointed then which vested in her only on the death of Jagannathdas on 7 Oct. 1957. On the question whether the suit was barred by limitation the High court, in our opinion rightly.

Judgment passed by the Hon'ble Commission:- In the result the appeal is allowed, the judgment & decree of the High Court are set aside & the judgment & decree of the trial court are restored. The appellant is entitled to his costs from the second & ninth respondents. Appeal allowed, by H.C.L.

(7)

CASE-LAW
OF
NEGLIGENCE
(2)

MUNICIPAL BOARD, JAUNPUR
VS
BRAHM KISHORE

Citation AIR 1978 All 168

Court Allahabad High Court

Judgment 13 January, 1978

Date

Judges M. P. Mehrotra iJ.

Fact of the Case — The brief facts are ; the plaintiff was posted at Jaunpur as munsif on 6th Dec. 1964 , which happened to be a Sunday. He used to go to a club which was known as the English Club, Jaunpur, of which he happened to be a member. On the said date, while returning from the said club, he fell in a ditch at about 6-15 pm. The ditch had been dug out the same day in the road, which vested in and was managed by the defendant-appellant. The digging was done for the purpose of repair of a culvert. This ditch was about 1 foot deep and about 2 to 3 mtr feet wide. It had been dug across the entire width of the road. The plaintiff alleged that there were no light, no danger signal, no caution notice; no barricade or other precaution in respect of the said ditch. The plaintiff had no prior knowledge of the existence of the said ditch at the time of the incident. The plaintiff was riding a cycle at the time of

and being unaware of the fact that the road had been cut by the employees of the defendant No. Two. plaintiff allegation was that the defendant failed to carry out their statutory duties under the U.P. municipalities Act and they were otherwise also grossly negligent. They created a public nuisance on a public road & as a result of the said negligence, the plaintiff was caused the aforesaid injuries. The plaintiff claimed a sum of Rs. 1050/- as compensation & damages for the acute bodily & physical pain a sum Rs 1050/-

Issue under Consideration :- It may be stated:

that the issue the defendant filed a joint written statement and contested the suit. They denied that there was any negligence on their part. It was denied that the municipal Board failed to carry out its statutory duty. It was denied that the injuries were caused to the plaintiff due to the negligence of the defendant. It was alleged that there was a mound of earth on one side of cutting and there was a [The municipal Board, Jaunpur vs Brahm Kishore & on 13 Jan. 1978]. It was also claimed by defendant there was sufficient light on the spot from an electric post situated at a few paces and there was also such light on the gate of the tube-well colony & also light in a tea stall situated nearby. It was further contended that plaintiff was guilty of contributory negligence as he was riding the cycle in a fast manner and it was also alleged that the cycle was not licensed.

Court Observation 8- In the observation of court Smti. J.M. Agrawal, learned counsel for the appellant was saved by the doctrine of contributory negligence which was applicable to the facts of the instant case. He strenuously contended that it was the minimum requirement in the facts of the instant case that the plaintiff should have had a lamp when he riding the cycle in the evening at about 6.15 P.M. It was winter evening and there was undoubtedly darkness at the said point of time. The court below in my opinion were right in not granting the benefit of the doctrine of contributory negligence to the defendant. Firstly it has to be emphasised that both the court below hold the appellant Board to have been guilty of having failed to carry out its statutory duties as laid down in section 223 of U.P. Municipalities Act. Smti. Agrawal next pointed out that the plaintiff was not entitled to claim separately for physical & mental pain. It cannot be denied that the plaintiff was entitled to claim damages for physical & mental pain which undoubtedly were caused to him. It might not have been necessary for the plaintiff to have separately claimed for physical injury & for mental pain. However, that in no way affect the decision of the case. A total sum of Rs. 2100/- was claimed by the plaintiff looking the nature of injuries sustained by him in my opinion the amount claimed is modest & not excessive.

Judgment passed by Hon'ble Commission :-

Judgment is therefore nothing turns on the alleged division of the amount between physical & mental pain, as no special damages have been claimed by way of expenses for medical attendance etc. In a result this appeal fails & is dismissed with costs.