

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No 2399 of 2015

IN

LPA 468 of 2012

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M/s Surendra Prasad Singh through its Partner Surendra Prasad Singh Son of late Ram Sagar Singh` Resident of Mohalla Sarvodaya Nagar, Police Station- Town, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mr Sanjeev Kumar, The Regional Manager, United India Insurance Company Ltd. 5th, Floor, Chanakya Complex, R Block, Patna.
3. Sri Ram Naresh Mishra The Branch Manager , United India Insurance Company Ltd Branch Office Begusarai Kapasiya, Chowk ,PO Barauni, Refinery Township ,District Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Aditya Nr Singh, Kundan Kr Sinha & Ms Rita Verma, Advocates

For Opposite Parties : Mr Jitendra Singh, Sr Advocate with M/s Rajiv Kr Singh & R C L Das, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 03-08-2016

Against an insurance policy, claims were raised in the latter half of 2007 by the writ petitioner. As is usual, on some pretext or the other or on some pretence or the other, lacking promptness, the claims were substantially rejected. This ensued dispute. It appears that the United India Insurance Company Limited (for brevity, *the Insurance Company*), not being satisfied with the first survey report,



got another survey report done and, on basis of that, substantially reduced the claims, tendered payment after more than two years of the incidence. Naturally, the writ petitioner refused to accept the settlement. He filed two writ petitions in this Court being CWJCs No 6065 and 6395 of 2010 in respect of the two claims. It may be noted that there were two insurance policies but the insurable claim event was one. The writ petitions were dismissed. Letters Patent Appeals being LPAs No 455 and 468 of 2012 were preferred by the writ petitioner which, after hearing the parties, were allowed by common judgment and order dated 19.05.2015 clearly holding that the Insurance Company was liable to pay the insurance claim as per the first survey reports dated 13.11.2007 and 19.11.2007 in respect of the two policies and not those reports obtained subsequently. After that, review applications were filed in the two LPAs which were also dismissed.

2 As is usual, as no expense has to be met out from the pocket of the officers of the Insurance Company, it carried the matter to the Apex Court without success. It was not left there. The SLP having been dismissed by the Apex Court, further review applications were filed before the Apex Court which was also dismissed. Now having been left with no option, payment had to be made as per orders in the two LPAs.

3 It may be noted here that after the judgment of the



Division Bench of this Court in the Letters Patent Appeal, when compliance was not being made, the present contempt proceedings were initiated. In the meantime, the Insurance Company preferred the SLP. The contempt proceedings were adjourned. The SLP, being dismissed, it preferred review before the Apex Court which was also dismissed. Now, when the contempt application is taken up, instead of immediately complying, it waited. We wonder for what? We then passed an order, in peremptory terms, directing that if the order of the LPAs is not complied, the Managing Director of the Insurance Company will be present in the Court. It is upon this order that payment was made. What followed is even more intense. The petitioner pointed out that he had asked for payment of interest along with the principal, which is statutorily provided. The reply he got was that there is no Court order to pay interest. A further clarification this Court had to give that interest liability is a liability by law and there has to be no order of the Court. The moment a claim is settled and if there is a delay in that, the law provides for interest to be paid then automatically alongwith the claim settlement, the interest component has to be paid. Surely, the Insurance Company was waiting further for something and delaying the payment. Now, a show cause has been filed again seeking to introduce a dispute with regard to the liability to pay interest. This dispute is based upon Clauses (5) and (6) of Regulation 9 of the Insurance Regulatory and Development



Authority (Protection of Policyholders' Interests) Regulations, 2002 (for brevity, *the Regulations*). As the name of the Regulations would show that it purported to be for the protection of the policyholders' interest, but it is being used to negate the interest of policyholders. What is urged on basis of sub-clauses (5) and (6) of Regulations 9 is that, if upon receipt of the surveyor's report, settlement is delayed beyond 30 days, there would be liability to pay interest. The first stand that is taken is that the liability to pay the principal amount arose only as a consequence of the judgment and order of the Letters Patent Appeals which were of 19.05.2015. Therefore, the interest liability would only be from 19.05.2015. We have noted this only to show the hollowness and the ridiculous stand, the Insurance Company can take. What the Letters Patent Appeals found was that the liability arose, when first survey report was submitted, way back in 2007. On the plain reading of the Regulations aforesaid, any layman, but senior officers of the Insurance Company, would understand that the interest, which is compensatory in nature, would accrue from the day liability to pay accrues. The liability to pay was of the year 2007 but for reasons best known, another dispute was sought to be raised and interest being tendered is only for the period 2015 to 2016.

4 In our view, the Regulations are clear. If the policy settlement is delayed beyond 30 days of the survey report, the liability to pay interest 2% above the bank rate accrues. The Court has found

that the liability to pay was dependent upon the first survey reports dated 13.11.2007 and 19.11.2007 and, thus, the interest liability would arise from that date onwards.

5 As to the two contentions that were raised by the Insurance Company, firstly that though we were (Company) bound to entertain and honour the claim in the year, 2007 but having failed to do so till 2016, we would only be liable to pay interest from 2015, our answer would be in terms of what Chief Justice Chagla said more than half a century back in the case of *All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232* :

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

6 We may further notice what the Apex Court had to say in the case of M/s Hindustan Sugar Mills –Versus- State of Rajasthan & Others since reported in AIR 1981 Supreme Court 1681:

“... .. We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal

technicalities, for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen, and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand.”

7 It cannot be disputed that the Insurance Company is statutory Corporation and State within the meaning of Article 12 of the Constitution. In the facts we are forced to note that the Insurance Company has not left any stone unturned to harass a policyholder. Unfortunately, all this is because the officers are not to pay litigation costs, which the Corporation pays. They force litigation upon policyholders which is very unfortunate. We would not like to say anything more. We would now expect that the interest, as contemplated by Regulations, as aforesaid and as indicated in this order, which is statutory liability for which no order has to be passed by the Court, for it automatically follows the claim, be paid forthwith. The interest has to be paid within a week from today, the responsibility of which would be on the Regional Manager of the Insurance Company who is personally present in the Court.

8 This application stands disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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