IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA: MIZORAM AND ARUNACHAL PRADESH)
SHILLONG BENCH

1. Civil Revision No. (SH)36 of 2011

National Insurance Company Ltd.
Regd and Head Office :
3, Middleton Street,
Kolkatta – 700071
Divisional Office at Merello Building
Kachari Road, Shillong – 1.

: Petitioner

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1. Shri Kyrmen Paslein,
S/o (L) Horen Bamon,
R/o Tongseng Narpuh Village,
BPO Khliehriat,
PO & PS Khliehriat,
Jaintia Hills District, Meghalaya.

2. Shri Tamlang Shylla,
S/o (L) Kharoo Phawa,
R/o Lalong Village,
PO & PS Jowai,
Jaintia Hills District, Meghalaya.

: Respondents

2. Civil Revision No.(SH)37 of 2011

National Insurance Company Ltd.
Regd and Head Office:
3 Middleton Street,
Kolkatta-700071
Divisional Office at Morello Building,
Kachari Raod, Shillong-1.

: Petitioner

versus

1. Shri Ris Rymbai,
S/o (L) Lisa Rymbai,

R/o Tongseng Narpuh village,
BPO-Khliehriat,
PO & PS Khliehriat
Jaintia Hills District, Meghalaya.

2. Shri Tamlang Shylla,
S/o (L) Kharoo Phawa,
R/o Lalong village,
PO & PS Jowai,
Jaintia Hills District,
Meghalaya.

: Respondents

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the petitioners	: Mrs PDB Baruah Mrs P Das Advocate
For the respondents	: Mr VK Jindal, Sr Adv Mr S Dey, Advocate
Date of hearing	: 17.5.2012
Date of Judgment and Order	: 27.07.2012

JUDGMENT AND ORDER (CAV)

Both these revision petitions involving a common question of law and of facts were heard together and are now being disposed of by this common judgment. Whether the liability to satisfy the amount of compensation awarded by the Lok Adalat on the basis of the settlement arrived at between the owner of the vehicle and the claimant can be fastened upon the insurer, who was not a party to such settlement, is the common question of law involved in this revision.

2. In Civil Revision Petition No.(SH) 36 of 2011, the facts of the case, briefly stated, are that the petitioner is a registered company and is engaged in the business of insurance with its headquarters at Kolkata and is carrying on its business, inter alia, at Shillong. The respondent No. 1 filed a claim petition being MACT No. 10 of 2007 before the Motor Accident Claims Tribunal, Jowai claiming compensation on account of the death of his wife, the late Medris Nialang, in a vehicular accident, which took place on 20-5-2007. The petitioner was impleaded as one of the opposite parties in the case as the vehicle bearing registration number ML-10-7280 which was reported to be involved was insured with it under Policy No. B-2005110 with its validity up to 16-10-2007. The petitioner contested the claim petition by filing a written statement as well as an additional written statement by taking the stance, among others, that the driver of the vehicle in question did not have a valid driving license at the time of the accident in question, which is in violation of the policy condition of the insurance policy. The Tribunal by its order dated 4-6-2008 passed an interim order on 4-6-2008 directing the petitioner to pay a sum of ` 50,000/- to the respondent No. 1 by way of no fault liability. However, during the pendency of the case, the case was referred to the Lok Adalat to be held on 17-9-2011. The petitioner did not appear before the Lok Adalat, but duly informed the Lok Adalat that it would like to contest the claim petition on merit. The case of the petitioner is that the Lok Adalat, however, in its absence proceeded

with the matter and passed the impugned order dated 17-9-2011 settling the claim case on the basis of the agreement arrived at between the claimant and the insured and awarding a sum of Rs. 3,50,000/- in favour of the respondent No.1 and directing the petitioner to pay the awarded amount within one month. According to the petitioner, the Tribunal most illegally accepted the terms of settlement of the Lok Adalat and passed a decree to that effect on 17-9-2011.

3. In Civil Revision Petition No. (SH) 37 of 2011, the respondent No. 1 filed a claim case being MACT No. 9 of 2007 before the Motor Accident Claims Tribunal, Jowai claiming compensation for the death of his wife, the late Elbi Nialang in the same motor accident case. As the petitioner was impleaded as one of the opposite parties, it contested the claim petition and filed its written statement and additional written statement by taking the same stance as in the earlier case. The Tribunal by its order dated 4-6-2008 directed the petitioner to pay a sum of ` 50,000/- to the respondent No. 1 by way of no fault liability, which was complied with. As in the earlier case, the case was referred to the Lok Adalat for amicable settlement by the parties. The petitioner did not put in its appearance before the Lok Adalat on the appointed day, but duly intimated the Lok Adalat that it would like to contest the claim petition on merit. As in the earlier case, the Lok Adalat, in the absence of the petitioner, proceeded with the conciliation exercise between the claimant and owner of the vehicle and passed the

impugned order dated 17-9-2011 on the basis of their agreement and settled the case by directing the petitioner to pay a sum of ` 3,50,000/- to the respondent No. 1 by way of compensation for the death of his wife. Aggrieved by this, this revision is preferred by the petitioner-insurer.

4. I have gone through both the impugned awards passed in the cases arising out of the same vehicular accident. There is no dispute at the bar that the petitioner was contesting the claim petition on impleadment and not only as a noticee under Section 149(2) of the Motor Vehicles Act, 1988 ("the Act" for short) ground, among others, of breach of policy conditions, namely, the driver of the offending vehicle did not have a valid driving license at the time of the accident. Consequently, it had every right to contest the claim petition, which was independent of the right of the insured to contest the claim petition. Yet the Lok Adalat proceeded to settle the case between the owner of the vehicle and the claimant in the absence of the petitioner, who had earlier intimated that it desired to contest the claim petition on merit: that means it was not interested in settlement of the case. The Lok Adalat, nevertheless, settled the case between the claimant and the owner of the vehicle in the absence of the petitioner and, accordingly, directed it (the insurer) to pay another ` 3 lacs as full and final settlement by way of indemnifying the owner of the vehicle/insured, which was in addition to the ` 50,000/- already paid by it by way of interim award under Section

140 of the Act. The fact that the petitioner did not appear before the Lok Adalat on the date fixed for the conciliation proceeding and had duly intimated the Lok Adalat of its desire to contest the claim petition on merit, is borne out by the impugned orders passed by the Ld. Member, Motor Accident Claims Tribunal, who had also presided over the same Lok Adalat, wherein it was recorded that "[O]pposite Party i.e. National Insurance Co. Ltd. absent with intimation that they could not attend and desired to contest the case on merit before the normal Court. Further they have acknowledged receipt notice of Lok Adalat Court to be held today." Notwithstanding the absence of the petitioner, the learned Member, Motor Accident Claims Tribunal proceeded to settle the case purportedly on compromise between the claimant, the respondent No. 1, and the owner of the vehicle, the respondent No. 2 but in the absence of the petitioner. The Lok Adalat had also recorded the finding that the driving license of the driver was "found valid as on that date of accident". At this stage, it may be noted that the Lok Adalat had vide Annexure-V awarded ` 3 lacs as full and final settlement and directed the petitioner to indemnify the respondent No. 1. However, vide Annexure-VI, the Tribunal, purportedly on the basis of the said settlement, directed the petitioner to pay ` 3.50 lacs to the claimant within a period of one month from the date of settlement of the case. The bindingness of this award upon the petitioner, as noted earlier, is called into question in this revision.

5. Mrs. P.D.B. Baruah, the learned counsel for the petitioner-insurer, submits that the impugned settlement was made without the consent of the petitioner and cannot be imposed upon the insurer for satisfying the amount so awarded. She heavily relies on the decision of this Court in ***N.I. Co. Ltd. v. Member, Secy., ASLS Authority*** reported in ***2007 (4) GLT 737*** to buttress her contention. Refuting her contention, Mr. V.K. Jindal, the learned senior counsel for the respondent, seeks to distinguish this case by submitting that as the petitioner steps into the shoes of the insured by offering to indemnify the latter in terms of the insurance policy so taken, the petitioner cannot question the validity of the settlement arrived by Lok Adalat, which under Section 21(2) of the Legal Services Authority Act, 1987 ("LSA Act" for short) as the same is binding upon it and should be directed to satisfy the impugned award. Reliance is placed by him upon the decision of the Apex Court in ***United Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509*** in support of his submission.

6. I have given my anxious consideration to the submissions advanced by the learned counsel appearing for the rival parties. At the outset, it must be placed on record that this is a claim petition in which the petitioner was specifically impleaded as the opposite party No. 2 and was not merely a noticee under Section 149(2) of the Act. What is the significance of this, is

explained by the Apex Court in ***Shila Datta case*** (*supra*) at para 16 and 19 of the judgment. This is what it said:

> *"16. The entire scheme and structure of Chapter XI and XII is that the claimant files a claim petition only against the owner and driver and the Tribunal issues notice to the insurer under Section 149(2) so that it can be made liable to pay the amount awarded against the insurer and if necessary, deny liability under the policy of insurance, on any of the grounds mentioned in Section 149(2). If the insurer is only a notice and not a party-respondent, having regard to the decision in Nicoletta Rohtagi, it can defend the claim only on the grounds mentioned in Section 149(2) and not only any of the other grounds relating to merits available to the insured respondent. This is the position even where the claim proceedings are initiated suo motu under Sections 149(7) [sic Section 166(4)] and 158(6) of the Act, without any formal application by the claimants, as the insurer is only a noticee under Section 149(2) of the Act.*
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> * * * * *
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> *"19. Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal under Section 170 or being impleaded as party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all the grounds, without being restricted to the grounds available under Section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party."*

7. What is clear from the above observations of the Apex Court is that the insurer has been conferred by Section 149(2), the right to contest the claim petition on the ground of breach of policy conditions even if it is not impleaded as a party-respondent either at the behest of the claimant or by the Tribunal. But the insurer has no right to contest the claim petition on other grounds unless it is voluntarily impleaded as party-respondent by the claimant or by the Tribunal. This is quite significant for resolving the present controversy. In the instant case, the admitted position of the parties

is that the petitioner-insurer was not interested in compromise or settlement of the case by the Lok Adalat and had, in fact, intimated the same in writing to the LOK Adalat of its desire to contest the claim petition on the ground of breach of policy conditions under Section 149(2), which was undoubtedly a matter of right for it. This right could not have been denied to it by the Lok Adalat. Once the petitioner expressed its desire to contest the claim petition on the ground of breach of policy condition, the Lok Adalat ought to have returned the case to the Tribunal for disposal according to law: it had no power to impose compromise or settlement upon the unwilling petitioner-insurer. This become evident from sub-sections (3), (4) and (5) of Section 20(3) of the LSA Act, which may be reproduced below:

> **"20. Cognizance of cases by Lok Adalat.—(1) * *omitted ***
>
> **(2) * * * * omitted * * ***
>
> **(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.**
>
> **(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.**
>
> **(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned**

by it to the court, for which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) * * * * omitted * * * *

8. The provisions extracted above were explained by the Apex Court in the ***State of Punjab v. Phulan Rani, (2004) 7 SCC 550*** at paragraph 7 of the judgment in the following manner:

> *"7. The specific language used in sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are "compromise" and "settlement". The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per Terms de la Ley, "compromise is a mutual promise of two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon." As per Bouvier it is "an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon". The word "compromise" implies some element of accommodation on each side. It is not apt to describe total surrender. (**See N.F.U. Development Trust Ltd., Re**). A compromise is always bilateral and means mutual adjustment. "Settlement" is termination of legal proceedings by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed of by the Lok Adalat. Therefore, the disposal of Writ Petition No. 13555 of 1994 filed by Respondent 1 is clearly impermissible."*

9. In the light of the aforesaid legal propositions laid down by the Apex Court, there can be no two opinion that when the insurer contests a claim petition either as a noticee under Section 149(2) or otherwise, its right to contest the claim petition on the ground of breach of policy conditions cannot be defeated in any manner. Consequently, if the case is settled or

compromised between the owner of the vehicle (the insured) and the claimant before the Lok Adalat in the absence of or without the consent of the insurer, who is contesting the claim petition as a noticee or otherwise on the ground of breach of policy conditions, the award so made by the Lok Adalat under Section 21 cannot be held binding upon the insurer. In other words, the liability to satisfy such an award cannot be fastened upon the insurer: it rather becomes the liability of the insured to satisfy the award as the insurer cannot step into his shoes, who chose to settle or compromise the case in the absence of or without the consent of the insurer. However, if the insurer does not apply for contesting the claim petition on any grounds other than breach of policy conditions or was not permitted to do so by the Tribunal, the settlement or compromise arrived at between the parties in Lok Adalat may be held binding upon the insurer. In the instant case, there is no dispute that the petitioner-insurer was contesting the claim petition on the ground of breach of policy conditions, namely, the driver of the offending vehicle did not have a valid driving license at the time of the accident, the compensation awarded by the Lok Adalat under Section 21 of the LSA Act need not be satisfied by the petitioner-insurer. In other words, it is the liability of the insured to satisfy the award.

10. For what has been stated in the foregoing, these revisions succeed. Both the Awards dated 17-9-2011 passed by the Motor Accident Claims Tribunal, Jowai in MACT Case No. 10 of 2007 and MACT Case No. 9 of

2007 in terms of the settlement arrived at by the insured and the claimants before the Lok Adalat are, therefore, not binding upon the petitioner-insurer. Resultantly, both the impugned Awards, in so far as the petitioner-insurer is concerned, are hereby set aside. If, however, the insured in both the cases do not wish to satisfy the awards, it shall be open to them to approach the Tribunal for revival of the case in accordance with law. No costs.

JUDGE.

Daphira