

HIGH COURT OF JAMMU AND KASHMIR JAMMU

**OWP.No. 473/2007
CMA. No. 709/2007**

Date of order: March 13, 2013

New India Assurance Co. Ltd.

Vs.

Dr. Vishwa Mitter Soodan and Anr.

Coram:

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge

- | | |
|--|------------|
| 1. Whether approved for Law Journal? | Yes |
| 2. Whether approved for publication in Press? | |
-

Appearing counsel:

For Petitioner (s) : Mr. D.S. Chauhan, Advocate.
For respondent(s) : Mr. Rohit Kapor, Advocate.

(Oral)

The respondents, doctors by profession, obtained insurance policy known as "***Doctors Composite Package Insurance Policy***". A criminal prosecution was launched against the respondents by one Mr. O.P. Baru grandfather of the child patient, who was surgically operated upon by the respondents on 27th March, 1991 in a private nursing Home. The surgery was unsuccessful and it was alleged that child lost his life. After investigation, the respondents were send up for trial for having allegedly committed offence under Section 304-A RPC read with Section 34 RPC. The

trial court framed charge against the respondents which was unsuccessfully called in question in petition under Section 561-A Cr.P.C. The SLP filed before the Hon'ble Supreme Court matured in finally settling the issue. The Hon'ble Supreme Court vide its Order dated 17th April, 2008 directed the respondents to deposit a sum of Rs. 2.00 lacs in the office of Jammu University for a noble cause and it was further directed to pay 1, 70,000. Since during the subsistence of the insurance policy, no claim was made in respect of compensation from the respondents, so they could not ask the appellant-insurance company to indemnify them. The cause accrued to the respondents on 17th April, 1998 when the matter was finally settled by the Hon'ble Supreme Court.

The Divisional Consumer Redressal Forum, Jammu (for short "**Forum**") vide its order dated 10th December, 2003 directed the appellant-insurance company to pay the amount of Rs. 1.70,000/- with 6% interest on the said amount till the realization thereof. The Forum directed the appellant-insurance company to pay further amount of Rs. 79,100/- to the respondents as charges, which they incurred to defend the case. Rs. 5000/- were also ordered to be paid as transportation charges and Rs. 10,000/- for

suffering mental agony. The appellant-insurance company challenged the said order before the Jammu and Kashmir State Consumer Disputes Redressal Commission, Jammu (for short "**Commission**") by filing an Appeal, which appeal has been dismissed by the Commission vide its order dated 29th January, 2007.

Learned counsel for the petitioner submitted that the claim was repudiated in the year 1992 and as such there was no cause or claim surviving against the appellant-insurance company in respect of which, the respondents could file complaint before the Commission. Learned counsel further submitted that in terms of the insurance policy, the claim of the respondents was not covered, inasmuch as, the orders for payment of amounts have been passed in a criminal case. Learned counsel accordingly prayed for allowing this Petition and setting-aside the orders impugned in this Petition.

Learned counsel for the respondents submitted that the claim of the respondents is covered by the insurance policy. Learned counsel in this behalf referred to relevant para viz. (special conditions) to indicate that liability incurred in criminal proceedings is also covered by the insurance policy.

The contention of learned counsel for the appellant that there being no claim against the insurance company in the year 1992 and same having been repudiated, cannot be accepted for the reason that at that point of time, no claim was filed against the respondents so they could not file claim with the appellant company. It is only after the matter was settled by the parties, which settlement was given effect to by the Ho'ble Supreme Court vide its Order dated 17th April, 1998 passed in Petition(s) for Special Leave to Appeal (Cr.1) No. 2411/97, the cause accrued to the respondents for lodging their claim for indemnifying them. The order of the Hon'ble Supreme Court approving the settlement arrived at between the parties and directing the Magistrate to accord requisite permission for withdrawal of the case and acquit the accused appears to have been passed in exercise of powers conferred by Article 142 of the Constitution of India. The appellant-insurance company, in such circumstances, cannot say that they are not liable to indemnify the respondents. In the peculiar facts and circumstances of this case, the appellant - company is held liable to indemnify the respondents.

For the above stated reasons this petition being meritless is accordingly dismissed.

(Muzaffar Hussain Attar)
Judge

Jammu

March 13, 2013

Shamim Ahmad