A UNITED INDIA INSURANCE CO. LTD.

v.

M/S PAYARELAL NIRNAJAN LAL

(Civil Appeal No. 1329 of 2009)

FEBRUARY 27, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Consumer Protection – Insurance – Complaint by C *respondent-insured dismissed by State Consumer Commission – Appeal by respondent before National Commission – No one appeared on behalf of appellant when the matter was called – National Commission decided the appeal ex-parte partially allowing the claim of respondent –* D *Appellant filed application for setting aside the ex-parte order taking the plea that its earlier counsel had returned the briefs and did not inform about the date of hearing – Application rejected by National Commission – Justification of – Held: Not justified, as notice had been served on the earlier counsel and* E *appellant had no knowledge about listing of the case – Ex-parte order of National Commission set aside – Direction to National Commission, to dispose of the appeal afresh on merits.*

F **The complaint filed by respondent-insured was dismissed by the State Consumer Commission. Respondent filed appeal before the National Commission. No one appeared on behalf of appellant when the matter was called. The National Commission decided the appeal *ex-parte* partially allowing the claim of respondent.**

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Appellant filed application before the National Commission for setting aside the *ex-parte* order taking the plea that its earlier counsel had returned the briefs and did not inform about the date of hearing. The application

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was rejected by the National Commission. Hence the present appeal. A

Allowing the appeal, the Court

HELD: In view of the undisputed factual position that the notice had been served on the earlier counsel, obviously he was to appear when the matter was taken up by National Commission. But the briefs had been returned by the earlier counsel to the appellant-company. Therefore, the appellant had no knowledge about the listing of the case. It is not in dispute that the earlier counsel had not informed the appellant-company about the date of hearing because he had returned the briefs. In the peculiar circumstances, the impugned order of the National Commission is set aside and the First Appeal is restored for disposal on merits afresh. Let the parties appear before the National Commission without further notice so that a date of hearing can be fixed by the National Commission. [Paras 5 and 6] [734-B-E] B C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1329 of 2009. E

From the Judgment and Order dated 18.4.2006 of the National Consumer Disputes Redressal Commission, New Delhi in Misc. Application No. 69 of 2006.

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A.K. Deo, Rajesh Dwivedi and Ashok K. Mahajan for the Petitioner.

Shobha and J.B. Prakash for the Petitioner.

The Judgment of the Court was delivered by G

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New H

A Delhi, (in short 'National Commission') refusing to accept the prayer made by the present appellant to set aside the *ex parte* order dated 30.11.2005.

3. Background facts, as projected by the appellant, are as
B follows:

The respondent (hereinafter referred to as the 'insured') gave a cheque for Rs.1451/- dated 8.10.86 to one Development Officer of the appellant-Company for obtaining Marine (Inland Transit Policy) for Rs.5,00,000/- for incoming
C goods from various States. On 9.10.1986 an oil tanker of the respondent-insured bearing No.RND-9259 coming from District Mehsana, Gujarat, met with an accident near Pali, Rajasthan. On 11.10.1986 the insured informed the appellant about the accident of its oil tanker. The cheque in question was received
D in the Divisional Office of the appellant on 13.10.1986 without any cover note. On 19.1.1987 respondent submitted claim bill to the appellant claiming certain amount in respect of the accident of its oil tanker. On 23.3.1993 the claim was rejected by the appellant informing the respondent as follows:

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"1. Your cheque dated 8.10.96 Rs.1451/- against the premium of the policy of insurance proposed to be issued reached our office on 13.10.86 without a cover note in absence where of any risk arising out of an accident was neither covered nor could that be said to have been
F covered as also for want of a concluded contract.

2. Besides that right from 8.10.86 till 13.10.86 the balance in your account in the concerned bank was only a sum of Rs.1259.21 only, wholly insufficient for clearance of your
G above cheque without which, mere issuance of the said cheque did not result into a contract worth of being honoured.

3. Your alleged accident took place at about 2 p.m. on
H 9.10.86, i.e. much prior to our even accepting the contract

to cover the said risk for reasons given in para No.1 & 2 of this letter and hence we are not liable for the same.

Any correspondence made between us on your initiation is also refuted as entirely irrelevant and off the subject and truth no further correspondence on this subject from you will be taken cognizance of by us as the chapter for vacuum is closed hereby once for all.

The respondent filed a complaint before the State Consumer Disputes Redressal Commission, Rajasthan (hereinafter referred to as the 'State Commission') claiming compensation of Rs.4,30,350/-. The complaint was dismissed by the State Commission by order dated 23.9.1996 holding that no concluded contract of insurance came into existence on 8.10.1993 as there was no acceptance of the proposal by the insurer since no cover note or any other customary note of contract had been issued.

An appeal was filed by the respondent before the National Commission which was numbered as First Appeal No.666/96. The matter was decided on 30.11.2005 *ex parte* partially allowing the claim of the respondent and directing the appellant to pay Rs.1,41,794.45 along with interest @ 12% p.a. from 1.1.1987 till date of payment and cost of Rs.10,000/- was awarded.

Appellant filed an application before the National Commission with the prayer to set aside the *ex parte* order by explaining the reason as to why there was no appearance on behalf of the appellant when the matter was called. It was specifically pointed out that Mr. S.C. Sharda who was the earlier counsel had returned all the briefs. The notice was handed over to Mr. Sharda who had not appeared. As no information was given by Mr. Sharda, there was no appearance on behalf of the present respondent before the National Commission when the matter was taken up. By the impugned judgment the application was rejected. It was observed that if there was any change in

A counsel, the appellant should have been more vigilant.

4. Learned counsel for the appellant submitted that the reason why there was no appearance was clearly indicated and there was no dispute as to the factual assertions and, therefore, B the National Commission should have set aside the *ex parte* order and heard the appeal on merits. Learned counsel for the respondent supported the order.

5. In view of the undisputed factual position that earlier Mr. Sharda was appearing and notice had been served on him, C obviously Mr. Sharda was to appear when the matter was taken up by National Commission. But the briefs had been returned by Mr. Sharda to the appellant-company. Therefore, the appellant had no knowledge about the listing of the case. It is not in dispute that Mr. Sharda had not informed the appellant- D company about the date of hearing because he had returned the briefs.

6. In the peculiar circumstances, we set aside the impugned order of the National Commission and restore First E Appeal No.666/96 for disposal on merits afresh. To avoid unnecessary delay, let the parties appear before the National Commission without further notice on 16.3.2009 so that a date of hearing can be fixed by the National Commission. As the matter is pending since long, we request the National F Commission to explore the possibility of early disposal of the appeal. We make it clear that we have not expressed any opinion on the merits of the case.

7. The appeal is allowed to the aforesaid extent.

G B.B.B. Appeal allowed.