

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4045 OF 2006
(Arising out of SLP(C) No.9598 of 2006)

UNITED INDIA INSURANCE CO. LTD.

.....APPELLANT(S)

VERSUS

M/S. USHA INTERNATIONAL LTD.

.....RESPONDENT(S)

O R D E R

Leave granted.

Heard learned ASG appearing on behalf of the appellant-Insurance Company and learned senior counsel appearing on behalf of the respondent-claimant.

The High Court on a detailed consideration of the peculiar facts and circumstances of the case directed the appellant-Insurance Company to pay to the respondent herein the sum of Rs.1,38,936/- together with interest thereon at the rate of 5% per annum from the date when the claim was preferred since the only defence of the appellant was that the claim was classified as a theft. The

cost was also quantified at Rs.10,000/-. Aggrieved against the order dt. 02.09.2005 passed by the learned Single Judge, the appellant preferred an

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appeal before the Division Bench of the High Court. The learned Judges of the Division Bench of the High Court after due discussion came to the conclusion that the theft was committed after the cyclone in Orissa and that the Burglary and House Breaking Policy dt.01.04.1999 clearly covered a case of theft in the house. By holding so, the learned Judges of the Division Bench affirmed the order passed by the learned Single Judge.

In this appeal, several questions of law have been raised by the appellant-Insurance Company in regard to the Exclusion Clause of Burglary and House Breaking Policy. Since the learned Single Judge and the Judges of the Division Bench have decided the matter on the basis of peculiar facts and circumstances of the present case, the learned Single Judge ordered the sum of Rs.1,38,936/- as compensation and the same was affirmed by the Division Bench. Since it is decided purely on the peculiar facts and circumstances of the present case, we are not inclined to interfere with the concurrent finding of the High Court.

However, we leave the question of law raised in this appeal open to be decided in an appropriate case. We also make it clear that the order passed by the learned Single Judge and as affirmed by the Division Bench cannot be

treated as a precedent in any other matter.

We direct the appellant-Insurance Company to pay the sum of

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Rs.1,38,936/- together with interest thereon at the rate of 5% per annum from

the date when the claim was preferred to the respondent-claimant within two

months from today. The cost awarded by the High Court should also be paid

within the stipulated time. However, the direction given by the High Court in

regard to penal interest is set aside. The appeal is disposed of accordingly.

No costs.

.....J.

(Dr. AR. LAKSHMANAN)

.....J.

(TARUN CHATTERJEE)

NEW DELHI;

SEPTEMBER 7, 2006.

ITEM NO.7

COURT NO.9

SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9598/2006

(From the judgement and order dated 23/01/2006 in LPA No. 2716/2005 of The HIGH COURT OF DELHI AT N. DELHI)

UNITED INDIA INSURANCE CO. LTD.

Petitioner(s)

VERSUS

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M/S. USHA INTERNATIONAL LTD.

Respondent(s)

(With prayer for interim relief)

(For final disposal)

Date: 07/09/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE AR. LAKSHMANAN

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Petitioner(s)

Mr.K.P.Pathak, ASG

Mr.Vineet Malhotra, Adv.

Mr.Shailendra Sharma, Adv.

Mrs.Rekha Palli,Adv.

For Respondent(s)

Mr.Sanjay Jain, Sr.Adv.

Ms. B. Vijayalakshimi Menon,Adv.

Mr.Sandeep Mahapatra, Adv.

Ms.Ekta Kapil, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

No costs.

(Satish K. Yadav)

Court Master

(Phoolan Wati Arora)

Court Master

(Signed order is placed on the file)