



Samyukta Prabhakar
Associate

SC ON DETERMINATION OF INSURANCE CLAIM

A. Introduction

Supreme Court (“**SC**”) in the *National Insurance Co. Ltd.* case¹ held that procuring insurance policy by a company is for indemnification of its losses and not for profit generation. However, the same must be determined on a case-to-case basis.

B. Facts

1. Harsolia Motors (“**HM**”) took a fire insurance policy with the National Insurance Co. Ltd. (“**NICL**”). HM, a commercial entity, took insurance cover in respect of its office, showroom, garage, and the machinery in its storeroom.
2. In February 2002, HM’s products were damaged due to breakout of a fire during the Godhra riots in Gujarat. NICL denied the insurance claim of HM. A complaint was filed before the State Commission under Consumer Protection Act, 1986 (“**Act**”).
3. State Commission held that the complaint was not maintainable on the grounds that: a) HM was not a ‘consumer’ under the Act; and b) the insurance cover fell within the definition “for commercial purpose” as it was a company running its business from a premises to earn profits.
4. Appeal was preferred before the National Commission (“**NC**”). NC held that any goods services or services procured do not fall within the category “for commercial purpose” if the intention was not to generate profit. Basis this, NC held that purchase of insurance policy is for indemnification of actual losses and not for profit generation. Hence, it held that HM fell within the definition of ‘consumer’ and is entitled to receive the insurance coverage. State Commission was directed to decide the matter in its own merits.
5. State Commission had not examined the matter on merits due to which NICL preferred an appeal with the Supreme Court. The question for the SC’s consideration was: “*whether the insurance policy taken by HM amounts to hiring services for a commercial purpose which thereby excludes HM from the purview of a consumer?*”

C. NICL’s Contentions

1. A blanket inclusion cannot be made for all insurance matters under the Act.
2. Relied on the *Laxmi Engineering Works* case,² which held that the term ‘commercial purpose’ must be determined on the facts and circumstances of the case. If goods and services are bought with

¹ *National Insurance Co. Ltd. v. Harsolia Motors and Others* (13.04.2023 - SC): Civil Appeal No(s). 5352-5353 of 2007.

² *Laxmi Engineering Works vs. P.S.G. Industrial Institute* (04.04.1995 - SC): MANU/SC/0271/1995.

a profit motive, the buyer would not qualify as a consumer and the provisions of the Act would not apply.

3. The dominant nature of businesses to purchase insurance policies is to earn profits.

D. HM's Contentions

1. Purchase of insurance policy is a contract of indemnification of a particular risk and not a contract of doing/not doing something to earn profits.
2. Transaction by a commercial enterprise with no immediate intention of earning profit cannot be regarded as "for commercial purpose".

E. Reasoning & Judgment

SC:

1. Relied on *Lilavati Kirtilal Mehta Medical Trust* case,³ which held that determination of a person as consumer or not or whether activities were meant for commercial purpose or not will depend on the facts and circumstances of the case.
2. Determined that there is no exclusion specified for the term 'consumer' in the Act merely because it is a commercial establishment. Held that there is no nexus between the fact that the 'consumer', *i.e.*, HM is a commercial establishment and whether the insurance policy can be considered as commercial purpose under the Act.
3. Relied on the *United India Insurance Company Limited* case⁴ which held that "a contract of insurance is and always continues to be one for indemnity of the defined loss, no more no less."
4. Held that procuring insurance policy by HM is "clearly an act for indemnifying a risk of loss/damages and there is no element of profit generation".
5. Dismissed the appeal and directed the State Commission to adjudicate the complaint on its own merits within a period of one year.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com.

Past issues of *Counselence Connect* are available on the 'Newsletters' page of our website (www.counselence.com)

³ *Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and Ors.* (14.11.2019 - SC): MANU/SC/1574/2019.

⁴ *United India Insurance Co. Ltd. vs. Levis Strauss (India) Pvt. Ltd.* (02.05.2022 - SC): MANU/SC/ 0568/2022.