

**Jay Shankar Singh Vs. Insurance Regulatory Development Authority**

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**SooperKanoon Citation :** [sooperkanoon.com/707650](http://sooperkanoon.com/707650)

**Court :** Delhi

**Decided On :** Jul-15-2009

**Reported in :** 163(2009)DLT785

**Judge :** Sanjiv Khanna, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** W.P. (C) 6409/2006

**Appellant :** Jay Shankar Singh

**Respondent :** insurance Regulatory Development Authority

**Advocate for Def. :** Arunabh Chowdhury and ; Raktim Gogoi, Advs. for IRDA and ;

**Advocate for Pet/Ap. :** R.P. Sharma, Adv

**Judgement :**

ORDER

**Sanjiv Khanna, J.**

1. The petitioner, Jay Shankar Singh, is owner of a vehicle, which was insured for the period 25th May, 2003 to 24th May, 2004 and then from 25th May, 2004 to 24th May, 2005 with the New India Assurance Company Ltd. Premium for both the

policies was paid and accepted.

2. On 16th March, 2004, the petitioner lodged a claim with New India Assurance Company Limited on account of an accident, which had taken place on 26th March, 2004. The said claim obviously related to the policy period 23rd May, 2003 to 22nd May, 2004 but was made after policy for the period of 25th May, 2004 to 24th May, 2005 had already been issued. The respondent insurance company, scrutinized the claim, accepted the claim and made payment of Rs. 4,542/- on 19th August, 2004.

3. On 22nd December, 2004, the petitioner filed an FIR for theft of the said vehicle. He also made a claim with the respondent insurance company, which was not accepted. The stand taken by the respondent insurance company as is also evident from the counter affidavit is that the petitioner while renewing the insurance policy for the period 25th May, 2004 to 24th May, 2005 had claimed no claim bonus and accordingly paid the insurance premium at Rs 11301/-. As claim payment of Rs 4542/- was made, higher premium without deduction of no claim bonus was payable. It is accordingly submitted by the respondent insurance company that claim for total loss cannot be examined and is not covered by the policy.

4. The stand of the respondent insurance company cannot be accepted and is without merit. It is admitted that insurance policy was renewed for the period 23rd May, 2004 to 24th May, 2005 and premium of Rs. 11,301/- was paid and accepted. Renewed insurance policy was issued. Till the said date, the petitioner had not made any claim in respect of the earlier period between 23rd May, 2003 till 22nd May, 2004. The petitioner made a claim for the earlier period vide application dated 16th June, 2004, which was paid on 19th August, 2004. This was after the insurance policy for the period 23rd May, 2004 to 24th May, 2005 had been issued. At this time, the respondent insurance company should have examined their records and informed the petitioner that the claim made for Rs. 4,542/- cannot be accepted because the petitioner had claimed no claim bonus for this period or the petitioner should pay extra premium if the petitioner wants the insurance cover to continue for the insurance period 25th May, 2004 to 24th May,

2005. The respondent insurance company did not raise any such plea or make any claim. While making payment of the claim for Rs. 4,542/- , the respondent insurance company should and could have deducted the extra premium payable by the petitioner for the period 25th May, 2004 to 24th May, 2005. It is highly unjust and unfair on the part of the respondent insurance company to deny their liability only when the claim for total loss was made.

5. Another plea raised by the respondent insurance company relates to maintainability of the writ petition. Writ courts are normally reluctant to entertain writ petitions in contractual matters but there is no absolute bar. The Supreme Court in *ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation of India and Ors.* : (2004) 3 SCC 553 has observed as under:

25. The learned Counsel for the respondent then contended that though the principal prayer in the writ petition is for quashing the letters of repudiation by the first respondent, in fact the writ petition is one for a money claim which cannot be granted in a writ petition under Article 226 of the [Constitution of India](#). In our opinion, this argument of the learned Counsel also cannot be accepted in its absolute terms. This Court in the case of *U.P. Pollution Control Board v. Kanoria Industrial Ltd.* : (2001) 2 SCC 549, while dealing with the question of refund of money in a writ petition after discussing the earlier case-law on this subject held: (SCC pp. 556-58, paras 12 & 16-17)

12. In the para extracted above, in a similar situation as arising in the present cases relating to the very question of refund, while answering the said question affirmatively, this Court pointed out that the courts have made distinction between those cases where a claimant approached a High Court seeking relief of obtaining refund only and those where refund was sought as a consequential relief after striking down of the order of assessment etc. In these cases also the claims made for refund in the writ petitions were consequent upon declaration of law made by this Court. Hence, the High Court committed no error in entertaining the writ petitions..This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax/cess is unconstitutional or

without the authority of law.

26. XXXX

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

6. In the present case, the facts are undisputed. The controversy is extremely limited. Regarding merits of the case, the same have been discussed above. The writ petition was filed in the year 2006 and I do not think it will be appropriate to relegate the petitioner to a civil court or Consumer Forum in 2009. The writ petition is accordingly allowed. The petitioner is also entitled to cost of Rs. 5,000/-, which will be paid along with the claim amount. Claim amount will be paid after adjudication within a period of eight weeks after copy of this order is received by the insurance company. In case the payment is not released within eight weeks, the respondent insurance company will pay interest @ 6% per annum with effect from the filing of the writ petition till payment is made.

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