A UNITED INDIA INSURANCE CO. LTD.

*v.*

SANTRO DEVI & ORS.

(Civil Appeal No. 7009 of 2008)

DECEMBER 2, 2008

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**[S.B. SINHA AND CYRIAC JOSEPH, JJ.]**

*Motor Vehicles Act, 1988 – Chapter XI – ss.145, 146, 147 and 149 – Payment of compensation – Liability of insurer* C *– Truck insured with appellant and hypothecated to a Bank – Renewal of insurance done by Bank – Truck owner died – No step taken either by Bank or by heirs of deceased owner to get registration of truck transferred in their names – Insurance policy continued to be renewed in name of deceased owner* D *– Three years later, truck met with accident in which the driver died – His legal heirs claimed compensation under the Workmen's Compensation Act against the widow of deceased owner as also appellant – Appellant denied its liability contending that no contract could be made in favour of a dead* E *person and on date of the accident, no legal insurance policy was in force – Liability of to pay compensation – Held: Appellant is liable – When a certificate of insurance is issued, the insurer is bound to reimburse the owner – A valid contract cannot be said to be void, unless it was shown that in obtaining* F *the contract, a fraud had been practised – On facts, no case of fraud was made out – If despite knowledge of the fact that the original owner had died, appellant had been accepting premium every year from his widow or from the Bank, a contract by necessary implication, had come into being – Doctrine of 'acceptance sub silentio' was applicable –* G *Doctrines – Doctrine of 'acceptance sub silentio' – Workmen's Compensation Act, 1923 – ss.4 and 23.*

**The truck in question was insured with appellant and hypothecated to a Nationalized Bank. 'A' was owner of**

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the truck. Renewal of the contract of insurance, however, used to be done by the Bank. 'A' died in 1991. Despite the death of 'A', no step was taken either by the Bank or by the heirs of 'A' to get the registration of the vehicle transferred in their names. The insurance policy continued to be renewed in the name of 'A'. In 1994, the said vehicle met with accident while being driven by one 'C', in which he died.

The legal heirs and representatives of 'C' claimed compensation under s.4 of the Workmen's Compensation Act, 1923 against the widow of 'A' as also the appellant. Appellant denied its liability contending that no contract could be made in favour of a dead person and on the date of the accident, no legal insurance policy was in force.

The Commissioner, Workmen's Compensation *held* that since the truck was insured with appellant, it was liable to pay compensation. Appeal filed thereagainst was dismissed by the High Court.

The question which arose for consideration in the present appeal is whether the contract of insurance having been entered into in 1994 in the name of deceased 'A', it was void *ab initio* and in that view of the matter, the appellant had no statutory or contractual liability to pay compensation.

Dismissing the appeal, the Court

HELD: 1.1. The insurer could deny its liability on limited grounds as envisaged under sub-section (2) of s.149 of the Motor Vehicles Act, 1988. One of the grounds which is available to the insurance company for denying its statutory liability is that the policy is void having been obtained by reason of non-disclosure of a material fact or by a representation of fact which was false in some material particular. In the instant case, however, apart

A from raising a general and vague plea of fraud, no particulars thereof had been disclosed. The contract of insurance was entered into by the Bank with the appellant. The premium was paid by the bank. The contract of insurance might have been drawn in the name B of the deceased 'A' but no witness has been examined on behalf of the appellant alleging that they were not aware thereabout. [Paras 11 and 12] [953-C-E]

1.2. If the appellant had been renewing the insurance policy on year to year basis on receipt of a heavy amount C of premium with the knowledge that the owner of the vehicle has expired and the name of his legal heirs and representatives had not been transferred in the registration book maintained by the authorities under the Motor Vehicles Act, the appellant cannot be heard to say D that it was not bound to satisfy the claim of a third party. [Para 13] [953-G]

1.3. The provisions of compulsory insurance have been framed to advance a social object. It is in a way part E of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. A contract of insurance must fulfill the statutory requirements of formation of a valid contract but in case of a third party risk, the question F has to be considered from a different angle. [Para 14] [953-H; 954-A-B]

1.4. There is no provision in the Motor Vehicles Act that unless the name(s) of the heirs of the owner of a vehicle is/are substituted on the certificate of insurance G or in the certificate of registration in place of the original owner (since deceased), the motor vehicle cannot be allowed to be used in a public place. Thus, in a case where the owner of a motor vehicle has expired, although there does not exist any statutory interdict for the person H in possession of the vehicle to ply the same on road; but

there being a statutory injunction that the same cannot be plied unless a policy of insurance is obtained, the contract of insurance would be enforceable. It would be so in a case of this nature as for the purpose of renewal of insurance policy only the premium is to be paid. [Para 15] [954-C-E]

1.5. In the present case, the vehicle was hypothecated to a nationalized bank. The certificate of registration, presumably, therefore, carried the name of the bank also. The bank admittedly paid the premium. One therefore fails to see any reason as to how the appellant could avoid its statutory liability. [Paras 16 and 17] [954-F, G]

1.6. Only a competent officer informed in the matter could have disclosed as to whether the widow of 'A' had signed any document or whether the fact that 'A' had expired in the year 1991 came to be known to the officers of the appellant only after the accident had taken place. If despite knowledge of the fact that 'A' had died in the year 1991, the insurance company, with its eyes wide open, had been accepting the amount of premium every year from the widow of the said 'A' or from the Bank, a contract by necessary implication, had come into being. Even in a case of this nature, the doctrine of 'acceptance sub silentio' shall be applicable. [Para 19] [955-C-E]

1.7. In this case, the statute itself takes care of validity of the contract. It is mandatory. Once a valid contract is entered into, only because of a mistake or otherwise, the name of the original owner has been mentioned in the certificate of registration and/or the documents of hypothecation of the vehicle with the bank had still been continuing in his name, it cannot be said that the contract itself is void unless it was shown that in obtaining the said contract a fraud had been practised. Not only the particulars of fraud had not been pleaded, but even no

A **witness was examined on behalf of the appellant. It cannot, thus, be said that a case of fraud in the matter of entering into the contract of insurance had been made out by the appellant. [Para 22] [959-G-H; 960-A-B]**

B *Rikhi Ram & Anr. v. Sukhrania (Smt.) & Ors.* **(2003) 3 SCC 97;** *National Insurance Co. Ltd. v. Laxmi Narain Dhut* **(2007) 3 SCC 700;** *Oriental Insurance Company Ltd. v. Meena Variyal & Ors.* **(2007) 5 SCC 428 and** *Deddappa & Ors. v. Branch Manager, National Insurance Co. Ltd.* **(2008) 2 SCC 595, relied on.**

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**Case Law Reference:**

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|---|---|---|
| **(2003) 3 SCC 97** | **relied on** | **Para 7** |
| **(2007) 3 SCC 700** | **relied on** | **Para 21** |
| **(2007) 5 SCC 428** | **relied on** | **Para 21** |
| **(2008) 2 SCC 595** | **relied on** | **Para 22** |

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7009 of 2008.

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From the Judgment and final Order dated 27.5.2005 of the High Court of Himachal Pradesh, Shimla in F.A.O. No. 112 of 1999.

F Vishnu Mehra and B.K. Satija for the Appellant.

J.S. Attri and Anshu Attri for the Respondents.

The Judgment of the Court was delivered by

G **S.B. SINHA, J.** 1. Leave granted.

2. One Atma Ram Sharma was the owner of a truck bearing registration No.HIN-4737. It was hypothecated to a Bank. Atma Ram Sharma died sometime in 1991. The said vehicle was insured with the appellant. Renewal of the contract

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of insurance, however, used to be done by the Bank. Despite the death of the said Atma Ram Sharma, no step was taken either by the Bank or by his heirs and legal representatives to get the registration of the vehicle transferred in their names. The insurance policy also continued to be renewed in the name of Atma Ram Sharma.

3. The said vehicle met with an accident while being driven by Shri Chhater Singh on 15.9.1994 in which he died. The legal heirs and representatives of the said Chhater Singh filed an application for grant of compensation under Section 4 of the Workmen's Compensation Act, 1923 against the widow of the deceased Atma Ram Sharma as also the appellant-Insurance Company claiming a sum of Rs.1,22,400/-.

4. Appellant, having been given notice by the Commissioner of Workmen Compensation, in its reply, raised the following purported primary objections :

> 1. That the para No.1 of the petition as stated is wrong hence denied. In fact Shri Atma Ram died in the year 1991 and on the date of alleged accident no legal insurance policy was in force. It is pertinent to say that alleged offending vehicle No.HIN-4737 was fraudulently got insured vide policy No.111302/31/16/21/0065/94 on 12.5.1994 by concealing the true facts. Even according to law the contract cannot be made in favour of dead person. So under the Indian Contract Act, 1872 the alleged contract of Insurance is not liable to pay any amount of compensation. The respondent No.1 was not insured, so as per the terms and conditions of the insurance policy, the company is not bound to indemnify the claim."

5. The Commissioner, Workmen's Compensation, having regard to the pleadings of the parties, framed several issues, issue No.5 whereof reads as under :

> "5. Whether the contract of insurance of the truck in

A question between Atma Ram & Co. is void and not enforceable as alleged. ... OPP.II"

6. From the order of the Commissioner, Workmen Compensation, it does not appear that any witness was examined on behalf of the appellant. The learned B Commissioner, Workmen Compensation, determined issue No.5 in favour of the respondent, stating :

"Whether the contract of insurance of the truck in question between Atma Ram and Co. is void? RW1 Rati Ram has C deposed in his statement that Shri Atam Ram was the owner of the truck and after his death his wife is owner of the said truck. He is general power of attorney of Gumani Devi. He further deposed that the truck was insured with United India Insurance Company and copy of Insurance D Cover is Ex.RW1/8. The driver of ill-fated truck was Chattar Singh who died in truck accident near Ronhat in year 1994 who was given Rs.2000/- per day *(sic)*. In cross-examination he admitted that Atma Ram died in 1991 and the truck was insured with SBI Kafetta. He denied that E Chattar Singh was gratuitous passenger in the ill fated truck. Since the truck was insured with the respondent No.2, therefore, it is the liability of the Insurance Co. to pay the amount of compensation. Therefore, this issue is decided in favour of the petitioners and against the F respondents."

7. A sum of Rs.1,42,465/- was directed to be paid by way of compensation. An appeal preferred thereagainst by the appellant herein under Section 30 of the Workmen Compensation Act has been dismissed by the High Court G relying on or on the basis of the decision of this Court in *Rikhi Ram & Anr. v. Sukhrania (Smt.) & Ors.* [(2003) 3 SCC 97], stating:

"It is thus clear that whether intimation is given or not given H to the Insurance Company with regard to the transfer of a

vehicle. The Insurance Company under the provisions of the Motor Vehicles Act, 1988 is liable to pay compensation. The Insurance Company at the time when it renewed the policy of insurance and accepted the premium should have verified whether Atma Ram was alive or not. In the present case the premium appears to have been paid by the bank with which the vehicle was hypothecated."

8. Mr. Vishnu Mehra, learned counsel appearing on behalf of the appellant, would submit that the contract of insurance having been entered into on or about 13.5.1994 in the name of the deceased Atma Ram Sharma, it was void ab initio and in that view of the matter, the appellant had no statutory or contractual liability to reimburse the owner of the vehicle in relation thereto.

9. Mr. Attri, learned counsel appearing on behalf of the respondent, on the other hand, would contend that a certificate of insurance having been issued by the Insurance Company, it could not have repudiated the claim having already accepted the amount of premium.

10. The Motor Vehicles Act, 1988 was enacted to consolidate and amend the law relating to motor vehicles. Chapter XI of the Motor Vehicles Act provides for insurance of motor vehicles against third party risks.

Section 145 is the definition section, clause (b) whereof defines 'certificate of insurance' to mean a certificate issued by an authorized insurer in pursuance of sub-section (3) of Section 147 and includes a cover note complying with such requirements as may be prescribed, and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be. Clause (d) of Section 145 defines 'policy of insurance' which include a certificate of insurance.

A Section 146 mandates that no person, except as a passenger, shall use or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying B with the requirements of the said Chapter. Section 147 provides for the requirements of policies and limits of liability in the following terms :

"(a) is issued by a person who is an authorised insurer; or

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(b) insurer the person or classes of persons specified in the policy to the extent specified in sub- section (2)-

(i) against any liability which may be incurred by him in D respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

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(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place."

The proviso appended thereto reads as under :

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"Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury G sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee-

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(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

11. The insurer could deny its liability on limited grounds as envisaged under sub-section (2) of Section 149 of the Act. One of the grounds which is available to the insurance company for denying its statutory liability is that the policy is void having been obtained by reason of non-disclosure of a material fact or by a representation of fact which was false in some material particular.

12. Indisputably, apart from raising a general and vague plea of fraud, no particulars thereof had been disclosed. The contract of insurance was entered into by the Bank with the appellant. The premium was paid by the bank. The contract of insurance might have been drawn in the name of the deceased Atma Ram Sharma but no witness has been examined on behalf of the appellant alleging that they were not aware thereabout.

13. When questioned, Mr. Mehra, very fairly stated that the insurance policy was an old one and it was being renewed from year to year. If the appellant had been renewing the insurance policy on year to year basis on receipt of a heavy amount of premium with the knowledge that the owner of the vehicle has expired and the name of his legal heirs and representatives had not been transferred in the registration book maintained by the aurhorities under the Motor Vehicles Act, in our opinion, the appellant cannot be heard to say that it was not bound to satisfy the claim of a third party.

14. The provisions of compulsory insurance have been

framed to advance a social object. It is in a way part of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. There cannot be any doubt whatsoever that a contract of insurance must fulfill the statutory requirements of formation of a valid contract but in case of a third party risk, the question has to be considered from a different angle.

15. Section 146 provides for statutory insurance. An insurance is mandatorily required to be obtained by the person in charge of or in possession of the vehicle. There is no provision in the Motor Vehicles Act that unless the name(s) of the heirs of the owner of a vehicle is/are substituted on the certificate of insurance or in the certificate of registration in place of the original owner (since deceased), the motor vehicle cannot be allowed to be used in a public place. Thus, in a case where the owner of a motor vehicle has expired, although there does not exist any statutory interdict for the person in possession of the vehicle to ply the same on road; but there being a statutory injunction that the same cannot be plied unless a policy of insurance is obtained, we are of the opinion that the contract of insurance would be enforceable. It would be so in a case of this nature as for the purpose of renewal of insurance policy only the premium is to be paid. It is not in dispute that quantum of premium paid for renewal of the policy is in terms of the provisions of the Insurance Act, 1938.

16. The vehicle was hypothecated to a nationalized bank. The certificate of registration, presumably, therefore, carried the name of the bank also. The bank admittedly paid the premium.

17. We, therefore, fail to see any reason as to how the appellant could avoid its statutory liability. Our attention has been drawn to Section 155 of the Motor Vehicles Act by Mr. Mehra to contend that the statutory liability of the insurance company arises only when the original contract of insurance was entered into by and between the owner and the insurer and

not in a case of this nature.

18. Section 155 of the Act, in our opinion, cannot be said to have any application in a situation of this nature. We may notice the provisions of Section 157 of the Act in terms whereof in a case of transfer of a motor vehicle, the certificate of insurance and the policy shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer.

19. We have noticed hereinbefore that no witness was examined on behalf of the appellant. Only a competent officer informed in the matter could have disclosed as to whether the widow of late Atma Ram Sharma had signed any document or whether the fact that Atma Ram Sharma had expired in the year 1991 came to be known to the officers of the appellant only after the accident had taken place. If despite knowledge of the fact that Atma Ram Sharma had died in the year 1991, the insurance company, with its eyes wide open, had been accepting the amount of premium every year from the widow of the said late Atma Ram Sharma or from the Bank, in our opinion, a contract by necessary implication, had come into being. Even in a case of this nature, the doctrine of 'acceptance sub silentio' shall be applicable.

20. This Court furthermore in some of its decisions noticed the distinction between a statutory contract of insurance and a contract of insurance simplicitor. It is in that view of the matter, this Court in *Rikhi Ram* (supra), held :

> **"4.** A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners. Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover three kinds of risks i.e. owner of the vehicle, property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in regard to the third party

A and not to the property. Section 95(5) of the Act runs as follows:

> "95. (5) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of person."

C **5.** The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would bring an action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an D insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94 does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use."

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21. We may, furthermore, notice that recently this Court in *National Insurance Co. Ltd. v. Laxmi Narain Dhut* [(2007) 3 SCC 700] held as under :

> **"17.** Section 149 is part of Chapter XI which is titled F "Insurance of Motor Vehicles against Third-Party Risks". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relatable to third parties are created only by fiction of G Sections 147 and 149 of the Act.
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> **23.** As noted above, there is no contractual relation between the third party and the insurer. Because of the H

statutory intervention in terms of Section 149, the same becomes operative in essence and Section 149 provides complete insulation.

**24.** In the background of the statutory provisions, one thing is crystal clear i.e. the statute is beneficial one qua the third party. But that benefit cannot be extended to the owner of the offending vehicle. The logic of fake licence has to be considered differently in respect of the third party and in respect of own damage claims."

Yet again, another Bench of this Court in *Oriental Insurance Company Ltd. v. Meena Variyal & Ors.* [(2007) 5 SCC 428], opined :

"12. Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against third-party risks". The definition of "third party" is an inclusive one since Section 145(g) only indicates that "third party" includes the Government. It is Section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. The heading of that section itself is "Necessity for insurance against third-party risk". No doubt, the marginal heading may not be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With effect from 14-11-1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover death of or bodily injury to any

A passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Then, as per the proviso, the policy shall not be required to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by
B the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, an employee engaged in
C driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy.

D 13. As we understand Section 147(1) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver,
E also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no
F difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or
G arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the
H effect that the policy must cover a liability arising under the

Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

14. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods."

22. We are not oblivious of a decision of this Court in *Deddappa & Ors. V. Branch Manager, National Insurance Co. Ltd.* [(2008) 2 SCC 595], wherein this Court, having regard to the fact situation obtaining therein, opined :

**"20.** A contract is based on reciprocal promise. Reciprocal promises by the parties are condition precedents for a valid contract. A contract furthermore must be for consideration."

In this case, the statute itself takes care of validity of the contract. It is mandatory. Once a valid contract is entered into, only because of a mistake or otherwise, the name of the original owner has been mentioned in the certificate of registration and/ or the documents of hypothecation of the vehicle with the bank had still been continuing in his name, it cannot be said that the

A contract itself is void unless it was shown that in obtaining the said contract a fraud had been practised. Not only the particulars of fraud had not been pleaded, but even no witness was examined on behalf of the appellant. It cannot, thus, be said that a case of fraud in the matter of entering into the contract
B of insurance had been made out by the appellant.

23. For the reasons aforementioned, there is no infirmity in the impugned judgment. The appeal is dismissed accordingly with costs. Counsel's fee assessed at Rs.25,000/-.
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B.B.B. Appeal dismissed.