

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5953 OF 2018
(Arising out of SLP (C) No. 15500/2017)

UNITED INDIA INSURANCE CO. LTD. ... APPELLANT (S)

VERSUS

... RESPONDENT (S)

WITH

CIVIL APPEAL NO. 5955 OF 2018
(Arising out of SLP (C) No. 15971/2017)

THE NATIONAL INSURANCE COMPANY LIMITED ... APPELLANT (S)

VERSUS

... RESPONDENT (S)

WITH

CIVIL APPEAL NO. 5954 OF 2018
(Arising out of SLP (C) No. 15755/2017)

ORIENTAL INSURANCE COMPANY LIMITED ... APPELLANT (S)

VERSUS

... RESPONDENT (S)

AND

CIVIL APPEAL NO. 5956 OF 2018
(Arising out of SLP (C) Diary No. 28109/2017)

THE NEW INDIA ASSURANCE COMPANY LIMITED ...APPELLANT(S)

VERSUS

... RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. The appellants, four insurance companies are aggrieved by the judgment dated 09.12.2016 of the Punjab & Haryana High Court passed in a Public Interest Litigation being Writ Petition CWP No. 6626 of 2015, issuing certain directions regarding payment of fee to its empanelled advocates.

3. Brief facts of the case resulting into the judgment of the Division Bench are:-

A FAO No. 2604 of 2013 - Rajesh Vs. Parmod & Anr. was filed by an injured of a motor accident, claiming compensation. While hearing the FAO, the learned Single Judge noticed that in spite of issue of notice

of motion, none had appeared on behalf of the insurance company, i.e. United India Insurance Co. Ltd. Learned Single Judge in the aforesaid FAO passed an order for treating the issue as of vital public importance and registering a separate writ petition in that regard. It is useful to extract the order dated 12.09.2014 passed by the learned Single Judge:-

".....26 Standing Counsel representing four Insurance Companies (1. United India Insurance Co. Ltd.; 2. Oriental Insurance Co. Ltd.; 3. New India Assurance Co. Ltd. and 4. National Insurance Co. Ltd.) appeared before the Court and brought their plight to the notice of the Court of how the officers and officials of these Companies were circumventing the administration of justice for their personal ends and gains. It has been highlighted during the course of hearing that these General Insurance Companies are for obvious reasons manipulating the guidelines/fee structures approved by GIPSA and under that undue exercise the Counsel were being not properly assisted and thus, intentionally causing delay in the disposal of these matters before the Court and invariably were causing loss to the exchequer of these Companies which mostly are public undertakings. It has been highlighted with much emphasis how the fees and bills of the advocates, who had been representing the Companies in the matters, were not being paid since decades. This unholy nexus and trend assumes greater importance as people in general, who repose faith in promises of financial security made by these

Companies in times of their sufferings and injury, were left high and dry. Thus, what was invented as a social welfare has become a tool of exploitation in the hands of these officers of the Companies who are out and out also trying to harm the advocates who are the officers of the Court. It has often been seen that the Counsel who do not tow the line are changed in between the hearings. Thus, the sufferings are increased manifold by the inordinate intentional delay of these Companies and lack of assistance to their Counsel. Since these issues of vital public importance are being faced by almost all the Advocates present before the Court for these Insurance Companies, is an impediment and delaying process in the dispensation of justice.

Thus, this Court is pleased to treat this issue as a writ petition and refer it to the Hon'ble Acting Chief Justice for constituting an appropriate Bench to look into the matter so that much relief could come about to the poor litigants."

The above reference made by learned Single Judge in the matter was placed before a Division Bench treating it to be a Public Interest Litigation being CWP No. 6626 of 2015. The Division Bench issued notice on 28.04.2015 to all four insurance companies, i.e., United India Insurance Company Ltd., Oriental Insurance Co. Ltd., New India Assurance Co. Ltd. and National Insurance Co. Ltd. Before the Division Bench, all the four insurance companies (who are

appellants before us) have filed a joint reply dated 01.09.2015 and further a joint reply for placing on record the fees schedule dated 05.05.2016. Before the Division Bench, Shri Akshay Bhan, learned senior counsel appearing for the advocates, whose fee are due and payable by the four insurance companies submitted that the New India Assurance Co. Ltd. has committed to pay all the fee in terms of its affidavit and they are in the process of doing so. It was further submitted by the learned senior counsel appearing on behalf of the advocates before the High Court that the advocates representing the Insurance Companies were never apprised of the Schedule relating to payment of fee to the advocates. Division Bench of the High Court after hearing the learned senior counsel appearing for the advocates as well as learned counsel appearing for the insurance companies disposed of the writ petition in the following manner:-

"The petition is accordingly disposed of and the Insurance Companies shall adhere to the three schedules framed by GIPSA i.e. 01.11.2004, 01.01.2009 and 01.04.2014 and full fee wherever payable shall be paid and balance wherever payable shall be paid. The necessary due

payments should be made to all the advocates to whom fee is due and payable as expeditiously as possible after necessary verification and preferably by 30.06.2017 and in case the same is not paid, the amount payable shall entail payment of simple interest at 7 per cent per annum from 01.07.2017 onwards from 08.04.2015, when this Court issued notices to the Insurance Companies.

For the purpose of verification, the counsel shall give the orders disposing of the matters and list of cases."

All the four insurance companies - the appellants have filed separate appeal challenging the aforesaid judgment of Division Bench dated 09.12.2016.

4. We have heard Shri Jaideep Gupta, learned senior counsel appearing for the appellants and Shri Neeraj Kumar Jain, learned senior counsel appearing on behalf of some of the advocates, who were represented before the High Court by Shri Akshay Bhan, learned senior counsel.

5. Shri Jaideep Gupta, learned senior counsel appearing for the appellants submits that the High Court erred in suo moto invoking Public Interest Litigation jurisdiction to entertain, adjudicate and determine the dispute pertaining to payment of fee by a client to his/her

advocate. The PIL is initiated to ameliorate the condition of a class of persons whose constitutional or lawful rights are affected or not adequately looked into. The payment of professional fee by the insurance companies to their advocates is purely contractual matter between a client and his/her advocate, which ought not to have been gone in the proceeding before the High Court. The Public Interest Litigation does not mean settling of disputes between individual parties, i.e., advocates empanelled by the national insurance companies and the insurance companies. The High Court held that the decision taken by GIPSA is binding on the member insurance companies, and the fees schedule decided by GIPSA could not have been readjusted. GIPSA being an informal non-statutory body consisting of representatives of national insurance companies has been formed with the object to form and bring unanimity in their actions and decisions. GIPSA is only a recommendatory body, whose recommendations cannot be enforced in a Court of Law. The High Court has issued direction with regard to mode and manner of payment of fee to the empanelled advocates, which was uncalled for. It is submitted that in the joint reply, all the four companies having stated that

the fees schedule as issued by GIPSA in the year 2009 and 2014 is being followed by insurance companies, there was no occasion to proceed with the Public Interest Litigation and issue any directions. The Schedule issued by GIPSA, which was to be enforced w.e.f. 01.11.2004 was considered by Inter Company Coordination Committee's Meeting dated 16.03.2005 of the Chandigarh Regional Officers of all the four insurance companies and the Schedule was revised, which was to be enforced w.e.f. 01.04.2005. The advocates always accepted the fee as offered by the insurance companies without raising any objection or protest at any point of time. The Issue of non-payment of fee as per Schedule issued by GIPSA w.e.f. 01.11.2004 was not required to be gone into especially when clear statement has been made by all the four companies that Schedule as enforced by GIPSA vide circular dated 09.01.2009 w.e.f. 01.01.2009 and Circular dated 18.03.2014 w.e.f. 01.04.2014 was being adhered to.

6. Shri Neeraj Kumar Jain, learned senior counsel appearing for some of the advocates opposing the appeals submits that there was no error in the High Court taking suo moto cognizance of the matter. It is submitted that

by taking suo moto cognizance, no constitutional or legislative mandate has been violated. It is further submitted that the submission that writ jurisdiction is not exercisable in the present case as it was purely contractual dispute, is wholly untenable. Administrative decision taken by the appellants affect the relationship between the appellants and empanelled advocates and any arbitrary exercise by the appellants was subject to jurisdiction of High Court under Article 226. The submission that decision taken by GIPSA are not binding on member insurance companies, is wholly misconceived. All insurance companies, i.e., the appellants voluntarily bind themselves to follow the various decisions taken by GIPSA from time to time. The appellants, which is to adopt and implement the 2004, 2009 and 2014 GIPSA Fee Schedules, there was no occasion to modify the Schedule of 2004 by the appellants by taking another decision dated 16.03.2005, by modifying the fees schedule as enforced by GIPSA, w.e.f. 01.11.2004. The High Court has rightly quashed the decision of the appellants to reduce the fee from Rs.7,500/- to Rs.5,000/-. Direction to pay fee lumpsum and also to pay fee in the matters before the High Court, which are settled in Mediations/Lok Adalats

have also been rightly issued. Learned counsel for the parties have also relied on judgments of this Court, in support of their respective submissions.

7. We have considered the submissions of the learned counsel for the parties and have perused the records.

8. A perusal of the order passed by the learned Single Judge of the High Court dated 12.09.2014 as extracted above indicates that learned Single Judge directed for suo moto registration of a Public Interest Litigation to look into the matter so that much relief could come about to the poor litigants, the reason, which mainly impelled the learned Single Judge to direct for registration of a Public Interest Litigation was a factum of non-appearance of empanelled lawyers of the insurance companies when hearing of FAO No. 2604 of 2013 was fixed. The counsel representing the four insurance companies before the learned Single Judge brought their plight to the notice of learned Single Judge. From the order of learned Single Judge, following four reasons are decipherable, which impelled the learned Single Judge to direct for suo moto registration of Public Interest Litigation:-

"(i)how the officers and officials of these Companies were circumventing the administration of justice for their personal ends and gains....."

(ii) these General Insurance Companies are for obvious reasons manipulating the guidelines/fee structures approved by GIPSA.....

(iii) under that undue exercise the Counsel were being not properly assisted and thus, intentionally causing delay in the disposal of these matters before the Court.....

(iv)invariably were causing loss to the exchequer of these Companies which mostly are public undertakings....."

9. A perusal of the Division Bench judgment of the Punjab & Haryana High Court indicates that although learned Single Judge has noticed above mentioned four reasons for directing for registration of Public Interest Litigation but when the matter was heard before the Division Bench, the only issue which was taken note and gone into was the issue that "these general insurance companies are for obvious reasons manipulating the guidelines/fee structure approved by the GIPSA". Thus, the only issue, on which the parties were heard, was regarding the guidelines/fee structure approved by the GIPSA.

10. Learned senior counsel for the appellants has strenuously urged before us that the issue pertaining to fee structure of the empanelled advocates, its alleged non-payment, and mode of payment are all the issues, which ought not to have been undertaken in the Public Interest Litigation. He submits that there was no occasion for registration of a Public Interest Litigation and the order of the learned Single Judge directing for registration of Public Interest Litigation itself was not appropriate. The High Court exercises its extraordinary jurisdiction under Article 226 when an element of public law exists. When learned Single Judge found that empanelled advocates are not appearing in the court, the learned Single Judge found that the said issue involved a public element, which ultimately affects the administration of justice and hence the learned Single Judge directed for registration of the Public Interest Litigation for the reasons as noticed by the learned Single Judge in his order dated 12.09.2014. We, at this stage, are not inclined to enter into the correctness or otherwise of the order directing for registration of Public Interest Litigation. The judgment challenged

before us is the Division Bench judgment of Punjab & Haryana High Court dated 09.12.2016, which was passed in the Public Interest Litigation disposing of the writ petition. We, thus, confine our discussions only to the said order, leaving the question of registration of Public Interest Litigation open, in facts of the present case.

11. Insurance companies have filed a joint reply placing on record the fees schedule, copy of which joint reply dated 05.05.2016 is filed as Annexure P-8. In the reply, it is useful to refer to Paragraph 1 to 6 of the reply, which is to the following effect:-

"1. That the applicants have placed on record 3 fee schedules. That insofar as the fee schedules at Ann A-2 (2009) and A-3 (2014) are concerned, the same as proposed by GIPSA have been adopted in its entirety by the 4 Public General Insurance companies and the fees are being raised by the respected lawyers and the payments are being made in accordance with them. However in certain cases where the matters are referred to the Lok Adalat and the lawyer so assigned is not present to conduct the proceedings thereof and to assist the company, no further fees may have been released to the assigned lawyers.

2. That in respect of the fees schedule annexed at Annexure it is submitted that

the same (like at A-2 and A-3), were proposed fees as suggested by GIPSA, however unlike the complete adoption of the proposed fee structures as suggested by GIPSA in the year 2009/2014, the fee schedule as suggested by GIPSA in 2005 was not adopted in toto by the companies and based on a ICC (Inter Company Coordination Committee) meeting dated 16.3.2015 of the Chandigarh Regional Officers of all the 4 public sector insurance companies, held at the regional level Chandigarh, the revised fees schedule as discussed were made applicable. That there was increase in the existing fees schedule as was prevalent, however the complete fees as suggested in the GIPSA schedule were not adopted.

3. That GIPSA is a non statutory body. That, in the year 2000 the insurance sector was completely deregulated. That, after opening of the insurance sector and &linking from the GIC General Insurance Corporation of India, in the year 2000, the 4 state-run, general insurance companies namely National Insurance Company Ltd, New India Assurance company limited, Oriental Insurance Company Ltd, and United India Insurance Company Ltd, started functioning independently.

4 That the said insurance companies formed an informal association known as the General Insurers' (Public Sector) Association of India, with headquarters at Delhi.

5. GIPSA was set up simply as a forum for facilitating consultations and deliberations amongst its member companies on matters of common interest mandated to it by them without having any administrative, supervisory, controlling

or statutory authority over the public sector insurance companies.

6. That the GIPSA is not a public authority and neither is the same statutory authority/body."

12. The High Court in its judgment has noticed three schedules of fee issued by GIPSA, they are:
 (i) Circular dated 21.02.2005 noticing that GIPSA had approved the revised fees schedule of advocates/investigators w.e.f. 01.11.2004;
 (ii) Circular dated 09.01.2009 issued in pursuance of approved and revised fees schedule by GIPSA w.e.f. 01.01.2009; and (iii) Circular dated 18.03.2014 issued by GIPSA approving the advocates/investigators fee w.e.f. 01.04.2014.

The High Court itself has noticed that there are no issues with regard to Circulars issued with regard to fee structure enforced from 2009 and 2014. The High Court noticed that the only issue is with regard to Circular dated 21.02.2005 of GIPSA regarding the revised fees schedule of advocates/investigators w.e.f. 01.11.2004. It has come on the record that w.e.f. 01.11.2004, the fee was fixed as Rs.7,500/-, which was not adopted in toto by the companies and based on Inter Company Coordination

Committee meeting dated 16.03.2005 of the Chandigarh Regional Officers, fee was revised reducing from Rs.7,500/- to Rs.5,000/- for appeals filed by claimants against the MACT awards and Rs. 6,000/- for appeals filed on behalf of companies against MACT, which was to be enforced w.e.f. 01.04.2005. The High Court has noticed the said fact in Page 15 of the judgment. The High Court itself at Page 16 noticed following:-

"The dispute, therefore, that now survives is with respect to the first Circular that was issued and according to the advocates, they are liable to be paid Rs.7500/- for each case irrespective of the fact whether the appeal had been filed by the claimants or by the companies; besides, there is no concept of half fee being paid at the time of filing the appeal and the balance fee at the time of disposal of the appeal even as per the Schedule of the Insurance Companies. Moreover, fee is also liable to be paid to the advocates who put in appearances before the Lok Adalats/Mediation Centers as also in cases where notices are accepted on the asking of the Court."

13. From the above, it is clear that in so far as the payment of fee as per Circular issued of 2009 and 2014 is concerned, there was no issue raised. The companies themselves in the reply had stated that they are adhering

to the said circulars and there was no complaint on behalf of the empanelled advocates regarding non-adherence of Circulars of 2009 and 2014. The Public Interest Litigation was registered suo moto by the High Court in 2015. At the time of registration of the Public Interest Litigation or when the order passed by the learned Single Judge on 12.09.2014, the fees schedule as enforced from circulars of 2009 and 2014 was very much in vogue and being adhered to. At that point of time, there was no occasion for the High Court to entertain the dispute as to whether the fee structure as enforced by GIPSA w.e.f. 01.11.2004 should have been followed and advocates should have been paid accordingly or advocates were rightly paid the fee as per the modified decision dated 16.03.2005, which decision was taken in the meeting of all the four insurance companies at regional level. The issue relating to non-payment of fee of empanelled advocates as per Circular dated 01.11.2004 could not have been undertaken in the Public Interest Litigation, more so, when the same was replaced by subsequent circulars of 2009 and 2014, which circulars were adhered to by the insurance companies. Adjudicating the said issue by the High Court was wholly uncalled for in the suo moto Public

Interest Litigation, which cannot be in any manner held to be affecting the case of the "poor litigants", which was the main reason for the learned Single Judge to direct for suo moto registration of Public Interest Litigation.

14. We, thus, are of the view that entertainment of the issue regarding payment of fee as per circular dated 21.02.2005 by GIPSA or subsequently modified by proceeding dated 16.03.2005 w.e.f. 01.04.2005 ought not to have been gone in the writ petition and directions by the learned Single Judge in the above regard deserves to be set aside.

15. We may notice that although various issues relating to entertainability of the suo moto Public Interest Litigation by the High Court, enforceable by circulars issued by GIPSA, the issue of payment of fee to the empanelled advocates, has been raised before us. Learned counsel for the parties have also in support of their submissions relied on various judgments of this Court, but for the purpose of this case, we need not go into the above issues and we leave the said questions open to be

considered in appropriate case. As we have observed above that the writ petition, which was entertained as a Public Interest Litigation, the stand taken by the insurance companies that they are adhering with the fee structure enforced from 2009 and 2014, which was not even objected by the learned counsel, who was appearing on behalf of the advocates, was sufficient enough to close the writ petition without entering into the issue pertaining to the earlier circular issued regarding fee structure w.e.f. 01.11.2004. We have decided these appeals on its own facts, which may not be referred to and relied as a precedent since, we have expressly left questions open.

16. In result, the appeals are partly allowed and the judgment of the High Court dated 09.12.2016 is modified in the following manner:-

- (i) The direction of High Court directing insurance companies to adhere to fees schedule issued by GIPSA dated 21.02.2005 w.e.f. 01.11.2004 is set aside.

We, however, make it clear that any payment of

fee made as per said Circular dated 21.02.2005 shall be treated as final and not to be re-opened.

- (ii) The insurance companies shall adhere to the schedule framed by GIPSA, i.e. 01.01.2009 and 01.04.2014 and fee wherever payable shall be paid and balance wherever payable shall be paid as admitted by insurance companies themselves before the High Court.
- (iii) The direction issued by the High Court regarding payment of interest is set aside.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
JULY 02, 2018.