

A NEW INDIA ASSURANCE CO. LTD.

v.

M/S. ABHILASH JEWELLERY
(Civil Appeal No. 7972 of 2002)

B JANUARY 22, 2009

[MARKANDEY KATJU AND R.M. LODHA, JJ.]

CONTRACT OF INSURANCE:

C *"Employee" – Whether apprentice is an employee – National Consumer Commission held he is an employee – On appeal, Held: In common parlance an apprentice is a trainee and not an employee – Even if stipend is given, still there is no master and servant relationship – Hence an*
D *apprentice is not an employee in the context of Contract of Insurance.*

WORDS AND PHRASES:

E *"Employee" – Meaning of in the context of Contract of Insurance.*

In this appeal, the correctness of the judgment of the National Consumer Disputes Redressal Commission holding that an apprentice is an employee is challenged.

F **Allowing the appeal, the Court**

G **HELD: 1.1. The present case is covered solely by the contract of insurance. The contract of insurance no doubt uses the word 'employee', but it does not say that the word 'employee' in the contract of insurance will have the same meaning as in the Kerala Shops and Commercial Establishments Act or the Employees State Insurance Act or any other enactment. In various enactments, the word 'employee', has no doubt, been defined to include an**

apprentice, but that is only a deeming provision and a legal fiction by which the meaning of the word 'employee' has been extended. [Paras 6 and 7] [478-D-E]

1.2. Since the word 'employee' has not been defined in the contract of insurance, one has to give it the meaning which it has in common parlance. In common parlance, an apprentice is a trainee and not an employee. Even if he is given a stipend, that does not mean that there is a relationship of master and servant between the firm and the apprentice. [Para 10] [478-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7972 of 2002.

From the Order dated 15.3.2002 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 815 of 1999.

Salil Paul and Indra Sawhney for the Appellant.

G. Prakash for the Respondent.

The following Order of the Court was delivered :

O R D E R

1. Heard learned counsel for the parties. This appeal has been filed against the order of the National Consumer Disputes Redressal Commission, New Delhi dated 15.03.2002.

2. The respondent had a business establishment at Vellappad in Trissur District in the State of Kerala. It took a Jeweller's Block Policy for Rs. 1,15,00,000/-. During the currency of the policy, the complainant-respondent lodged a claim with the appellant for the loss of gold ornament weighing 587.870 grams. The claim was repudiated by the appellant on the ground that the loss of gold was occasioned as it was in the custody of an apprentice, who was not an employee.

A 3. The relevant clause in the Insurance Policy stated;

"S. 11(a) property insured whilst in the custody of the insured, his partner or his employees".

B 4. The question, therefore, is whether an apprentice is an employee.

C 5. The National Consumer Disputes Redressal Commission has held that an apprentice is an employee because Section 2 (6) of the Kerala Shops and Commercial Establishments Act defines an employee to include an apprentice. The National Commission has also relied on the definition in the Employees State Insurance Act and some other enactments.

D 6. We are of the opinion that the view taken by the National Commission is not correct. The present case is covered solely by the contract of insurance. That contract of insurance no doubt uses the word 'employee', but it does not say that the word 'employee' in the contract of insurance will have the same meaning as in the Kerala Shops and Commercial Establishments Act or the Employees State Insurance Act or any other enactment.

E 7. In various enactments, the word 'employee', has no doubt, been defined to include an apprentice, but that is only a deeming provision and a legal fiction by which the meaning of the word 'employee' has been extended.

F 8. Legal fictions are well-known in law. For example, Section 43 (3) of the Income Tax Act defines 'plant' to include a book. Ordinarily a plant means a factory, and by no stretch of imagination can we call a factory a book. However, the Income Tax Act deems a book to be a plant for the purpose of depreciation.

G 9. Many such illustrations of deeming clauses or legal H fictions can be given. The definition of employee in various

enactments which include an apprentice within the ambit of the definition is such a piece of legal fiction. That, however, does not mean that in common parlance an apprentice is an employee.

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10. In the present case, since the word 'employee' has not been defined in the contract of insurance, we have to give it the meaning which it has in common parlance. In common parlance, an apprentice is a trainee and not an employee. Even if he is given a stipend, that does not mean that there is a relationship of master and servant between the firm and the apprentice. Hence, we cannot agree with the view taken by the National Commission. In our view, the claim before the National Commission was not maintainable.

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11. Hence we set aside the order of the National Commission.

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12. The appeal is allowed. No orders as to costs.

G.N.

Appeal allowed.