

Asha Garg & Ors. vs National Insurance Company Limited on 15 May, 2026

IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

NC/OP/164/2001
With
(IA No.3373/2026, Addl. Fact)

Asha Garg & Ors. ... Complainants
Versus
United India Insurance Co.Ltd. ... Opposite Party

NC/OP/272/2001

Asha Garg & Ors. ... Complainants
Versus
National Insurance Co.Ltd. & Ors. ... Opposite Parties

BEFORE:

HON'BLE MR. JUSTICE A.P. SAHI, PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

Appeared at the time of arguments:

For the Complainant(s) : Mr. Joy Basu, Sr. Advocate
with Mr. Anoop George, Advocate
Mr. Nitin Mishra, Advocate
For United India Ins.Co. Ltd. : Mr. Amit Kumar Singh, Advocate
with Mr. Rokosieno M., Advocate
Mr. Chubalemla Chang, Advocate
For National Ins.Co.Ltd. : Mr. Yogesh Malhotra, Advocate
Mr. Sushant Kishore, Advocate

PRONOUNCED ON: 15th May 2026

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JUSTICE A. P. SAHI, PRESIDENT

1. These two complaints relate to the repudiation of two Personal Accident Insurance Claims, (i) Secured by way of policy from the United India Insurance Co.Ltd. and the second from the National

Insurance Co. Ltd. The accident took place on 27.3.1997 when the insured Late Mr. Kishori Lal Sharan Garg was travelling in his Car by road from Jaipur to Delhi. The insured died in the accident that had fatally wounded the insured in a collision with a Truck.

2. The insurance with the United India Insurance Co.Ltd. was for a sum of Rs.10 crores, with two proposals one for Rs.9,97,000/- and the other for Rs.3 lakhs thereby a total amount of Rs.10 crore for the period covering the risk from 11.2.1997 to 10.2.1998.

3. The other policy was from National Insurance Co. Ltd. for a sum of Rs. 5 crore for the coverage period from 31.1.1997 to 30.1.1998.

4. The United India Insurance Company sent its spot surveyor Mr. B.B. Rai after the accident, who seems to have tendered a report. They appointed a surveyor M/s R.K. Aggarwal & Sons who tendered 4 reports from time to time and who in turn sought an investigation report from one Mr. G.L. Yadav who sent his report regarding the activities of the insured and other criminal investigation matters and an interim investigation report was tendered on 06.10.1997 by him. He later on also tendered his final investigation report on 25.04.1999 that related to the involvement of the insured in custom's case and NC/OP/164/2001_272/2001 Page | 2 other criminal cases. The report of M/s Indian Surveyors Pvt. Ltd. and the enquiries made by them are on record. The report of M/s R.L. Aggarwal & Sons are dated 11.04.1997, 26.07.1997, 05.12.1997 and 17.02.1998.

5. The National Insurance Company on the submission of the claim in respect of the other policy prepared a claim note dated 26.04.1999 which refers to an investigation carried out by M/s Lal International Security and Detective Services headed by Mr. G.S.L. Srivastava, Hazratganj, Lucknow who tendered an interim investigation report on 20th July, 1997 and a final report on 12th October, 1998.

6. These reports of both the insurance companies are on record. There are details, in fact, with regard to the enquiries made by the surveyor of the United India Insurance Company and also the investigation carried out by the National Insurance Company and then ultimately it seems that with all these investigations and claims the United India Insurance Company through its deliberations dated 3rd May, 1999 decided to take a legal opinion in the matter. The correspondence between the Regional Office and the Divisional Office of the United India Insurance Company dated 18.05.1999 & 26.05.1999 are a testimony to these deliberations.

7. There seems to be a correspondence between the United India Insurance Company and the National Insurance Company inter-se on 21.02.2000 which is extracted herein under: -

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8. This was followed by a note tendered to the General Manager, United India Insurance Company on 3rd March, 2000 which is extracted herein under:

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9. The relevance of this document with regard to income tax returns shall be referred to later on. This note proposes a joint action for repudiation. The General Manager seems to have dispatched the same on 14th March, 2000 and the claim was considered by the Board at the Head Office at Chennai and deliberated upon in the meeting held on 28th March, 2000 where a decision was taken for repudiating the claim. These recommendations are on record and the minutes of the meeting dated 28th March, 2000 also records the observations of the head office which reveals that the head office had advised the regional office to obtain a legal opinion that was sought from Hon'ble Mr. Justice R.S. Pathak, the Former Chief Justice of India. The said legal opinion has been quoted in extenso where it had been opined that the claim cannot be repudiated on the basis of the reputation of the insured and the criminal cases against him but he had opined that given the negative entries against the questions contained in the form, the claim could be repudiated. The said document also indicates that a joint meeting was held at the head office of the National Insurance Company for deliberations which is an evidence of the fact that both the insurance companies were in tandem with each other and the said deliberations were communicated by the United India Insurance Company to the National Insurance Company on 17th April, 2000. The said letter is extracted herein under: -

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10. There are other communications between the two insurance companies and then finally the United India Insurance Company repudiated the claim.

11. With the repudiation of the claims by both the Insurance Companies after the submission of the Surveyor's report, these two Petitions came to be filed seeking separate reliefs in respect of both the Policies. The United India Insurance Co. Ltd. repudiated the claim vide letter dated 16.6.2000. The National Insurance Company repudiated the claim on 29.09.2000. Both the policies have been repudiated on similar grounds of non-disclosure and suppression of facts. However, the nature of suppression in both the cases have been referred to separately.

12. The repudiation letter dated 16.6.2000 by the United India Insurance Co.Ltd. narrated as follows :

16.6.2000 "Asha Devi Garg 383, Hamuman Ji Ka Rasta Tripolia Bazar JAIPUR - 3 Madan, RE CLAIM NO. 140301/42/7/573/96-97 UNDER P.A. Policy A/c LATE KISHORI SHARAN GARG Reference the above said claim regarding the death of Shri Kishori Sharan Gars, the company has processed the claim. On receipt of the intimation, the survey has been got conducted from the approved surveyors of the company, the investigations have been carried out by Shri G.L.Yadav retired Deputy Superintendent of Police and on the basis of the these documents as well as proposal form and other evidence, the company has also obtained legal opinion NC/OP/164/2001_272/2001 Page | 9 in the matter. Thereafter the Board of the Company which is the competent authority for such a claim has considered the matter and applied its mind and on the basis of such exercises, the company has decided to repudiate the claim on the following grounds amongst others:

The proposal form submitted by Late Mr.Garg contained mis-statements of facts in regards to question posed by clause no. 10(a) and 10 (b) of the proposal form. The claim 10 of the proposal form alongwith its reply is reproduced for ready reference.

10.

(a) Have you ever proposed for accident and/or life insurance? Yes/No

(b) If so, give name of the Company, amount of insurance

(c) Has any company

(i) Declined to issue a policy to you? No

(ii) Decline to continue the insurance? No

(iii) Not invited renewal of your policy? No

(iv) Imposed any restrictions on special conditions? No

(b) That late Shri Kishori Sharan Garg by making mis-statement has also concealed material information (Like having LIC Policy and Proposal for personal accident policy for Rs.5.00 Crores already made Had these facts been disclosed in the proposal form or otherwise, this would have led to the investigation the company regarding the status, income and means of income of deceased and the inquiry Could have led to the company to refuse the proposal. By making this mis-statement, he has been able in his attempt inquiry regarding his source of income and business. any Since the contract of Insurance is based on utmost good faith and by making mis-

statements, said late Mr. Garg has been successful in misleading the company in accepting the proposal.

Since the risk has been got undertaken on the basis of mis-statement of facts, the company is not under obligation to honour its commitment and has thus decided to NC/OP/164/2001_272/2001 Page | 10 repudiate the claim and through this letter you are hereby informed that the claim stands repudiated and file has been ordered to be consigned to records. Thanking you, Yours faithfully, SR. BRANCH MANAGER"

13. The repudiation letter dated 29.9.2000 by the National Insurance Co. is as follows:

"370203/81/96-97/33/50

Dated 29-09-2000

Smt. Asha Garg.

W/o Late Shri Kishori Sharan garg.

383, Lashkari Bhawan, Hanuman Ji Ka Rasta, Tripolia Bazaar, Jaipur "without prejudice Sub:-

Personal Accident Policy For Rs. Five Crores. (Policy No. 370203.8100236/97) Ref our Claim No. : 370203/81/96-97/33/50 Madam, We regret to inform your goodself that the competent authority has repudiated your above referred claim for the under mentioned reasons-

a) That Insured failed to disclose/concealed/ suppressed the material fact of having already submitted two proposals for Personal Accident Insurance with "United India Insurance Co. Ltd." for capital sum insured of Rs. five crores and ten Cores respectively. This non-disclosure/ Concealment/ suppression has caused prejudice against " National Insurance Co. Ltd." in its assessment of risk as well as the decision to assume the risk. Thus the Insured has violated the sacrosanct principle of observance of good faith prior to as well as subsequent to the issuance of the subject policy NC/OP/164/2001_272/2001 Page | 11

b) The income attributed to the Insured is highly disproportionate. The Claimant & other family members of the Insured have refused consistently to co-

operate in verifying the income of the Insured during the processing of the above referred Claim.

Kindly take note of the same.

Your's faithfully.

For NATIONAL INSURANCE CO. LTD."

14. Challenging the repudiations, two complaints were filed, OP No. 164 of 2001 questioning the repudiation dated 16.06.2000 by the United India Insurance Co. Ltd. and OP No. 272 of 2001 challenging the repudiation dated 29.09.2000 by the National Insurance Co. Ltd.. Affidavits were exchanged between the Parties and after evidence was led, Original Petition No.164 of 2001 was allowed vide order dated 24.11.2005 against the United India Insurance Co. Ltd. holding that the allegations of suppression were not made out and therefore since the Insurance Company has failed to produce the proposal form to substantiate the same, therefore, the claim was admissible and a sum of Rs.10 crore with interest @ 9% from the date of death of the insured was allowed.

15. However, the Original Petition No. 272/2001 against the National Insurance Company was dismissed by the same order on the ground that there was no justifiable reason for the deceased to have withheld facts about the proposal for insurance coverage with the United India Insurance Co. Ltd.

16. Two Appeals were preferred before the Apex Court. Civil Appeal No.2599 of 2006 was filed by the United India Insurance Co.Ltd. assailing the NC/OP/164/2001_272/2001 Page | 12 order of this Commission whereby the claim of the Complainant had been allowed whereas the Complainant had preferred Civil Appeal No.1720 of 2006 whereby the claim against the National Insurance Co. had been dismissed.

17. There is another aspect with regard to the permission for withdrawal of the amount awarded in OP No. 164 of 2001 during the interregnum period that was taken up by this Commission in EA No.2 of 2006. The Apex Court seems to have issued interim directions for the withdrawal of the amount to be permitted by furnishing adequate security on which orders were passed. The order passed on 18.7.2006 by this Commission is extracted hereinunder :

18.7.2006 ORDER "In view of the order passed by the Apex Court for furnishing adequate security, Ld. Counsel for the petitioner seeks two days' time. Time granted. Adjourned to 20.7.2006."

18. This was followed by another order passed by this Commission in EA No.170/2006 on 20.7.2006, which is extracted hereinunder :

20.7.2006 ORDER "Matter be placed before the Registrar for verification of the security. If the security is sufficient, Registrar would see that order passed by the Apex Court is implemented by permitting the complainants to withdraw the amount as directed by this Commission."

19. Before the Apex Court an attempt was made to get the matter settled through arbitration and an order was passed on 21.02.2011 which is extracted herein under: -

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20. Accordingly, Hon'ble Mr. Justice Arun Kumar proceeded with the matter but unfortunately he passed away and on 23rd July, 2013. The Apex Court noticing the said fact opined that they see no reason at this stage to appoint a new arbitrator as in their opinion the controversy may be adjudicated by the Court itself. The order is extracted herein under: -

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21. Both the Appeals were finally disposed of by the Apex Court on 11.1.2017 whereby the matter was remanded back by the Apex Court to be heard again for a fresh consideration. The judgement of the Apex Court is extracted hereinunder :

UNITED INDIA INSURANCE CO.

.....APPELLANT(s)

Versus

ASHA GARG & Ors.

.....RESPONDENT(s)

WITH

CIVIL APPEAL NO.1720 OF 2006

ORDER

We have heard learned counsel for the parties in both the appeals for quite some time. We are of the opinion that this is an appropriate case in which the National Consumer Disputes Redressal Commission (for short "the Commission") ought to have recorded evidence instead of deciding the case only on the basis of the affidavits. We say this because there is a serious dispute about the Proposal Form under the personal accident cover submitted by Late Shri Kishori Sharan Garg both to the United India Insurance Company and the National Insurance Company Limited. There is also some dispute about the concealment of material information regarding the proposals. That apart, we find that the payment of premium was paid in two instalments and the assured amount is extremely high, viz. an amount of Rs.10 crores whereas earlier the policy taken by Late Shri Kishori Sharan Garg was for only Rs. 2 lakhs with Life Insurance Corporation Limited.

In our opinion, it would have been more appropriate if the entire records had been perused by the Commission by summoning them from both the NC/OP/164/2001_272/2001 Page | 16 insurance companies. 1. United India Insurance Company and the National Insurance Company Limited including the correspondence from the Divisional Office, the Regional Office and the Head Office of each of the insurance companies as well as the despatch registers. We say this because according to learned counsel for the insurance companies a proposal was made by Late Shri Kishori Sharan Garg on 19th March, 1996 that was processed by the United India Insurance Company but declined. It is not clear whether the rejection of the proposal was communicated to the proposer, Late Shri Kishori Sharan Garg, although it is denied by learned counsel for the proposer that the proposal was declined. Similarly, the records relating to the other proposals would also throw light on the correct and full facts. Accordingly, we remand the matter in both the appeals to the National Commission for fresh consideration.

The death of Late Shri Kishori Sharan Garg took place on 27th March, 1997 and almost 20 years have elapsed since then. We are of opinion that the matter should be taken up on priority basis by the Commission and necessary evidence be recorded after summoning the records, as mentioned above and giving an opportunity to both the parties to produce their witnesses and, of course, cross-examining them.

We request the Commission as above and to dispose of the case at the earliest preferably within six months or so.

We have been informed by learned counsel for the parties that the amount in dispute was deposited in the Commission by the United India Insurance Company and the amount has since been withdrawn by the complainant on furnishing Commission. a security to the satisfaction of the Commission. We do not require the complainant to refund that amount at this stage. Refund, if any, will of course be subject to the final orders that may be passed by the Commission in this regard.

The appeals are disposed of."

22. The matter proceeded and on 2.5.2017, the counsel for United India Insurance Company Ltd. had sought time to trace out and produce records in NC/OP/164/2001_272/2001 Page | 17 terms of the order passed by the Apex Court. The Affidavit of the Managing Director of the Company was also

called for explaining the reason why the record has not been produced. The order of this Commission dated 2.5.2017 is extracted hereinunder :

"Dated 2.5.2017 ORDER The learned Sr.Counsel appearing for the OP, namely United India Insurance Co.Ltd. wants two to trace and produce the record in terms of the notice sent to the said opposite party by this Commission, pursuant to the order of the Hon'ble Supreme Court dated 11.1.2017. The OP is granted two weeks from today to trace and produce the said record, failing which it shall file the affidavit of its Managing Director explaining the reasons for the record not being produced. Re-notify on 24.5.2017. Order Dasti."

23. This was followed by another order passed on 24.5.2017 by this Commission, which is extracted hereinunder :

"Dated 24.5.2017 ORDER The learned counsel for the opposite party states that the entire record in terms of the notice sent to the insurer has been brought. He undertakes to file the copy of the aforesaid record. The opposite party is directed to file the copy of the aforesaid record supported by an affidavit, after supplying the advance copy to the complainant. An inspection of the original record shall also be given to the learned counsel for the complainant in the chamber of Mr.Vineet Malhotra, learned counsel for the opposite party in Delhi High Court on 8.7.2017.

The learned counsel for the complainant states that after carrying out inspection and examining the advance copies supplied to the complainant, they will be in a position to decide whether they would like to file additional affidavit in terms of the liberty granted by the Hon'ble Supreme Court or not.

Hence, re-notify this complaint for directions on 26.7.2017. if any, additional evidence is sought to be led by the complainant, they shall intimate the same to the Commission in writing with a copy to the opposite party by NC/OP/164/2001_272/2001 Page | 18 15.7.2017. If the insurer wants to lead additional evidence it shall also intimate this Commission in writing with advance copy to the complainant by 22.7.2017.

Mr. Malhotra states that the entire record available with the insurer has been brought and to the extent, the record is not available, he will be filing an affidavit of the concerned official giving particulars of the said record, within one week from today."

24. Both the Complaints were then taken up on 26.7.2017 where a query was again raised with regard to the documents sought as well as the proposal form on the basis whereof the Insurance Policies were issued. The order dated 26.7.2017 is extracted hereinunder :

"Dated 26.7.2017 ORDER I have heard the learned counsel for the parties at some length. In OP No.164 of 2001, the insurer has not been able to produce either the

original proposal on the basis of which the policy in question was issued or the dispatch registers containing entries of sending either intra office communications or the communications if any sent to the insured. The Managing Director of the OP, namely United India Insurance Co.Ltd. is directed to make one final effort to trace the aforesaid documents and file them before this Commission in case the record either wholly or any part is traced. In case the aforesaid record is still not traced, he shall file an affidavit stating therein that the company has made best efforts to trace the aforesaid record but it is not possible to produce the same before this Commission. He shall also annex to his affidavit in the stand of the insurer, is the true and correct copy of the proposal on the basis of which the policy in question was issued.

In OP No.272 of 2011 also the insurer has not filed the original proposal form on the basis of which the insurance policy was issued. The learned counsel for the insurer states that no communication except the insurance policy was sent by them to the insured at any point of time of till the policy came to be issued. He, however, admits that the file in which the proposal submitted by the insured was processed had travelled upto the head office of the company though according to him the proposal was ultimately approved at the Regional Office. The Managing Director of the OP is, therefore, directed to make efforts to trace the original NC/OP/164/2001_272/2001 Page | 19 proposal as well as the dispatch registers containing the intra office communications till the date of ratification of the insurance policy issued to the deceased insured. In case the whole or part of the said record is traced, it will be filed before this Commission and in case it is not traced, the Managing Director shall state in his affidavit that it is not possible for the insurer to produce the said still untraceable record.

It has also been stated by the leaned counsel for the complainant during the course of hearing that National Insurance Co. Ltd. opposite party in OP No.272 of 2001 has not filed some of the documents referred in the documents filed by them before this Commission. He wants the insurer to file those documents as well. The said OP is, therefore, directed to give inspection of its entire record pertaining to the policy in question till the date of its ratification by the Regional Office to the complainant and such of the record which has not already been filed but the complainant wants to be filed before this Commission, shall be filed by the OP.

The aforesaid directions shall be complied by both the OPs within four weeks from today. The OPs are granted liberty to file documents in the Registry.

List these complaints for further directions on 31.8.2017. Dasti under signature of the Court Master to both the OPs."

25. An affidavit was filed on behalf of the MD in OP No. 164 of 2001 in compliance of the said order and then an order was passed on 31.8.2017 for filing further affidavit and Mr. S. M. Chopra a former

Addl. District Judge was appointed as Court Commissioner to record the Cross Examination of the complainant Smt. Asha Garg. The order dated 31.8.2017 is extracted hereinunder :

"Dated 31.8.2017 ORDER The learned Sr. Counsel appearing for the OP states on instructions that presently neither there is any Managing Director of the OP nor is there any other Director of the OP holding Addl. Charges of the post of the MD. The aforesaid NC/OP/164/2001_272/2001 Page | 20 statement is confirmed by Mr. UPS Gujral, Regional Manager (Delhi) of the OP. Mr. Malhotra states that the OP would file the affidavit of its General Manager, who also happens to be a Director of the Company namely Ms. P. Hemamalini in terms of the direction issued by the Commission on the last date of hearing. The OP is permitted to file affidavit of the aforesaid Director/General Manager in compliance of the direction dated 26.07.2017, within one week from today.

The learned counsel for the complainants states that though they had earlier filed affidavit by way of evidence, they would like to file evidence of the widow of the deceased namely Smt. Asha Garg, but needs at least eight weeks to file the said affidavit considering the volume of the documents filed by the OP. However, considering the age of the case, it will not be possible to grant eight weeks for the aforesaid purpose. The complainants are therefore, permitted to file the aforesaid affidavit on or before 17.10.2017.

Mr. S.M. Chopra, former Additional District Judge is appointed as the Court Commissioner, to record the cross-examination of complainant no.1 Smt. Asha Garg at an appropriate venue, if possible, in one of the Chambers stated to be available in the office of Delhi High Court Bar Association for recording the evidence, on a date to be fixed by him in consultation with the parties. His fee is initially fixed at Rs.20,000/-which shall be contributed equally by the parties. The final order as to who bears the said cost shall be passed at the time of disposal of the complaint. The hire charges for the venue will also be contributed equally by the parties. The Court Commissioner shall record the cross-examination of complainant No.1 within six weeks from today. The Registry will depute an official of the Commission to take the files to the venue of cross-examination and bring the same back after the cross-examination is recorded.

Re-notify this matter on 25.10.2017 awaiting the report of the Court Commissioner."

26. The cross-examination was delayed and therefore the matter was once again adjourned. The cross-examination of the complainant was recorded on several dates thereafter and the reports of the Court Commissioner were collected and placed on record.

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27. Then proceeded the filing of the Evidence Affidavit and Cross- Examination of the witnesses of the United India Insurance Company Ltd. that was directed vide order dated 4.1.2018 which is extracted hereinunder:

"Dated 4.1.2018 ORDER The learned counsel appearing for the OP namely United India Insurance Co.Ltd. states that both the affidavits by way of evidence are ready and will be filed today itself after supplying advance copies to the learned counsel for the Complainants. The Local Commissioner is requested to record the cross-examination of both the witnesses of the United India Insurance Co.Ltd. at the earliest possible.

Re-notify on 29.1.2018, awaiting the report of the Local Commissioner. As suggested by the learned counsel for the parites, the Local Commissioner shall initially be paid Rs.30,000/- in addition to the expenses incurred by him for recording the cross-examination of both the witnesses of United India Insurance Co.Ltd. The fee and the expenses of the Local Commissioner shall be shared equally by the parties. The OP is also directed to make the original record available at the time of cross-examination of the witnesses. The Registry is directed to depute an official of the Registry to carry the record to the Local Commissioner at the time of recording the cross-examination of the witnesses. The Local Commissioner shall give three days advance notice to the learned counsel for the parties to enable them to prepare for the cross-examination."

28. The time for Cross Examination was further extended and then the reports of the Examination Chief and part cross examination was proceeded with as recorded on 16.2.2018. Since further time was sought for cross examination, the matter was adjourned. On several occasions, fixing date for production of witness and the records being made available for the said purpose. The same was concluded and stood recorded in the final order dated 19.7.2018 and 31.8.2018.

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29. Thereafter, the matter was directed for being listed for final hearing, and since the documentation through a Written Synopsis alongwith convenience compilation was desired, the matter was adjourned vide order dated 26.02.2020 to six months with the Covid intervening thereafter. The exercise was further delayed on account of the impact of the pandemic that continued. The order passed by the Supreme Court in Misc. Application No.661/2017 was produced directing for an early disposal of the matter preferably within six months. Orders were passed on 11.10.2022 to file the revised convenience compilation, documents and synopsis. The case was adjourned on one count or the other when the matter was heard only by a single Member on 24.8.2023 but since the Benches were directed to be reconstituted with a coram of two members vide order dated 29.10.2024. The case came up for hearing on 19.11.2024, when it was informed that the earlier counsel of United India Insurance Company Ltd. had expired and a new counsel had been instructed to proceed to argue the matter. Accordingly, we commenced the hearing with the opening arguments of Mr. Joy Basu, Learned senior counsel for the Complainant that was recorded

on 15.4.2025, which is extracted hereinunder :

"Dated 15.4.2025 ORDER Mr. Basu has commenced his arguments on behalf of the complainants in the controversy involved in CC/164/2001 concerning two Personal Accident claim policies, the sum insured wherein are Rs.9.97 crores and Rs.3,00,000/- respectively. The personal accident policy covered risks with regard to one late Mr. Kishori Saran Garg who met with an unfortunate accident on 22.03.1997 in a head on collision while travelling in a Maruti Car that dashed against a truck resulting in his death.

NC/OP/164/2001_272/2001 Page | 23 The insurers are the United India Insurance Company before whom the claim was set forth and the claim form was tendered on 12.04.1997. Mr. Basu has invited the attention of the Bench to the said document from the convenience set and has urged, that this claim engaged the attention of the Insurance Company for almost three years for being processed during which period according to him the queries raised by the Insurance Company and its Surveyors were only in relation to the financial status of the insured including the information with regard to the Income Tax Returns of the insured. The contention is that these queries were answered categorically stating that since the policy itself was of a very high value the Insurance Company had conducted a detailed scrutiny and was aware about the tax returns even before finally processing the proposal and issuing the policy. The contention therefore is that even though all such information was available with the Insurance Company yet the complainant had supplied all the information that was desired. It is urged that in all these enquiries that were conducted during this period no information was demanded or query raised from the complainants about any pre-existing policies or any misinformation regarding any such pre-existing policy. The submission is that had any such enquiry been made the same could have been appropriately responded but as a matter of fact at no point of time were the complainants given anything to understand about any misinformation having been tendered in the proposal form.

With this background Mr. Basu further urged that the repudiation dated 16.06.2000 nowhere mentions any date of the proposal form or any details regarding the same. The repudiation simply proceeds on the presumption that the proposal forms available with the Insurance Company were deficit in information regarding the pre-existing policies, and he therefore submits that in the absence of any such details the conclusion drawn by the Insurance Company to repudiate the claim is based on speculations and not on the basis of the correct proposal form.

For this he connects this with his subsequent arguments which he has advanced, namely, that the policy categorically recites that the same is based on a written proposal, dated as stated in the schedule of the policy, as recited in the preamble of the policy. Consequently, the Insurance Company has itself indicated the existence of a written proposal and a dated form as stated in the schedule. He then points out

towards the schedule just below the preamble in the policy to contend that the details given in the schedule recite the proposal NC/OP/164/2001_272/2001 Page | 24 and declaration as dated 11.02.1997. He therefore contends that once this declaration is there in the policy itself, there is a presumption of the existence of a proposal which is dated 11.02.1997 that has culminated into the said policy. He further submits that apart from the categorical mention of a written and a dated proposal, the date whereof is recited as 11.02.1997, there is yet another disclosure in the policy which is the name of the assignees in the policy. He submits that there are four names: that of the widow of the insured, the son, the daughter and a nephew.

He has then pointed out towards the amount of premium indicated in the said policy, which is to the tune of Rs.64,805/-.

With these facts in the policy he submits that it was obligated upon the Insurance Company to produce the original proposal form which according to him has not been done and this failure on the part of the Insurance Company to do so even after the remand of the matter from the Supreme Court is a clear deficiency on their part. He submits that whatever forms are being relied on by the Insurance Company are photostat copies and none of them contain the date of 11.02.1997. He therefore submits that those proposal forms cannot be relied on to be the same so as to connect it with the policy, and consequently this failure is a clear deficiency in service.

His next contention is that these proposal forms as relied on by the Insurance Company contain the name of only two assignees namely that of the widow and the son. In the absence of any mention of all the four names, the Insurance Company has failed to explain as to how these four names have come in the policy when they were not mentioned in the proposal, and therefore this Commission should presume that the proposal forms relied on by the Insurance Company are not the genuine proposal forms related to the Insurance Policy. His argument therefore is that the said proposal forms cannot be an evidence to be relied on for the purpose of construing the correct status of the proposal forms which therefore demolishes the entire stand taken by the Insurance Company.

His third submission is that if the proposal form as relied on by the Insurance is believed to be correct then in that event it is not understood as to why the amount of premium mentioned in the proposal form which is Rs.99,750/- has not been mentioned in the policy where the premium amount is only Rs.64,805/- . He therefore seriously doubts the aforesaid endorsements in the proposal forms filed by the Insurance Company on the ground that the figures do not NC/OP/164/2001_272/2001 Page | 25 match with the figures in the policy and consequently the same should be treated to be some sort of manipulation that does not inspire confidence. The proposal forms therefore deserve rejection as evidence. He submits that even though through the communications dated 04.03.1997 and 07.03.1997 there was an additional demand raised with regard to the premium and

which was paid but the said additional demand does not in any way explain the aforesaid discrepancies appearing in the proposal form. He therefore submits that the subsequent demand does not in any way regularise the premium amount mentioned in the proposal form more so because the subsequent demands were correlated to the queries raised by the re-insurers. He therefore submits that this was not an error or an inadvertence in the policy itself and therefore these documents raise serious doubts about the proposal forms relied on by the Insurance Company.

He has then advanced his submissions in respect of the answers given to the question No.10-(a) & (b) which has also been made the basis for repudiation to contend that on 19.03.1996 a proposal form had been filled up which is on record. He does not dispute the factum of the filling up of the said form and he contends that the said document is not even disputed by the Opposite Party - Insurance Company. The proposal form dated 19.03.1996 according to him was neither accepted nor rejected nor any communication was sent to the complainant about its status. He submits that the stand of the Insurance Company that the said form stood rejected cannot be accepted in the absence of any communication to that effect. He however submits that what is important about the contents of the said form is the disclosure of the pre-existing policies by the insured in the said form namely that of the policy from the Life Insurance Corporation of India. He submits that the ground taken in the repudiation letter therefore is incorrect inasmuch as the fact of disclosure of a pre-existing policy taken from the Life Insurance Corporation was well within the knowledge of the Insurance Company and therefore the claim could not have been repudiated on that ground.

He submits that apart from these proposal forms on record what is more interesting is the admission of the Insurance Company in the SLP filed before the Apex Court and he has invited the attention of the Bench to ground No.41 & 42 thereof to contend that the Insurance Company has categorically admitted the existence of two proposal forms namely 19.03.1996 and 11.2.1997. In this background the Insurance Company was obliged to further disclose as to NC/OP/164/2001_272/2001 Page | 26 whether the 19.03.1996 proposal was rejected, and in what way the same came to be communicated, which they failed to do. The proposal forms which they have relied now do not bear the date of 11.02.1997 and therefore the Insurance Company even assuming that they have been probating and reprobating in their averments from here to the Apex Court, they have not been able to establish the probative value and the veracity of the proposal form on which they are relying. The submission therefore is that in the absence of any evidence to that effect the contention raised by the Insurance Company about the proposal forms on which they have now relied upon should not be accepted. Mr. Basu also urged that all proposal forms that are received by the Insurance Company they, according to the general practice, bear a seal, the date as well as a number assigned to the said forms which are completely missing in the proposal forms relied on by the Insurance Company.

It is with this prelude that Mr. Basu proceeded with the arguments which could not conclude today.

Let the matter be now listed on 08.08.2025 at 2.00 pm and 26.08.2025 at 2.00 pm to proceed further in the matter.

30. This was followed by the arguments again being heard on 8.8.2025 that stands recorded as under :-

Dated: 08.08.2025 ORDER

1. The arguments on behalf of the Complainants were further advanced by Mr. Joy Basu, learned Senior Advocate in OP No. 164 of 2001 where the Opposite Party is the United India Insurance co. Ltd.

2. Supplementing his arguments that were advanced on 15.04.2025, Mr. Basu has invited the attention of the Bench to the Order of the Apex Court in Civil Appeal No. 2599 of 2006, United India Insurance Co. Ltd. vs. Asha Garg & Ors. and Civil Appeal No. 1720 of 2006, whereby the Order passed by this Commission on 24.11.2005 was interfered with and for all intents and purposes the final Order passed by this Commission in the two complaints was set aside whereupon the matter was remanded back to this Commission for decision afresh in the light of the observations made therein. We may point out that there were two Original Petitions, one against the United India Insurance Co. Ltd., NC/OP/164/2001_272/2001 Page | 27 which is Original Petition No. 164 of 2001 and the other was against the National Insurance Co. Ltd. in Original Petition No. 272 of 2001. Under the Order dated 24.11.2005, the Original Petition No. 164 of 2001 was allowed with a direction to the United India Insurance Co. Ltd. to pay a sum of Rs. 10 Crores with interest @ 9% to the Complainant i.e. from 01.07.1997. The Original Petition No. 272 of 2001 filed against the National Insurance Co. Ltd. was dismissed. The operative part of the Order dated 24.11.2005 of this Commission is extracted hereinunder:

A. Original Petition No. 164 of 2001:

In the result the Original Petition is allowed. The United India insurance Co. Ltd. is directed to pay the Complainants a sum of Rs. 10,00,00,000/- with interest at the rate of 9% p.a. (approximately) after three months from the date of the death of the assured, i.e. 1st July, 1997. There shall be no order as to costs.

B. Original Petition No. 272 of 2001:

This Original Petition is dismissed. There shall be no order as to costs.

3. It is the aforesaid Orders passed in the two Complaints that were challenged before the Apex Court, by the United India Insurance Co. Ltd. in Civil Appeal No. 2599 of 2006 and by the Complainant Smt. Asha Garg in Civil Appeal No. 1720 of 2006. The Apex Court on 11.01.2017 disposed of the Appeals by the following Order:

We have heard learned counsel for the parties in both the appeals for quite some time.

We are of the opinion that this is an appropriate case in which the National Consumer Disputes Redressal Commission (for short "the Commission") ought to have recorded evidence instead of deciding the case only on the basis of the affidavits. We say this because there is a serious dispute about the Proposal Form under the personal accident cover submitted by Late Shri Kishori Sharan Garg both to the United India Insurance Company and the National Insurance Company Limited. There is also some dispute about the concealment of material information regarding the proposals.

NC/OP/164/2001_272/2001 Page | 28 That apart, we find that the payment of premium was paid in two instalments and the assured amount is extremely high, viz., an amount of Rs.10 crores whereas earlier the policy taken by Late Shri Kishori Sharan Garg was for only Rs. 2 lakhs with Life Insurance Corporation Limited.

In our opinion, it would have been more appropriate if the entire records had been perused by the Commission by summoning them from both the insurance companies, i.e., United India Insurance Company and the National Insurance Company Limited including the correspondence from the Divisional Office, the Regional Office and the Head Office of each of the insurance companies as well as the despatch registers, etc. We say this because according to learned counsel for the insurance companies a proposal was made by Late Shri Kishori Sharan Garg on 19th March, 1996 that was processed by the United India Insurance Company but declined. It is not clear whether the rejection of the proposal was communicated to the proposer, Late Shri Kishori Sharan Garg, although it is denied by learned counsel for the proposer that the proposal was declined. Similarly, the records relating to the other proposals would also throw light on the correct and full facts.

Accordingly, we remand the matter in both the appeals to the National Commission for fresh consideration.

The death of Late Shri Kishori Sharan Garg took place on 27th March, 1997 and almost 20 years have elapsed since then. We are of opinion that the matter should be taken up on priority basis by the Commission and necessary evidence be recorded after summoning the records, as mentioned above and giving an opportunity to both the parties to produce their witnesses and, of course, cross-examining them.

We request the Commission as above and to dispose of the case at the earliest preferably within six months or so.

We have been informed by learned counsel for the parties that the amount in dispute was deposited in the Commission by the United India Insurance Company and the amount has since been withdrawn by the complainant on furnishing a security to the satisfaction of the Commission. We do not require the complainant to refund that amount at this stage. Refund, if any, will of course be subject to the final orders that may be passed by the Commission in this regard.

The appeals are disposed of.

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4. Commencing his arguments, Mr. Basu urged that the direction of the Apex Court was to record evidence and receive affidavits in order to record findings pertaining to the proposal forms and the dispute relating thereto. It was observed by the Apex Court that the entire records required an assessment after necessary evidence is recorded upon summoning the records as mentioned therein and after giving an opportunity to both the Parties to produce their witnesses and cross-examining them.

5. It is important to take notice of the fact that the Apex Court had noticed that the amount deposited by the United India Insurance Co. Ltd. pursuant to the Orders passed by this Commission had been withdrawn by the Complainant on furnishing a security to the satisfaction of the Commission. This was in the light of Orders passed on Execution Application No. 170 of 2006 on 20.07.2006 and the amount seems to have been released on furnishing of security.

6. Be that as it may, Mr. Basu, advancing his submissions, urged that in pursuance of the said directions, the records were summoned in terms of the Orders passed on 23.03.2017, 02.05.2017, 24.05.2017, 26.07.2017 and 31.08.2017. The evidence of the witnesses was recorded and they were subjected to cross-examination.

7. In particular, Mr. Basu has invited the attention of the Bench to the affidavit of Smt. P. Hemamalini sworn on 08.09.2017 to urge that the explanation given by her with regard to the proposal forms categorically indicates that the original undated proposal forms, that are being relied on by the Insurance Company were not available in the head office nor are the dispatch registers available. He therefore submits that in the absence of any such original records, the alleged undated proposal forms cannot be relied on as they have not been proved.

8. To substantiate his submissions, Mr. Basu has relied on the affidavit of Mr. Rajiv Simlote, the Development Officer of the United India Insurance Co.

Ltd. that was sworn subsequently on 22.12.2017. He contends that the said affidavit categorically admits that there was an oral request for adding two nominees over and above the two names given earlier, and accordingly the Insurance policy was issued with four names. He further submits that the said affidavit also admits of having received Income tax returns and documents as well as other income sources that were provided to him by the insured. He has further admitted of having visited the office of the deceased insured along with the Branch Manager, Mr. L. C. Gupta for the said purpose.

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9. Mr. Basu then points out that the cross-examination of Mr. Simlote which runs into 218 questions, that were answered by him categorically, records in an answer to question no. 216 that with regard to the assignment and nominations, the Insurance Company needs everything in writing by the Insured. He therefore submits that the affidavit indicating oral request being implemented is false and stands contradicted in the cross-examination itself.

10. He points out that while answering question no. 190, Mr. Simlote has stated that there was only one proposal of Rs. 10 Crores received from the insured. This according to him is also another contradiction as against the proposal forms relied on by the Insurance Company. He then points out that while answering question no. 171, Mr. Simlote has stated that the proposal forms would bear the acceptance seal and stamp with date of the higher authority. It is therefore urged that none of the proposal forms bear any such seal, signature or stamp and therefore the said proposal forms, which are mere photostat copies, cannot be relied on.

11. He points out that there is one proposal form dated 19.03.1996, which is the only original form about which there is no dispute, but the said form was never translated into any policy and the said proposal was neither accepted nor any decision taken thereon. He therefore contends that except this proposal form, no other proposal form which are all undated, conform to or support the contention of the Insurance Company and it is for this reason that the originals thereof were required to be produced which the Insurance Company has failed to do. He submits that the affidavit of Smt. P. Hemamalini and that of Mr. Simlote confirm that no such forms in original are available. He has, in support of his submissions, pointed out to the answers given to question no. 129 and question no. 139 posed to Mr. Simlote and then to question no. 92, 93 and question no. 57 to urge that there is a clear admission of the proposal form not being available nor was Mr. Simlote able to locate the same. The answers given by him therefore do not support the contention of the Insurance Company of the existence of any valid proposal form as alleged by them which they have failed to prove in terms of the directions given by the Apex Court and the Orders passed by this Commission as indicated above.

12. He has also invited the attention of the Bench to question no. 32 posed to another witness of the Insurance Company namely Mr. Rajiv Kumar Saxena, the Regional Manager, who while answering the same, has admitted that all proposals include a date. It is therefore urged that none of the proposal forms NC/OP/164/2001_272/2001 Page | 31 indicate any date and on the other hand, the policy which was relied on and was issued, and is a document produced by the Insurance Company,

categorically records the date of proposal and declaration as 11.02.1997. He submits that the policy categorically states that the Insurance Company had received the written proposal as stated in the schedule and it is therefore urged by Mr. Basu that it was obligated on the Insurance Company to have produced the said proposal which they have deliberately withheld or have either misplaced it that could have thrown light on the correct proposal form. The Insurance Company having failed to do so has therefore not discharged its burden of proving the existence of the correct proposal form on the basis whereof the policy was issued and hence, there cannot be any assumption of an alleged non-disclosure or incorrect disclosure by the insured as attempted and recited in the repudiation letter dated 16.06.2000. Mr. Basu submits that the contents of the repudiation letter therefore having not been substantiated and established, the repudiation letter has no legs to stand.

13. With all the aforesaid submissions and documents, Mr. Basu contends that there is no ground available at all, much less a valid and a legal ground to repudiate the claim and he therefore submits that even after arrival of the entire evidence as desired by the Apex Court, the Insurance Company has miserably failed to support its repudiation and hence the complaint still deserves acceptance and should be allowed.

14. He has further urged that admittedly, the Insurance Company did not provide any copy of the proposal which they were obliged to do in terms of the IRDA Regulations and therefore this is yet another deficiency on the part of the Insurance Company. The contention therefore is that the allegation of the alleged misstatement or misrepresentation regarding non-disclosure of existing policies in the proposal form having not been proved, the letter of repudiation deserves rejection.

15. Being conscious of the time required for the conclusion of arguments, Mr. Basu urged that the next date as already fixed on 26.08.2025 at 2.00 pm may be maintained and he may be permitted to conclude his arguments in respect of Original Petition No. 164 of 2001.

16. He further submits that he would be requiring about ½ an hour time over and above the same for concluding his arguments in the other Original Petition No. 272 of 2001 where the National Insurance Co. Ltd. is the Opposite Party and Mr. Yogesh Malhotra appears in that case. Mr. Malhotra however made a NC/OP/164/2001_272/2001 Page | 32 request that he may not be available on 26.08.2025 at 2.00 pm and therefore the arguments with regard to Original Petition No. 272 of 2001 be permitted to be advanced on some other date.

17. Mr. Amit Kumar Singh is also present for the United India Insurance Co. Ltd., who has to advance his submissions for the Opposite Party in Original Petition No. 164 of 2001.

18. Keeping in view the long pendency of this matter and the fact that the Apex Court had remanded the matter way back in 2017, it would be appropriate that the arguments in Original Petition No. 164 of 2001 are proceeded with and Mr. Basu may conclude his arguments with any response by Mr. Amit Kumar Singh to the same in case time permits on 26.08.2025. The request made by Mr. Malhotra as prayed by him for an accommodation is accepted. Accordingly, any other date required for proceeding with the Original Petition No. 272 of 2001 shall be fixed on that date.

31. Since the arguments could not conclude, keeping in view the chronology of events and the evidence recorded in compliance of the judgment of the Hon'ble Supreme Court and once again on 26.8.2025, Mr. Basu for the complainant advanced submissions on behalf of the complainant that stands recorded as under :

"Dated: 26th August 2025 ORDER

1. Mr. Joy Basu, learned senior counsel for the Complainants while advancing his submissions in O.P. No. 164 of 2001 recapitulated the arguments advanced earlier as recorded in the Orders dated 15.04.2005 and 08.08.2025. He has urged that in the wake of clear directions of the Supreme Court calling upon the Insurance Co. to provide the original of the proposal forms in order to prove their contentions, including the dispatch register regarding any intimation about the proposal dated 19.03.1996, has not been NC/OP/164/2001_272/2001 Page | 33 complied with, as such, the Insurance Co. has failed to discharge its burden in terms of the Supreme Court order.

2. Even otherwise he submits that the photo copies of the proposal forms produced by the Insurance Co. indicate inconsistencies and are not the proposal forms as mentioned in the policy.

3. The submission is that in fact it appears that the Insurance Co. on the one hand has relied on the proposal form dated 19.03.1996. This proposal form is in relation to a coverage of Rs.5 crores. It is therefore obvious that this did not result in the issuance of any Insurance policy inasmuch as the ultimate policy is of Rs. 10 crores. Consequently, it stands established that the proposal form dated 19.03.1996 never crystalized into any policy at all. He further submits that the information of an LIC policy had been disclosed in the said proposal form. He also contends that the said proposal form was in the custody of the same Branch Office that it travelled to the same Divisional Office and therefore the Insurance Co. had full knowledge about the disclosure of the LIC policy of the insured. Nonetheless since the said policy did not crystalize into a final policy the same cannot be the proposal form. He submits that this is the only form which has been produced by the Insurance Co. and does not relate to the policy of Rs. 10 crores presently involved.

4. He then submits that the other four proposal forms for personal accident that have been produced appear to be photo copies of each other inasmuch as the contents thereof are identical and in the same handwriting but with overwriting and cuttings in a couple of them. He points out that it is one and the same form which seems to have been utilized by the Insurance Co. to setup its case and that is why the original of the said forms has not been produced. The photostat copies cannot be relied on inasmuch as the first one depicts certain calculations that have been scribbled out. There is an overwriting in the same.

5. The second document contains the word 'Yes' against column no. '10 KA' whereas the same description in the repudiation letter does not contain any scoring out of the word 'Yes'.

6. He then points out that the calculation of the premium is Rs.99,750/-. This is contrary to the policy where the receipt of payment is only Rs.68,845/-. There is therefore no match between the figures of the receipt of premium as compared to the amount of premium mentioned in the proposal form which records a much higher amount. Consequently, this proposal form NC/OP/164/2001_272/2001 Page | 34 which was initially scribbled and then a calculation made is not the proposal form as mentioned in the policy.

7. He has again emphasized that the date of the proposal form mentioned in the policy is 11.02.1997. He submits that this proposal form of 11.02.1997 has not been produced till date. He further contends that the photostat copies of, as relied on, do not bear any date, month or year.

8. He has further invited the attention of the Bench to the affidavits of Mr. Rajiv Saxena and Mr. Arora to point out that proposal forms have to be bear a date with a seal. He has then pointed out towards the communications dated 08.10.1996 to urge that this new proposal form sent by the Senior Branch Manager was for Rs.10 crores. This was obviously not the proposal dated 09.03.1996 which was only of Rs.5 crores. The next letter is dated 09.10.1996 where the Divisional Office through Mr. Ram Kumar dispatched a proposal to the Regional Office that was sent by the Senior Branch Manager referred to above for Rs. 10 crores.

9. Mr. Basu emphasized that Mr. Ram Kumar is the same person who had initiated the proposal dated 19.03.1996.

10. On 22.10.1996 the Regional Office forwarded the proposal to the Head Office through Mr. Bhandari and in turn Mr. Bhandari dispatched the letter dated 08.11.1996 to the Head Office with his suggestions. On 14.11.1996 a letter was dispatched to the re-insurance department about the said proposal of Rs.10 crores and it is pointed out by Mr. Basu that these letters also indicate the forwarding of the balance-sheet of the Insured's enterprises as well as his income-tax assessment forms for the year 1995-1996. The letter dated 21.11.1996 from the Divisional Office to the Branch Office once again required the furnishing of the income-tax returns of the year 1996-1997. This information was accordingly dispatched by the Divisional Office to the Regional Office vide a letter dated 08.12.1996. The Regional Office in turn dispatched it to the Head Office on 23.12.1996 that was received on 30.12.1996. Mr. Basu submits that these documents pertaining to the Income- tax assessment of the insured was fully enquired into and the Insurance Co. was well informed about the financial status and other documents pertaining to the insured. The other communications of having received the information are on record and ultimately an

intimation was given on 06.02.1997 to M/s Professional Risk Management to go ahead.

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11. The cover note issuance letter dated 07.02.1997 has been pointed out in pursuance where to the policy was issued referring to the proposal dated 19.02.1997 for the period from 11.02.1997 to 10.02.1998.

12. Mr. Basu then submits that the cover notes as well as the policy mentions four nominees whereas the proposal forms relied on by the Insurance Co. mentions the names of only two nominees and therefore the said proposal forms cannot in any way be co-related to the proposal forms of the policy and hence they deserve rejection.

13. It is further submitted that this entire communication was through the same officials Mr. Ram Kumar and Mr. Bhandari and they had full and complete information regarding the same.

14. He submits that accident took place on 27.03.1997 and the letter thereafter dated 31.03.1997 establishes knowledge about the policies but the Insurance Co. according to Mr. Basu had no intention to indemnify the claims right from the beginning.

15. He then submits that the repudiation letter dated 16.06.2000 has been issued far beyond the timelines as per the 2002 Regulations which requires a written communication within the period prescribed that was never done. He submits that even though the Regulations are of 2002 yet the principles therein would be attracted. He again reiterates that the reasons given for the repudiation in the letter dated 16.06.2000 therefore are nowhere established and the Insurance Co. cannot now travel beyond any of the reasons given therein. The allegations in the written statement about the suspicious death of the insured cannot be a ground to be considered in support of the repudiation without it being mentioned therein.

16. He then submits that the principles relating to the interpretation of an insurance policy have to be read in favour of the insured in the event there is any doubt about the same and in the given circumstances the Insurance Co. having full knowledge about the details cannot repudiate the policy on the ground that there was any suppression on the part of the complainant. He has also referred to the judgment of the Apex Court in the case of Canara Bank vs. United India Insurance Co., (2020) Vol.3 SCC P 455 paragraphs 22 and 39. He has also urged that since the Insurance Co. has failed to prove the probative value of the photostat copies of the proposal forms relied on by it, the same does not pass the test of the directions given by the Supreme Court in the present case on remand and to further substantiate the same Mr. NC/OP/164/2001_272/2001 Page | 36 Basu relies on the judgment of the apex court in the case of Mahavir Sharma vs. Exide Life Insurance Co. Ltd., AIR 2025 SC P

1187.

17. He also submits that no provision of the policy or breach of any condition has been specified in the letter of repudiation so as to substantiate the rejection. Once the entire information regarding the status of the insured and his previous policy had been communicated through its own officials, the same establishes knowledge. He has further pointed out towards the principles of Section 19 of the India Contract Act to support his submissions.

18. He then urges that there is no element of suppression much less of a material fact as there was no intention on the part of the insured to suppress any fact which might lead to any gain to him. He submits that the policy is only for one year occurring on an accidental death and therefore it would be preposterous to presume that a person will acquire the risk of death on the basis of his own fraud. It is therefore difficult to assume that a person will undertake a dangerous peril or a risk to pay with one's own life.

19. In the given circumstances there is a complete failure on the part of the United India Insurance Co. Ltd. to support its highly belated repudiation which deserves rejection and the complaint deserves to be allowed.

20. Mr. Amit Kumar Singh, learned counsel for United India Insurance Co. Ltd. urged that he would respond to the arguments after Mr. Basu concludes his arguments in respect of O.P. No. 272 of 2001 against the National Insurance Co. Ltd. Learned counsel for the parties therefore agree that the matter be listed on 13.10.2005 at 2.00 P.M.

32. Adjournments were sought thereafter and then again arguments advanced on the evidence as well as other documents by Mr. Basu on 19.11.2025. The order sheet is extracted hereinunder :

"Dated: 19.11.2025 ORDER

1. Heard Mr. Joy Basu, learned senior counsel for the complainant, who has recapitulated the facts in respect of the contentions raised in OP No. 164/2001 and has pointed out that while recording the order passed on 26.08.2025, a few inadvertent dates have been transcribed which may be corrected.

2. We have perused the same and the contention of Mr. Basu is correct. Accordingly, the date mentioned as "09.03.1996" in paragraph 8 shall be read as NC/OP/164/2001_272/2001 Page | 37 "19.03.1996". Similarly in paragraph 10, the date "08.11.1996" shall be read as "08.10.1996". In the same paragraph, the date "08.12.1996" shall be read as "18.12.1996". The date "19.02.1997" mentioned in paragraph 11 of the order shall be read as "11.02.1997". The order dated 26.08.2025 therefore shall stand corrected accordingly.

3. Mr. Basu has then advanced his submissions in respect of OP No. 272/2001 where the challenge raised is to the repudiation letter dated 29.09.2000 by the OP National Insurance Co. Ltd. in respect of the policy involved therein. He has pointed out that the date of the proposal of the said policy is 21.01.1997 and the duration thereof is 31.01.1997 to 30.01.1998 for a sum insured of Rs. 5 crores. The policy has four nominees namely Smt. Asha Garg, the complainant, Master Sanjeev, Kumari Jyoti and Sh. Mohanlal Lashkari. He has then invited the attention of the Bench to the letter of repudiation dated 29.09.2000 to contend that there are only two grounds of repudiation, the prominent and primary ground is that the complainant had failed to disclose the details of the policy taken from United India Insurance Company and had incorrectly filled up the proposal form which was a clear misrepresentation. The second ground of repudiation was that the complainant had failed to cooperate with the Surveyor regarding the verification of the Income Tax details that could not be ascertained resulting in depriving the Insurance Company of assessing and calculating the risk to be covered.

4. Mr. Basu submitted that firstly the allegation of suppression in the proposal form is an incorrect inference drawn by the Insurance Company, in as much as, there is neither any suppression nor any wrong information given therein. He submits that the proposals that had been made to the United India Insurance Company had remained pending and no intimation was given to the complainant about its finalisation as on the date of the proposal in the present policy which is 21.01.1997. As a matter of fact, the date of proposal as indicated in the policy acquired from United India Insurance Company was clearly stated in that policy as 11.02.1997. Thus, the policy had neither been accepted and there was no intimation declining the grant of the policy as on 21.01.1997 when the proposal form was filled up in the present case for acquiring the policy from National Insurance Co. Ltd. Thus, there was neither any misinformation nor incorrect intimation.

5. He then submitted that even otherwise it is established from the record and the documents filed by the Insurance Company itself that the National Insurance Co. Ltd. was well aware of the proposal that was pending or were NC/OP/164/2001_272/2001 Page | 38 finalized by the United India Insurance Co. Ltd., as such they had complete knowledge about the policies that were being negotiated with the United India Insurance Co. Ltd. Consequently, to allege misrepresentation or suppression is without any foundation.

6. Mr. Basu then contends that all the documents pertaining to income eligibility were available and had been tendered by the complainant along with the proposal form that had been processed by the Insurance Company which stands admitted in the documents which are the communications between the Branch Office and the Regional Office, and being internal communications leave no room for doubt that that the National Insurance Co. Ltd. had full knowledge and was aware of the policies being negotiated with the United India Insurance Co. Ltd., both on the date of the

proposal form i.e. 21.01.1997 as also even prior to the date of the issuance of the policy in question on 31.01.1997.

7. He has pointed out to the questions posed in the proposal form dated 21.01.1997 particularly to clause 7(a) and (c) of the said form to urge that the complainant had rightly not indicated the existence of any policy from any other company on 21.01.1997. He submits that in fact there was no policy on that day from the United India Insurance Company where the proposal itself was of 11.02.1997. There was therefore no question of disclosing the existence of any policy from the United India Insurance Company. On the other hand, there was one policy of the LIC which has been categorically disclosed in the proposal form. He then submits that since the consequences of the proposal before the United India Insurance Company were not known on the date when the proposal was filled up in the present case, the complainant rightly answered question no. 7(c) by stating that no policy had been declined by any other Insurance Company. He submits that as a matter of fact, no policy was declined by the United India Insurance Co. Ltd. and therefore there was no question of answering question no. 7(c) in the affirmative. Thus, the negative answer given against question no. 7(c) is the correct answer as it was dependent upon the outcome of the information sought against question no. 7(a) where the consequences were still not known as the proposal was pending. He submits that the proposal form did not require any information of a pending proposal and therefore no suppression can be attributed to the complainant.

8. To support his submission that the National Insurance Co. Ltd. was well informed of this position, he has pointed out to the letter written by the Branch Office of the National Insurance Co. Ltd. to the Divisional Office on 24.01.1997. He NC/OP/164/2001_272/2001 Page | 39 has read out the said letter to urge that it categorically refers to the United India Corporation proposals and also records the documents that were sent along with the said letter to the Divisional Office including the Income tax returns. Thus, the National Insurance Co. Ltd. cannot plead any lack of knowledge on their part nor their conclusion in the repudiation letter about suppression is sustainable keeping in view the contents of the said letter.

9. He has then referred to the subsequent communications namely the letter dated 19.07.1997 dispatched by the Head Office to the Branch Office of the National Insurance Co. Ltd. regarding reinsurance coverage, which was based on the same very fact of the existence of the policies as well as the Income tax returns and other income details as well as the status of the insured.

10. He has then read out the letter dated 25.07.1997 sent from the Branch Office to the Regional Office regarding the proposals of the policy with United India Insurance Co. Ltd. as well as the information with regard to the Income tax returns. In addition thereto, he has read out the letter dated 07.08.1997 which once again refers to the Income tax returns.

11. Mr. Basu then read out the claim note dated 26.04.1999 where the case history categorically records about the knowledge of the policy with United India Insurance Co. Ltd. as well as the information of the Income tax returns available with the National Insurance Co. Ltd. at the time of extending the policy.

12. He has then once again reiterated that the United India Insurance Co. Ltd. proposal was finalized on 11.02.1997, whereas the policy in the present case was given on 31.01.1997 and therefore there could be no possible suppression or any adverse inference that could be drawn in respect of the answers given in the proposal form in the present case.

13. He has then read out parts of the claim form dated 26.04.1999 under the heading "reinsurance" to urge that it records that the complainant Mrs. Asha Garg had forwarded various papers vide a letter dated 08.04.1997 to the Branch Office and that it records that there was no doubt about the nature of the accidental death of the insured. It further records the malafide intentions of the Insurance Company and he alleges that there was a sort of collusion and a deliberate design entered into between the National Insurance Co. Ltd. and the United India Insurance Co. Ltd. forming a joint strategy to deal with the claim which was nothing else, but an attempt, somehow or the other, to repudiate the claim. This fact is reflected at item no. 4 of the recommendations made in the claim note dated 26.04.1999 that was read by him during the course of submissions. To substantiate the same, he has NC/OP/164/2001_272/2001 Page | 40 referred to the letter dated 17.09.1999 to urge that this strategy planned by the Insurance Company along with the United India Insurance Co. Ltd. is also reflected from the said letter. This argument has been supplemented by the letter dated 17.01.2000, where once again the joint meeting of both the Insurance Companies was planned for settling the claim. He has emphasized on the word "settlement" to urge that both the Insurance Companies were working together to repudiate the claim of the complainant.

14. This was further fortified by pointing out to the letter dated 22.02.2000 written by the United India Insurance Co. Ltd. to the National Insurance Co. Ltd. confirming this strategy as planned between the two. He has then urged that this entire story spun around non-disclosure was an afterthought and if the nondisclosure was writ large on the face, it is not understood as to why the National Insurance Co. Ltd. did not forthwith repudiate the claim if it was certain about such non-disclosures. He submits that the failure on the part of the National Insurance Co. Ltd. to take any action on such belief of apparent non-disclosure clearly estops then from raising such a plea and he further submits that this would amount to waiver for which he relied on paragraph 18 of the judgement passed by the Apex Court in the case of Galada Power & Telecommunication Ltd. Vs. United India Insurance Co. Ltd., (2016) 14 SCC 161. He submits that this submission should also be considered as an evolving jurisprudence to hold that the Insurance Companies by withholding claims for long period in spite of being certain of their acts should amount to waiver and the

Insurance Companies should be held to forfeit their right to set up any such plea later on. He however submits that on the facts of the present case, it is established that in spite of having knowledge of all the disclosed facts regarding the policies with the United India Insurance Co. Ltd. as also the Income tax returns, there was no plausible reason for the National Insurance Co. Ltd. to have kept quiet. What he submits is that in view of all this material, the Insurance Company was not in a position to repudiate the claim at all with all the material that was available and consequently, it is estopped from taking any such ground to repudiate later on as indicated in the letter of repudiation dated 29.09.2000, which was issued after almost three years of this exercise.

15. During the course of arguments, he has also tendered the fair typed copies of certain pages of the convenience compilation and the documents on record that has been perused by us. He therefore concluded his arguments in so far as OP No. 272/2001 is concerned, urging that none of the grounds of NC/OP/164/2001_272/2001 Page | 41 repudiation are sustainable and therefore, the complaint deserves to be allowed and the claim deserves to be indemnified.

16. Mr. Amit Kumar Singh, learned counsel for the United India Insurance Co. Ltd. submitted that since his arguments are likely to take some time, he may be permitted to proceed with the arguments at one stretch on some other day, as no further time is left today. Mr. Yogesh Malhotra also urged that he would be concluding his arguments on behalf of the National Insurance Co. Ltd. after Mr. Singh concludes his arguments for United India Insurance Co. Ltd.

17. We accordingly, keeping in view the aforesaid request of the learned counsel for the parties, direct that the matters be taken up on 15th and 16th of December, 2025."

33. Mr. Amit Kumar Singh, learned counsel for the United India Insurance Company Ltd. in OP No. 164 of 2001 commenced his arguments on 16.12.2025 and the same stands recorded, which is reproduced hereinunder :

"Dated : 16.12.2025 ORDER

1. These two complaints were heard earlier on 15.04.2025, 08.08.2025, 26.08.2025 & 19.11.2025 when Mr. Joy Basu, learned Senior Counsel for the Complainants in both the Complaints advanced and concluded his submissions subject to his rejoinder after the learned counsel for the Insurance Company conclude their arguments. Accordingly, Mr. Amit Kumar Singh advanced his submissions on 15.12.2025 in OP/164/2001 defending the United India Insurance Company and justifying the repudiation dated 16.06.2000. It may be pointed out that the Complaints had earlier been decided, whereby the Complaint against the United India Insurance Company had been allowed but the Complaint against the Oriental Insurance Company Ltd., CC/272/2001 had been dismissed vide common order dated 24.11.2005. The United

India Insurance Company filed Civil Appeal No.2599/2006 before the Apex Court and the said Appeal was allowed vide judgment dated 1.10.2017 whereby the order of this Commission disposing off the Complaints was set aside and remanded to this Commission for fresh consideration. He has read out the order of the Apex Court to urge that all the documents are on record that are, according to him, required for the adjudication of the controversy and he has urged that the Complainant has sought to make NC/OP/164/2001_272/2001 Page | 42 out an unnecessary capital out of the proposal forms that have been brought on record. The arguments of the learned counsel for the Complainants have no substance inasmuch as the proposal form dated 19.03.1996 never translated into any policy and was therefore a rejected proposal. He submits that thereafter there is an undated proposal which translated into the policy dated 11.02.1997. Apart from this there is no other proposal.

2. Advancing his submissions, he has urged that the 1996 proposal form cannot be denied and that the Complainant Asha Garg in her cross-examination has admitted the same, but the same was never accepted or converted into a policy. He submits that silence cannot be construed as acceptance and to the contrary it is a clear rejection. He has cited the judgment of the Apex Court in the case of LIC vs. Raja Vasireddy Komallavalli Kamba (1984) 2 SCC 719. He submits that the signatures of Mr. Kishori Raman were very much there when the proposal was moved in 1996 and therefore it stands established that an earlier proposal had been made by Mr. Kishori Raman and this proposal was not disclosed and was suppressed while filling up the undated proposal form that resulted in the issuance of the policy on 11.02.1997.

3. To substantiate his submission that the proposal form of 19.03.1996 had been tendered stands admitted in the affidavit of Mr. Mohan Lashkari, the nephew and also one of the beneficiaries under the policy. He has pointed out towards the answer given to question No.3 which is the interrogatory at page 110 of Part-B of the convenience compilation.

4. He has then clarified the argument of Mr. Basu about the difference of the premium amount of Rs.64,000/- and odd mentioned in the policy dated 11.02.1997 as against the amount of Rs.95,500/- mentioned in the undated proposal form. Mr. Amit Kumar Singh points that there is no difference in the calculation inasmuch as the receipt dated 04.03.1997 for Rs.31,463/- added to the amount already paid results in an almost exact amount of Rs.99,451/- that was charged by the Insurance Company as premium which was short in respect of the policy acquired by the Complainant. This is justified keeping in view the letter dated 07.03.1997. Both these documents have been placed in Part-E of the convenience compilation at pages 41 & 42 respectively. He therefore points out that the undated proposal also mentions an almost equal amount of Rs.99750/- which is a correct calculation and therefore the allegation about there being a difference in the amount of premium as mentioned in the policy is an argument against record and deserves rejection.

5. He has then invited the attention of the Bench to paragraphs 2 to 6 of the Complaint to urge that the Complainant also refers to the two proposals that were tendered for acquiring the policy of Rs.10 crores, splitting it into Rs.9,97,00,000/- and Rs.3,00,000/- separately. The additional premium of Rs.31,463/- is clearly admitted and therefore there is no difference between the premium sought in the proposal form and which has been actually paid by the insured.

6. He then submits that the Complainant has come up with a case as if no proposal form had been filled up on 19.03.1996 in order to justify the non- disclosure thereof in the undated proposal form. For this Mr. Singh submitted that after the matter was remanded by the Apex Court the affidavit of the official of the Insurance Company Mrs. Hema Malini was filed on 08.09.2017 that has been filed alongwith Part-C of the convenience compilation. She categorically stated that there were two forms and the original of the form dated 19.03.1996 was available and is on record of the proceedings. She has also stated that the original of the undated proposal form even though not available, a copy thereof has been filed and apart from these two proposal forms there is no other form. She has categorically stated that the proposal form of 19.03.1996 was tendered by Mr. Kishori Raman and Mr. Singh submits that this affidavit has neither been countered nor has Mrs. Hema Malini been cross-examined. He therefore submits that facts traversed in this affidavit are a testimony by the witness of the Insurance Company that has nowhere been contradicted and therefore will be presumed to have been accepted. For this, learned counsel has relied on the decision of the Apex Court in the case of Muddasani Venkata Narsaiah vs. Muddasani Sarojana (2016) 12 SCC 288.

7. He has then invited the attention of the Bench to the affidavit of Mr. Simlote as well who also refers to the same affidavit in his evidence affidavit dated 04.01.2018. Mr. Singh has vehemently urged that even though a large number of questions were asked but he was cross-examined only on the non- production of the original of the undated proposal form, and no question was put to him regarding the existence of only one proposal form that led to the issuance of the policy dated 11.01.1997. Mr. Singh submits that the undated proposal form is clearly referable to the 11.02.1997 policy and the policy was taken on the basis of the said form. He then submits that the entire edifice of the arguments set up on behalf Complainant is without any foundation inasmuch as the suppression is writ large because while answering question No.10 (a) which is "have you ever NC/OP/164/2001_272/2001 Page | 44 proposed for accident and/or life insurance" the categorical answer given is 'No'. Mr. Singh submits that this was a clear misleading and a false statement by the proposer inasmuch as it is established that the 19.03.1996 proposal form was filled up by the insured seeking an accident policy from the same company.

8. He has invited the attention of the Bench to the extensive cross examination of Mr. Rajeev Saxena where he has categorically stated that the earlier proposal form dated 19.03.1996 had been rejected. He therefore submits that the answer to question No. 10 (c) which states "has any company declined to issue a policy to you" has been once again wrongly answered by ticking the block of "No" by the proposer namely Mr. Kishori Saran Garg. He submits that this was a deliberate and a false statement made inasmuch as the policy that was proposed vide form dated 19.03.1996 for all intents and purpose stood rejected and even otherwise the proposer was bound to disclose the said information which he did not do.

9. Thus, the aforesaid fact has been proved by the affidavit of Mr. Rajeev Saxena who in his cross examination has stated about the rejection of the said policy.

10. During the course of submissions Mr. Singh also pointed out the manner in which the proposer had been tendering different addresses and the nature of his occupation in the form dated 19.03.1996 and in the undated form which brought about the policy dated 11.02.1997.

11. He then submits that there is no denial of the signatures of Mr. Kishori Raman on the proposal forms and therefore the submission that the forms had not been filled up by the proposer or creating any doubt deserves to be rejected. He submits that the burden has been clearly discharged by the Insurance Company to prove these facts and when the signatures have not been denied, they obviously stand admitted. He therefore submits that once the signatures on the forms are established then in view of the law laid down by the Apex Court in the case of Reliance Life Insurance Co. Ltd. & Ors. vs. Rekhaben Nareshbhai Rathod (2019) 6 SC 175 paragraph 34, the contents of the document cannot be disputed. He submits that the same argument is available for the undated form relating to the 11.02.1997 policy.

12. Mr. Amit Kumar Singh has taken us through various documents to urge that there cannot be a presumption of knowledge about the status and eligibility of the complainant due to the subsequent communications when admittedly on the basis of the documents on record the proposer had clearly suppressed NC/OP/164/2001_272/2001 Page | 45 material facts without disclosing details and hence the communications referred to by the learned counsel for the Complainant are of no avail to the advantage of the proposer.

13. Advancing his submissions, Mr. Malhotra, learned counsel for the Insurance Company vehemently urged that paragraph 4 of the complaint in OP No. 272 of 2001 admits the submission of a proposal form dated 21.01.1997 applying for a Personal Accident Policy for a sum of Rs. 5 crores. He points out from the original documents that have been brought on record through the compilation dated 06.09.2017 along with an index of the original file, the letter preceding this proposal form, dated 20.01.1997. This is on the letterhead of Kishori Sharan Garg with his address at

Ganpati Exports, Hanuman Ji Ka Rasta, Tripolia Bazar, Jaipur where a request has been made to the Branch Manager of the Insurance Company for a Personal Accident Insurance Policy for a sum of Rs. 5 crores.

14. Mr. Malhotra then pointed out that the letter sent the very next day by Kishori Sharan Garg on 21.01.1997 is in connection with the same Personal Accident Policy requesting for a family package plan for a policy of Rs. 5 crores for himself, Rs. 2.5 crores for his wife Mrs. Asha Garg - complainant and Sanjeev Lashkari and Jyoti Lashkari, their children for a sum of Rs. 1.25 crores each.

15. He has then invited the attention of the Bench to the copy of the proposal form to point out that it was filled in by the Proposer Mr. Kishori Sharan Garg where he has described his occupation as "Export business". However, this proposal form has been filled for an insured sum of Rs. 5 crores where details have been given in the form itself.

16. Mr. Malhotra emphasized on question no. 7(a), (b) and (c)(i) and the answers given thereto. He submits that there is no ambiguity in the questions posed. Question no. 7(a) requires an answer to the query "Have you ever proposed for accident and / or life insurance?". The column against the same has not been ticked either against Yes or No. Mr. Malhotra submits that the complainant on the date of filling up of this form i.e. 21.01.1997 had already filled-up a proposal form dated 19.03.1996 which is subject matter of original petition no. 164/2001. Not only this he filled-up another proposal form, which even though undated, had already commenced its journey somewhere in September / October, 1996 and was finalized with the issuance of the policy on 11.01.1997 by the United India Insurance Company which is also subject matter of the above noted complaint.

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17. He points out that the proposal is for an accidental cover, and question no. 7(a) clearly demands an answer as to whether any proposal form had been filled up for accident or life insurance in the past. As noted above, the column for the answer in Yes or No remained unticked, but while answering question no. 7(b) which is "if yes, please state name of the company and amount of insurance.". Mr. Malhotra submits that 7(b) has to be read conjunctively with 7(a), in as much as, the answer to 7(b) is dependent upon and in continuity of question no. 7(a), which was left unticked. However, 7(b) has been answered by the proposer by stating the acquisition of a life insurance policy from LIC for Rs. 2 lakhs. Mr. Malhotra therefore submits that by virtue of the answer given to 7(b), he has answered question no. 7(a) as Yes and has therefore acknowledged the fact of the existence of a policy proposed by him to LIC for Rs. 2 lakhs.

18. It is therefore urged that if the answer to 7(a) is Yes, then the suppression is by concealing the proposal forms filled up by the proposer on 19.03.1996 for obtaining a policy from the United India Insurance Company and the second proposal form which is undated and was processed resulting in the policy dated 11.02.1997 issued by United India Insurance Company. He submits that the proposal was already existing and in the pipeline as on 21.01.1997, before the United India Insurance Company, when the proposal was filled up in the present case.

19. He has emphasized that the proposal form for the National Insurance Company is neither denied nor challenged.

20. He then points out to the declaration accompanying the proposal form which he has also demonstrated from the original file to urge that a solemn statement has been made of having disclosed all particulars regarding the proposal and the risk which shall be the basis of the contract between the proposer and the Insurance Company. It is urged that this declaration has been clearly breached by suppressing the fact of the two proposals made before the United India Insurance Company and making a false statement. He has then pointed out the statement made in the rejoinder affidavit in paragraph 1(a) and paragraph 2 to urge that it is alleged therein, that prior to the proposal dated 21.01.1997, no proposal for any accident insurance has been submitted to any other company much less the United India Insurance Company either for Rs. 5 crores or Rs. 10 crores. He then submits that this averment is further supplemented by a statement that even assuming the existence of such proposals the mere pendency of a proposal is not a material fact because no NC/OP/164/2001_272/2001 Page | 47 contract of insurance had come into existence on a mere proposal. Mr. Malhotra urges that these statements are patently false and contrary to record, in as much as, the proposals before the United India Insurance Company were very much there and the actual existence of the contract is not necessary for any answer to question no. 7(a), (b) and (c) which simply requires the information about proposals.

21. He then submits that question no. 7(c)(i) is "has any company declined to issue a policy to you?". The specific answer given to this question is No, which is absolutely false, in as much as, no policy was issued by the United India Insurance Company against the proposal form dated 19.03.1996 which stood declined. If the policy against the proposal form dated 19.03.1996 had not been issued, it was a clear disinclination and therefore this fact was a material fact which ought to have been disclosed both against question no. 7(a) and against question no. 7(c)(i). This is a patent material non-disclosure.

22. To support his submission, Mr. Malhotra urges that whatever is asked for is material as held by the Apex Court in paragraph 16 to 25 of Satwant Kaur Sandhu vs. New India Assurance Co. Ltd., (2009) 8 SCC 316.

23. He then points out to the cross-examination of Mrs. Asha Garg against question no. 10 and 22 and urges that the answers given are clearly inconsistent and contrary to the complaint and rejoinder affidavit. For this, he has also relied on the affidavit of Mr. Mohan Lal Lashkari to the same effect. He has read out paragraph 6 of the said affidavit to urge that the proposal form was submitted on 21.01.1997 which contained the required information, whereas the required information had been clearly suppressed. He submits that the fact in paragraph 23 of the said affidavit is also incorrect.

24. While reverting back to the cross-examination of the complainant Mrs. Asha Garg dated 02.11.2017, he has read out question no. 10 and its answer which is regarding the insured having been taken a personal accident policy for the first time to which the answer is "February, 1997". However, while answering question no. 22, Mrs. Asha Garg was asked as to how many proposals have been submitted to United India Insurance Company to which she answered "No".

He submits that these answers and the affidavits clearly indicate the contradictions in the stand and according to him, improvements have been made after the matter was remanded back from the Supreme Court. According to Mr. Malhotra, there is a somersault about the contents of the proposal, which runs contrary to the contents of the complaint and the rejoinder affidavit.

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25. He then submits that the arguments about the requirement of disclosure as urged on behalf of the complainant deserves to be discarded including the arguments about the awareness of the eligibility and other information about the proposer to the Insurance Company. He submits that in the absence of any information whatsoever no such information can be presumed and hence, the contention deserves to be rejected.

26. Mr. Malhotra has then pointed out to the letter dated 24.01.1997 wherein an oral information about the rates offered by United India Insurance Company through verbal discussions have been disclosed. Mr. Malhotra points out that it was only in respect of some quotations from the United India Insurance Company and the said information does not relate to any proposal from the United India Insurance Company. The argument that the National Insurance Company had therefore knowledge about the proposals of United India Insurance Company is absolutely incorrect as the letter dated 24.01.1997, nowhere reflects the same. The inference as alleged cannot be drawn nor any knowledge can be attributed to the National Insurance Company. He then points out that the letter dated 19.07.1997 also does not reflect any such indication.

27. It was only after the investigation was made on 22.05.1997, that unfolded the fact of the previous policies including that of the United India Insurance Company and therefore there was no knowledge prior to that, hence the suppression is established and consequently the terms and conditions of the policy have been violated.

28. He has then invited the attention of the Bench to the claim note dated 26.04.1999 and has pointed out to the recitals contained in the case history and the comments with regard to the letter dated 24.01.1997. The note categorically records that no information about any other earlier policy was known to the National Insurance Company and that the proposal dated 19.03.1996 of United India Insurance Company had not materialized nor this information was given while filling up to proposal form with the National Insurance Company. He has also urged that all this inquiry came to be investigated when letters regarding reinsurance were investigated.

29. Mr. Malhotra then submits that the allegation of the complainant that there was some collusion between the National Insurance Company and the United India Insurance Company for repudiating the claim is a wrong inference, in as much as, in the claim note referred to above, a joint effort was made for collecting information and not aimed at strategically dislodging the claim. To the NC/OP/164/2001_272/2001 Page | 49 contrary, keeping in view the nature of the misinformation and suppression, it was necessary to bring on record these facts and therefore any such inquiry made with the joint effort of the United India Insurance Company cannot be termed as any malafide act nor motives can be attributed in that regard.

30. Mr. Malhotra has read out the documents and has handed over a chart indicating the discrepancies of the addresses and the names to demonstrate the suppression in support of the arguments advanced by him. Mr. Malhotra concluded his arguments by contending that there is no doubt that in the present case there is a clear suppression of material facts pertaining to the existence of and non-disclosure of previous policies and therefore the claim has been rightly repudiated by the National Insurance Company on 29.09.2000.

31. Mr. Malhotra then urged that even in the first round of litigation, this Commission had dismissed CC No. 272/2001 and he submits that the complaint cannot survive on any novel arguments now advanced on behalf of the complainant.

32. Mr. Malhotra then advanced his submissions to distinguish the judgment in the case of Mahaveer Sharma vs. Exide Life Insurance Co. Ltd. & Anr., AIR 2025 SC 1187 to urge that on the tests laid down in the said case also, once a material fact has been suppressed, and is misleading which was detrimental for taking a decision to extend a policy benefit, then in that event the claim deserves to be repudiated as the doctrine of uberrimae fidei has been violated. He submits that the decision in the case of Reliance Life Insurance Co. Ltd. & Anr. vs. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175 is clearly attracted on the facts of the present case and the said decision has neither been over ruled or diluted by the Apex Court either in the case of Mahakali Sujatha vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. & Anr., 2024 SCC OnLine SC 525 or in the case of Mahavir Sharma (supra). He has also cited the decision in the case of Mithoolal Nayak vs. LIC of India, 1962 SCR Supl. (2) 571 to urge that any inaccuracy in the disclosure is fatal and the terms of the contract stands breached, hence the inevitable consequence is repudiation. He has cited other decisions as well alongwith his compilation of judgments which has been perused by us. He therefore concluded his arguments subject to any new submissions that might come up on behalf of the complainant.

33. Mr. Joy Basu, learned senior counsel has urged that the matter be taken up on some other date to enable him to present his concise arguments and NC/OP/164/2001_272/2001 Page | 50 effectively respond to the submissions made by the learned counsel for both the Insurance Companies.

34. List accordingly on 13.01.2026."

34. There were certain minor errors in the recording of the order dated 16.12.2025 that was corrected on 13.1.2026 and then again Mr.Basu, learned senior counsel concluded his Rejoinder as against United India Insurance Company Ltd. on 22.1.2026 which order is extracted hereinunder :

Dated : 22.01.2026 ORDER Mr. Joy Basu, learned Senior Counsel for the complainants, has advanced his submission in rejoinder in OP/164/2001. He urges by pointing out to the documents from the convenience compilation Part-A, Part-C, Part-D and Part-E to contend that the policy clearly recites that the declaration made shall form the "basis of the contract". He therefore submits that the policy dated 11.02.1997 is conclusive proof of the existence of the policy as also the recital of the date of the proposal dated 11.02.1997, which the Insurance Company has failed to produce in spite of a clear direction by the Apex Court. The proposals that have been relied on are clearly deficient and a complete mismatch, inasmuch as the date of proposal is absent, there is no seal, the premium has been incorrectly indicated and the number of assignees is also different. He has relied on the arguments already advanced by him to substantiate his submissions.

He contends that the sequence is that the proposal to the National Insurance Co. Ltd. was made on 21.01.1997 whereas the proposal to the United India Insurance Co. Ltd., which is presently involved, was made on 11.02.1997. The previous proposal dated 19.03.1996 remained undecided.

He then submits that the written statement of the Insurance Company does not deny or refer to the proposal dated 11.02.1997. Consequently, the policy dated 11.02.1997 should be presumed to be reflecting the proposal on the basis whereof the policy has been granted. The Insurance Company has been unable to dislodge this or connect it with any of the proposal forms that have been relied upon by them. There is no communication of rejection and therefore the proposal was kept pending, the information of which was not required to be disclosed as against the questions asked. He therefore submits that there is no suppression NC/OP/164/2001_272/2001 Page | 51 and the stand of the complainants has been consistent for which he has read out the pleadings, including the rejoinder, as well as the assertions made in the Special Leave Petition before the Apex Court.

To the contrary, the inconsistency is in the pleadings of the Insurance Company, inasmuch as they have stated that the proposal dated 19.03.1996 had been declined/not accepted. It is for this reason that the Apex Court while remanding the matter had called upon the Insurance Company to bring on record any such communication or evidence of a dispatch register. There is no communication and in fact there was no decision to reject the said proposal and in such circumstances the argument of the Insurance Company cannot be accepted. He then urged that the affidavit of the official Ms.

Hema Malini does not in any way improve the contention of the Insurance Company as she herself has stated that there are no other records available.

He then points out that every information was given and the policies were negotiated by the officials of the Insurance Company, two of whom appear to be named commonly in the communications, namely, Mr. R. Kumar and Mr. Suparas Bhandari. The contention therefore is there is no misrepresentation of any material fact or relevant fact which may amount to a valid cause to allege breach of the policy.

He has then cited the decision in the case of D. Srinivas Vs. SBI Life Insurance Company Limited and Ors. (2018) 3 SCC 653 to contend that the judgment in the case of Life Insurance Corporation of India Vs. Raja Vasireddy Komalavalli Kamba and Ors. (1984) 2 SCC 719 comes to the support of the complainants and the argument on behalf of the Insurance Company that there can be a deemed rejection cannot be accepted on the same logic as indicated in paras-11 and 12 of the aforesaid judgment. He submits that the suppression has to be intentional and fraudulent. There was no intention to defraud nor it has been proved by the Insurance Company and for that he has relied on the judgment of the Madhya Pradesh High Court in the case of Bhagwani Bai Vs. Life Insurance Corporation of India, Jabalpur 1983 SCC OnLine MP 10. He has then cited the decision in the case of Mahaveer Sharma Vs. Exide Life Insurance Company Limited and Anr. 2025 SCC OnLine SC 435, Para-18, to urge that it was a case of life insurance policy and the Supreme Court went on to hold that in order to construe suppression there has to be a substantial non- disclosure that would amount to influencing the decision making process. He submits that there is no material as per the inference drawn in the repudiation NC/OP/164/2001_272/2001 Page | 52 letter to establish the suppression of any material or relevant fact. He has reiterated the submission made by him in this regard and then cited the decision in the case of Kopargaon Sahakari Sakhar Kharkhana Ltd. (now known as Karmaveer Shankarrao Kale Sahkari Shakhari Kharkhana Ltd.) Vs. National Insurance Co. Ltd. and Anr. 2025 SCC OnLine SC 2442 to point out that unless the misrepresentation is fraudulent and a finding is arrived at on the basis of some evidence, the allegation of suppression cannot be construed to be an act of non-disclosure.

In brief, Mr. Amit Kumar Singh, learned counsel for the United India Insurance Co. Ltd., urged that the deception is clearly evident, inasmuch as the insured had been taking insurance by depicting separate addresses, at different times for different amounts, reciting different occupations and depicting different States as already argued earlier. He submits that the cross-examination of Anita Garg against question no.3 clearly establishes that the insured had knowledge of the policy dated 19.03.1996 which was admitted by his widow Anita Garg in her answer to question no.3. He also submits that the disclosure made by the official of the Insurance Company namely Ms. Hema Malini has not been countered by any cross-examination nor the contents thereof have been disputed. He therefore submits that the complaint is liable to be dismissed. The hearing in this matter therefore is concluded but the connected matter OP/272/2001 regarding the claim against the National Insurance Company Ltd. has to be heard finally as Mr. Basu has to conclude his rejoinder in that case as well.

As agreed by learned counsel for the parties, list on 18.03.2026.

35. The arguments in Original Petition No.272 of 2001 were concluded with the Reply of Mr. Malhotra on 30.3.2026 when orders were reserved for pronouncement.

36. Learned counsel for both the parties cited their decisions by placing reliance and also pointing out towards defects on which emphasis was laid. In short, Mr.Basu urged that while answering the questions in the proposal forms, in the case of National Insurance Company, not answering Question No.7 (a) and leaving the column as Blank did not amount to any suppression.

NC/OP/164/2001_272/2001 Page | 53 As a matter of fact, the insurance company ought to have raised its queries and therefore, it cannot take undue advantage of its own under writing lapses. It was also urged that both the insurance company had joined hands to carry out investigations and in their endeavour had collected all information regarding the information sought at the pre inception stage of the policy. The entire income credentials of the insured were clearly disclosed which is evident from the correspondence on record and he has once again relied on the ratio of the decisions that has been cited by him. He has also urged that the IRDA Protection of Policy Holders Interest Regulation of 2002 has been violated and the insurance company cannot take any undue advantage of its short comings nor can the reasons of repudiation be now supplemented to make out a new case for repudiation.

37. The submission of Mr.Basu for the purpose of defending the allegations of suppression is that any suppression has to be intentional and fraudulent and in the present case, no such evidence could be produced by the insurance company. He relies on the decision of the Division Bench of Madhya Pradesh High Court in the case of Bhagwani Bai Vs. LIC of India, AIR 1984 Madhya Pradesh page 126, para 12 to 15 and then on the provisions of Section of the Indian Contract Act which he supports with the decision of the Apex Court in the case of Kopargaon Sarkari Sakhar Karkhana Ltd. Vs. National Ins.Co.Ltd. & Anr., 2025 SCC online SC page 2442, para 36.

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38. He has also relied on the decision of the Apex Court in the case of Mahavir Sharma Vs. Exide Life Insurance Company Ltd. & Anr. 2025 SCC Online SC page 435 para 18 to urge that failure to disclose other policies, will not automatically result in any material non-disclosure. He therefore emphasizes that unless there is an element of fraud, the suppression will not be material.

39. To point out that if a column has been left as Blank, then the Insurance Company will have to show some prejudice on account of non-disclosure. He has cited the decision in the case of Canara Bank Vs. United India Insurance Company Ltd. 2020 Vol. III SCC page 455. He submits that all the income tax returns and information about the financial status were very much available.

40. He has then with the help of the chart indicated, that the arguments of Mr. Malhotra that there were different addresses seen in the undated different proposal forms, is also incorrect and therefore there was no incongruency in the disclosure of facts.

41. On the other hand, Mr. Malhotra has concluded his arguments by urging that the proposal by giving different descriptions and particulars including the personal description of the insured about his height, weight, about the addresses and the partial disclosure of only one policy were all intentionally deceptive. The insured was under a positive obligation of correct disclosure and since he had left the answer in the National Insurance Co. Ltd. proposal to Question No. 7 (a) blank and had incorrectly answered 7(b), the repudiation NC/OP/164/2001_272/2001 Page | 55 was valid. He submits that upon a reading of the answer, there is no ambiguity to allow the insurance company to make further queries. The insurer was therefore deceived by the suppression of material facts and therefore the decision in the case of Satwant Kaur would support his submissions. The insured had while seeking the policy of Rs. 5 crores from the National Insurance Company, had not disclosed the details of the policies taken from United India Insurance Company Ltd. and had simply disclosed the acquisition of a Life insurance of Rs. 2 lakhs. Thus, the arguments of both sides concluded with their submissions and citations and the matter were closed for delivery of orders.

42. Mr. Amit Kumar Singh, learned Counsel for the United India Insurance Company, while advancing his submissions has also pointed out to an Application moved by him being I.A. No.3373 of 2026 filed on 24.03.2026 whereby certain information was sought to be introduced and the documents accompanying the same were prayed for being taken on record. A copy of the said Application was served on the learned Counsel for the Complainants. During the hearing, arguments on the said Application have also been heard. The same pertains to the disclosure of information of the status of income of the insured and Mr. Singh submits that the Income Tax Returns which are being relied upon the present controversy, also became subject matter of Exhibits in a Motor Accident Claim case where the same Returns for the assessment year 1995-96 and 1996-97, that were marked as Ex.39 and 40 before the MACT, were considered and the request to lead secondary NC/OP/164/2001_272/2001 Page | 56 evidence was dismissed. Thus, the same evidence regarding proof of income which are material facts has not been accepted by another Tribunal in respect of the same accident and therefore the order passed by the Tribunal be taken on record.

43. Mr. Basu has opposed the same and has urged that order of the MACT is dated 11.04.2016 and hence no cognizance should be taken of the same as it is sought to be produced at the stage of final hearing. Mr. Basu however urged that it was the investigation carried out by the Insurance Company from the Chartered Accountant of the Complainants and his certification that the said Income Tax Returns had been duly communicated and confirmed, therefore merely because it was not verified before the MACT, the order passed therein would have no impact in view of the clear evidence regarding the inquiry of proof income made by the Insurance Company itself whereafter the policies were issued upon satisfaction thereof. He therefore submits that the said information from the MACT has absolutely no bearing in the background of the evidence already on record which has to be taken into account in the light of the decision of the Apex Court while remanding the matter to this Commission. We therefore hold that the decision has now to be taken on the basis of whatever material was there on record and even otherwise such material would not be relevant at this stage, inasmuch as, the Insurance Company has repudiated the claims way back in the year 2000 and the reasons for repudiation therefore cannot travel beyond that which already stands mentioned in the letter of repudiation which is the subject matter of the NC/OP/164/2001_272/2001 Page | 57 present controversy and has to be determined in the light of the submissions, the pleadings and the

evidence on record.

44. We may further point out that the order of the MACT is of the year 2016 and was not even referred to in the evidence of the witnesses of the United India Insurance Company that was recorded in the year 2017-18 under the orders of this Commission. We will therefore proceed accordingly and this Application would therefore stand disposed off with the final disposal of these Complaints in the light of the discussions made hereinunder and for the reasons stated hereinabove.

45. As is evident from the arguments advanced, learned Counsel have urged that the Apex Court had issued directions, and according to the learned Counsel for the Complainants, the United India Insurance Company has failed to produce and establish the factum of the actual and original proposal form. Consequently the basis of the alleged suppression contained in the proposal form on the strength whereof non-disclosure has been alleged is not proved. The United India Insurance Company has failed to establish any acceptance or rejection of the proposal made on 19.03.1996 and have also failed to produce the original of the proposal dated 11.02.1997 which is a clear breach of the directions of the Apex Court Judgment dated 11.01.2017. He further submits that the Insurance Company failed to produce any corroborative or direct evidence to establish the intimation or acceptance of any such proposal or its rejection with reference to the proposal form dated 19.03.1996. He submits that it was categorically taken notice of by the Apex Court in the NC/OP/164/2001_272/2001 Page | 58 judgment dated 11.01.2017 and it was opined that the records relating to the manner in which it was processed or any communication made including the "Dispatch Registers etc." were required to be produced. The United India Insurance Company has failed to do so and therefore this failure once again demolishes the reasons for repudiation as the Insurance Company has failed to discharge its burden as directed by the Apex Court and even otherwise.

46. At this stage, we may refer to the judgment of the Apex Court dated 11.01.2017 and we find that the matter had proceeded in terms of the said directions and the affidavits of the Insurance Company as required were brought on record and the statements of its witnesses were also recorded who have been cross-examined. We will discuss the same but for the time being we may record that there is no dispatch register or extract thereof to indicate any communication of acceptance or rejection of the policy dated 19.03.1996. No original proposal form for the policy dated 11.02.1997 has been produced. The Insurance Co. has only relied on the photostat copy of undated proposals.

47. In the background above, we now proceed to record the communications and then the evidence thereafter. To begin with the case of the insurance coverage by the United India Insurance Company as noted above, the policy that was issued for Rs.9.97 Crores bears the date of 11.02.1997 issued on 19.02.1997. The same is extracted hereinunder:

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48. An additional premium was also charged that stands endorsed on 07.03.1997. The second policy of Rs.3 Lacs which states the date as NC/OP/164/2001_272/2001 Page | 60 11.02.1997 issued on 07.03.1997 with the same set of nominees is extracted hereinunder:

49. Both the policies bear a column reciting the "Date of Proposal and Declaration" with a clear endorsement of the said date as 11.02.1997. Neither any proposal form or declaration of the said date has been produced. The forms relied on by the Insurance Company are undated and only photostat copies.

50. A perusal of the policies would indicate that they refer to a proposal form. It is these undated photostat copies of proposal forms that were not produced before this Commission earlier which gave rise to the doubts that seems to have impelled the Apex Court to remand the matter for redetermination.

51. The parties have now after remand tendered their documents in both the claims through convenience compilations that will be referred to hereinafter.

52. The undated proposal forms of the United India Insurance Company which form the major dispute are five in number even though Mr. Singh states that there were only two proposal forms, one dated 19.03.1996 and the other an undated photocopy which according to him crystallized into the policy dated 11.02.1997, copy whereof has also been filed with the affidavit of Mr. Simlote, the development officer, and also referred to in the affidavit of Mrs. Hemamalini, the Director holding charge of MD of the United India Ins. Co. Ltd. These photostat proposal forms have been filed before this Commission by the Insurance Company that are as follows:

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NC/OP/164/2001_272/2001 Page | 64 NC/OP/164/2001_272/2001 Page | 65
NC/OP/164/2001_272/2001 Page | 66 NC/OP/164/2001_272/2001 Page | 67
NC/OP/164/2001_272/2001 Page | 68 NC/OP/164/2001_272/2001 Page | 69
NC/OP/164/2001_272/2001 Page | 70 NC/OP/164/2001_272/2001 Page | 71
NC/OP/164/2001_272/2001 Page | 72 NC/OP/164/2001_272/2001 Page | 73
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53. A perusal of the first proposal form indicates the date of 19.03.1996. A comparison of the date 19.03.1996 with the date on the actual policy issued to the insured dated 11.02.1997 does not match at all and therefore is not the proposal form for the policy in question.

54. The other photostat proposal forms are undated and have overwritings on the calculations. These proposal forms have neither the date nor the year and the number of nominees is only two whereas the policy has four nominees. There is a difference in the premium calculation as well. The photocopies of the policies also do not indicate dates nor do they have similarities in contents, yet they appear to be photocopies of one another and they also bear the seal of the insurance company and the signatures of the insured. These forms, even though bear signatures of Mr. Garg that appear to be uniform and to the visual eye, similar to other documents signed by Mr. Garg, could have been possibly signed blank to facilitate it being filled up while being processed. But the variation in contents do raise serious presumptive doubts that do not clarify the contents by any other evidence

by the United India Insurance Co. Ltd.

55. Thus even assuming that there was one of these proposal forms, the same does not get connected with the policy actually issued to the insured, inasmuch as, the policy refers to a proposal and declaration dated 11.02.1997 in respect of the policy of Rs.9.97 Crores as also of Rs.3 Lacs that has not been produced. None of these proposal forms therefore match with any proposal dated 11.02.1997, yet the two policies for Rs. 9.97 crores and Rs. 3 NC/OP/164/2001_272/2001 Page | 75 lakhs respectively have been issued. The contention of Mr. Basu is that the Insurance Company has failed to produce that proposal form which was required to be gone into and assessed as per the directions of the Apex Court. On the other hand, learned Counsel for the Insurance Company, Mr. Singh has urged that there is no other proposal form, and therefore in the absence of any proposal form dated 11.02.1997 we have been unable to discover any other evidence so as to definitively co-relate the policy with one of these proposal forms. However, in the absence of any other proposal form, the proposal form relied upon by the Insurance Company has to be assessed as noted. The Apex Court had also indicated that the dispatch register etc. may be required to be produced in order to establish that there had been a communication of either acceptance or rejection of the proposal but no such evidence of despatch register has been produced by the Insurance to establish the same.

56. Mr. Basu has therefore urged that in these circumstances there is no basis for treating the answers stated to have been given by the complainant appearing in the photocopy of the undated form as alleged to be misleading or amounting to any suppression.

57. There is therefore no identifiable proposal form produced to establish the existence of the proposal form dated 11.02.1997 nor any document or direct communication to that effect to prove its existence which amounts to a clear failure on the part of the Insurance Company to produce the relevant and NC/OP/164/2001_272/2001 Page | 76 material document that was desired by the apex court to be examined and considered afresh.

58. In our considered opinion, the undated proposal forms with all their errors, discrepancies and overwritings are neither credible nor are possessed of any probative value of their contents to connect them with the policy issued on 11.02.1997.

59. It appears that these undated, incomplete and reflecting different information forms, even though do bear the signature of the insured, might have been filled up by somebody several times on a Xerox copy of a presigned blank form for adjusting the proposal while permuting the premium for the two split policies of Rs. 9.97 crores and Rs. 3 lakhs and then scratching it out or there could be separate forms as Mr. Simlote in his examination has referred to have handed over four proposal forms to Mr. Garg. They were therefore neither complete proposals and seem to be tentative preparatory proposals and that is why they appear to remain undated. These proposals do not seem to be the final proposal dated 11.02.1997 that has been not produced by the Insurance Company. Nonetheless there was a proposal form that must have led to the issuance of the policy.

60. In the absence of the proposal form dated 11.02.1997, there is therefore no valid reason or proof available to construe or infer any suppression or wrong disclosure by the insured. The mystery of the original proposal could not be unravelled by the Insurance Company.

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61. We may then reflect on the communications that do indicate some negotiations for the two policies from the United India Insurance Co. Ltd. in 1996.

62. The contention of non-disclosure of the policy from the United India Insurance Company Ltd. is in two parts. The first is regarding the proposal form dated 19.03.1996. The proposal in that policy was only for Rs. 5 crores.

63. We may point out that the Insurance Company has also taken a stand about the existence of the original proposal form dated 19.03.1996 which was a proposal for a policy of the insured amount of Rs.5 Crores. This proposal dated 19.03.1996 had already been filed in the earlier round of litigation alongwith an index on 19.07.2005 vide Diary No.1467. This proposal never got converted into any policy and it was a proposal for coverage of Rs.5 Crores only. Alongwith the same index, was also included a letter from the Regional Office addressed to the Divisional Office of the Insurance Company at Jaipur requesting for the Income tax returns of Late Kishori Sharan Garg for the accounting year from 31.03.1994 to 31.03.1995. We will refer to this document in respect of the other contention about the disclosure of income tax returns, but for the time being, the proposal form dated 19.03.1996 did exist but only for a coverage of Rs.5 Crores against which no policy was ever issued. There is no communication on record accepting the said proposal and in fact, the proposal for assurance and coverage of Rs.5 Crores was never accepted.

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64. The stand of the Insurance Policy is that this disclosure was essential when the policy in question for Rs.10 Crores was taken inasmuch as the proposal dated 19.03.1996 is not denied and if it was not accepted, then it should be deemed to have been rejected. The submission of Mr. Amit Kumar Singh for the Insurance Company is that the questions posed in the proposal form require a clear recital as to whether any previous policy was proposed, taken or rejected and therefore, the insured was bound to disclose the existence of the said form in the fresh (undated proposal) of the policies dated 11.02.1997 which was concealed and suppressed. We are not impressed by this argument of the Insurance Company for the reason that it is not the case of the Insurance Company that the said proposal was accepted or any policy of a coverage of Rs.5 Crores was given. The said proposal form therefore, remained a dead letter and was never pursued. There is no evidence that the proposal dated 19.03.1996 was sought to be revived or renewed. In effect what can be inferred is that it stood withdrawn or more practically abandoned without any trace of life. The Insurance Company did not reject the same.

65. There is no communication either by the Insurance Company intimating the rejection of the said proposal. It is for this reason that the Apex Court had called upon the Insurance Company to

produce any such communication or the dispatch registers to substantiate the same. In the absence of any such compliance by the Insurance Company, there is a complete failure to discharge this burden by the Insurance Company regarding the proposal form dated 19.03.1996 and therefore, the argument that it should be deemed to NC/OP/164/2001_272/2001 Page | 79 have been rejected, and hence the Complainant ought to have treated it as rejected and answered the questions accordingly, is a far-fetched unacceptable argument. If the Insurance Company has not been able to demonstrate its rejection, then there cannot be an allegation sustained to believe that it was a fraudulent suppression by the Complainant. The fact of rejection could have been communicated or declined which was not done.

66. To the contrary, the communication attached with the compilation dated 19.07.2005 seeking information about the Income tax status of the insured on 24.05.1996 indicates that the Insurance Company was still exploring to collect information possibly in respect of some other proposal and therefore to presume a deemed rejection of the proposal dated 19.03.1996 is contrary to the evidence placed by the Insurance Company. The Insurance Company therefore cannot blame the insured to have suppressed a fact of rejection or having answered the question in the proposal form in respect of the 11.02.1997 policy incorrectly. The proposal form dated 19.03.1996 having not been accepted, seems to have outlived its utility for any purpose and cannot be treated to be a rejection in the absence of any implied or express communication. At least we are unable to infer or construe any rejection as suggested by the learned counsel for the Insurance Company.

67. The policy with the United India Insurance Co. Ltd. dated 11.02.1997 is of Rs. 10 crores and comprises of two policies, one for Rs. 9,97,00,000/- and the other for Rs. 3 lakhs. Thus, for all intents and purposes, the proposal form NC/OP/164/2001_272/2001 Page | 80 dated 19.03.1996 is nowhere concerned with the policy in question and the same was not the basis of the policy dated 11.02.1997.

68. It is therefore necessary to locate the genesis of the policy in question relating to the proposal of Rs. 10 crores and for which we find that fortunately, there are records now available that form part of the additional documents that have been produced after remand from the Supreme Court. A perusal thereof indicates that with regard to the current policy of Rs. 10 crores, one proposal form is stated to have been dispatched by Mr. L.C. Gupta, the Branch Manager on 08.10.1996 to the Divisional Office of United India Insurance Co. Ltd. at Jaipur. The said letter is extracted hereinunder:

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69. The journey of some proposal form that remains somewhat unidentified and is undated, therefore did commence on 08.10.1996.

70. This letter has to be read with the affidavit of Mr. Rajeev Simlote, the Development Officer that has been filed on 04.01.2018 and has already been NC/OP/164/2001_272/2001 Page | 82 extracted hereinabove. The said affidavit dated 22.12.2017 refers to the visit by Mr. Simlote to the office of Mr. Garg in respect of the policy coverage of Rs. 10 crores. The affidavit then states that one or two days

later, he had again visited Mr. Garg's office along with Mr. L.C. Gupta, the Branch Manager of United India Ins. Co. Ltd. and had requested him to fill-up the details in the proposal form that was done by him and signed. This proposal form of United India Ins. Co. Ltd. has been filed along with the affidavit of Mr. Simlote and is the undated proposal form which is under contest. The affidavit of Mr. Simlote does not indicate any date of visit along with Mr. L.C. Gupta, but it seems that the said visit was followed by the filling-up of the undated proposal form that appears to have been dispatched with the letter dated 08.10.1996. We can presume that Mr. Simlote and Mr. L.C. Gupta had visited the insured Mr. Garg for the said purpose prior to 08.10.1996 which can be either September or the first week of October, 1996 as the letter could not have emanated without the proposal being signed and offered by Mr. Garg. Whether Mr. Garg signed a blank form or was it partly filled up are all doubts but the fact remains that it is undated.

71. This proposal form which is undated is a proposal for the coverage of Rs. 10 crores and was a fresh proposal, and therefore can be related to the policy in question, but unfortunately it does not bear any date nor does the declaration bear any date to connect it with 11.02.1997 as mentioned in the policy. The affidavit of the insurance officials do indicate another proposal for Rs. 10 crores, other than the earlier proposal dated 19.03.1996 that was only NC/OP/164/2001_272/2001 Page | 83 for Rs. 5 crores. Thus, this much can be inferred that Mr. Garg had offered a fresh proposal to United India Ins. Co. Ltd. for Rs. 10 crores that was in his knowledge. However, for the limited purpose of knowledge to the insured about the proposal form having commenced its journey at least on 08.10.1996 on emerging facts seems to be certain even if the contents of the undated form are doubtful. The reason is, that it is the proposal of the coverage of Rs. 10 crores, which ultimately resulted in the issuance of the current policy.

72. To confirm this, we may further refer to the said proposal having been forwarded by the Divisional Office through the then Senior Divisional Manager, Mr. R. Kumar on 09.10.1996. The letter dated 09.10.1996 has also been made available and is extracted hereinunder:

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73. A perusal of the same at the end confirms the proposal for the coverage of a policy for Rs. 9.97 crores and another coverage of Rs. 3 lakhs under two tables that was proposed and forwarded by Mr. R. Kumar.

74. It may be pointed out that Mr. R. Kumar seems to be the next link in the forwarding of the proposal that was received from Mr. L.C. Gupta and was NC/OP/164/2001_272/2001 Page | 85 sent to the Regional Office. The Regional Office in turn dispatched the said letter to the Head Office at Madras vide a letter dated 22.10.1996 that was received in the Head Office on 04.11.1996. The said letter is extracted hereinunder:

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75. The letter has been signed by Suparas Bhandari, the Regional Manager and once again refers to the same proposal of the policy under the heading of two tables, one for Rs. 9.97 crores and the

other for Rs. 3 lakhs (total sum insured Rs. 10 crores)

76. It may be pointed out that while dispatching the letter, the Divisional Office had also dispatched the statement of assessable income duly certified by the Chartered Accountant, Income and Expenditure Account, Balance Sheet and most importantly the Income Tax Return form for the assessment year 1995-1996.

77. The letter dated 22.10.1996 extracted above that was sent to the Head Office also refers to the Income Tax documents for the assessment year 1995-1996. The proposal was recommended for acceptance.

78. Another letter from the Regional Office was sent to the Miscellaneous Technical Department of the Head Office by Mr. Brij Syal, Manager on 05.11.1996 which is extracted hereinunder:

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79. The Madras Office referred the said insurance coverage to the Re- insurance Department to arrange for a re-insurance keeping in view the substantive proposal of Rs. 10 crores of coverage. This letter dated 14.11.1996 in respect of the same proposal has also been placed for perusal.

NC/OP/164/2001_272/2001 Page | 88 The Divisional Office wrote a letter to the Branch Office on 21.11.1996 intimating that the Regional Office had advised to further furnish the Income Tax returns for the year 1996-1997 for necessary approval. This letter has also been signed by Mr. R. Kumar, the Senior Divisional Manager and is extracted hereinunder:

80. The same Divisional Manager dispatched a communication to the Regional Office on 18.12.1996 forwarding the Income Tax return of 1996-

1997. The same is extracted hereinunder:

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81. The Regional Office forwarded the same along with the intimation of the gross total income of the insured to the Head Office at Chennai vide a letter dated 23.12.1996 which is extracted hereinunder:

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82. Responding to the same, the Head Office intimated the Regional Office that the reinsurance could not be arranged. Therefore the policy was directed to be restricted only to death and permanent total disablement for a sum insured of Rs. 10 crores with the revised benefits mentioned under the table 4.

NC/OP/164/2001_272/2001 Page | 91 The description thereon is given and the said letter dated 28.01.1997 is extracted hereinunder:

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83. The Miscellaneous Department of the Head Office wrote a letter reiterating the same on the same date i.e. 28.01.1997.

84. The Regional Office dispatched a request to the Head office on 03.02.1997 requesting that they have yet not received their approval and the said letter is extracted hereinunder:

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85. In between the reinsurer through M/s. Professional Risk Management had written a letter to the Head Office on 06.02.1997 confirming the negotiations regarding the reinsurance of the said proposal of Rs. 10 crores which letter is also on record.

86. The Regional Office wrote to the Divisional Office on 07.02.1997 intimating about no success achieved for reinsurance and therefore the issuance of separate policies was advised with the conditions mentioned in the said letter dated 07.02.1997 which is extracted hereinunder:

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87. A copy of a similar communication has also been placed on record with a request for acceptance of reinsurance.

88. The Branch Office after this process having undergone through the letter dated 11.02.1997, intimated the Regional Office that two cover notes have been issued and copies of the cover notes were referred to and attached therewith.

89. This entire narration of facts supported by the aforesaid documents does indicate that the proposal was noted duly signed by the insured for its acceptance that saw its journey commence at least on 08.10.1997. The signatures of Mr. Kishori Sharan Garg are available on the said undated proposal form. Not only this, the Income Tax return of 1996-1997 was also demanded that was supplied. This must have been done after obtaining it from the insured Mr. Garg and therefore the insured preponderantly, in all probability, had knowledge of the commencement of this proposal and had tendered his information which was being processed intensely by all levels of the office of the Insurance Company right from the Branch Office upto the Head Office as is confirmed by the complainant. The fresh policy for the coverage of Rs. 10 crores therefore was initiated by Mr. Garg through the Divisional Officer, Mr. Simlote and the Branch Manager of United India Ins. Co. Ltd., Mr. L.C. Gupta. Consequently, there is every reason to believe that it is this proposal which had been forwarded and was being processed that ultimately resulted in the policy of the exact coverage of Rs. 9.97 crores and Rs. 3 lakhs respectively (Total Rs. 10 crores) that is also referred to in the NC/OP/164/2001_272/2001 Page | 96 letters extracted hereinabove. Consequently, there was no

other proposal except the coverage for these two policies that was being negotiated and this could not have been without the proposal form and within the knowledge of the insured Mr. Kishori Sharan Garg.

90. This Commission had been called upon by the Apex Court to assess the evidence, but as already indicated above, the original proposal form could not be produced by the Insurance Company to confirm the status of the contents of the proposal form except that the undated proposal was for Rs. 10 crores and was in two parts as referred to above. The insured on 11.02.1997 received the policy for a 10 Crore coverage from United India Ins. Co. Ltd. on the basis of such an exercise, but the fact remains that the policy states the date of the proposal and declaration as 11.02.1997 which does not match with the undated proposal form. Nonetheless, the fact of knowledge to the insured about the coverage having processed in the manner aforesaid cannot be doubted. The policy was not taken all of a sudden on 11.02.1997 and as noted above, it had commenced its journey much earlier, at least prior to 21.01.1997 which is the date of the proposal form for National Insurance Company.

91. The insured having knowledge about the proposal which ultimately culminated on 11.02.1997 may raise a doubt about the endorsement of the date of proposal and the declaration in the policy of the United India Insurance Co. Ltd. as 11.02.1997, but in view of the aforesaid fact, the processing of the proposal on the request of the insured had already commenced its journey NC/OP/164/2001_272/2001 Page | 97 prior to 08.10.1996. There are doubts about the contents of the proposal, but its initiation by Mr. Garg and knowledge thereof to him cannot be suspected.

92. At this juncture, we will have to give credit to the affidavit of Mr. Simlote to that extent where he has disclosed the proposal form having been collected by him and Mr. L.C. Gupta, which was the proposal form that seems to have been forwarded by Mr. L.C. Gupta on 08.10.1996.

93. Needless to repeat that the insured died in the accident on 27.03.1997.

94. The intimation to the United India Insurance Company was sent on 31.03.1997 by the Complainant requesting for processing the claim documents. The Insurance Company vide letter 08.04.1997 intimated the complainants that Mr. R. L. Aggarwal had been nominated and deputed by the Insurance Company to do the needful for processing the claim. Certain documents were dispatched on 12.04.1997 and the claim form was also filled up giving the information about the accident along with death certificate and the FIR etc.

95. The direction of the Apex Court to assess the evidence after calling for the records vide judgment dated 11.01.2017 were complied with and as enumerated in the sequence of events disclosed at the outset, we now proceed to deal with the same.

96. From the order-sheet dated 02.05.2017 and 24.05.2017, it appears that the learned counsel for both the Insurance Companies had proceeded to collect the records and time was therefore, granted to file affidavits to the extent the records were available.

97. In OP/164/2001, the United India Insurance Company, through its officials, filed affidavits and documents separately and therefore, we are proceeding with the evidence in this Petition. The order-sheet dated 26.07.2017 quoted above records that the Insurer (United India Insurance Company) has not been able to produce either the original proposal on the basis of which, the policy in question was issued or the dispatch registers containing entries of sending either intra-office communications or the communications if any, sent to the insured. Nonetheless, in this background, the Commission directed the Managing Director to make one final effort and file his affidavit alongwith the correct copy of the proposal, on the basis of which, the policy was issued. Needless to remind that the policy is dated 11.02.1997 and therefore, it is the proposal form of this policy and the communications related thereto as well as the dispatch registers that were required to be produced.

98. We therefore now come to the other part of the direction of the Apex Court for the production of the original proposal forms and communications, if any, in order to co-relate it with the policy that was actually issued on 11.02.1997. The remand was therefore, specifically calling upon the Insurance Company to produce all such documents from their respective Offices and to lead evidence if any, to demonstrate and substantiate the allegation of the Insurance Company about the suppression of information of any previous policy.

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99. We have already noted above that the order-sheet dated 26.07.2017 recorded the fact of no document having been produced, including the original proposal or the dispatch registers containing the entries of sending either intra-office communications or the communications if any, sent to the insured and therefore, the Managing Director was ultimately called upon to file his affidavit.

100. We may point out that the aforesaid situation arose as the affidavits had not been filed as desired.

101. On record, what we find is that there is an application dated 25.07.2017, a copy whereof was served on the learned counsel for the Complainant who was then appearing, Mr. Vaidalingam at about 03:35 pm. This application was filed by the United India Insurance Company praying for condoning the delay in complying with the order dated 24.05.2017. The said application, para-4 onwards, reads as under:

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102. Alongwith the said application, there are three affidavits dated 17.07.2017 by three officials of the Insurance Company, identically worded. The affidavits are of Dr. Jagbir Singh Dahiya, General Manager, United India NC/OP/164/2001_272/2001 Page | 101 Insurance Company Head Office, Chennai; Ramesh Chand Sharma, Divisional Manager, United India Insurance Company, Jaipur and Haresh Kumar Patni, Branch Manager, United India Insurance Company, Jaipur. What is noticeable is that the Branch Manager of United India Insurance Company Mr. Patni, in his affidavit, states that all correspondence with regard to the proposal and the claim, had been

forwarded to the Divisional Office, who would, in turn have forwarded the same to their Regional Office for seeking approval and therefore, the records in respect of the above claim were not traceable in the Branch. He also states that the letters which were sent to the Divisional Office, their dispatch registers are also not traceable and as a matter of practice, after every few years, old records are destroyed. The affidavit in para-2 to 5 categorically states the same which is extracted herein under:

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103. Then comes the affidavit of Mr. Rajeev Kumar Saxena, Regional Manager who states that he has looked up the records at the Regional Office and he states that he was attaching the complete records whatever was found NC/OP/164/2001_272/2001 Page | 104 and available in the Regional Office. To the same effect is the affidavit of Dr. Jagbir Singh Dahiya.

104. It may be pointed out that the order dated 26.07.2017 was passed after the aforesaid affidavits were sought to be placed through the application dated 25.07.2017 and it was thereafter that it was categorically recorded that the insurer had not been able to produce either the original proposal or the dispatch registers, and it is in this context that a direction was issued to the Managing Director to file his affidavit.

105. A perusal of the order-sheet dated 31.08.2017 also extracted herein above records that the senior counsel appearing for the Insurance Company made a statement that since there was no Managing Director available at that point of time and that another Director was holding additional charge, was confirmed by the Regional Manager Mr. Gujral who was present before the Commission. It was further informed by him that the Director who was presently in charge namely Smt. P. Hema Malini, be permitted to file the affidavit as directed on 26.07.2017. The Commission accordingly, granted the said permission and an affidavit was then filed by Smt. P. Hema Malini dated 08.09.2017. The same is extracted herein under:

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NC/OP/164/2001_272/2001 Page | 107 NC/OP/164/2001_272/2001 Page | 108
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106. This affidavit, for the first time, narrates in para-3 that there were two proposal forms filled up by the insured; one dated 19.03.1996 and another proposal form which was undated on the basis of which the "instant policy"

had been issued. The affidavit contests the stand of the Complainant by stating that the undated proposal form had not been disputed earlier and had only questioned the form dated 19.03.1996 as only a photocopy had been produced. The original form was later on produced in the earlier round on 19.07.2005 and has been noted by us herein above.

107. It is therefore, urged that the undated proposal form is now being disputed which is an after-thought. We are unable to appreciate this logic in the affidavit of Ms. Hemamalini after the order of remand that has placed the burden on the Insurance Company specifically to produce the original of the undated form on the basis whereof the policy in question came to be issued. The form dated 19.03.1996 is of no avail or relevance as it does not and cannot relate to the policy dated 11.02.1997 as reasoned out above. The Apex Court had therefore opened the inquiry relating to the existence and probative value of the undated proposal form which the United India Insurance Co. Ltd. is now stating to be the proposal form. Thus, to contend that the argument of the Complainant is an after-thought, is not correct, more so when the order of remand has been passed on an Appeal by the Insurance Company itself and the doubt being created by its own contentions and the photostat copies of the proposals referred to above.

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108. The affidavit of Mrs. P. Hema Malini further states that the matter is about 20 years old and the available records have been filed and no further records other than those, which have already been filed, are available in the Head Office in respect of the present matter. There is a categorical statement in para-9 of the affidavit quoted above that the original undated proposal form, on the basis of which the present Insurance Policy was issued, is not available in the Head Office nor are the dispatch registers available. It is only a photostat copy that has been filed.

109. It is thus clear that with the aforesaid admission on oath, the direction of the Apex Court for production of original records and the original proposal form or dispatch registers remains unsatisfied and therefore, the burden by the Insurance Company remains undischarged. The said form relied on by the Insurance Company has been vehemently contested both on its existence and its contents by the complainant.

110. Para-10 of the said affidavit confirms that the Regional Manager Mr. Saxena had informed that whatever documents were available were filed with his affidavit dated 13.07.2017, and that no other records are available including the original undated proposal form. It is therefore, confirmed that the original of the undated proposal form was neither available in the Head Office nor with the Regional Office. The same is the recital about the Divisional Office on the basis of the information received from Mr. Ramesh Chand Sharma, the Divisional Manager. To the same effect, in para-12 is the recital about the information from the Branch Office and it is thus confirmed that none NC/OP/164/2001_272/2001 Page | 112 of the original records including the original undated proposal form or dispatch registers were available and being more than 20 years old, are not traceable. Not only this, in para-13 & 14, it has been stated that the file of the counsel for the Insurance Company was also got inspected and such records are not available in his file as well and therefore, inspite of the best efforts, whatever record was available, has been filed and no other record was available with the Company.

111. What is revealing is para-16 of the affidavit which states that a photostate copy of the undated proposal form, on the basis of which, the insurance policy was issued, was being filed.

112. Then comes an affidavit of Mr. Rajeev Simlote, the Development Officer, dated 04.01.2018 that was filed before the Commission through Diary No.821 on 05.01.2018. Mr. Simlote discloses himself to be the Development Officer of United India Insurance Company and was working as such in the year 1996-1997. His narrative is yet another evidence that has been introduced by the Insurance Company through an affidavit that was sworn and verified on 22.12.2017 accompanied by the photocopy of the undated proposal form, which according to Mr. Simlote, was made the basis for issuance of the policy in question. The said affidavit alongwith the photostat copy of the form, is extracted herein under:

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113. A perusal of the said affidavit would demonstrate that Mr. Simlote, as the Development Officer, had negotiated the policy with Mr. L.C. Gupta, the NC/OP/164/2001_272/2001 Page | 117 then Branch Manager and had got the said form filled up with a request to Mr. Garg to provide the details. According to the affidavit, he had filled up the details in the presence of Mr. Simlote and had signed the form in Hindi. The affidavit in para-5 also states that the income tax returns would be required which had been provided to him by Mr. Garg. On receipt of the form, the same had been forwarded to Mr. Gupta, the Branch Manager. The affidavit further states that at the time of negotiating the said proposal, no information was given to him about any earlier policies. In para 8, Mr. Simlote records that the Insurance Company, instead of giving one consolidated policy for covering Rs.10 Crores risk, 2 separate policies for Rs.9.97 Crores and Rs.3 lacs were approved by the Insurance Company and issued accordingly. The affidavit states that at that time, an oral request was made by Mr. Garg that he had requested for two nominees and that two more names should be added and accordingly, the policy names two more nominees.

114. The affidavit further states that the Branch Manager had duly signed the cover note and that Mr. Garg had not informed him about having obtained another insurance policy from National Insurance Company.

115. It may be pointed out that Mr. Simlote, with his affidavit, had enclosed the proposal form that was made subject matter of contest as well as evidence and cross-examination of Mr. Simlote.

116. In continuation of the aforesaid Affidavit of Mr. Simlote his examination in chief and cross-examination which runs into almost 218 paragraphs has been recorded and has also been perused by us. The Commission had NC/OP/164/2001_272/2001 Page | 118 assigned the duty of recording of this evidence to a retired additional District Judge Mr. Chopra who also tendered his reports regarding the recording of evidence and production of original records to be put to the witnesses.

117. A perusal of the said Affidavit and the cross-examination confirms the undated status of the proposal form. Mr. Simlote had also admitted having handed over four proposal forms to the insured.

118. It is thus clear that the photocopy of the undated proposal form cannot be with certainty said to be the photocopy of the original form in as much as the policy categorically recites the existence of the proposal form dated 11.02.1997 (and not an undated form) and the issuance of the policy on the basis thereof.

119. As noted above there are five proposal forms, one dated 19.03.1996 and the other four forms are undated photostat copies of forms out of which one of the proposal forms has been appended alongwith the Affidavit of Mrs. P. Hemamalini, the Managing Director and has been filed with the affidavit of Mr. Simlote. It is thus clear that the production of four undated photostat copies makes the situation for assessment more doubtful than expected. However the proposal form which has been filed alongwith the Affidavit of Mrs. Hemamalini and that of Mr. Simlote admittedly does not contain any date. There is no explanation by the Insurance Company as to why the said form is undated. Mr. Simlote in his examination had referred to four forms being handed over to Mr. Garg.

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120. A comparison of the four forms indicate a variation in the names of nomination as well as the calculations made and at one place having been scratched out. It was therefore incumbent on the Insurance Co. to establish from the original to connect it with the date 11.02.1997. Thus, the Insurance Company has been unable to establish as to which is the exact photocopy of that proposal form that had been tendered on the basis where of the policy dated 11.02.1997 was issued.

121. This being the position of the evidence, the insured cannot be indicted for having tendered any false information or suppressed any fact or for having answered a question incorrectly, when the Insurance Company has been unable to produce the original proposal form. The Argument of Mr. Singh for the Insurance Company that there were just two proposal forms one dated 19.03.1996 and the other undated therefore stands contradicted with the production of these forms and the statement of Mr. Simlote.

122. Apart from this, even if there was only one form and was photocopied several times, there is no explanation as to why there is a difference in the names of the nominees if the other forms are photocopies of the first photocopy which is also being relied by the Insurance Company through the affidavit of Mrs. Hemamalini and Mr. Simlote. There is no explanation as to why there are scratches in the calculation of the premium which do not occur in the other forms. Thus, it is not clear as to which of these forms was actually filled up even though it is stated that the form bears the signature of the insured in Hindi.

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123. It is correct that the photocopies reflect the same type of signatures but the Insurance Company has been unable to establish as to which was the exact proposal to enable us to appreciate the argument of incorrect or false disclosure amounting to suppression. The evidence therefore which could have been conclusively produced remains absent and the entire argument is based on some sort of a secondary evidence in the shape of photostat copies which even otherwise under the

Ordinary Law of the Land is inadmissible in the absence of the originals. The contradictions and variations in this important link of evidence cannot qualify as cogent evidence of probative value. We therefore find the attempt of the Insurance Company to have ended in failure in proving their own documents.

124. In addition to the aforesaid evidence of Mr. Simlote, the affidavit of Mr. Rajiv Kumar Saxena, the Regional Manager of United India Company has also been filed. Mr. Saxena was also examined and cross-examined and his testimony has also been maintained on record. While answering question number 32 and 33, Mr. Saxena admits that the proposal has to be filled with a date and is also the prevalent system. While answering question number 34, he has stated that a blank signed proposal form not bearing any date, will not be ordinarily forwarded but it would depend on circumstances. He has further while answering question number 41 confirmed not to recollect in his carrier having processed any blank signed proposal. He however testified the approval of the said proposal. He further testified that on 29.01.1997 a proposal was processed where after the policy was issued. He also testified NC/OP/164/2001_272/2001 Page | 121 regarding the sending of internal communications on 01.05.1996, 24.05.1996 and the letter dated 05.11.1996 as well as the letter dated 07.02.1997.

125. Then comes the affidavit of Mr. P. K. Arora, the Manager of the United India Insurance Company at the Regional Office.

126. A perusal of these affidavits also nowhere indicate the proof of the date on which the proposal form was filled up and as to why it remained undated. It goes without saying that the deposition of all the insurance officials was based on the said photocopy of the undated proposal form in the complete absence of the original records.

127. We therefore find it difficult to accept the veracity or probative value of the Photostat copy of the forms that have been produced by the United India Insurance Company to believe the existence of the proposal form to possibly infer any suppression or non-disclosure on the part of the insured.

128. Having discussed the evidence and the facts narrated above, the United India Insurance Co. Ltd. has been unable to establish the authenticity of the Photostat copies of the proposal forms relied by it and even if one of the proposals which remains undated is treated to have resulted in the issuance of the policy dated 11.02.1997, then there is no convincing evidence to establish as to which of these proposals did finally end up in the issuance of the policy as all of them are undated, and no proposal form dated 11.02.1997 has been produced by the Insurance Company. Applying all the rules of prudence as enshrined in the principles of the Indian Evidence Act, we do not find any material to conclude that the declaration made in any of these NC/OP/164/2001_272/2001 Page | 122 undated proposal forms and the answers given therein were an incorrect and deliberate false disclosure by the insured as the photostat copies remain tentative and unsubstantiated. It is for this reason that the Apex Court had remanded the matter back, but with the production of these photostat copies of these proposal forms, and the complete absence of any original form as admitted to the Insurance Company and its officials in their affidavits, it will not be possible to hold that the repudiation by the United India Insurance Co. Ltd. was based on any valid material reflecting

suppression on the part of the insured.

129. Coming to the ground of disclosure of the correct income and Income Tax returns, the entire correspondence between the United India Ins. Co. Ltd. and the National Ins. Co. Ltd. during investigation reveals that the Income Tax returns for 1994-1995, 1995-1996, 1996-1997 were very much available and the entire material with regard to the status of the income of the insured had been tendered to the Insurance Company about which investigations had been held and the information was available. The massive negotiations with regard to the number of policies therefore was also the responsibility of the underwriters to have undertaken this exercise and in fact, the communications which have been referred to hereinabove, all indicate this exercise having been undertaken by the Insurance Co. not only to the level of the United India Ins. Co. Ltd., but also to the level of the reinsurance coverage that was sought by the United India Ins. Co. Ltd. where this issue relating to income had been disclosed and was well within their knowledge. As a matter of fact, after NC/OP/164/2001_272/2001 Page | 123 receiving the information from the reinsurance agent and as advised by the Head Office, the insurance policy was clearly modulated and was directed to be issued with the conditions mentioned therein prior to the issuance of the policy.

130. As noted above the income tax returns were available. For this reference can be had to the letter dated 09.10.1996, which refers to the balance sheet, income and expenditure account and the statement of assessable income duly certified by the Chartered Accountant. The income tax form for the year 1995-96 is also referred to have been received. This is further substantiated by the letters dated 22.10.1996 and 05.11.1996. The letter dated 21.11.1996 is an evidence of the demand of income tax return of 1996-97 which was provided and forwarded on 18.12.1996 by Mr. R. Kumar, the Senior Divisional Manager which letter is also on record. The letter dated 23.12.1996 to the head office sent by the Regional office also acknowledges the said fact where the gross income of the year 1996-97 has been shown to be Rs.6,66,18,121/-. All these documents are prior to the issuance of the policy and it is on the said basis that recommendations were made for the issuance of the policy.

131. It is therefore clear that deliberations with regard to the status of income had been made and this further stands supported by the enquiry about the income from paragraph-5 of the affidavit of Mr. Simlote already extracted hereinabove. After the claim was set forth, M/s R.L. Aggarwal & Sons in their enquiries through the letters addressed to Smt. Asha Garg and to the United NC/OP/164/2001_272/2001 Page | 124 India Insurance Company and the responses indicate that the Income tax returns for the year 1994-95, 1995-96 and 1996-97 coupled with the assessment year of 1997-98 had been tendered. This is evident from the reply of the complainant after all this exchange of communications on 17th December, 1997 to M/s R.L. Aggarwal & Sons where the complainant had categorically stated that the gross income in 1994-95 was Rs.8.38 crores, in 1995-96 it was Rs.5.66 crores and in 1996-97 the income was 6.42 crores and the copies of these income tax returns had already been collected by the National Insurance Company which also gets support from the letter dated 25.04.1997 sent by the Divisional Office of the United India Insurance Company Ltd. to its Regional Office where at item No.8 the sending of the income tax returns with balance sheet had been mentioned. Such figures have also been indicated in the report of Mr. G.S.L. Srivastava of M/s Lal International Securities who was the investigator set up by the National Insurance Company Ltd.

132. We may further point out that this enquiry about the status of income or the reputation of the insured has to be ascertained prior to the extending of the policy in case there were any doubt in the mind of the Insurance company and this was therefore an underwriting lapse of the Insurance Company. After a claim is set forth then the fact regarding the basis of the claim has to be furnished. Of course any allegation of non-disclosure at the pre-inception stage so as to attract the doctrine of ubberima fidei can be enquired into, but on the facts of the present case we are satisfied that the income tax returns NC/OP/164/2001_272/2001 Page | 125 had been filed by the insured before the United India Insurance Company Ltd. It is quite possible that the Apex Court while remanding the matter on 11.01.2017 had indicated the scope of enquiry to be made for a reconsideration which was substantially with regard to the status of the original documents including the proposal form and other communications.

133. With all these facts, we also find force in the arguments of Mr. Basu that both the insurance companies had combined their efforts to repudiate the claim also on the ground of alleged non-disclosure of the facts regarding the status of income of the insured. We may further point out that after having gone through the various survey reports, the investigation reports and the legal opinion sought by the Insurance company seems to be an all out effort to deny the indemnification primarily on the ground of incorrect disclosure of the existence of the proposals and also doubts about the status of income of the insured and his reputation.

134. From the proposal forms, whatever worth they are we do not find any column for disclosure regarding any litigation touching upon the reputation of a person as a necessary information to be disclosed in the proposal form. In fact these are informal reports which can be obtained by the Insurance company through their development officers and their agents. In the instant case we find that the recommendations for accepting the proposal by the National Insurance Company indicates that a satisfaction was expressed before the issuance of the policy in the recommendations made for its acceptance and approval. The question of any deception on that count cannot be gathered.

NC/OP/164/2001_272/2001 Page | 126 This is also evident from the letter of the National Insurance Company dated 24.01.1997 which also admits of the proposal being forwarded with the income tax returns. Apart from this the said letter also categorically states that the client is having good reputation and also has potential for the National Insurance Company to get business in future. This letter has been written by the Branch Office to the Divisional Manager of the National Insurance Company. It is with this proposal that the matter was examined by the National Insurance Company with reference to the circulars applicable given the guidelines for assessing the status of a proposal, and it categorically states that there are no fixed guidelines and the proposal can be suitably dealt with in accordance with the same. The National Insurance Company therefore was also apprised of the income and financial status of the insured.

135. The investigations carried out by the Insurance Company in respect of the other activities of the insured and his involvement in the customs case as well as the allegations about his conduct of business cannot be construed to be a reason for repudiation, in as much as, the repudiation letter does not substantiate the same. The legal opinion of a former CJI extracted in the recommendation dated 28.03.2000 also supports the same. It is by now well settled in view of the decisions of the

Apex Court that the Insurance Company while contesting such a claim cannot travel beyond the reasons given in the letter of repudiation for which reference may be had to the decision in the case of *New India Assurance Co. Ltd. vs. M/s. Mudit Roadways*, (2024) 3 SCC

193. Paragraphs 33 and 34 of the same judgment are extracted hereinunder:

NC/OP/164/2001_272/2001 Page | 127 "33. Notably, in earlier cases like *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.* [*Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*, (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765] and *Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd.* [*Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd.*, (2019) 19 SCC 70 : (2020) 4 SCC (Civ) 298], it was declared that new grounds for repudiation cannot be introduced during the hearing if they were not included in the repudiation letter. This legal principle was reiterated in *JSK Industries (P) Ltd. v. Oriental Insurance Co. Ltd.* [*JSK Industries (P) Ltd. v. Oriental Insurance Co. Ltd.*, (2022) 17 SCC 340 : 2022 SCC OnLine SC 1451] : (*JSK Industries case [JSK Industries (P) Ltd. v. Oriental Insurance Co. Ltd.*, (2022) 17 SCC 340 : 2022 SCC OnLine SC 1451], SCC para 12) "12. Mr Gopal Sankaranarayanan, learned Senior Counsel for the appellants has argued both on substantive and procedural points to assail the aforesaid orders. His first submission is that the insurance company cannot resist a claim petition on grounds beyond those cited by them while repudiating a claim. In support of this argument, a decision of this Court in *Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd.* [*Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd.*, (2019) 19 SCC 70 : (2020) 4 SCC (Civ) 298] has been cited. In this judgment, it has been held : (SCC p. 78, para 23) '23. Hence, we are of the considered opinion that the law, as laid down in *Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*, (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765] on Issue (2), still holds the field. It is a settled position that an Insurance Company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC.' "

34. Canvassing supplementary arguments during the hearing, (beyond those in the insurer's repudiation letter), is explicitly prohibited. Consequently, it is held that the insurer cannot introduce additional reasoning beyond those detailed in their letter, to justify the repudiation."

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136. Thus, any of the grounds of repudiation by the United India Ins. Co. Ltd.

can be sustained. The letter of repudiation dated 16.06.2000 therefore is untenable and is declared to be invalid. The complainant is entitled to the reimbursement and indemnification of the insured amount of Rs. 10 crores with interest and therefore OP No. 164 of 2001 is allowed only on the aforesaid grounds.

137. We are therefore in agreement with the ultimate conclusion drawn by this Commission in the previous decision dated 24.11.2005. We say this because as

indicated above, the amount of indemnification already stands released to the complainant under the interim directions of the Apex Court and the orders passed by this Commission after remand that was made subject to the outcome of this decision. Since the said amount already stands released to the complainant, we confirm the same and in case any amount on that count still remains to be paid or is admissible in terms of the earlier judgment of this Commission directing payment of 9% interest, the same shall also be released accordingly.

138. The policy issued on 07.02.1997 by the National Insurance Company on a proposal dated 21.01.1997 is extracted hereinunder:

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139. The Life Insurance Policy acquired by the insured for a sum of Rs.2 lakhs that was disclosed before the National Insurance Co. Ltd. is extracted hereinunder:

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140. The evidence in this Petition admits of no ambiguity. The Insurance Company has produced its original record and has filed all the letters including the proposal form dated 21.01.1997 on the basis where of the proposal was negotiated with the National Insurance Company Limited. The said Proposal Form was preceded by two letters of requests made by the insured Late Mr. Kishori Saran Garg. The first letter is extracted hereinunder :

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141. The second letter dated 21.01.1997 addressed to the Branch Manager and signed by Mr. Garg is extracted hereinunder :-

142. Both these letters are at variance in as much as the first letter was for a policy of Rs.5 crores insured sum only for Mr. Garg himself whereas the next NC/OP/164/2001_272/2001 Page | 133 letter dated 21.01.1997 made a request for a policy of Rs.5 crores for himself and then in addition thereto a policy of Rs.2.5 crores for his wife and a policy of Rs.1.25 crores each for two of his children Sanjeev and Jyoti. The request therefore stood enhanced to Rs.10 crores.

143. However, the proposal form which was filled up by Mr. Garg was for Rs.5 crores only. The proposal form is extracted herein under:

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NC/OP/164/2001_272/2001 Page | 136

144. In this proposal form question number 7(a) is "Have you ever proposed for accident or life insurance"? The answer to this question has been left blank. Neither the 'yes' nor the 'no' has been tick marked. However while answering question number 7(b), the recital is that if the question number 7(a) is yes, details be given. Against this question, the answer is filled up by mentioning a life insurance policy number said to have been acquired from the LIC of India for a sum of Rs.2 lakhs. Rest of the questions have been answered in the negative or not being applicable. The proposal is for 5 crores. The argument by Mr. Basu, Ld. Senior Counsel for the Complainant is that there is complete disclosure and no concealment in as much as this proposal form is of 21.01.1997 and the policy from United India Insurance Company was only issued on 11.02.1997. Hence as on the date of filling up of the form, the policy from United India Insurance was not in existence hence it cannot be said that there was any concealment on the part of the Complainant.

145. It is urged that the proposal form dated 19.03.1996 to the United India Insurance Co., which remained a dead letter with no communication of either acceptance or rejection, was not required to be answered or filled up as the proposal form dated 19.03.1996 never ended up in any finality. It's non-

disclosure therefore has no bearing on the controversy in as much as a non-existent policy with no communication of its rejection cannot be treated to be a material or relevant suppression on the part of the Complainant. There is no provision for a deemed acceptance or rejection.

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146. Mr. Basu further submits that so far as the policy dated 11.02.1997 is concerned which was obtained from United India Insurance Company for a sum of Rs.10 crores was not in existence on the date of the proposal in this case on 21.01.1997 and therefore the same cannot be treated to be a suppression. He further submits that in case the Insurance Company had any doubts it could have called for an information and therefore the said underwriting lapse of a blank answer cannot be made a ground to repudiate a claim later on for which he has relied on the case of Manmohan Nanda -vs- United India Insurance Company Ltd. (2022) 4 SCC 582.

147. He submits that the suppression should be material and not fraudulent and therefore the answers given to question number 7(a), (b) & (c) did not suffer from any infirmity or deception and do not amount to any suppression.

148. Responding to the same, Mr. Malhotra urged that there is a positive obligation of correct disclosure on the insured and on a reading of the answers, there was no ambiguity therein for the Insurance Company to have undertaken any exercise or further enquiry to probe into the same. He urges that this proposal form has been admitted in the evidence of the Complainant. Mr. Malhotra points out that the two letters that have been referred to herein above were sent by Mr. Garg when the policy proposal with the United India Insurance Company was pending and was being processed that crystallized into the policy dated 11.02.1997. He urges that even if the 19.03.1996 proposal form

with the United India Insurance Company may not have yielded any result, the fact remains that Mr. Garg had already communicated with the NC/OP/164/2001_272/2001 Page | 138 United India Insurance Company for the policy of the sum insured of Rs.10 crores the proposal whereof had already been made which fact was deliberately suppressed. This was a material suppression and therefore the claim was rightly repudiated. He has relied on the decision in the case of Satwant Kaur Sandhu vs New India Assurance Co. Ltd. to point out as to what is a material fact. He then refers to the English Decision in the case of Carter vs Boehm to point out that the insurer was deceived in taking a decision, due to this material suppression of fact. He has then cited the decision of Mahaveer Sharma vs Exide Life Insurance Company Limited 2025 SCC Online SC 435 for the proposition that the non-disclosure being substantial, the claim deserves to be repudiated.

149. He has then urged that the different addresses that were reflected also indicate an intentional deceptive description made for obtaining the Insurance Policy and information about income and documents relating thereto were deficient. Thus, on both grounds the policy has been rightly repudiated.

150. He has then urged that non-disclosure of the correct status of income of the insured was also investigated and the documents on record all indicate towards incorrect information being supplied to the Insurance Company. He therefore submits that this also clearly amounts to a breach of the terms of the policy. Hence the repudiation is justified.

151. While advancing his submissions, he has relied on the following decisions :

- NC/OP/164/2001_272/2001 Page | 139
- (1) Mithoolal Nayak vs Life Insurance Corporation of India. 1962 SCR Supl. (2) 571
 - (2) General Assurance Society Ltd. Vs Chandmull Jain reported as AIR 1966 SC 1644
 - (3) Life Insurance Corporation of India & Ors. Vs. Asha Goel (Smt.) & Anr. (2001) 2 SCC 160
 - (4) Satwant Kaur Sandhu vs New India Assurance Co. Ltd. (2009) 8 SCC 316
 - (5) Reliance Life Insurance Co. Ltd. Vs.Rekhaben Naresbhai Rathod (2019) 6 SCC 175
 - (6) Life Insurance Corporation of India vs. Manish Gupta (2019) 11 SCC
 - (7) Branch Manager, Bajaj Allianz Life Insurance Co. Ltd. & Ors. Vs.Dalbir Kaur AIR 2020 Supreme Court 5210

152. The findings recorded by us with regard to the proposal to the United India Ins. Co. Ltd. commencing with the letter dated 08.10.1996 as analysed clearly lean in favour of the National Insurance Company which is an evidence in respect of the OP No. 164 of 2001 and therefore has to be accepted to hold that when the insured filled-up the proposal form on 21.01.1997 for getting the policy of Rs. 5 crores from the National Insurance Company, it had sufficient knowledge of the proposal form initiated by the insured that was being processed since 08.10.1996 by the United India Insurance Co. Ltd. for a sum of Rs. 10 crores. This was therefore a relevant and material fact

which ought to have been disclosed in the proposal form of the National Insurance Co. Ltd. on 21.01.1997. The contention on behalf of the complainant that the United India Insurance Co. Ltd. issued the policy only on 11.02.1997 on the basis of a NC/OP/164/2001_272/2001 Page | 140 proposal as referred to in the policy is an unacceptable argument, in as much as, no policy can be issued without a proposal form. We may reiterate that the contents of the undated proposal form regarding the United India Insurance Co. Ltd. are clearly doubtful that remains unexplained as it is undated and does not match with the date of the policy i.e. 11.02.1997 as already discussed above. Even otherwise the forms of the United India Insurance Co. Ltd. which have been produced indicate cuttings and differences in the names of the nominees as also certain endorsements which do not match with each other, but the fact remains that the policy was issued with a coverage of Rs. 10 crores by the United India Insurance Co. Ltd. and the premium calculation that was attempted at least in some proposal form. The insured cannot nor could have feigned ignorance of the proposal before the United India Insurance Co. Ltd. that commenced initiation in September / October 1996 at the instance of the insured and was forwarded on 08.10.1996. Apart from this, the examination and cross-examination of the complainant Smt. Asha Garg on this factual aspect also does not inspire confidence, in as much as, she has denied having any knowledge of the proposals being taken or the policy before the United India Insurance Co. Ltd. being mooted. The same also does not lead to any safe conclusion and to the contrary the documents discussed above together with the affidavit of Mr. Simlote in OP No. 164 of 2001 do establish the proposal having generated before the United India Insurance Co. Ltd. in 1996 and this was therefore well within the knowledge of the insured NC/OP/164/2001_272/2001 Page | 141 when he filled-up the proposal form for the National Insurance Co. Ltd. on 21.01.1997.

153. In our considered opinion, with the aforesaid evidence on record, we are of the opinion that this material fact of the proposal with the United India Insurance Co. was concealed and suppressed by the insured by leaving the answer to question no. 7(a) blank and then mentioning only the life insurance coverage of Rs. 2 lakhs without referring to the proposal of Rs. 10 crores coverage before the United India Insurance Co. Ltd. that was very much in existence on the said date. There is one more aspect namely that no other proposal form to prove that it was filled-up on 11.02.1997 has been produced by the complainant. The United India Insurance Co. Ltd. has produced the aforesaid documents on record which comes to the aid of the National Insurance Co. Ltd. for all the reasons stated hereinabove. The complainants have therefore failed to rebut this evidence which substantially proves the existence of a proposal before the United India Ins. Co. Ltd. prior to 21.01.1997. Consequently, non-disclosure of such a fact is a material concealment and therefore the National Insurance Co. Ltd. was fully justified in repudiating the claim on this ground.

154. The other ground in respect of the availability of the Income Tax returns and the status of the income of the insured may not be relevant for this policy any further even though the tendering of this information also became subject matter of communication in the joint venture of the United India Insurance Co. Ltd. and the National Insurance Co. Ltd. when they undertook the exercise of NC/OP/164/2001_272/2001 Page | 142 discovering facts relating to the same. The said communications do indicate the information about the Income Tax returns as well as the income status as intimated by the insured.

155. The claim therefore as against the National Insurance Co. Ltd. cannot be sustained and the repudiation by it has to be upheld. Accordingly, OP No. 272 of 2001 is hereby dismissed.

156. Accordingly, OP No. 164/2001 is allowed and OP No. 272/2001 is dismissed.

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(A.P. SAHI, J) PRESIDENT

(BHARATKUMAR PANDYA)
MEMBER

Sonia/bs/Indu/Jyotsana/Pramod/VM/Court-1/CAV

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