

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an application for Leave to
Appeal from the judgment of the High Court
of Civil Appeal of the Western Province
(Holden in Colombo)

Janashakthi Insurance Company Limited,
No. 47, Muttiah Road,
Colombo 02.

Present Address

Level 25-27,
One Galle Face Tower,
No. 1A, Centre Road,
Galle Face,
Colombo 02.

Plaintiff

Vs.

SC/HCCA/LA/329/2023
WP/HCCA/COL/02/2017 (F)
DC Colombo Case No.7812/SPL

Sri Lanka Insurance Corporation Ltd.,
No. 21, Vauxhall Street,
Colombo 02.

Defendant

And

Janashakthi Insurance Company Limited,
No. 47, Muttiah Road,
Colombo 02.

Present Address

Level 25-27,
One Galle Face Tower,
No. 1A, Centre Road,
Galle Face,
Colombo 02.

Plaintiff- Appellant

Vs.

Sri Lanka Insurance Corporation Ltd.,
No. 21, Vauxhall Street,
Colombo 02.

Defendant-Respondent

AND NOW BETWEEN

Sri Lanka Insurance Corporation Ltd.,
No. 21, Vauxhall Street,
Colombo 02.

Defendant-Respondent-Petitioner

Vs.

Janashakthi Insurance Company Limited,
No. 47, Muttiah Road,
Colombo 02.

Presently,

Allianz Insurance Lanka Limited,
Level 25-27,
One Galle Face Tower,
No. 1A, Centre Road,
Galle Face,
Colombo 02.

Plaintiff – Appellant- Respondent

Before: **Murdu N.B. Fernando, PC, CJ.**
 Yasantha Kodagoda, PC, J., and
 Arjuna Obeyesekere, J.

Counsel: Chandaka Jayasundere PC with Chandimal Mendis and Dinithi Hewavitharana
 instructed by Hemantha Rajapaksha for the Defendant-Respondent-Petitioner.
 Nigel Hatch PC with Rajindra Jayasinghe and Ms. S. Illangage instructed by Julius
 and Creasy for the Plaintiff-Appellant-Respondent

Argued on: 08-10-2024 and 15-10-2024

Decided on: 26-05-2025

Murdu N.B. Fernando, PC, CJ.,

01. We have heard the learned President's Counsel for the Petitioner and the Respondent exhaustively.

02. We appreciate the submissions made by Mr. Chandaka Jayasundere, PC on behalf of the Defendant-Respondent-Petitioner ("Petitioner") that the Plaintiff-Appellant-Respondent ("Respondent") has failed to establish a contractual relationship between the Petitioner and the Respondent. Mr. Jayasundere, PC contended, that the failure of the Respondent to annex and produce the contract of re-insurance entered between the Sri Lanka Insurance Corporation and the National Insurance Corporation was fatal for the maintainability of the instant application and therefore, the dismissal of the action by the trial court was correct and justified. Further, it was contended on behalf of the Petitioner, that the setting aside of the trial court judgement by the Civil Appellate High Court of the Western Province ("the High Court"), was erroneous and moved that it be revised and set aside.

Mr. Nigel Hatch, PC on behalf of the Respondent, strenuously argued that the Petitioner cannot maintain this Special Leave to Appeal application upon merits and also on the principle of *Res Judicata*, as this Court has examined the matters in issue and rejected the Special Leave to Appeal Application in a connected matter between the very same parties.

03. We have considered the factual matrix of this application, viz.,

- On 12-05-1987, two marine cargo policies were issued and a contract of insurance was entered into between National Insurance Corporation ('NIC'), and P.B. Umbichy Limited, an importer of goods, in relation to a consignment of lentils on board MV Elitor;
- The consignment failed to reach the port of Colombo. The importer claimed on the contract of insurance but the NIC failed to honour the policy of insurance;
- The importer then sued the NIC on the policy and the trial court entered judgement in favour of the importer. This decision of the trial court was subsequently upheld by the Supreme Court;
- Consequent to the District Court judgement that directed the NIC to honour the contract of insurance, the NIC filed two separate actions, bearing case No. 7712/Spl and 7812/Spl, in the District Court of Colombo against Sri Lanka Insurance Corporation Limited ("SLIC"), seeking declaratory relief that the NIC

has re-insured the aforesaid contract of insurance with SLIC and therefore, SLIC is liable to reimburse all payments which the NIC should make to the importer under the said contract of insurance;

- In the case bearing **No. 7712/Spl**, the District Court having considered the facts therein, entered judgement in favour of the NIC. The SLIC went up in appeal to the High Court, and the High Court upheld the decision of the trial court;
- Being aggrieved by the said Order the SLIC came before the Supreme Court in a Special Leave to Appeal Application and the Supreme Court refused to grant Special Leave to Appeal to the SLIC. Thus, it was held that SLIC was liable to reimburse the NIC the sum insured on the re-insurance arrangement in District Court Case No. 7712/Spl;
- In the instant case bearing **No. 7812/Spl**, which was filed by the NIC against SLIC, upon the same facts as the District Court case bearing No 7712/Spl, the trial court dismissed the action of the NIC;
- Being aggrieved by the said decision, the NIC went before the High Court and the High Court set aside the District Court judgement and gave judgement in favour of the NIC. The Petitioner SLIC, is now before this Court being aggrieved by the said judgement of the High Court.

04. We have also considered the legal ramifications wound around this application, namely,

- Nationalization of the insurance industry in this country and the establishment of the Insurance Corporation of Ceylon (“ICC”) in 1961 by Act No. 2 of 1961 which was the genesis of the Petitioner, “SLIC”;
- Powers and functions of the ICC as laid down in the law, amended from time to time and specifically the power to ‘re-insure’ and the monopoly the ICC had in the re-insurance field;
- The development of the insurance industry and establishment of subsidiary corporations and independent corporations and the duty of each and every corporation to re-insure with the ICC, which by then had changed its name to Insurance Corporation of Sri Lanka (“ICSL”);
- Formation of the Respondent “NIC”, by Act No. 22 of 1979 being a fully-fledged State Owned corporation and the mandatory nature of the NIC to re-insure with ICSL (*Vide* Section 21 of the said Act);
- Policy changes in the business of insurance, especially the amendments made to the Control of Insurance Act bearing No. 25 of 1962 and other laws in the year 1986, which relaxed the monopoly of ICSL in relation to re-insurance, and the manner and mode of implementing of such policy by the State Owned NIC;

- Privatization of the insurance industry in the years 2002/2003 which led to the change of ownership of ICSL and the NIC, both falling into the hands of the private sector entities namely, SLIC, the Defendant before the trial court, and Janashakthi Insurance Company Limited, the Plaintiff before the trial court; and
- The Trade Rules and Practices (*vide* evidence led) followed by the State Owned NIC during the changeover especially during the period 1986 to 2002, prior to NIC being bought over, by Janashakthi Insurance Company Ltd and specifically NIC's manner of conducting the business of re-insurance through State Owned ICSL.

05. We have considered and examined in detail,

- The pleadings, the evidence, and the plethora of documents produced at the trial;
- the cordial relationship and the correspondence during the period 1987 to 2003 between the State owned NIC and the ICSL, both being state functionaries pertaining to the instant subject matter, namely, the re-insurance of the two marine cargo policies in relation to the consignment which was said to be lost in transit in the high seas;
- the subsequent change of stance pertaining to the re-insurance arrangement by the Petitioner, the privately owned Sri Lanka Insurance Corporation Limited ("SLIC") especially the correspondence dated 20th January, 2004 (P50a) by SLIC informing the Attorneys-at-law for the Respondent, Janashakthi Insurance Company Limited that *the Petitioner is not liable to settle the claim and as such no reimbursement can be considered*;
- the subsequent correspondence between Janashakthi Insurance Company Limited and the SLIC from 2004 to 2007 which led to the Respondent filing two applications, bearing numbers 7712/Spl and 7812/Spl before the District Court of Colombo; and
- the facts and findings in the connected case bearing number 7712/Spl and its legal consequences, in respect of SLIC being liable to reimburse the sum insured on the re-insurance arrangement.

06. Having perused, considered and examined the relevant facts, the evidence, the provisions of the law, the policy of the government, the legal ramifications, principles of insurance law and the practices of trade, the decisions of this Court especially in respect of the subject matter in dispute in connected matters, the larger picture and the overall effect of two State functionaries entering into a re-insurance arrangement, and the well-articulated submissions by the two learned President's Counsel,

We see no reason to grant Special Leave to Appeal to the Petitioner in the instant application.

The judgement of the Civil Appellate High Court of the Western Province, Holden in Colombo, dated 30th June 2023 is thus, affirmed.

The Special Leave to Appeal Application filed by the Defendant-Respondent-Petitioner is refused. Parties may bear their own costs.

Leave to Appeal is refused. Application is *pro-forma* dismissed.

Chief Justice

Yasantha Kodagoda, PC, J.,
I agree

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree

Judge of the Supreme Court