
(2010) 08 BOM CK 0059

In the Bombay High Court

Case No : Appeal No. 102 of 2008 in Suit No. 1724 of 1978

Century Textiles and Industries Ltd.

APPELLANT

Vs

Oriental Fire and General Insurance Co. Ltd., New India
Assurance Co. Ltd., National Insurance Co. Ltd. and United
India Fire and General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2011) 3 BomCR 401 : (2011) 1 MhLj 540

Hon'ble Judges : P.B. Majmudar, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Rahul Narichania, Prakash Shah and Hardik Sanghavi, instructed by PDS Legal, for the Appellant; E.P. Bharucha Cyrus Bharucha, Mohan Salian, Mayur Shetty and Vijayanta Shete, instructed by Gagrats, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—This appeal is directed against the judgment and order dated May 04, 2007 passed by the learned single Judge in Suit No. 1724 of 1978. By the impugned judgment, the learned single Judge dismissed the suit of the appellant.

2. The appellant is the plaintiff in the aforesaid suit. The plaintiff is a Public Limited Company registered under the Companies Act, 1913. The defendants carry on general insurance business. During the period between 1st January, 1976 and 1st January, 1977, the plaintiff obtained five insurance policies from the defendants. Each of the said five policies are in connection with covering the stock and stock in process of the Rayon Division & Tyre Cord Division of the Company. The first four policies are described as policies in connection with the fire insurance and the same have been extended to cover a risk of loss and damage caused by riot and strike and malicious damage. The fifth policy is to cover consequential loss.

3. It is the case of the plaintiff that on the night of 24th July, 1976, an agitation took place by the workmen within the premises of the factory at Kalyan. The agitating workmen alleged to have gathered in a mob and have attempted to reach the residence of the Senior Vice-President of the appellant company. Since the management apprehended the risk about riot and widespread damage, ultimately declared a lock out from 2.00 a.m. on 26th July, 1976 in the Rayon and Tyre Cord Divisions. It is the case of the plaintiff that inspite of notice of lock out, the workmen remained within the factory and they were alleged to have stopped work in protest against the lock out until they left the premises with the assistance of police. The factory remained under lock out till 30th July, 1976 which was subsequently lifted on the intervention of Labour Minister of the State. It is the further case of the plaintiff that as a result of refusal of the workers to continue to work, various processes could not be attended to as a result the viscose in the Rayon and Tyrecord Divisions, in the tanks and pipelines, machines and accessories coagulated and solidified. The coagulation of viscose and dismantling and cleaning of the machinery is alleged to have resulted in damage to the plaintiff. The surveyor of the defendants, Mehta and Padamsey Pvt. Ltd., submitted a survey report on 12th January, 1997 and 5th December, 1977, quantifying the losses suffered by the plaintiff. The Defendant insurance Company, however, denied the claim of the plaintiff on the ground that the loss falls within an excepted peril and hence not covered by the five policies of insurance. It is the say of the defendant that the loss which the plaintiff claims to have sustained arose due to stoppage or cessation of work which is expressly excluded from the purview of the five insurance policies. The learned single Judge framed various issues arising out of the pleadings and after considering the evidence on record and insurance policies came to the conclusion that the damage suffered by the Plaintiff has been caused by excluded perils consequent upon which the plaintiff is not entitled to recover any amount. The learned Judge found that in the present case, the damage caused to the plaintiff has not been caused by perils insured under the first four policies of insurance. The spoilage risk Clause of the consequential loss policy would, therefore, not cover the claim raised by the plaintiff. The learned single Judge dismissed the suit against which the present appeal has been filed by the original plaintiff.

4. Mr. Rahul Narichania, learned Counsel appearing for the appellant, vehemently submitted that the learned single Judge has gravely erred in dismissing the claim of the plaintiff, though according to him, as per the insurance policies, risk was covered and the defendants having accepted the premium for covering such a loss was bound to compensate the plaintiff in the matter of making necessary payments towards the loss suffered by the plaintiff. It is submitted by the learned Counsel for the appellant that the plaintiff has already led proper evidence before the learned single Judge pointing out as to how the machineries of the Company were damaged in view of the strike of the employees. It is submitted that the sophisticated machines are required to be attended continuously and if it is not properly attended and allowed to continue in the

running position, it is bound to suffer heavy damage which fact, according to him, is proved by the Surveyor's report also. It is submitted by the learned Counsel for the appellant that the insurance policy and special conditions attached to it are required to be read in a harmonious manner. It is submitted that if the workers, without attending the machinery, allowed the machines to run as it is, it can be said to be a wilful act of a striker in furtherance of a strike and it need not be that there should be a specific act on the part of the striker by resorting to any violence. Learned Counsel for the appellant submitted that when a striker fails to attend machinery and if the machinery is allowed to work continuously without any supervision and if the machinery becomes useless and loss is caused, as per Clause 3 of the policy, the insured is entitled to receive the amount from the Insurance Company towards the loss and damage sustained by the insured. It is submitted that the Insurance Company, without any basis, has denied the just claim of the plaintiff, even though the case is already covered by the insurance policies in question. It is submitted that the special conditions attached thereto has no application to deny the just claim of the plaintiff. The learned Counsel for the appellant has taken us through the various Clauses of policies in question along with the special conditions attached to it. The learned Counsel for the appellant has also relied upon the decision of the Kerala High Court in the case of Sujir Ganesh Nayak and Co., Quilon Vs. National Insurance Co. Ltd., Calcutta and Another, as well as the decision of the learned single Judge of this Court dated 10th June, 2009 in the case of The NRC Ltd. and Anr. v. The New India Assurance Company Ltd. in Suit No. 1164 to 1166 of 1979, to substantiate his say that special condition No. 5 (i)(b) has no application in the facts of the case and that the appeal is required to be allowed by decreeing the suit of the plaintiff.

5. Mr. Cyrus Bharucha, learned Counsel appearing for the respondents, with the assistance of Mr. E.P. Bharucha, senior counsel, in his turn submits that on a perusal of the various Clauses of the insurance policy, it is clear that the risk in question is not covered by the insurance policies and, therefore, the plaintiff is not entitled to receive any amount so far as loss which the plaintiff has suffered in connection with the damage to the machineries of the plaintiff. The learned Counsel further submits that the special conditions are part and parcel of the riot and strike endorsement in the policy. The claim of the plaintiff is, therefore, always subject to the special conditions forming part of strike and riot endorsement in the policies obtained by the plaintiff and Clause (3) in the endorsement cannot be read in isolation but it has to be read with special conditions attached with the same. The learned Counsel further submits that as per the special conditions attached with the endorsement, loss or damage resulting from total or partial cessation of work or retarding or interruption or cessation of any process or operation is excluded from the risk covered by the insurance company and accordingly the learned single has rightly dismissed the suit of the plaintiff as the risk in question has not been covered nor any premium is paid in connection with the said risk by the plaintiff.

6. We have heard the learned Counsel appearing for both the sides in detail. We have also gone through the oral and documentary evidence as well as various judgments cited at the Bar.

7. The principal question which requires consideration is as to whether the loss sustained by the plaintiff can be said to be covered by the insurance policies and whether the plaintiff can be said to be insured in connection with such loss or damage sustained by the plaintiff.

8. So far as the oral evidence is concerned, the plaintiff has tendered an affidavit in lieu of examination-in-chief. The affidavit of one Suresh M. Bandekar, Vice-President of the Rayon Plant of the Company was tendered in evidence. In paragraph 8 of his affidavit, he has given particulars about five policies which the plaintiff had obtained from the defendants for the period between 1st January, 1976 and 1st January, 1977. As per the said affidavit, the aforesaid five insurance policies were all extended to cover, inter alia, riot and strike damage risks and also malicious damage risks. The fifth policy was also extended to cover spoilage risk to the extent of Rs. 20 lakhs. In paragraph 9 of the affidavit, description is given regarding the Clauses forming part under the riot and strike endorsement in the first four insurance policies. In the said affidavit the said witness has also averred in connection with the strike resorted to by the workers. In paragraph 21 of the affidavit it is averred as under:

In pursuance of their resistance to the said lock-out and/or in furtherance of the aforesaid strike the workers themselves did not arrange for any proper and planned shut down of the Plants (which they should have done in any case) and they also prevented by diverse acts and omissions any such proper and planned shut down of the plants which directly resulted inter alia in extensive damage and/or loss to the plants, machinery, equipments and accessories, stock and stock-in-progress and which also directly resulted in considerable loss of production and loss of profits and diverse other consequential losses.

The said witness was cross-examined through Court Commissioner. Regarding question No. 3 which was put to him in his cross-examination as to what had happened during the shift on the relevant day, the said witness has stated that nothing happened except slogan shouting by some workmen. Regarding question No. 7 as to whether there was any overt act on the part of workmen during 26th and 26th July, 1976, the witness has stated that there was no overt act. In another question as to whether the damages to the machineries were caused as a result of the workmen not working according to the instructions of the plaintiff, the witness has stated ?Yes?.

9. On behalf of the plaintiff, another affidavit in lieu of examination-in-chief was tendered of a witness viz. Prahladrai Mohanlal Singrodia, who was working as an Officer-in-charge of the Costing, Insurance and Finance Department of the Company at its factory at Shahad, Dist. Thane. In the affidavit he has given description about the strike resorted to by the workmen. In the cross-

examination, the said witness has given reply to question No. 17 and stated that there were regular slogan shouting at the time of the change of shifts by the workmen. In connection with the question as to whether he was manhandled or not by the workmen he stated that he did not remember.

10. On behalf of the defendants, affidavit of Mr. Virendra Shah, Director of M/s. Mehta and Padamsey Private limited, Surveyors, Assessors and Valuers, in lieu of examination-in-chief was tendered. In paragraph 7 of the affidavit he has averred that there was substantial damage caused to the stock in process and machinery and accessories of the Plaintiff's Rayon and Tyre Cord Divisions. The damage was caused by the coagulation/solidification of viscose in the machines and accessories of the Plaintiff's Rayon and Tyre Cord Divisions. In his affidavit he has stated that there was no broken machinery. According to the said witness, since the workmen had not resorted to violence or there was no overt act in the matter of damaging the machinery, the risk is not covered by the insurance policies. This is the only oral evidence on record of the case.

11. The riot and strike endorsement attached to and forming part of

Policy No. 1110/0/Var./F/94 provides as under:

In consideration of the payment of the sum of Rs. 4130/-additional premium, it is hereby agreed and declared that notwithstanding anything in the within written policy contained to the contrary the insurance under this policy shall extend to cover Riot and Strike damage which for the purpose of this endorsement shall mean (subject always to the Special Conditions hereinafter contained).

Loss of or damage to the property insured directly caused by:

1. The act of any person taking part together with others in any disturbance of the public peace (whether in connection with a strike or lock out or not) not being an occurrence mentioned in Condition 6 of the Special Conditions hereof.
2. The action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimising the consequences of any such disturbance.
3. The wilful act of any striker or locked-out worker done in furtherance of a strike or in resistance to a lock-out.
4. The action of any lawfully constituted authority in preventing or attempting to prevent any such act or in minimising the consequences of any such act.

SPECIAL CONDITIONS

For the purposes of this endorsement but not otherwise there shall be substituted for the respectively numbered conditions of the policy the following:

CONDITION 5.

(i) This insurance does not cover:

(a) Loss of earnings, loss by delay, loss of market or other consequential or indirect loss or damage of any kind or description whatsoever.

(b) Loss or damage resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation.

(c) Loss or damage occasioned by permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority.

(d) Loss or damage occasioned by permanent or temporary dispossession of any building resulting from the unlawful occupation by any person of such building.

(e) Loss or damage directly or indirectly caused by⁷ or arising from or in consequence of or contributed to by nuclear weapons material.

PROVIDED nevertheless that the Company is not relieved under (c) or (d) above of any liability to the insured in respect of physical damage to the property insured occurring before dispossession or during temporary dispossession.

12. Both the learned Counsel have relied upon the Clauses in the said policies. In various policies, the riot and strike endorsement has been added subsequently and accordingly it has become part and parcel of the concerned policies. Extra premium has been taken by the insurance companies in connection with the said riot and strike endorsement which has been added in the original policies. Considering the oral evidence on record, it is not in dispute that the plaintiff Company suffered losses because of the strike resorted to by the workmen. It is not in dispute that the workmen were not attending the machines in question which resulted the machineries becoming useless. The Surveyor has also assessed the loss and damage to the tune of Rs. 58,40,773/-which loss can be said to be attributed to the act and omission of the striking workmen in leaving the machineries in running condition. It is submitted by the learned Counsel for the appellant that because of the strike there was cessation of work which can be directly attributed to the strike and since the machineries were not attended to by the workmen and they were allowed to continue to function that ultimately the Company was subjected to such a heavy loss and the machinery has also become useless for which he relied upon the report of the Surveyor.

13. The question which requires consideration is as to whether by not attending the machineries because of the strike and if any damage has been caused to the machineries which ultimately resulted loss to the company, whether the insurance company is bound to indemnify such loss in view of the insurance policies in question. As pointed out earlier, riot and strike endorsement has been subsequently added in the original insurance policies. The insurance company has taken the risk of indemnifying the insured in case of damage sustained by the Company in case of riot and strike. However, such riot and strike policy is subject to special conditions attached with the riot and strike endorsement. As

per condition No. 3, if there is any wilful act of any striker or locked out worker done in furtherance of a strike or in resistance to a lock out and if any loss or damage to the property occurred which may be attributed directly by such wilful act of a striker, then the insurance company is bound to indemnify such loss. It is, however, required to be noted that Clause (3) is subject to special conditions attached with the aforesaid endorsement on the policy i.e. Riot and strike endorsement in the policy. So far as special conditions are concerned, condition No. 5 (b) clearly provides that the insurance does not cover any damage or loss resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation. The learned Counsel for the appellant vehemently submitted that in every case of a strike there is always partial or total cessation of work. Therefore Clause (b) cannot be made applicable in the present case to deny the claim of the plaintiff as, according to him, in every case of strike there is always a cessation of work and when insurance company has taken extra premium in connection with any loss caused by way of any wilful act of a striker, the insurance company cannot deny the just claim of the plaintiff by resorting to Clause 5 (b) of the policy. It is further submitted that such Clause is to be interpreted in case where there is a loss or damage due to cessation of work which cessation of work can be attributed to any other eventuality like natural calamity, flood or in a given case there should be mal-functioning of the machinery or power failure or lack of raw material etc. If any damage is caused to the machinery, the insurance company is bound to indemnify such loss in view of the fact that the Company has taken riot and strike policy. If the machine is damaged on the ground that the workers have not attended the same by virtue of cessation of work, in such eventuality the insurance company is bound to indemnify such loss. It is submitted by the learned Counsel for the appellant that in the instant case the workmen abstained from attending the machines and these machines were highly sophisticated one which requires total monitoring from time to time and when the machines were allowed to run in the manner in which they were allowed to run ultimately resulted damage to such machineries for which Surveyor's report is also very clear. In order to substantiate his say the learned Counsel has relied upon the judgment of the Kerala High Court in the case of Sujir Ganesh Nayak (supra). The Division Bench of the Kerala High Court has considered similar type of policy and similar type of Clauses in the insurance policy. In the aforesaid case, the learned single Judge rejected the claim of the plaintiff therein on the ground that as per the special conditions similar to our case, the loss cannot be stated to have been covered by the insurance policies.

The single Judge accordingly dismissed the suit filed by the insured. The Division Bench while reversing the judgment of the single Judge held as under:

From a reading of the special conditions it is clear that what the contracting parties intended was that if any loss is caused due to cessation of work or interruption of work and for that reasons loss is caused, that will not be covered by the policy. If the cessation or interruption of work can be directly attributed to the strike by the workers, that will not exclude the liability of the insurance

company. If such an interpretation is accepted, under no circumstances, the loss if any sustained by the insured due to riot and strike can be said to be under the cover of the insurance policy. Ordinarily, the strike by the workers will cause cessation or interruption of work. If the loss sustained due to such cessation or interruption of work is not covered by the policy, the special conditions will have an overriding effect on the riot and strike endorsement. Therefore, in our view, the special conditions stated in Clause 5 (i)(b) is not applicable to the facts of the case. Here the loss sustained by the appellant is directly attributable to the strike by the workers. If the cessation or interruption of work was caused by any break down of machinery or other reason, such loss would not be covered under the policy

14. A learned single Judge of this Court in the case of The NRC Ltd. (supra) relying upon the decision of the Kerala High Court took similar view and decreed the suit of the plaintiff where the Company sustained loss and machinery was damaged by the striking workers.

15. We have considered both these judgments. Though the argument of the learned Counsel for the appellant at the first blush looks attractive but, in our view, on closure scrutiny of the policies in question, along with the special conditions attached thereto, it is not possible for us to accept the view canvassed by the learned Counsel for the appellant. It is indeed true that the machineries in question were damaged because of the fact that the same were not properly attended to by the striking workers and it was allowed to continue in the running position, without taking care of either switching off the running machines or by not allowing the same to be functional by properly putting the raw material etc. In this behalf we accept the evidence of the plaintiff that the machineries have become useless because of not being properly attended to by the striking workmen and the same were allowed to remain in running condition as it is. It is also true that by not attending the machineries by the striking workers, one can say that it is a wilful act of a striker in furtherance of a strike or in resistance to a lock out, as the case may be. We agree with the learned Counsel for the appellant that it may not be necessary that the wilful act may be treated as any overt act in such manner that it can have a direct impact to the damage caused to the machinery in question. However, as pointed out earlier, the special conditions which form part and parcel of the riot and strike endorsement and more particularly condition 5 (i)(b) which clearly provides that the insurance policy does not cover loss or damage resulting from total or partial cessation of work or the retarding or interruption or cessation of any process or operation. Once these special conditions are attached with the riot and strike policy, Clause 3 has to be read along with condition No. 5 attached with the policy. These special conditions are accordingly part and parcel of the insurance policy itself. Reading the said Clause 5 (i)(b), it is clear that if any loss or damage is sustained by the insured in view of total or partial cessation of work or the retarding or interruption or cessation of any process or operation, such loss is not insured by the insurance company. We cannot give such a restrictive meaning to

Clause (b) that cessation of work should only be considered in case of other natural calamities and not in the case where such cessation of work is due to any act of the striker. Once these special conditions are attached to the policy which cover the risk in case of riot and strike, naturally condition 5 (i)(b) is said to be part and parcel of riot and strike endorsement which is added in the policy later on. Clause 3 in the policy is required to be read with special conditions attached with the policy and the said Clause cannot be read in isolation. It is clear that if any damage is caused to the machinery by virtue of any overt act by the workmen during the strike, the insurance company is bound to indemnify the losses but not for any loss which is caused to the machinery in case of cessation of work. The learned Counsel for the appellant submits that, in other words, in no case the insured can get any amount in case of strike even though insurance company accepts the premium in this behalf. So far as this argument is concerned, the simple answer to this is that in a case where by any overt act of a striker, by which the machinery is made non-operational, by resorting to any violence or damaging the machinery by physical act, in that case naturally the insurance company is bound to indemnify the insured. On a closure scrutiny of Clause 3 read with Condition No. 5 (i)(b), in our view, in case where a workman who has resorted to strike by which the machinery is damaged by some positive act on the part of workmen, such loss sustained by the insured is required to be indemnified by the insurance company. In a case where by passive act of the workers if the machinery is ultimately damaged on account of the fact that the same was not being attended to by the workers, such risk in the policies, in our view, is not covered in view of the special conditions attached with the policy. In our view, what is covered by the policy is only damage to the machinery by which the insured has sustained loss. In the instant case the loss or damage that was sustained by the plaintiff was occasioned by a cessation of work or by a retardation, interruption or cessation of the process of operation. A loss caused by the cessation of work is expressly excluded from the insured perils in the first four policies as well as in the policy providing for consequential loss. It is submitted that even a passive act of the workmen is sufficient to hold that because of something which has been done by the workmen in furtherance of the strike that such damage has been caused to the machinery of the Company. Mr. Bharucha, the learned Counsel for the respondents has argued that if any extra premium is paid by the insured for covering the risk when there is a damage to the machinery on account of cessation of work by the workmen, then in such eventuality even the insurance company is required to indemnify the insured.

16. Considering the recitals in the insurance policy including the special conditions, we are not in a position to accept the view taken by the Division Bench of the Kerala High Court. At the cost of repetition, we may say that in a given case if there is any positive act on the part of the workmen by damaging the machinery in furtherance of the strike, such loss sustained by the company is required to be indemnified by the insurance company as per the policy. In a case where physical act or violence or overt act is directly attributed to the

damage or loss to the machinery due to the act of the striking workmen, such risk can be said to have been covered under the policy. We are, therefore not in a position to accept the view of the Kerala High Court that in no case such risk can be said to have been covered even though insurance company accept the premium towards riot and strike policy.

17. So far as the decision of the learned single Judge in the case of the NRC Ltd. (supra) is concerned, as per the evidence available in that case it was found that the workmen resorted to violence and the said act was directly attributed to the loss sustained by the company and the machinery was damaged because of violence carried out by the striking workers. That is not the factual aspect in the present case. In the instant case, the evidence on record clearly establish that admittedly the striking workmen had not resorted to any violence but it was a peaceful strike. This aspect has not been disputed by the learned Counsel for the appellant. The main argument of the learned Counsel for the appellant is that even if the workmen resorted to peaceful demonstration but by not attending the machineries if there is any loss caused to the insured as the machinery has ultimately become non-functional, such loss is also covered under the riot and fire policy. It is also required to be noted that the special conditions are part and parcel of riot and strike policy and this riot and strike policy contains such special Clause prescribed in the policy. The special conditions have been attached in the riot and strike endorsement and the same is to be read in connection with the riot and strike endorsement in the policy. In view of what is stated above, we are unable to accept the said submission canvassed by the learned Counsel for the appellant.

18. In our view, unless both the eventualities are present i.e. strike of the workmen and when there is an overt act on the part of the workmen during such strike which has a direct bearing to the loss suffered by the company, in such an eventuality the insurance company is required to indemnify such loss as per the riot and strike policy. In fact, as per the evidence on record, it is clear that the workmen had not resorted to any violent act or not resorted to any violence and tried to damage the machinery by way of violent act. In view of the same, we agree with the ultimate decision by the learned single Judge to the effect that no relief can be granted to the plaintiff as claimed by the plaintiff in the suit.

19. We accordingly find that the appeal is devoid of merit and hence the same is dismissed with no order as to costs.