
(2016) 09 CAL CK 0054
In the Calcutta High Court
Case No : W.P. No. 1135, 1137 of 2015

Dhansar Engineering Co. Pvt. Ltd.

APPELLANT

Vs

The New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 15-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 CalLJ 262

Hon'ble Judges : Debangsu Basak, J.

Bench : Single Bench

Advocate : Mr. Sabyasachi Chowdhury, Mr. Syed Huda and Mr. Amit Nag,
Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

Debangsu Basak, J. - Two writ petitions involving similar issues are taken up for hearing analogously.

2. The petitioner essentially seeks a declaration that the repudiation of the claim under a contract for insurance is wrong and that the petitioner is entitled to the amount assessed by the Surveyor, at the least.

3. W.P. No. 1135 of 2015 is taken up for consideration first. Learned Advocate for the petitioner submits that, the repudiation is contained in the writing dated April 11, 2013 issued by the insurance company. He submits that, taking every statement made in the letter of repudiation to be true and correct, although not admitting the same to be so, then also the repudiation is ex facie contrary to the materials available on record and, therefore, cannot be sustained. He submits that, since there is a repudiation and apparently a dispute has been sought to be raised by the insurance company with regard to the claim for insurance, by the letter of repudiation dated April 11, 2013, the Writ Court is not denuded of its jurisdiction to grant the reliefs to the petitioner. He relies upon 2004 Volume 3 Supreme Court Cases page 553 (ABL International Ltd. & Anr. v. Export Credit

Guarantee Corporation of India Ltd. & Ors.) in support of his contentions.

4. None appears for the respondents.

5. The petitioner as an owner of an excavator had obtained a contract of insurance with the respondent no. 1. The excavator was employed with regard to a tender of Bharat Coking Coal Limited (BCCL) and at a coal mine for the purpose of removal of over burden, extraction and transportation of coal at Kusunda Colliery. The petitioner had obtained the insurance on October 16, 2011. The insurance policy was valid till October 15, 2012. The insurance policy covered various contingencies. The insurance policy also noted that, the machine would be located at an area classified at Risk 1 by the insurance company. Accordingly, premium had been obtained by the insurance company.

6. On May 27, 2012 there was an incident with regard to the excavator while in Kusunda mines. The incident was within the validity period of the insurance policy. The petitioner claims that, the excavator was hit by a bolder on the bottom side of the hydraulic pump guard and hose. The petitioner also claims that, on impact the hydraulic oil had caught fire. The fire had spread on the excavator causing damage to it. The petitioner lodged its claim with the insurance company. The excavator was examined, a survey was carried out. A survey report dated March 12, 2013 was submitted. The respondent no. 1 has rejected the claim by the writing dated April 11, 2013 contending that, the excavator being hit by a bolder was not established. The Surveyor did not consider the loss as accidental and that the damage to the excavator cannot be treated due to any peril covered under the policy. The letter of rejection dated April 11, 2013 also notes that, the claim was intimated after 38 days, which is in violation of the policy of insurance.

7. ABL International Ltd. & Anr. (Supra) has held that, a writ petition to enforce a contractual obligation of the state or its instrumentality is maintainable. It has also held that, cases involving disputed questions of fact can be looked into under Article 226 of the Constitution of India and that, if the facts require oral evidence, it can be taken. A repudiation of a claim under a contract of insurance was under consideration there.

8. In the present case, the Court has to find out that, whether triable issues have been raised by the insurance company in the letter of repudiation dated April 11, 2013 or not. The first ground of repudiation is that, the fact that the excavator caught fire due to hitting of the bolder was not established. On this ground learned Advocate for the petitioner has submitted that, since the excavator was insured for fire and was operating in a Risk 1 zone to the notice and knowledge of the insurance company, the fact whether the excavator caught fire due to a bolder hitting it or not is immaterial. The factum of fire damaging the excavator being established and the quantum of damage caused to the excavator being also established in the survey report, this ground to repudiation is not valid. This does not require elaborate appreciation of evidence for the Writ Court to relegate

the parties to a more length process for adjudication.

9. No doubt the excavator was working at a Risk 1 zone to the notice and knowledge of the insurance company and that, the risk of fire was covered, even then it has to be established conclusively that, the damage to the excavator caused by the fire which was accidental and not deliberate. Essentially by the statements made in the letter of repudiation, the insurance company was contending that the damage by fire by accident has not been established conclusively and, therefore, it is not in a position to accept the claim.

10. In my view, the letter of repudiation dated April 11, 2013 as it stands, raises triable issues which ought to be looked into on more detailed evidence than what is made available on affidavit evidence in a writ petition. It is for the petitioner to establish conclusively that, the fire damaging the excavator was accidental. On the materials made available on record today it is not possible to come to a conclusive finding on such scope.

11. Facts of W.P. No. 1137 of 2015 are similar as that of the other writ petition. An identical letter of repudiation dated April 8, 2013 has been issued in respect of an identical incident relating to a different excavator employed in a different colliery.

12. In such circumstances, I am not inclined to interfere in the two writ petitions.

W.P. No. 1135 of 2015 and W.P. No. 1137 of 2015 are dismissed. No order as to costs.