

(2012) 12 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

GOODWILL ENGINEERING WORKS

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Citation : 2012 0 NCDRC 894 : 2013 1 CPJ 77

Hon'ble Judges : J.M.MALIK J.

Final Decision : Complaints dismissed

Judgement

1. THE verdicts rendered by my both the learned brothers give the facts in detail. Those are hardly to be reiterated. It must be borne in mind that it is the complainant and nobody else, who has to carry the ball in proving its case. Certain dates in this case are very important. The Marine Hull Policies, proposed on 22.10.1997, were obtained for the period 15.9.1997 to 14.9.1998. The vessels were complete on 25.3.1998, vide certificates dated 30.3.1998 but no evidence was led that its information was sent to the OP. On 27.4.1998, at the request of the complainant, the period of policies was extended from 15.9.1998 to 4.7.1999. The delivery voyage commenced on 17.5.1998. The loss/damage occurred on 27.5.1998 which was conveyed to the OP by telephone on 27.5.1998 and by telegram on 28.5.1998, and by way of letter, dated 1.6.1998. The complainant paid a further premium of Rs. 5,27,076 on 10.7.1998, of its own without seeking addition in the policy. This is noteworthy that the said premium was paid after the loss had occurred. The claim was repudiated by two letters dated 12.2.1999 and 14.7.1999.

2. THE complainant has placed reliance on two letters dated 4.3.1999 and 4.6.1999 which have been discussed by my learned brother, Hon "ble Mr. Anupam Dasgupta. They have also relied upon Adjustor recommendation. It was contended that there is admission of the complainant "s case in the above said letters dated 4.3.1999 and 4.6.1999. The complainant has also placed reliance on the payment of Rs. 5,27,076 paid to the OP on 9.7.1998. According to it, it was nothing but the additional premium demanded by the OP "s Underwriter "s

Office after the complainant had informed the OP of the damage to the barges on their way from Pondicherry to Mumbai. It was the OP who sought payment of additional premium for coverage of risks under the (held cover) provisions of insurance policy issued earlier. However, there is no such demand letter in this context. The Counsel for the complainant also submitted that his case stands covered under Section 33, Clause 2 of the Marine Insurance Act, 1963. The learned Counsel for the complainant also picked up a conflict with the affidavit of Mrs. P. Hema Malini and the document Ex. R-1. It was submitted that these are in conflicting state. In R-1 there are two identical entries "deposit premium collected Rs. 2,45,676 on 10.7.1998. However, the affidavit states that an amount of Rs. 3,91,352 was debited on 31.3.1999 towards issuance of policy, dated 31.8.1999. The details of policy dated 31.3.1999 were not stated. It was argued that it is difficult to fathom as to why the money would be given in advance for a considerable long period of 8 months. Letter dated 20.7.2009 makes the things clear.

3. AFTER sinking of the two dumb barges in the Sri Lankan coast, the complainant again built two new barges at Pondicherry. They solicited its quotation for placing the business with OP. The OP vide its letter dated 24.2.2000 addressed to the complainant gave its Quotation for dumb barges with a sum insured of Rs. 2,23,10,000 for each of the dumb barges. Vide letter dated 20.12.2000 the OP quoted the rates for the delivery of wage in regard to single tow and double tow and the rate was quoted to be Rs. 1,28,431 per barge, i.e. Rs. 2,56,862 for double barge. The double tow rate was quoted to be Rs. 2,79,958. These were not got approved by Tariff Authority Committee.

4. AFTER having subjected the evidence and written synopsis, I do not find myself amenable to the arguments advanced on behalf of the complainant. The reasons for reaching the above said conclusion are listed as follows. The construction of contract entered into between the parties assumes importance. It is a settled law that Court should refrain from any interpretation which would result in injustice and absurdity, AIR 1963 SC 25. The question to be considered is not what was intended, but what has been said. I am of the considered view that the clauses of the contract are not patient of two interpretations. This must be borne in the mind that the casualty to the barges took place off Sri Lankan coast which is beyond 20 nautical miles. The terms and conditions regarding 20 nautical miles has to be strictly construed. We cannot amend or substitute anything in the contract. In *Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd. and Anr.* The Hon "ble Apex Court was pleased to hold: "22. Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a contract of insurance. It is trite that in a contract of insurance, the rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance have to be strictly construed, and no exception can be made on the ground of equity. In *General Assurance Society Ltd. v. Chandmull Jain*, 1966 ACJ 267 (SC), a Constitutional Bench of this Court had observed that

- "In interpreting documents relating to a contract of insurance, the duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however, reasonable, if the parties have not made it themselves ". 23. Similarly, in Harchand Rai Chandan Lal 's case, 2005 ACJ 570 (SC), this Court held that - "Terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever, liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended ".

24. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the Court should always be to interpret the words in which the contract is expressed by the parties ". The Commission is bound to read the words as these are. No contract was adduced before us which may go to show that the contract was at any time amended, and the words "20 nautical miles ", were replaced by the words "by sea from Pondicherry to Mumbai ".

5. ACCORDING to Clause 9.1 of the Institute Clauses on Navigation, it is clear that the policy will cover the goods within a distance by water of 20 nautical miles off port or place of construction or it would be covered at a premium to be arranged in the event of such distance being exceeded. The main question, therefore, is "Whether the alleged premium paid on 10.7.1998, after the event in the sum of Rs. 5,27,076 can be taken into consideration "?

6. CLAUSE 9.2 of the Institute Clauses on Navigation further states that the previous notice is to be given to the OP regarding any movement of the vessel. Secondly, no information was given as per the above said Clause 9.2. The contract also did not say that the intimation of movement of the two barges would be given to the OP. As Clause 9.2 was applicable, therefore, it was incumbent upon the complainant to give previous notice to the OP. There is no evidence on record to show that the OP was apprised of completion of barges or barges were taken out from the port of construction at Pondicherry. Mere obtaining of Group Personal Accident Policy cover for the crew and the members of the twin vessel cannot be said to be a prior notice about the towing of the barges of the above named tug "Shivshakthi ". It is also clear that the intimation about the commencement of the Voyage of the barges was given to the insurance company after the peril on 27.5.1998/28.5.1998/1.6.1998 which was against the very spirit of Clause 9.2 of the Marine Insurance Policy in question. Its failure to do so, dampens the ardour of its case. Next, there is no evidence that a sum of Rs. 5,27,076 was paid vide any demand made by the complainant. No such demand letter was placed on record. It must be borne in mind that an

amount of Rs. 5,27,076 was paid on verbal communication received from the Branch Manager. The letter accompanying the cheque dated 9.7.1998 does not say anything about the details of that cheque. It merely mentions "deposit premium ". The affidavit of Mrs. P. Hema Malini remains unrebutted. The payment dated 10.7.1998 was otherwise as per Section 64VB of the Insurance Act and Section 33(2) of the Marine Insurance Act, 1963 and Rule 58 of the Insurance Rules, 1939. Facts are stubborn things. Some low rank officials of the Insurance Company while working in cahoots with the complainant cannot change the facts. The complainant did not have the intention to pay a sum of Rs. 5,27,076 or whatever was payable. It should have paid the said amount beforehand and got the policy amended before the damage was caused or if it came to its mind, subsequently, but before the damage was caused there, should have been an additional or amended contract, only in that event it would have come in category of "held covered ".

7. FOR all these reasons, I find that the complainant has no bone to pluck with the OP. I give concurrence to the findings given by Hon "ble Mr. Justice R.C. Jain and dismiss the complaints. However, parties are left to bear their own costs. Complaints dismissed.