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(2005) 04 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

JAGSON INTERNATIONAL LTD. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 11-04-2005

Acts Referred:

Citation : 2005 0 ACJ 615 : 2005 0 NCDRC 68 : 2005 2 CLT 480 : 2005 2 CPC 221 : 2005 3 CPJ 12

Hon'ble Judges : M.B.SHAH , P.D.SHENOY J.

Advocate : R.C.MISHRA , VISHNU MEHRA

Judgement

1. IT is the say of the complainant that the company is engaged in the business of drilling oil in Bombay High area under the supervision of Oil and Natural Gas Commission. For this purpose, the complainant owns a RIG. The complainant took an insurance policy called Combined Hull Policy/Package Policy for an amount of Rs.42,50,00,000/- by paying premium of Rs.19,16,750/- for a period effective from 23.12.1998 to 22.12.1999; on 29th June, 1999 an accident took place and the crane boom got twisted and the bridle line broke and boom fell on the top of the schlumberger unit. On the same date, complainant addressed a letter to the insurance company giving details of the accident of Deep Sea Matdrill Jack Up Rig which was insured. On 30.6.1999, the complainant estimated the cost of repairs / replacements which was expected to exceed 15 million rupees. Thereafter, the insurance company appointed M/s. J.B. Boda Offshore Surveyors & Adjusters Pvt. Ltd. to assess the damage. As per the surveyor''s report circumstances leading to incident are as under: "On June 29, 1999 the rig was in the process of exploratory drilling at location C-37/B at Tapti Field. At 0950 Hrs.the rig had commenced parallel operations of snatch lift of cargo consisting of production control head from OSV/ "SINDHU-8" using the barge''s Port Crane. During the operation of attempting to rig up and lift the cargo, the vessel, due to strong winds and tide caused by the prevailing monsoon was unable to hold position resulting in the crane hook entangling with the support rail of "SINDHU-8".

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2. THE fast and uncontrollable drift to the vessel with the fouled up lifting hook of the crane caused serious buckling of the boom and subsequent shearing at the hinge of the boom whose free fall resulted in multiple damages to the surrounding structure (Like Helideck, Schlumberger Unit) and the crane sections (Hoist Wires, Prime Mover and Operators Cabin)". In the preliminary report, surveyors estimated the loss at Rs.74 lakhs. Complainant protested and presented the claim bills at Rs.80,69,136/-. The surveyors informed that air-freight will not be allowed and only notional sea-freight will be considered and submitted the final survey report dated 3.2.2000 assessing the loss at Rs.42,97,253/-. Relevant part is as under: FINAL ADUJSTMENT SUMMARY After application of the deductible excess of Rs. 20,00,000=00, a net adjusted claim of Rs. 4,47,253=00 falls for underwriters consideration. Rs.20 lakhs were deducted by applying 30% depreciation towards cost of spares.

Thereafter, on March 3, 2000 the Complainant informed the CMD, Insurance Company that they have given final bill amounting to Rs.80 lakhs to the surveyor on 14.12.1999. This bill contained airfreight charges amounting to Rs.17 lakhs as the spare parts were required to be brought by air because it was urgently required and no ship was available for the next few days. Nowhere in the policy, there is a condition which provides that airfreight is to be excluded. It was, therefore, contended that the surveyor has arbitrarily awarded only Rs.3 lakhs and not Rs.17 lakhs. Again a letter was written on 10th March, 2000 stating that they do not require any favour from the surveyor whom the Insurance Company thought fair and reasonable. The settlement can be reasonable only if it is in accordance with the policy issued by the Insurance Company. It was also stated that surveyor has wrongly referred to a condition of the insurance policy which provides that cost of replacement less depreciation will be paid. It was also mentioned that even in normal course they bring the spare parts by air and there is no written agreement that airfreight will not be paid. It was pointed out that the surveyor was definitely prejudiced for reasons which are not known. But, the Insurance Company is a party to the contract and should not act against it. To that letter reply was sent by the Assistant General Manager of the Insurance Company on 27/28th April, 2000 wherein it was stated that expediting expenses were not allowed, as the policy did not cover for such expenses. It is submitted that premium for expediting expenses were not paid by the Complainant. Therefore, airfreight was rightly not granted. It was also pointed out that the amount of Rs.20 lakhs was deducted as per the terms of the policy. For this, reference is made to term of the policy which provides for expediting expenses.

3. IN view of the aforesaid dispute, as the claimed amount was not paid, this complaint was filed on 19.5.2000 before this Commission for recovering, in all, Rs.62,19,136/- towards loss suffered by the Complainant with interest at the rate of 18% p.a. and costs. At the time of hearing of this complaint, learned Counsel for the Complainant raised only two contentions, namely: (a) deduction of Rs.20 lakhs is totally unjustified. The said deduction is on the basis of depreciation of the crane which was repaired by spending large amount. The

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reduction of this amount is without any basis. (b) secondly, there was no justifiable reason for not awarding airfreight charges of Rs.17 lakhs and only of paying Rs.3 lakhs which would be sea freight for bringing the spares from Huston (U.S.A.) and Singapore. Contention (a): Learned counsel appearing on behalf of the insurance company submitted that reduction of 30% is on the basis of clause-10 of the insurance policy. The said clause is as under : Limit of Liability: "In no event, except as provided for in the Sue and Labour Expense Clause and Collision Liability Clause herein, shall the Underwriters liability arising from any one accident or occurrence exceed the amount insured hereunder as set forth in Clause 3 in respect of the items subject to claim in such accident or occurrence. In respect of the property insured hereunder Underwriters shall not be liable for more than their proportion of the cost of repairing or replacing the property damaged or lost with materials of like kind and quality to a condition equal to but not superior to or more extensive than its condition prior to the loss; nevertheless in respect of the hull of the drilling be covered hereunder all costs of repair and replacement for which Underwriters may be liable shall be on the basis of new for old with no deduction for depreciation.

In no event shall Underwriters be liable for any increased cost of repair or construction by reason of law, ordinance, regulation, permit or licence regulating construction or repair."

4. ON the basis of the aforesaid clause it is submitted that the insurance company''s liability is limited to replacing the property damaged with materials of like kind and quality to a condition equal to but not superior to its condition prior to the loss. It is contended that admittedly the complainant in their balance sheet had claimed 30% depreciation of the repaired item and, therefore, the said amount was justifiably deducted. In our view, this submission cannot be accepted. If we read the aforesaid clause, it is apparent that the insurance company has limited its liability to the extent of cost of repairing or replacing the property damaged or lost with materials of like kind and quality to a condition equal to but not superior to or more extensive than its condition prior to loss. In this case, the complainant has not purchased a new crane. The crane is repaired and for repairs whatever amount is required to be paid, is to be reimbursed by the insurance company. It cannot be contended that as the RIG was used for some time, the Complainant should repair the crane and replace the damaged parts only with those parts which were used for some time or similarly used articles. This would be practically impossible. It is not the case of the insurance company that the complainant has repaired the crane with any superior material or that material was of different kind and quality. Further, in the complaint it has been pointed out that the crane is a part of hull of the rig and there cannot be deductions for depreciation as envisaged under condition for limit of liability. The relevant clause is quoted above. It specifically provides that in respect of the hull of the drilling base covered all costs of repairs and the replacement for which the underwriters shall pay on the basis of new for old with no deduction in depreciation.

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5. ON behalf of the Insurance Company an affidavit has been filed by Mrs. Alice G. Vaidyan, who was working as Manager in the office of the Insurance Company. In the said affidavit it has been stated that there is no damage to the hull of the drilling barge covered by the policy, but damage is only to the crane which is not the hull of the drilling barge, but is only an equipment. In our view, it would be difficult to hold that the equipment which is part of the hull cannot be said to be part of the hull. It has been rightly pointed out that the property insured is jack up drilling Rig Matdrill which consists of hull and machinery of the drilling barge, hull and crane cannot be treated as separate item. Crane is an integral part of hull and not equipment. There is nothing on record to hold that the crane is not part of the hull of the drilling barge. The policy taken by the insured is a combined hull package policy. In any case, if the term of the policy is vague, benefit certainly goes to the assured and not to the insurer. Otherwise, the purpose of insurance policy to protect against the perils for which insurance coverage is given, would be defeated. Law on this subject is settled [(i) re.Shashi Gupta (Smt.) Vs. Life Insurance Corporation of India and Anr. 1995 Suppl. (1) SCC 7540]. [(ii) In United India Insurance Co. Ltd. Vs. Pushpalaya Printers (2004) 3 SCC 694)] the apex court has also held that where the words of a documents are ambiguous they must be construed against the party who prepared the documents Further to avoid such situation, instead of borrowing the terms of the policy, it is high time for Insurance Companies to have precise terms of the policy which could be easily understood and suit the present day situation. If the terms of the policy are understood properly by the parties such disputes could be avoided. Admittedly, in this case the complainant has submitted bills totalling Rs.80,66,196/-. However, surveyors assessed the loss at Rs.42,97,253/- as fair and reasonable cost of repair. Once that amount was assessed, there was no justifiable reason to hold that repair cost is required to be depreciated by 30%. In this view of the matter, deduction of Rs.20 lakhs cannot be justified. Contention (b)

6. THE complainant has also claimed air-freight charges amounting to Rs.17 lakhs. The surveyors have allowed only Rs.3 lakhs on the basis of ocean-freight. For justification of the non-payment of air-freight, learned counsel Mr.Mehra submitted that no extra premium was paid by the complainant. The relevant clause for expediting expenses is as under: "EXPEDITING EXPENSES Coverage under this section of the policy is extended to include additional costs and expenses reasonably incurred by the Insured or on their behalf in connection with or incidental to expediting the commencement, carrying out or the completion of the repair or replacement of the interest hereunder as a consequence of the loss of or damage to property covered by the terms of this policy. Such additional costs and expenses include but are not limited to: (a) Necessary expenses of chartered carriage or delivery (b) Chartered and /or other travel (including by sea or air) of the Insured''s directors, officers, employees, agents, contractors, sub-contractors, consultants or representatives (c) Hire of additional labour, equipment, materials or services (d) Accommodation including

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meals and other associated costs.

There is nothing on record to arrive at a conclusion that the aforesaid term requires payment of additional premium. The said term only provides that policy is extended to include additional cost and expenses reasonably incurred by the insured for carrying out the repair. As such, this can be termed as part and parcel of the policy condition because for repairs reasonable cost incurred by the insured is required to be reimbursed. It does not require any separate payment of premium. Otherwise the whole purpose of the policy is frustrated. There is nothing on record to indicate that while accepting the large premium, the Insurance Company or its agent had informed that repair cost would not include transport cost for bringing articles for repair or if article is required to be shifted form one place to another for its repair, the cost incurred for repair would not be reimbursed. In any case, it depends upon the practice of the Complainant and it is stated by the Complainant that in such cases, they were bringing such spares for repair by airfreight. Further, if such cost was not required to be reimbursed, then there was no necessity of reimbursing notional ocean freight. This reveals that stand taken by the Insurance Company is inconsistent. Further, it is not the case of the Insurance Company that the articles, which were brought from foreign country, were available in India at a lesser cost.

7. IN the result, it is held that deductions of Rs.20 lakhs (30% depreciation from the cost of repairs) and Rs.14 lakhs (i.e. Rs.17 lakhs airfreight minus Rs.3 lakhs paid on an assumption that goods ought to have been brought by ship) are held to be unjustified. Hence, the Insurance Company is directed to pay to the Complainant in all Rs.34 lakhs which was wrongly deducted on the alleged account of depreciation and from the airfreight incurred by the Complainant with interest at the rate of 10% p.a. from six months after the date of the incident, i.e. 29th December, 1999 till the date of payment. The Opposite Party is also directed to pay Rs.10,000/- as costs. The costs shall be deposited with the legal aid fund of NCDRC.

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