(2015) 05 PAT CK 0130

In the Patna High Court

Case No : Letters Patent Appeal No.455 of 2012 in Civil Writ Jurisdiction Case No. 6395 of 2010

M/s Surendra Prasad Singh APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Citation : (2015) 3 BBCJ 174 : (2015) 3 BLJud 139

Hon'ble Judges : Mr. V.N. Sinha and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Aditya Narain Singh, Mr. Kundan Kumar Sinha and Mrs. Rita Verma, Advocates, for the Appellant; Mr. Ram Chandra Lal Das, Advocate, for the Respondent Nos. 6 and 7

Final Decision : Allowed

Judgement

Mr. V.N. Sinha, J.(Oral)—These two Letters Patent Appeals are directed against order dated 28.02.2012 passed by learned Single Judge in C.W.J.C. No. 6065, 6395, both of 2010, where under the two writ petitions praying, inter alia, to direct United India Insurance Company Limited, its functionaries, Respondent Nos. 6, 7 to pay the insurance claim of the writ petitioner in the light of claim dated 16.08.2007, 21.09.2007, 2.11.2007, Annexures-6, 7 to the writ petition has been rejected holding that petitioner having obtained the policy cover on 03.07.2007 was only entitled for compensation for the work done pursuant to the contract Package No. BR/30/03 SH Chainage 10 KM to 17.745 KM and Shivajinagar Baheri Path in Rosera Block, referred to in the policy cover note respectively after 03.07.2007 and not prior thereto. Appellant petitioner is a Construction Firm which had taken contract for laying a road in the town of Rosera, length whereof was 10 K.Ms. from Rosera to Shivaji Nagar. The contract was awarded by the Executive Engineer, C.P.W.D., Darbhanga, Respondent No. 4. In the light of the contract the contractor was to obtain an insurance cover for the protection of the C.P.W.D. as also the contractor before undertaking the execution of the contract. In the instant case the execution of the contract by resorting to earth filling, brick laying was undertaken in November, 2006 but the two insurance cover in question was obtained on 03.07.2007 which became effective from the date of payment of the premium which is also 03.07.2007. Perusal of the cover note indicates that the period of insurance is from 00:00 hours of 03.07.2007 to midnight of 02.04.2008. Warranty Clause of the Insurance Cover is as follows:-

A. Effective date of policy is from the date of receipt of premium, in the instant case 03.07.2007.

B. All losses prior to date of payment of premium are excluded.

2. After the contractor suffered loss, claimed insurance benefit vide claim dated 16.08.2007 and the Investigator submitted Investigation Report the surveyor submitted interim survey report dated 13.11.2007 stating that the civil work for laying the road-in-question was started on 08.11.2006 which was likely to be completed by 07.08.2007 further stating that prior to the flood the Insured had completed most of the work except for laying the top bituminous surface and its allied work. Having noted the aforesaid background the interim survey report assessed the loss suffered by the contractor as Rs. 1,27,60,183/-. Payment in the light of the surveyor''s report dated 13.11.2007 was not made where after contractor came to the Writ Court, filed C.W.J.C. No. 16895, 17027, both of 2008. Both the writ petitions were disposed of under order dated 12.08.2009 observing as follows:-

"In the facts and circumstances of the case, this Court directs the petitioner to file representation before the respondent Insurance Company, who would after considering his representation settle the amount and make payment to him within three months from the date of representation.

With the aforesaid direction this writ application is disposed of."

3. Even after the direction to consider the representation of the contractor and make payment the Insurance Company did not make payment, preferred Civil Review Nos. 257, 256, both of 2009 which was rejected under order dated 24.02.2010. After rejection of the review petitions matter was again referred to the surveyor who submitted final survey report dated 21.10.2009 in the light of the information received from the Executive Engineer, C.P.W.D., Samastipur that the work for laying the road had begun on 17.10.2006, 08.11.2006 and prior to the taking of the insurance cover road laying work was completed of the value of Rs. 2,34,70,784/-, Rs. 1,70,85,163/-.

4. In the light of the information received from the Executive Engineer, the Investigator appointed by the Company also informed the Regional Manager of the Insurance Company that Insured had not taken insurance cover at the time of commencement of work in 2006. He had taken insurance coverage after almost eight months of progress of work. Schedule time of construction period

for the project was nine months only. Thus, Insurance was arranged at the fag end of the schedule completion of the project. The Investigator also stated that Insured had proposed for insurance coverage from 03.07.2007 and not declared the work done prior to date of proposal in proposal form. Thus, the Insured had concealed material fact. In conclusion 4 the Investigator stated that apart from concealment of material fact in the proposal form by not declaring date of first arrival of consignment the Insured has not taken the opportunity to contest the point raised by him that he intended to take insurance coverage only for the property work done subsequent to inception date of the policy i.e. 03.07.2007. In conclusion 5 the Investigator stated that in the light of the above inference the insurer may deny the liability. In the light of the report of the Investigator dated 02.08.2009 the surveyor quantified the loss for the work done in chainage 0-10 K.M. from 03.07.2009 which is perhaps a mistake for 3.07.2007, the date of cover proposed and granted, as per the insurance policy the total work done was Rs. 19,82,902/- which was further reduced to Rs. 17,82,902/-. The Insurance company in the light of final survey report dated 21.10.2009, Annexure-13 has made payment of Rs. 17,82,902/- which has been affirmed by the learned Single Judge under the impugned order. In this connection, learned Single Judge has held that final survey report is on the basis of discharge vouchers generated after commencement of the insurance policy and the petitioner cannot be allowed to claim payment for the work done prior to the taking of the insurance cover. The insurance cover has been obtained in the light of the terms of the contract executed by and between the petitioner and the Executive Engineer, C.P.W.D., Darbhanga dated 12.09.2006 which enjoined the contractor to obtain an insurance cover. In the light of the terms of the contract contractor proceeded with the work in November, 2006 and then purchased the insurance cover on 03.07.2007. The terms of warranty clause of the insurance cover clearly provides that the Insurance Company will not grant insurance benefit for the losses prior to the date of payment of the premium. In the instant case, the work done pursuant to the contract from November, 2006 till the date of taking of the insurance policy 03.07.2007 is foundation for the subsequent work done after 03.07.2007 has been subjected to loss on account of inundation of the town of Rosera, as such, the claim of the contractor is covered by the warranty clause of the cover note and thereunder any loss caused to the contractor even prior to the purchase of the insurance cover for the work done pursuant to the contract Package No. BR/30/03 SH Chainage 10 KM to 17.745 KM and Shivajinagar Baheri Path in Rosera Block, referred to in the policy cover note respectively is to be taken into account and claim granted.

5. In such view of the matter, we set aside the order passed by the learned Single Judge, direct United India Insurance Company, its functionaries Respondent Nos. 6, 7 to make payment of the loss as assessed by the surveyor in preliminary report dated 13.11.2007, 19.11.2007 for the work done from November 2006 i.e. prior to the purchase of the insurance policy till the date of inundation after deducting the amount already paid as early as possible, in any

case within three months from the date of receipt/production of a copy of this order.

6. Both the appeals are, accordingly, allowed.

