

(2006) 03 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE COMPANY LTD.REPRESENTED BY ITS SENIOR DIVISIONAL MANAGER APPELLANT

Vs

MANGALAGOWRI CASHEW INDUSTRIES RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:

Citation : 2006 0 NCDRC 101 : 2006 1 CPC 561 : 2006 2 CLT 135 : 2006 2 CPJ 32

Hon'ble Judges : M.B.SHAH , S.N.KAPOOR J.

Advocate : JOY BASU , GIRISH ANANTHAMURTHY , H.B.Mallya

Judgement

1. FIVE complaints were filed against M/s. National insurance Company Ltd. (hereinafter referred to as the Insurance Company) contending that the complainants were carrying on business of processing cashew nuts and in that connection they purchased dried raw cashew nuts in shells from a party in United Kingdom which was to be transported by sea from Apapa, Nigeria, via Colombo to be off-loaded at Tuticorin, from where it was to be carried by road to the business premises of the complainants around Mangalore. The cargo was booked in sea-worthy polypropylene bags, each bag containing 80 Kgs of cashew nuts (net) which were put in containers for being transported by sea. The goods were insured and the opp. party issued policies to the five complainants on different dates for different sums assured under each policy. It appears that when the cargo reached Colombo Port from Apapa, Nigeria, there was some delay in transshipment and when the goods reached Tuticorin, they were found to be affected by rain water, resulting in deterioration in value and quality of the packed cashew nuts to such an extent that they had become virtually useless.

2. IN the wake of such a happening, the complainants filed claims under the policies since the peril which had occurred was covered under the policy conditions. The opp.party, however, showed disinclination to settle the claim and, hence, the complainants were compelled to arrange for a survey by Lloyd's Agents and the report given by them were made available to the opp.party to

settle the claim expeditiously. After considerable delay, the opp.party chose to repudiate the claim on the flimsy ground that the loss was not on account of any of the insured perils. In the complaint it was contended that the insurer had issued an "All Risks Policy" under which if the goods are affected during transit, for whatever reason, the insured is entitled to reimbursement for the loss or damage caused. It is stated that subsequent to the repudiation of the claim, when the eligibility of the complainants for the claim under the policies was brought to the notice of the higher authorities of the opp. party, the matter was decided to be reopened for reconsideration and in that premises certain additional documents were called for from the complainants. However, despite promptly furnishing of all the documents required, there was no positive response from the opp.party and, hence, the five complaints were filed before the State Commission.

3. AFTER hearing the parties, the State Commission allowed the five complaints and directed the insurance company to pay, as under: (i) In Complaint No.76/96 a sum of Rs.10,93,506/- under the policy with interest at 12% p.a. from the date of complaint till realization with costs of Rs.5000/-. (ii) In Complaint No.77/96 a sum of Rs.3,50,399/- under the policy with interest at 12% p.a. from the date of complaint till realization with costs of Rs.2000/-. (iii) In complaint No. 78/96 a sum of Rs.8,53,526/- under the policy with interest at 12% p.a. from the date of complaint till realization with costs of Rs.4,000/-. (iv) In Complaint No. 79/96 a sum of Rs.9,04,362/- under the policy with interest at 12% p.a. from the date of complaint till realization with costs of Rs.4000/-. (v) In Complaint No.80/96 a sum of Rs.11,35,159/- under the policy with interest at 12% p.a. from the date of complaint till realization with costs of Rs.5000/-."

4. AGAINST the aforesaid orders, the insurance company has preferred these Appeals. It is admitted that the contract of shipment was signed on 1.4.1994; the actual shipment took place between 25.5.1994 and 30.6.1994; the containers reached Tuticorin on 20.8.1994; the goods were opened for the first time at Tuticorin and the goods were destuffed at Tuticorin between 20.8.1994 and 11.9.1994; decay and germination was noticed at that time. Admittedly, the transit took place during the rainy season. There is no dispute that there was some delay in completion of voyage. Submissions: At the time of hearing of these appeals, Mr.Joy Basu, learned counsel for the insurance company contended that: 1.(a) By the Marine Insurance Policy, only sea perils are covered and not germination of the cashew nuts, because it is not a sea peril as found by the surveyor. As the packages containing the cashew nuts were in a properly packed condition, there was no reason for sea water entering the container as sealed containers were never opened. Survey reports only mention that there were droplets of water inside the container due to condensation and this has resulted in decay. He has also pointed out that there were no holes/cracks in the container. Therefore, there was no question of ingress of fresh water or rain water. (b). Onus of proof in Marine Insurance Policies with regard to cause of damage to the goods is always on the insured and not on the insurer.

5. IN support of his contention that in Marine Insurance Policies it is for the complainant to establish the cause for the damage to the goods, and in support of this contention he relied upon the following decisions: La Compania Martiartu Vs. The Corpn. of the Royal Exchange Assurance - [(1923) King's Bench Division] - Pgs.650, 653, 657, 658 Rhesa Shipping Co. SA Vs. Edmunds and another [(1985) 2 AII ER] - Pgs.712, 713, 714, 718, 719 (burden of proof on ship owners) Bihar Supply Syndicate Vs. Asiatic Navigation & Ors. [AIR 1993 SC 2054] - Pg.2060 D.K. Lall Vs. Samrat Shipping & Transport Systems Pvt. Ltd. & Ors. [III(2003)CPJ 113 (NC)] - Pgs.121 and 122 Paras 23, 24

6. THERE was delay in arrival of the goods at Tuticorin and because of the delay, the insurance company is not liable to reimburse the complainant. Marine Insurance Policy is based on utmost good faith and when there is suppression with regard to the nature of goods, insurance company is not bound to reimburse. In the present case, policy was issued on the basis of telegram.

7. THERE is material suppression on the part of the complainant with regard to the quality of goods shipped. For this purpose, he has referred to the Sales Contract dated 1.4.1994 which inter-alia states that - Quality : Defective nuts, rotten, void, diseases, etc. 9% (+/- 1%) Moisture - 9% (+/- 1%) Foreign matters - 0.25% max. Admixture - 0.25% max. Number of nuts per kilo - 180/200 In case that results from specifications are higher than above discount of 1% or prorata for each 1% or prorata higher than above specifications.

8. HE has also referred to SGS Inspection Services Report wherein it has been stated that defective nuts were as under : "Defective Nuts : Rotton - 39.2 grams - 3.92% Spotted - 9.3 grams - 0.93% Diseased - 22.5 grams - 2.25% Immatured - 26.5 grams - 2.65% Partly damaged - 12.2 grams - 1.22% Void - - grams - -

-----			Total
-	109.7	grams	- 10.97%

Average moisture content and admixture as per attached Laboratory Report No.16365 - WAN/0303/AP94AS dated 31st May 1994."

As per the survey report (Pg.59) there is inherent vice of having damaged or having germination in raw cashew nuts and, therefore, the Insurance Company is not liable as per the terms and conditions of the policy. Exclusion Clause 4.4 specifically excludes the risk in case the damage is caused because of the inherent vice of the goods assured. Findings: Re. Contention No.1:

9. THE insurance policies, in the present case, are for covering "all risks" and that is specifically provided in the first part of the policy itself. For appreciating the aforesaid contention, we would refer to the terms and conditions of the Insurance Policy. In our view, the insurance policy is comprehensive covering all the risks. This would be clear from the following part of the insurance policy: "The Company hereby promises and agrees with the assured, their executors,

administrators and assigns that the Company will insure against loss damage liability or expense subject to the clauses, endorsements, conditions and warranties contained in this schedule.

"Subject-matter insured : Dried raw cashew nuts in polypropylene bags and seaworthy of about 80 Kgs. nett each of 100 mts. From Nigeria to India Rs.18,15,850/- (Rupees eighteen lakhs fifteen thousand eight hundred fifty only) ICCA, SRCC war risks, shipment should be made only on standard ships in sound bags. Each bag should be identified by marks and nos. Prelanding survey by our sub agent of our overseas claim agents regarding condition and weight. Vessel should be approved by GIC. Rs.18,15,850/- (Rupees eighteen lakhs fifteen thousand eight hundred fifty only).

With regard to the special conditions and warranties, the insurance coverage is subject to the clauses and conditions as mentioned therein, inter alia, namely: "1. Institute Cargo Clause (A) 10. Institute War Clau- 11. Institute Strike Clauses (Cargo) 22. Important Notice."

The Institute of Cargo Clauses (A), provides for the risk covered and exclusion clauses are as under : "Risk covered : 1. This insurance covers all risks of loss of or damage to the subject matter insured except as provided in Clauses 4,5,6 and 7 below. 2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice. Incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4,5,6and 7 or elsewhere in this insurance. 3. This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment "Both to Blame Collision" Clause as is in respect of a loss recoverable hereunder in the event of any claim by ship-owners under the said clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim. Relevant part of Exclusions Clauses : "4. In no case shall this insurance cover 4.1 Loss damage or expense attributable to willful misconduct of the Assured. 4.2 Ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject matter insured. 4.3 Loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured (for the purpose of this Clause 4.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants.) 4.4 Loss damage or expense caused by inherent vice or nature of the subject matter insured. 4.5 Loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under clause 2 above). 4.6 Loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel. 4.7 Loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter. 5 "... 6"..., 7".."

Duration:

10. THIS insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either 8.1.1 on delivery to the Consignee's or other final warehouse or place of storage at the destination named herein, 8.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named therein, which the assured elect to use either 8.1.2.1 for storage other than in the ordinary course of transit or 8.1.2.2 for allocation or distribution. Or 8.1.3. on the expiry of 60 days after completion of discharge overseaside of the goods hereby insured from the overseas vessel at the final port of discharge whichever is first occur 8.2. If, after discharge overseaside from the overseas vessel at the final port of discharge but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination. 8.3. This insurance shall remain in force (subject to termination as provided for above and to the provisions or clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment".

Thereafter, Clause 18 dealing with delay reads thus: "It is a condition of this insurance that the Assured shall act with reasonable dispatch in all circumstances within their control."

The learned Counsel Mr.Joy Basu, submitted that in view of the fact that it was a marine insurance policy, only sea perils are covered and germination of cashewnuts was not any sea peril as found by the Surveyor and, in any case, the onus of proof in marine insurance policy with regard to the goods is always on the insured and not on the insurer. Therefore, the entire approach of the State Commission in deciding the matter is erroneous.

11. IN our view, the aforesaid contention has no substance because of the specific terms and conditions mentioned in the insurance policy issued to the assured. It covers risk from "warehouse to warehouse" and is a comprehensive insurance policy with addition of Institute Cargo Clause-A as quoted above. The Institute Cargo Clause-A, inter alia, provides a specific underwriting that the insurance covers all risks of loss or damage to the subject matter insured except as provided in Clauses 4, 5, 6, and 7. These terms nowhere provide that it would not cover the loss or damage because of germination of the cashew nuts. Thus, the policy being extensive and comprehensive to cover all risks of loss or damage to the subject matter insured, it cannot be held that it would cover only sea perils. In this view of the matter, it is not necessary for us to discuss the judgments relied upon by the learned Counsel for the Appellant with regard to burden of proof in case of marine insurance policy. Re. Contention No.2 Delay:

Clause (18) of the Institute Cargo Clause - A: (i) With regard to delay in arrival of the shipment, in our view, the contention raised by the learned Counsel for the Appellant, Mr. Joy Basu, does not deserve much consideration, in view of the specific clause (18) of the Institute Cargo Clause-A, which only provides that it is a condition of the insurance that the assured shall act with reasonable dispatch, in all circumstances, within their control. In the facts of the present case, it is apparent that there is no delay on the part of the assured in the dispatch of the goods. The contract for shipment was executed on 1.4.1994 and the actual shipment took between 2.5.1994 and 30.6.1994. The containers reached Tuticorin between 20.8.1994 and 11.9.1994. In between, the goods were required to be de-shipped at Colombo. (ii). Secondly, for the delay at Colombo, the assured is not responsible as at the said Port the goods were stranded for want of a smaller vessel. For this, the Complainant cannot be held responsible. Such a delay which was caused in the voyage is not within the control of the Respondent/assured. (iii). Thirdly, the Complainant has not taken voyage policy prescribing any definite period of time nor it was a contract for both voyage and time as contemplated under Section 27 of the Marine Insurance Act, 1963.

(iv). Fourthly, as per the Duration Clause of the Institute Cargo Clause-A, it is clear that insurance coverage is from the time the goods leave the warehouse or place of storage at the place named therein for the commencement of the transit and continues till the goods are redelivered to the consignees or other final warehouse. It also continues till the expiry of 60 days after completion of discharge overside of the goods. Therefore, it remains in force during reshipment or transhipment. (v). Fifthly, in addition, the State Commission, rightly relied upon the evidence of RW-1, the Administrative Officer of the Opposite Party, who, in his cross-examination, has admitted that delay in transportation is irrelevant as the insurance coverage is from warehouse to warehouse. This is in conformity with the Clause (8.3) quoted above which specifically provides that "Insurance remains in force during delay beyond the control of the assured due to reshipment or transhipment", unless there is termination of insurance as provided in the insurance policy. Admittedly, there is no termination of the insurance cover at any point of time. Hence, on the basis of the admission, the State Commission rightly held that the delay in transportation is not material in processing the claims of the Complainants.

Re: Contention No.3: Material Suppression:

12. WITH regard to material suppression of the quality of goods shipped by the Complainant, learned Counsel Mr. Basu submitted that the Complainant had obtained the quality reports and also Inspection Service Report which indicated that raw cashew nuts were partly damaged and partly rotten at the time of shipment and these reports were not brought to the notice of the Insurance Company. Further, the fact that the consignment in question contained moisture content to the extent of 9% and an equal quantum of void nuts, had also not been brought to the notice of the Insurance Company while seeking insurance

coverage, which amounted to suppression of material information. In our view, this submission with regard to suppression of material fact is totally baseless because: (i). Firstly, Surveyors of the Complainants are also surveyors of the Insurance Company who inspected the entire operation. Hence, there is no question of suppression; (ii). Secondly, suppression of material information was not the reason for the repudiation of the claim. Therefore, this ground is subsequently thought of and is sought to be contended. The repudiation letter reads as under: "We refer to the above claim lodged with us: We had appointed M/s. Seascan Services to assess the loss and it is observed from their report that the cashew nuts were affected by fresh water. The containers were inspected and found to be physically sound and free from any holes or cracks in their structural components. Hence, the source of fresh water has been attributed to moisture condensation which is caused by inherent vice or nature of the cashewnuts. The shortage in the cargo delivered have been due to moisture loss which is also an inherent loss. Since, the damages have been caused by inherent vice or nature of the subject matter insured and not due to any insured perils the claim falls outside the scope of the policy. Hence, we very much regret our inability to consider your claim and are treating the matter as closed".

The above stated repudiation letter makes it clear that the repudiation was made solely on the ground that the peril had occurred due to inherent vice of the consignment and on account of fresh water entering the containers from without. Hence this ground of material suppression is apparently afterthought. (iii). Thirdly, the Insurance Company has examined Pramod R. Nayak, Branch Manager of the Insurance Company. He has issued the cover note on the request of the Complainant. It is his say that at the time of issuance of the cover note the Complainant has informed orally about the place from which they proposed to import the cashew nut. The quantity and quality have also been informed which was incorporated in the cover note. Further, in the cover note it was not mentioned that the cover note was issued as per the oral request. He has not denied the suggestion that when the cover note was issued the Complainant had given the sale contract and pre-dispatch survey report. He has admitted : "It is true that on the day the policy was issued we have information about the container, etc. It is mentioned in the cover note that a pre-despatch survey should be done at the dispatch point of the consignment. Pre-despatch survey has been made by SGS Inspection Services, Nigeria. The said report contains the nature of consignment stuffed into the container". He has also admitted that the container was kept in open yard at Colombo. He has admitted that the actual policy was issued on 7.9.1994 and the container had reached Tuticorin on 20.8.1994. He has also admitted that as per the policy insurance coverage is from warehouse to warehouse. He has also admitted that "cause for water damage", as mentioned in the survey report, "germination of water affected nuts indicates that they were affected by fresh water".

13. THE cross-examination of the Manager of the Opposite Party, RW-1, reveals that the Complainants had informed him about the contract having been entered

into by them on 1.4.1994. On this basis the State Commission observed that, if that is so, the most prudent option for the Opposite Party would have been to issue the cover note and the policy only after scrutinizing the contract, when the Insurance Company was aware of the existence of the contract, it was upto to it not to issue the cover note without insisting on seeing the contract; and issuing a cover note without satisfying itself would disqualify themselves to seek shelter behind the principles of uberrima fides and proceed to repudiate the claims under such pretext, because the Opposite Party had enough opportunity to verify such facts in detail before providing cover which they had failed to avail and hence they cannot take the plea of suppression of material facts by the Complainants. As per the oral evidence also it cannot be held that there was suppression on the part of the Complainant. He was informed about the contract and that necessary survey was carried out by M/s. SGS Inspection Services, Nigeria. Re. Contention No.4 : Cause of damage as stated by the Surveyor and Inherent Vice of Raw Cashew Nuts: (a). Cause of Damages: M/s. Seascan Services Pvt. Ltd. addressed letter dated 8.8.1995 to the Insurance Co. to the following effect: "1. When we inspected the container prior to destuffing, all the containers were observed lock with padlock and the seals were reportedly broken for Customs Inspection. However, no Surveyor witnessed the breaking of the seals. 2. We attended the de-stuffing operation continuously on the 11th September, 1994. 3 and 4. No Surveyors/Representatives from the Shippers/carriers were present at the time of destuffing operation except the consignee's representatives".

14. THEREAFTER , they submitted their report on 29.9.1994. According to them, the cause of loss is as under: "Cause of Water Damage: 1. On completion of destuffing, all the containers were inspected and found to be physically sound and free from any holes or cracks in their structural components; 2. The germination of the water affected nuts indicates that they were affected by fresh water; 3. The only source for fresh water in physically sound containers is moisture condensation. This is confirmed by the fact that there were water droplets on the inner surface of the roof panels of all the containers at the time of opening the containers".

The aforesaid survey report establishes beyond doubt that the cashew nuts were affected by fresh water. Therefore, this surveyor report's falsifies that there was inherent vice with cashew nuts. This is in conformity with the deposition of the witness, Mr.Kamath, Managing Partner of the Complainant Firm, that the containers were kept in open for 43 days at Colombo when the said period was of heavy rains. In such set of circumstances, it is reasonable to arrive at the conclusion that some fresh rain water would have entered into the containers. There is nothing on record to falsify the aforesaid statement made by the witness.

15. MR .Kamath, has further stated that they were carrying on common business in cashew processing. They get cashew from the local market as well as by imports. The consignment in question came from Apapa, Nigeria. The seller organised shipment of the goods. The goods were examined by the Society

General System (SGS), a world wide known agency, which had organised the inspection of the goods before shipment. The insurance policy was taken for covering "ALL RISKS" covering goods from warehouse to warehouse with Institute Cargo Clause A, B, C, attached to it. Since the vessels in which the cargo shipped were of a bigger size, they could not dock in Tutitorin. Hence, they were docked at Colombo. At Colombo the cargo was unloaded and was kept in uncovered/open dock waiting for suitable smaller vessel for further transshipment to Tuticorin. The goods which were brought at Tuticorin were subject to customs cess. The agents opened the containers in the presence of Customs authorities to verify whether the contents are the same as mentioned in the bill of lading. When the containers were opened it was found that fresh water was flowing out of the containers. The nuts had germinated at the bottom level. Immediately, information was conveyed to the Insurance Company to appoint Surveyors. They appointed M/s.Seascam Services as Surveyors. They submitted their report but copy was not given to them. Therefore, they approached an independent Surveyor authorised by Lloyd's Insurance, namely, Indo Cargo Surveyors. The Society General System (SGS) issued a certificate of loading at Apapa. The SGS also represented the Insurance Company. The contract of insurance contained 10% of defective nuts. It is his say that in Colombo the containers were kept in open dock yard for 43 days which was a peak season of monsoon, and Colombo is a heavy rain-fall area. When the containers were opened by the Customs, the germinated seeds were found at the bottom of the containers. 20% of the PP bags were found broken. It is his say that cashew nut is not a perishable item, and that they have claimed for non-standard settlement which means the claim is limited to 75% of the value of the goods.

16. IN cross-examination he says that it takes two days for the cashew nuts to germinate and it depends upon the moisture content. The other witness has also said to the same effect. Therefore, the cause of damage is entering of fresh water into the containers. (b). Inherent vice of raw cashew nuts: Learned Counsel for the Insurance Company further relied upon exclusion clause 4.4 of the insurance policy which provides that "in no case shall this insurance cover "loss, damage or expenses caused by inherent vice or nature of the subject matter insured"". (i) Once we arrive at the conclusion that the damage was because of fresh water entering into the containers, this contention would have no substance; (ii). Further, it would be difficult to arrive at the conclusion that the raw cashew nuts would have inherent vice of being damaged. There is no evidence to that effect.

According to the Complainant, life span of such cashew nuts is one year. As stated above, the goods were packed in the month of May, containers were opened at Tuticorin in the month of September. Therefore, it cannot be held that because of inherent vice there was damage to the cashew nuts. It is also pointed out that for the same goods, i.e. for raw cashew nuts, the Complainants were taking policies since last 15 to 20 years and thereafter also. But, at no point of time it was contended by the Insurance Company that raw cashew nuts had

inherent vice of being damaged by its own nature. Therefore, it would be difficult to arrive at the conclusion that Clause 4.4 would be applicable in the present case. Before the State Commission for inherent vice, it was contended by the Insurance Company that: what had happened to the consignment was something spontaneous, without any catalytic agent like the seeping water from without interfering with the process; the source of fresh water in the containers was in the containers was that when the cargo was packed in air-tight containers without any ventilation, it produced sweating, leading to moisture condensation which affected the nuts; in this process, the cargo had also lost its weight.

17. THE State Commission referred to "inherent vice" as mentioned in Halsbury's Laws of England (4th Edition, pr.177), which reads as under: "As regards the inherent vice or nature of the subject matter, unless the policy of marine insurance otherwise provides, the underwriter is not liable for loss or damage that is not the consequence of some causality which can properly be considered a peril of the seas. He is, therefore, not liable for loss or damage arising solely from decay or corruption of the subject matter insured, as when fruit becomes rotten or flour heats, not from external causes, but from internal decomposition; nor is he liable for spontaneous combustion generated by some chemical changes in the thing insured, arising from its being put on board in a net or otherwise damaged condition, or for some damage caused in inadequate packing of the goods".

18. REFERRING to the above passage, the State Commission rightly observed that it is not a case of spontaneous combustion as in the case of spontaneous combustion it is fire or burning (with or without flame) which causes the damage. The State Commission has further analysed as: "Whether the containerised goods came to be damaged of its own as a fruit becomes rotten or flour gets heated or putrefaction takes place in meat, or whether they were damaged by an external agent. The State Commission observed that in the cases of rotten fruit, heated flour or putrefied meat the common factor is not an "external agent" to bring about the change, i.e. "rotten" in case of fruits, "heating" in case of flour, and "putrefaction" in case of meat, and that the change takes place because of "hidden vice" of the substance and not due to any "external agent" acting as a catalyst. Under the influence of the inherent vice a fruit or meat is liable to decay or putrify of its own after sometime even if they are kept in very congenial or ambient conditions. The State Commission also analysed the contention that the sweating produced by the nuts on account of air-tight packing and for lack of ventilation in the containers produced moisture condensation, and held that this "process" had damaged the cashew nuts. But this is different from the "process" wherein the fruit gets rotten or the meat gets putrified. In the case of fruits the decay starts because of the chemical process occurs from within (i.e. in the fruits) and thereafter gradually sets in a chain reaction of decay, i.e. the decay results without the aid of any moisture condensation or other external factors. But, in the case of dry cashew nuts in shells, there cannot be decay of its own from within unless the "external

factors", i.e. the condensed water of moisture generated settled on them. When such external agent triggers germination or damage it cannot be said that damage has occurred on account of inherent vice of goods. Inherent vice, like spontaneous combustion, acts from within the substance without the aid of external agents. In the present case the damage was caused to chashew nuts by an external agent, namely, fresh water which was not inherent in the good cashew consigned. In view of the above discussion the State Commission held that the damage to the cashew nuts had occurred due to inherent vice.

With regard to determination of the reimbursement payable to the Complainant, there is no dispute. Hence, for the foregoing reasons, there is no substance in these appeals and are dismissed. The Appellant, Insurance Company, shall pay costs of Rs.25,000/- in each of the appeals to the Complainants.