
(2016) 02 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No. 10199 of 2010

New India Assurance Co.Ltd.

APPELLANT

Vs

M. Soy & General Food Ltd.

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Constitution of India, 1950 — Article 133

Citation : (2016) 02 SC CK 0022

Hon'ble Judges : Shiva Kirti Singh;R.Banumathi, JJ.

Bench : Division Bench

Advocate : P.K. Seth, Ms. Manjeet Chawla, Advocate, for the Appellant; K. Radhakrishnan, Sr. Adv, Sumit Kumar Sharma, Niraj Sharma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. P.K. Seth, learned counsel for the appellant - Insurance Company and Mr. K. Radhakrishnan, learned senior counsel for the respondent.
2. By the judgment and order under appeal dated 18th August, 2010 of the National Consumer Disputes Redressal Commission (hereinafter referred to as "the Commission"), the Original Petition No.200 of 2000 preferred by the respondent has been allowed in part. The appellant - Insurance Company has been directed to pay the amount which was reflected as the actual loss in the survey report calculated at RS. 52,10,323/- along with interest thereon at the rate of 9% per annum from 11th April, 1999. The Commission has also awarded costs of RS. 15,000/- to the respondent.
3. The main issue canvassed on behalf of the appellant is one of law relating to interpretation of Clause (1)(v) of the Riot, Strike, Terrorist and Malicious Damage Clause (RSMD Clause), hence, the facts need not detain us unnecessarily. It is sufficient to note that the respondent had taken an insurance policy for RS. 4.50 crores to insure its building, machinery and appliances, stocks in process and

stock for the period from 24th April, 1997 to 23rd April, 1998. On 29th March, 1998, which was a Sunday and a holiday for the office and plant of the respondent, an information was received by the respondent disclosing mischief by opening of the four valves of the four main oil storage tanks as well as opening of the main valve connecting all the four tanks/ valves. That led to leakage of large amount of oil out of 400 MTs oil stored in the tanks. The leakage could be detected accidentally by someone noticing the flow of oil in the drain and then into a nallah outside the factory premises because the Hose Pipe through which the oil had to come out was put in a man-hole made for drainage of water from the factory to the outside.

4. The occurrence was reported to the police on the same day and to the Insurance Company on the next day. Spot inspection by way of preliminary survey or otherwise was held on 31st March, 1998 followed by a detailed survey leading to a survey report submitted on 11th February, 1999, i.e., almost after eleven months of the inspection. After waiting for a reasonable time, the respondent on 24th November, 1999 filed a complaint before the Commission alleging that it had suffered a loss of RS. 1,36,00,000/- (One crore thirty six lakhs only). It transpires that the Insurance Company forwarded a letter of repudiation of the claim dated 27th April, 2000 when the complaint was pending before the Commission. Besides raising several other objections, the appellant supported its stand in the letter of repudiation which has been extracted by the Commission to highlight the main three grounds of objections, which are as follows:

"1. There was no visible physical damage by external violent means to the property insured.

2. No such damage was found to have been directly caused by any malicious act. Even the fact of malice has not been established from evidence on record.

3. The loss is found to be caused by omission and commission of some person/s."

5. Objections 2 and 3 have been rejected on the basis of facts which do not require further reconsideration. For deciding the first objection, the Commission was called upon to interpret Clause (I) of the RSMD Clause of Policy, which is reproduced hereinbelow:

"(I) Loss of or visible physical damage by external violent means to the property insured directly caused by -

1. The act of any person taking part together with others in any disturbance of the Public peace (whether in connection with a strike or lock-out or not) not being an occurrence mentioned in Exclusion (h)(iii) and (iv);

2. The action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimizing the consequences of any such disturbance;

3. The wilful act of any striker or locked-out-worker done in furtherance of strike or in resistance to a lock-out resulting in visible physical damage by external violent means;

4. The action of any lawfully constituted authority in preventing or attempting to prevent any such; or

5. Any malicious act but excluding any omission of any kind of any person (whether or not such act is committed in the course of a disturbance of public peace) provided that the Company shall not be liable for any loss or damage arising out of or in the course of burglary, housebreaking, theft or larceny or any attempt by any person taking part therein."

6. The Commission chose to reiterate its earlier views while interpreting the same clause in the case of *Indu Nissan Oxo Chemical Industries Ltd. v. Oriental Insurance Co. Ltd.* [IV (2009) CPJ 68(NC)], Original Petition No.58 of 1999, decided on 1st July, 2009 and also relied upon the appeal against the said judgment which was dismissed by this Court in Civil Appeal D No.150 of 2010 on 15th February, 2010. From the order of this Court, cited by Mr. Radhakrishnan, it is apparent that this Court after hearing the parties condoned the delay and dismissed the appeal summarily, but on merits.

7. The issue before this Court is whether to accept the interpretation already rendered by the Commission, which has received approval of this Court, or to redo the whole exercise afresh, as argued by learned counsel for the appellant.

8. At this juncture, it will be useful to extract paragraph 6 of the Commission's judgment in *Indu Nissan Oxo Chemical Industries Ltd.* (supra), which is as follows:

"6. Reading of the clause would show that it covers loss of the property insured or visible physical damage to the property by external violent means directly caused by any of the events enumerated in five sub-clauses. We are unable to accept the submission advanced by Mr. Shankara, Advocate that the word "or" between the words "loss of" and "visible physical damage" occurring in above Clause (I) is conjunctive/additive and not disjunctive and this clause would be inapplicable till the loss is shown to have been caused by visible physical damage by external violent means to the property. Clause (I) is in two parts. Loss to the insured property by any malicious act will be covered by the former part of Clause (I) read with Sub-clause 5 above. In Black's Dictionary, "malicious act" is defined as an intentional or wrongful act performed against another without any legal justification or excuse. In para 4 of the additional affidavit dated 19.8.2002 of Mehool N. Bhuva, Director of the complainant, it is averred that on 6.4.1993 a warning notice was issued to Shri Naidu for violation of safety norms, on 14.4.1993 notice was issued for sleeping on duty, on 1.6.1993 and again on 2.12.1993 show-cause notices for not sitting on designated place and for his indecent behaviour with the Vice-President of the Company were issued, on 11.12.1993 he was charge-sheeted for the same offence, on 18.12.1993 he was

again charge-sheeted for sleeping on 15.12.1993 in compressor station, on 11.4.1994 a letter was issued for sleeping on night duty, on 13.4.1994 he was suspended pending inquiry and after inquiry and his acceptance of the charges on 20.4.1994 he was served with suspension order for 4 days i.e. from 21st to 24th April, 1994, on 30.4.1994 he was suspended for 2 days against the charge-sheet dated 18.12.1993 and on 4.5.1994 a show-cause notice was served for harassing the Vigilance Officer. Copies of warning notices, etc. Exhibits 37 to 49 have been filed along with this additional affidavit. Said Sanjeev Naidu, thus, may be having grudge against the management. Malicious act of leaving the value open was committed by him with intention to cause loss to the complainant company. Had the value not being left open deliberately, the loss would not have occurred whether or not the pipe leading to the underground vent corroded. Loss was, therefore, the direct result of the deliberate opening of the value by Shri Naidu with intent to cause loss to the complainant company. Case is thus fully covered by RSMD clause of the policy. Repudiation of the claim by the letter dated 8.12.1998 by the Insurance Company was without any justification. In the survey report dated 29.12.1997, M/s. Mehta and Padamsey Pvt. Ltd., Surveyor assessed the loss for cogent reasons at RS. 34,17,174. It is admitted by the opposite party that this assessment was revised by the Surveyor to RS. 58.18 lakh. Complainant is entitled to this amount along with interest which in the facts and circumstances of case, is quantified at 12% per annum commencing after the expiry of two months from the said report dated 29.12.1997."

9. In our considered view, the interpretation extracted above lays down the law correctly and does not require any further elaboration.

10. In view of our agreement with the views taken by the Commission on the main question of law, we find no other good ground to interfere with the judgment and order under appeal. The appeal is, therefore, dismissed, but without any order as to costs.

11. In case, the amount has not been paid to the respondent so far, the Insurance Company shall do well to pay the amount allowed by the Commission along with interest and costs at an early date, preferably within six weeks from today.