(1998) 08 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

P. VENKATESWARA RAO APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Citation : 1998 2 CLT 505 : 1998 2 CPC 565 : 1998 3 CPJ 14 : 1998 3 CPR 24

Hon'ble Judges : S.C.Sen , R.Thamarajakshi , S.P.Bagla , C.L.Chaudhry , J.K.Mehra J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal filed against the order dated 15.2.1994 by the State Commission, Andhra Pradesh, in C.D. No. 166 of 1990. The State Commission in their order accepted the contention of the Insurance Company that the policy in respect of a commercial vehicle does not cover the loss caused by the acts of naxalites diverting the lorry by force by pointing out guns at the driver and setting it afire later. The fact that the lorry was diverted by some persons who were agitating against the exploitation of tribal people and then set it on fire is not disputed. The Insurance Company, however, repudiated the claim of the insured, who is appellant before us for a sum of Rs. 3,25,000/- on the ground that under the policy conditions any loss or damage caused by war, invasion, the act of foreign enemies, hostilities or war like operation (whether war be declared or not), civil war, mutiny, assuming the proportion of or amounting to popular rising, military rising, rebellion, revolution, insurrection, military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the over-throw by force of the Government de jure or de facto or to the influence of it by terrorist or violence or by the direct or indirect consequences of the said occurrences. For facility of reference the whole clause relating to riot and strike in the policy is reproduced : "I.M.T. 21. Riot and Strike It is hereby understood and agreed that the words "Riot Strike" in General Exceptions of this policy shall not apply to any accident, loss, damage or inability 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) or the action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimising the consequences of such disturbance; (2) the wilful act of any striker or locked- out worker done in furtherance of a strike or in resistance to a lock-out or the action of any lawfully constituted authority in preventing or attempting to prevent any such act in minimising the consequence of any such act. Provided that the indemnity given by reason of this endorsement shall not apply to any accident, loss, damage or liability (except so far as is, necessary to meet the requirements of the legislation) directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with: (a) war, invasion, the act of foreign enemies hostilities or war like operation (whether war be declared or not) civil war. (b) mutiny assuming the proportion of or amounting to popular rising, military rising, rebellion, revolution, insurrection, military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the over-throw by force of the Government dejure or de facto or to the influence of it by terrorism or violence or by the direct or indirect consequences of the said occurrences. In the event of any claim hereunder the insured shall prove that the accident, loss, damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequences thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim. Notwithstanding what is stated in Condition No. 6 of the policy it is hereby understood and agreed that if the insurance included by virtue of this endorsement be terminated at the request of the insured before its expiry date, the Company shall not repay the premium or any part thereof chargeable for such insurance except where the cover provided by the Riot and Strike Endorsement and the Motor Policy is terminated simultaneously in which case the Company shall in respect of this insurance retain the customary short period premium for the time the said subject otherwise to the terms, exceptions, conditions and limitations of this policy".

2. IT is clear from the reading of the conditions of this policy that 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) or the action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimising the consequences of such disturbance is not covered by the word riot and strike. However, one of the exceptions in this condition, namely, exception (b) referring to mutiny, assuming the proportion of or amounting to popular rising, military rising, rebellion, revolution, insurrection military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the over-throw by force of the Government dejure or de facto or to the influence of it by terrorism or violence or by the direct or indirect consequences of the said

occurrences, provides an exclusion from the riot and strike clause and the consequent risk there- from. From the order of the State Commission we find that while lodging the FIR with the police, the loss caused to the truck was attributed to naxalite activity, whereas the fact is that five persons claiming themselves as the Girijan members of Dandakaranya Girijan Ryotu Cooli Sangam of Visakha Zilla Branch, had set afire to the lorry. A pamphlet in this regard was also seen by the State Commission and they have stated that this pamphlet shows that the policy of the Girijan was to restrict the exploiting businessmen from robbing the Girijans by purchasing the products of Girijan areas at cheaper rates. We have given a very careful thought to the facts of this case as well as the order of the State Commission. We are of the opinion that the agitation by the Cooli Sangam cannot be described as mutiny or a popular rising assuming the proportion of rebellion etc. etc. as mentioned in Clause (b) of exceptions under "I.M.T. 21: Riot and Strike in the policy document". In our view, it is covered by Condition No. 1, viz., "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) or the action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimising the consequence of such disturbance". In our view, the Insurance Company has taken a stand, which is not consistent with the policy conditions, that it does not cover the risk or riot, strike and fire. We, therefore, accept this appeal and direct the Insurance Company to settle the claim as estimated by the Surveyor, viz; Rs. 2,40,000/- within one month from the date of receipt of a copy of this order. We find that the Surveyor had submitted his report on 11.2.1990. The Insurance Company should not have delayed the settlement of the claim for more than three months after the receipt of this report which means after May, 1990. We, therefore, direct that the Insurance Company shall pay interest at the rate of 12% p.a. from 1st June, 1990 till the date of payment within a period of one month from the date of receipt of a copy of this order. The appeal is disposed of accordingly. Appeal allowed.