(1966) 04 MAD CK 0025

In the Madras High Court

The Indian Mutual General Insurance Society, Ltd. APPELLANT

Vs

R. Raman Nair RESPONDENT

Date of Decision : 12-04-1966

Acts Referred:

Citation : (1966) 79 LW 389 : (1966) 2 MLJ 239

Hon'ble Judges : K. Veeraswami, J

Bench : Single Bench

Judgement

K. Veeraswami, J.—The respondent''s lorry M.D.N. 3797 was covered by a comprehensive insurance policy issued by the appellant, the period of cover being from 23rd October, 1958 to 22nd October, 1959. On 5th February, 1959, while the lorry was parked on a road in Appukodu in Nilgiris, it tumbled down the valley up to a distance of 50 yards from the parking place and was thereby badly damaged. This was on account of the fact that there was a sudden sinking of the loose soil, at the place near the right rear wheel of the lorry and the road was on a gradient. Though the downward movement of the lorry was prevented by placing wooden logs, the accident took place due to the sinking of the loose soil. The respondent made a claim which the appellant repudiated with the result the former had the lorry repaired elsewhere at a cost of Rs. 5,466-45. The appellant''s repudiation was on the ground that the accident was not due to external means and that in any case it was covered by one of the exceptions contained in the terms and conditions of the insurance policy. The respondent''s claim was decreed by the Seventh Assistant Judge.

2. There is no dispute about the facts as we narrated. The only question is whether the risk is covered by the terms of the policy, The material term in the policy is that the appellant will indemnify the insured against the loss of or damage to the motor vehicle "by accidental external means." The rest of the terms is not material. The policy provides for certain general exceptions of which one is relied on for the appellant, that is, that the appellant will not be liable in respect of any accident loss or damage due to ''''earthquake or other convulsion

of nature." Learned Counsel for the appellant argues that the accident to the lorry can by no means be described as an accident by external means. He adds that in any case, the accident, must fall within the expression " other convulsion of nature." In our opinion, this contention cannot prevail. The words "by accidental external means,'' in our view, are comprehensive to include the accident to the lorry. The occurrence was certainly accidental for, nobody foresaw it. It just happened that the lorry was parked at the spot and it was an accident that it rolled down the hill. The accident was also due to the reason as we said that the loose soil underneath the right wheel gave way. We do not see why this cannot be described as " by external means." External in the context is to be understood as referable to cause other than what is internal to the lorry, as for instance, a sudden bursting of the engine. The other phraseology " earthquake or other convulsion of nature " is also definite of its meaning. Other convulsion of nature must be of the pattern of the earthquake or something like it. Even if the words "other convulsion of nature" are read disjunctively from the word " earthquake," even so, the loosening of the earth can hardly be described as a convulsion of nature.

3. We are, therefore, of opinion that the Court below was right in decreeing the suit. The appeal is dismissed with costs.

