
(2009) 04 SC CK 0174

In the Supreme Court Of India

Case No : Civil Appeal No. 2080 of 2002

Vikram Greentech (I) Ltd. and Another

APPELLANT

Vs

New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Consumer Protection Act, 1986 — Section 23

Citation : AIR 2009 SC 2493 : (2010) AIRSCW 481 : (2009) AIRSCW 3856 : (2009) 2 AWC 1901 Supp : (2009) 3 CompLJ 385 : (2009) 5 JT 579 : (2009) 4 MLJ 811 : (2009) 5 SCALE 183 : (2009) 5 SCC 599 : (2009) 6 SCR 437 : (2009) 3 Supreme 226 : (2009) 2 UC 907

Hon'ble Judges : R. M. Lodha, J;D. K. Jain, J

Bench : Division Bench

Advocate : Vijay Hansaria, Sneha Kalita and Sunil Kumar, for the Appellant; P.K. Seth and Sudhir Kumar Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—This appeal u/s 23 of the Consumer Protection Act, 1996 (for short, 'The Act') is directed against the judgment and order dated October 30, 2001 passed by National Consumer Disputes Redressal Commission, New Delhi (for short, 'National Commission') whereby the complaint filed by the appellant for direction to the respondent to settle the insurance claim alongwith interest @ 18% per annum and compensation of Rs. 25 lakh on account of mental agony, harassment and monetary loss came to be dismissed.

2. The sequence of facts may be noticed first. Vikram Greentech (I) Ltd. came to be incorporated in 1993 with an object of setting up a floriculture project in the State of Maharashtra. In 1995, the company started negotiations with the respondent (hereinafter referred to as 'Insurance Company') for a comprehensive floriculture insurance policy. On January 18, 1996, the company (hereinafter referred to as 'insured') submitted a proposal to the Insurance Company for a comprehensive floriculture insurance of poly-house (Rs. 1.25

crore), irrigation system (Rs. 25 lakh), cost of cultivation of flowers (Rs. 25 lakh) and input cost from first flowering to the harvest (Rs. 25 lakh). The Insurance Company issued a comprehensive Floriculture Insurance Policy ('Policy', in short) on January 23, 1996, period of insurance being from January 18, 1996 to January 17, 1997 and charged premium of Rs. 2,31,000/-. On May 23, 1996, according to the insured there was a severe storm/cyclone, which damaged the floriculture extensively and substantial damage was caused to the roofs and walls of the poly-houses. On June 18/19, 1996, there was another storm/cyclone. As a result of which the floriculture project of the insured and the poly clothes and the roofs as well as walls of the poly-houses were extensively damaged; certain poly-houses even collapsed completely. For the loss suffered in the first storm/cyclone, a claim for Rs. 31,17,140/- was submitted by the insured with the Insurance Company. The insured submitted another claim for Rs. 38,97,906/- in respect of loss suffered due to second storm/cyclone that occurred on June 18/19, 1996.

3. The Insurance Company appointed M/s Standard Surveyors Private Limited as their Surveyors for assessing the loss claimed by the insured. The Surveyors submitted their report on October 24, 1996 and assessed the loss suffered by the insured at Rs. 28,85,243/- in respect of the first storm. On October 28, 1996, the Surveyors submitted its second report in respect of the second storm/cyclone and assessed the loss at Rs. 34,81,214/-.

4. On November 28, 1996, the Insurance Company informed the Surveyors that their report included loss to poly- houses Nos. 7, 8A and 8B whereas the policy covered only poly-houses 1 to 6. The Surveyors were, accordingly, asked to reassess the loss.

5. On December 19, 1996, the Surveyors gave their clarification to the Insurance Company that all the poly-houses were covered under the policy and their assessment was correct and fair.

6. The Insurance Company, then, appointed M/s Jupiter Claim Consultants as investigators for verification of the claim. The insured was also asked to furnish necessary documents to the said investigators. The investigators are said to have submitted their report on September 12, 1997 stating therein that they were not able to submit their certification as regard the cost of poly-houses Nos. 1 to 6 and other related matters categorically for sum insured and claim thereof.

7. On November 6, 1997, the Surveyors submitted their addendum to the earlier report dated October 24, 1996 with regard to the first storm and reduced the assessment of loss to Rs. 4,77,355/-. The Surveyors submitted another addendum on February 16, 1998 to the report dated October 28, 1996 with regard to the second storm and reduced the assessment of loss to Rs. 95,443/-.

8. The insured then approached the National Commission alleging therein deficiency of service by the Insurance Company in not settling the claim and sought direction to the Insurance Company to settle the claim of the insured in full and pay interest on due amount.

9. The Insurance Company contested the claim and set up the plea that the claim on account of damages to poly- houses 7, 8A and 8B was not admissible as these poly-houses were not covered under the policy. As regards the poly-houses Nos. 1 to 6, the Insurance Company admitted that the policy covered those poly-houses. They stated before the National Commission that insured has already been informed that the loss finally assessed by the Surveyors is to the tune of Rs. 4,77,355/- in respect of first storm and Rs. 95,443/- on account of loss caused by second storm.

10. A rejoinder came to be filed by the insured and it was stated therein that at the relevant point of time, the size of the farm was 6.3 hectares and the entire area was covered by the Insurance Company and it was not limited to the area to 2.8 hectares as contended by the Insurance Company.

11. The National Commission heard the arguments of both the parties and held that at the time of taking policy only six poly-houses were in existence and there was no evidence or proof to substantiate that the insurance was covered for poly- houses 7, 8A and 8B. The National Commission recorded the admitted position that poly-houses 7, 8A and 8B were not in existence at the time of taking insurance policy. The National Commission held that the policy clearly mentioned the number of poly-houses as "six" and in view thereof the complainant is entitled to an amount of Rs. 5,72,798/- on account of damages to these poly-houses (Nos. 1-6) during the storm/cyclone that hit on May 23,1996 and June 18/19,1996 alongwith interest @ 12% from the date of the first Surveyors report i.e. November 6,1997 upto the date of payment, failing which the rate of interest shall be @ 18% per annum.

12. Aggrieved by the dismissal of the complaint with regard to the claim for loss to poly-houses 7, 8A and 8B, the insured, as stated, is in appeal.

13. We have heard Mr. Vijay Hansaria, learned senior counsel for the appellant and Mr. P.K. Seth, learned Counsel for the Insurance Company.

14. The question that arises for our consideration is: whether comprehensive floriculture insurance policy issued by the Insurance Company to the insured covered poly-houses 7, 8A and 8B?

15. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of *uberimma fides* i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. The endeavour of the court must always be to interpret the words in which the contract is expressed by

the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. [General Assurance Society Ltd. Vs. Chandumull Jain and Another, ; Oriental Insurance Co. Ltd. Vs. Sony Cheriyan, and United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal,]

16. Document like proposal form is a commercial document and being an integral part of policy, reference to proposal form may not only be appropriate but rather essential. However, the surveyors' report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible.

17. That the insured submitted proposal to the Insurance Company for comprehensive floriculture insurance on January 18,1996 is not in dispute. The insured furnished particulars for the following components which were to be covered:

	Polyhouse	1	2	3	4	Total	
							Value of (Rs. in Crores)
1) Steel structure	0.25	2) Fabrication	0.15	3) Plastic Grippers	0.10	4) Plastic & Fittings charges	0.50
5) Cost of constr. For polyhouses, Gutters & other accessories	0.25						1.25

B) Irrigation System (Capacities value and specifications for the following) In lakhs

1) Plasto make system 15.00 2) Agricon Associates (Valves & Pipes) 00.50 3) Fitting charges 00.50 4) Reservoir 04.00

ELECTRIC MOTOR

1) Electric Motor, 15 HP 3 nos., 2 HP 20 nos., 20 HP 1 No. with pumps, pipes & valves. 01.00 2) D.G. set, 2 nos., POWERICA (Kirloskar), 140 KVA & 1.25 KVA Transformer, Starters MCL -CTCL & others access 04.00 25.00 C) Details of flowers planted in Green house or

Open Cultivation : Green House Cultivation i) No. of Green Houses : 6 Polyhouses ii) Area under Green Houses: 2.8 hectares iii) Area under Open Cultivation : No

D) Details of Flowers plants under cultivation

i) Total area under Floriculture : 2.8 hectares ii) Survey/Gat/Hissa No. : 163, 158, 157, 156 148, 149, 147, 164 iii) Name of the flower plants : Dutch Roses under cultivation iv) Variety : Vivaldi,Texas, Konfetti, First Red, Vanilla, Kiss, Tiamo, Lambada v) No. of flowers : 195500 vi) Distance between flower plants : 14 cm. vii) Expected date of harvest : September 1995 Input cost (From planting to : Rs. 25 lacs to first flowering i.e. 4 months) ix) Cost of saplings :

Rs. 70 per plant

E) Cost of cultivation for flowers : 25 lacs.

i) No. of flowers : 19,55,500.00 ii) Input cost from first flowering to harvest : 25 lacs. iii) Area under Open Cultivation : No

18. Based on the said proposal, the Insurance Company issued comprehensive floriculture insurance policy on January 23, 1996 The schedule attached to the said insurance policy is thus:

` SCHEDULE'

Insured : M/s VIKRAM GREENTECH (i) Ltd. (Name and address) Plot No. 99, Sector 24, Rigdi-Pradhikaran PUNE- 411 044 Policy No. : 47/221200/00940
Insured at : Surat Proposal Date : 18th January, 1996 Name of the Crop : Floriculture offered for insurance Period of Insurance : 18/01/96 to 17/01/97
Address of the Site of : Village : Sanghise, the proposal to be Near Kamshet Railway Station Insured Tal.: Maval, District: PUNE Total sum Insured : Rs. 2 crore Total Premium : Rs. 2,20,000/- + 11,000/-(s.o.)

INVENTORY OF THE PROPERTY INSURED (Sections I & II)

Description of the item with sum Insured Rs. Excess Rate Premium Details Rs.
Rs. Rs.

I POLYHOUSE:

a) Steel Structure 25,00,000/- b) Fabrication 15,00,000/- c) Gripper 10,00,000/- d) Plastic Fitting Charges 50,00,000/- e) Cutter | f) Plastic | 25,00,000/- ----- 1,25,00,000/-

II IRRIGATION :

A a) Plasto Make System 15,00,000/- b) Agricon Associates 50,000/- (Valves & Pipes) c) Fitting Charges 50,000/- d) Reservoir 4,00,000/-

III ELECTRIC MOTOR

a) Electric Motor HP 1,00,000/- b) Starter-MCL-CICL } c) Other Assessories, }
DG set 2 nos.,and } Transformers } 4,00,000/-

19. That the aforesaid policy covered the insured for the loss and and/or damage caused by storm/hailstorm/cyclone over the insured area is not in dispute. The Insurance Company under the policy also agreed that the sum insured would be equal to the costs of placement of the insured property by new property of the same kind and same capacity; in other words replacement cost.

20. Although, Mr. Vijay Hansaria, learned senior counsel for the insured strenuously submitted that the Proposal Form did not specify the number of poly-houses and, therefore, all poly-houses including 7, 8A and 8B were covered under the policy as they were in existence at the time of calamity that occurred on May 23,1996 and June 18/19,1996, we are afraid, the submission of the senior counsel does not merit acceptance. Admittedly, at the time, the policy was taken (i.e. proposal made on January 18,1996 and insurance policy issued on January 23,1996), poly-houses 1 to 6 were in existence and poly-houses 7, 8A and 8B were not in existence. These poly-houses (7, 8A and 8B) were completed in March 1996. Moreover it is not correct to say that the Proposal Form does not specify the number of poly-houses. It does. It clearly mentions six poly-houses. It is true that six poly-houses are mentioned in Clause(C) of the Proposal Form which is with regard to green house cultivation but what is mentioned in respect of poly-houses in Clause(C) is necessarily referable to the number of poly-houses in Clause(A) of the Proposal Form as well.

21. The learned senior counsel for the insured submitted that the entire material for poly-houses 7, 8A and 8B had already been received at the time of making proposal and issuance of insurance policy and the intention was also to cover the material lying at the site for erection of poly-houses. In this regard, the learned senior counsel sought to refer to the correspondence between the parties and the Surveyors' reports dated October 24,1996 and October 28,1996. He would submit that cost of six constructed poly-houses on the date of making proposal was around Rs. 65-70 lakhs and for the insurance cover of these six poly-houses, the insured would not have valued their cost at Rs. 1.25 crores and paid premium of Rs. 2,31,000/-.

22. A careful consideration of the Proposal Form that sets out the particulars of the components which were to be covered and the inventory of the property insured (Sections I and II), mentioned in the policy leaves no manner of doubt that what was insured was existing poly-houses on the date of the issuance of policy. It is clear from the proposal and the policy. The two documents admit of no ambiguity and it is clear that six poly-houses covering an area of 2.8 hectares was covered by the policy. It may be mentioned that Clauses (C)(ii), (D)(i) and (ii) of the Proposal Form mentions Survey/Gat/Hissa No. 163, 158,157,156,148,149,147 and 164 and total area 2.6 hectares. It is on this area that six poly-houses were existing on the date the proposal was made and policy issued. These six poly- houses were only covered by the policy.

23. The National Commission concluded thus:

...we are unable to accept the contention of the complainant that only houses 7,8A or 8B were covered under the Insurance Policy in question especially when admittedly, they were non-existent on the date, the policy was taken and policy clearly mentioned the number of poly houses as "Six". In our view the complainant has failed to prove a case based on the material on record....

We do not find any error in the conclusion of the National Commission.

24. In what we have discussed above, the appeal is liable to be dismissed and is dismissed with no order as to costs.