SUPREME COURT OF INDIA

United India Insurance Co. Ltd

Vs.

Great Eastern Shipping Co. Ltd

Civil Appeal No. 2319 of 2004

(A.K.Mathur and Tarun Chatterjee JJ.)

16.07.2007

JUDGMENT

A.K. MATHUR, J.

1. This appeal is directed against the order passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'the Commission') whereby the Commission has allowed the claim of the respondent to the tune of Rs. 4,94,22,000/- and directed the appellant-Insurance Company to pay the said amount with interest at the rate of 9 % per annum from the date after two months of the survey report by the Apex Surveyors Pvt. Ltd. I.e. from 1.3.1995 till its payment. Aggrieved against this order of the Commission, the present appeal has been filed by the appellant- Insurance Company.

2. Brief facts which are necessary for disposal of this appeal are that the claimant-respondent is engaged in import of sugar and other items and in connection with import of 12,000 metric tons of sugar from China to Calcutta the respondent had taken an insurance policy for which cover note dated 9.6.1994 and policy was valid from 23.9.1994 i.e. from the date of issue. The policy was further extended by endorsement dated 28.9.1994 for up-country destinations in India. It was alleged that after taking delivery of sugar, the bags could not be transported from the dock area because of Durga Puja celebrations and as a result of which all activities including transportation facilities virtually came to a stand still from 10.10.1994. Therefore, in all 82,237 bags of sugar were temporarily stored in T-sheds at Calcutta Port area en route up-country destinations. On 21.10.1994 fire broke out in the godown and destroyed the entire stock of sugar bags. Hence, a First Information Report was lodged and the appellant- Insurance Company was also informed by the respondent. The appellant appointed M/s. Apex Surveyors Pvt. Ltd. on 22.10.1994. On 24.10.1994 the Surveyors wrote to the respondent asking for the books of accounts and stock register and also took the spot inspection. The appellant appointed one N.V.P. Sharma Associates Pvt. Ltd. as another additional surveyor. Since the claim was not settled by the appellant- Insurance Company, the respondent filed the present complaint before the Commission on 21.3.1996. The appellant on 6.5.1996 repudiated the claim of the respondent. The letter dated 6.5.1996 reads as under:

"The unsold remaining bags of sugar were taken to three different private godowns outside the port premises. The fire broke out on the 26th day after the cargo was stored. This storage was general storage other than the "in the ordinary course of transit". The case falls under Clause 108, 102 & 2.1 of the Institute Cargo Clause (a) of the policy issued, as a consequence of which transit terminated upon storage, in the T-shed and before sale and disposal of the cargo. It was destroyed by the fire after the cover under the policy ceased. The risk would have been covered, if you had obtained a "Storage Risk Policy". Such a policy would have covered a loss due to fire when the goods were stored. In the absence of such a policy, the loss which occurred due to fire to the stored goods, well after the voyage and transit terminated, cannot be claimed under the above. The claim, therefore, is not maintainable. "

The plea of the appellant-Insurance company for repudiating the present claim was that the goods were destroyed in general storage other than in the ordinary course of transit and it was also observed that what was covered was transit risk and not storage risk. Therefore, it was held that the claim was not maintainable. The Commission examined the relevant provisions and took the view that as per the Institute Cargo clause and extended coverage to the policy on payment of additional amount, the insurance cover of the goods would be till the delivery to the consignees at the destination named therein i.e. the insurance coverage was valid till the goods were delivered to the consignees' warehouse or other final warehouse or the place of storage at the destination. Ultimately, the Commission decreed the claim of the respondent. Hence the present appeal.

3. We have heard learned counsel for the parties and perused the records. A policy was taken out which is known as Marine Insurance Policy for import of 12,000 metric tones of crystal sugar from Guangzhou, China to Calcutta, India Port for which a premium of Rs.13,57,450/- was paid. It was

also mentioned that it was subject to the clauses attached which formed part of the policy, inter alia, Institute Cargo Clause 'A' (21-A). As per this policy, the ship was supposed to take the cargo from Guangzhou, China to Calcutta Port. It was also not in dispute that the goods safely reached Calcutta Port on 22.9.1994. The discharge of sugar commenced on 22.9.1994 and continued up to 13.10.1994. 1,39,000 bags of sugar were transported by 274 trucks from the port to private godowns. The transportation work started on 26.9.1994 till 10.10.1994 and it was stored at different sheds. Thereafter on 27.9.1994 a request was made for extension of insurance coverage and extension of insurance coverage was granted on 28.9.1994 which reads as under:

" At the request of the insured it is hereby declared and agreed to extend the cover under the within mentioned policy No.01/534/94 from Calcutta Port to any place of Indian Republic. All other terms and conditions of the policy remain unaltered."

Unfortunately, fire broke out in T-shed on 21.10.1994. Therefore, the respondent raised a claim for loss of sugar by fire in T-shed. Relevant provisions of Institute Cargo Clause, which deals with duration transit clause reads as under:

"9.1.3 On the expiry of 60 days after completion of discharge overside of the goods Hereby insured from the overseas vessel at the final port of discharge, whichever shall first occur."

It further says that so far as law and practice is concerned this insurance was subject to English law and practices. As per this transit clause of the Institute Cargo clause, the policy covered on delivery to the consignee's or other final warehouse or place of storage at the destination named therein. It further laid down the period that on expiry of 60 days after completion of discharge overside of the goods insured from the overseas vessels at the final port of discharge, whichever shall first occur. As per the policy, the destination was Calcutta Port, India. This policy was extended by the subsequent cover note as mentioned above and it was mentioned that the policy was extended to cover from Calcutta Port to any other place of destination in Indian Republic and the terms and conditions of the policy remained unaltered.

4. The submission of Mr. Vishnu Mehra, learned counsel for the appellant was that since the destination was Calcutta Port and once the goods reached Calcutta Port and the same were discharged, then the policy stood discharged and if the goods were kept in some other different sheds then that storage is not covered. Learned counsel for the appellant submitted if the goods had been taken out and had been destroyed in transit then perhaps the loss would have been covered. So far as the present case is concerned, the goods reached the Calcutta Port and they were discharged from the vessels and they were taken out and kept in storage in different sheds and there it was destroyed because of fire, the storage in the godown is not covered as per the original policy. According to learned counsel for the appellant the destination in the original policy was Calcutta Port and the goods were discharged and kept in storage at the risk of the respondent. It was submitted that the policy which was extended was only for transit purpose and not for storage purpose. Therefore, the appellant rightly repudiated the claim.

5. As against this, Mr. Divan, learned senior counsel for the respondent-claimant submitted that when the coverage stood extended on same terms and conditions and it was clearly mentioned that it would cover to any part of the Indian Republic, that means that the goods in storage in transit from Calcutta Port to any part of the destination would cover the policy on same terms and conditions along with the original marine policy. Therefore, the limited question that arises for consideration is whether the coverage which has been extended would cover the goods till they reached the destination in any part of the country or not.

6. Mr. Mehra, learned counsel for the appellant has very strenuously urged and took us through the Marine Insurance Act, 1963 and tried to impress upon us that as per the terms and conditions of the policy, once the goods reached the destination i.e. Calcutta Port, the policy stood discharged and the extended coverage does not cover the storage but goods in transit till they reached any part of the country.

7. We have bestowed our best of consideration to the rival submissions of the parties. Mr.Divan, learned senior counsel for the respondent submitted that as per the Institute Cargo Clause, the English law and practice covers the dispute and in that connection, Mr.Divan invited our attention to a decision in Bayview Motors Ltd. v. Mitsui Marine & Fire Insurance Co. Ltd. & Ors. reported in [2003] 1 Lloyd's Law Reports 131 and in John Martin of London, Ltd. v. Russel reported in [1960] 1 Lloyd's List Law Reports 554. He has also referred to The Law Lexicon, so as to give the meaning of the words, 'extension' and 'renewal' and also invited our attention to various interpretation of the word, 'extension' and in that connection, he has also invited our attention to a decision of this Court in Provash Chandra Dalui & Anr. v. Biswanath Banerjee & Anr. [1989 Supp. (1) SCC 487] , and in that connection our attention was invited at paragraph 14 which reads as under :

"14. It is pertinent to note that the word used is 'extension' and not 'renewal'. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act.

In other words, the word 'extension' when used In its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole."

He has also submitted that in case of interpretation of policy if two views are possible, then the one which favours the policy- holder should be accepted as the same serves the purpose for which the policy is taken and would be in consonance with the object to be achieved for the lives assured.

8. In support of his contention, learned counsel relied on a decision of this Court in Shashi Gupta (Smt.) vs. Life Insurance Corporation of India & Anr. [1995 Supp.(1) SCC 754] in which it has been held as follows :

“ As both the aforesaid interpretations are reasonably possible, we would accept the one which favours the policy-holder, as the same advances the purpose for which a policy is taken and would be in consonance with the object to be achieved for getting lives assured.”

9. Our attention was also invited to a decision of this Court in Life Insurance Corporation of India vs. Raj Kumar Rajgarhia & Anr. [(1999) 3 SCC 465] wherein it has been held as follows:

“It is not always possible to be guided

By the meaning of the words as found in the dictionary while resorting to interpret the actual meaning of a word found in an agreement between the parties. While construing the meaning of a particular word found in an agreement between the parties the intention of the parties to the document in question will have to be given necessary weightage and it is not possible to give a wider and liberal meaning merely because one of the parties to the said agreement is a public authority. While interpreting the terms of the insurance policies if two views are possible, courts will accept the one which favours the policy-holders.”

10. Our attention was also invited to a decision of this Court in United India Insurance Co, Ltd. vs. Pushpalaya Printers [(2004) 3 SCC 694] wherein it has been held as follows:

“In order to interpret clause 5 of the insurance contract, it is also necessary to gather the intention of the parties from the words used in the policy. It is evident from the terms of the insurance policy that the property was insured as against destruction or damage to whole or part. If the word “impact” is interpreted narrowly, the question of impact by any rail would not arise as the question of a rail forcibly coming into contact with a building or machinery would not arise. In the absence of specific exclusion and the word “impact” having more meanings in the context, it cannot be confined to forcible contact alone when it includes the meanings “to drive close”, “effective action of one thing upon another” and “the effect of such action”; it is reasonable and fair to hold in the context that the word “impact” contained in clause 5 of the insurance policy covers the case of the respondent to say that damage caused to the building and machinery on account of the bulldozer

moving closely on the road was on account of its “impact”. Clause 5 speaks of “impact” by “any rail/road vehicle or animal”. If the appellant Company wanted to exclude any damage or destruction caused on account of driving of vehicle on the road close to the building, it could have expressly excluded the same. The insured possibly did not understand and expect that the destruction and damage to the building and machinery is confined only to a direct collusion by vehicles moving on the road, with the building or machinery. In the ordinary course, the question of a vehicle directly dashing into the building or the machinery inside the building does not arise. Further, “impact” by road vehicle found in the company of other words in the same clause 5 normally indicates that damage caused to the building on account of vibration by driving vehicle close to the road is also included.”

11. Our attention was also invited to a decision of this Court in Oriental Insurance Co. Ltd. v. Sony Cheriyan [(1999) 6 SCC 451] wherein it has been held as follows :

“The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy.”

12. Our attention was also invited to a decision of this Court in M/s. Peacock Plywood Pvt. Ltd. V. The Oriental Insurance Co. Ltd. [JT 2007 (1) SC 191] wherein at paragraph 71 of the judgment while interpreting the expression, “peril insured against”, it has been held as follows:

“Marine Insurance Act is subject to the terms of insurance policy. Where the insurer takes additional premium and insure a higher risk, no restrictive meaning thereto need be given. A term of the policy must be given its effect. While construing a contract of insurance, the reason for entering there into and the risks sough to be covered must be considered on its own terms. “

13. A reference may also be made to a decision of this Court in Polymat India (P) Ltd. & Anr. v. National Insurance Co. Ltd. & Ors. [(2005) 9 SCC 174] wherein this Court held as follows:

“The expression “factory-cum-godown” occurring in the policy document has to be read in the present context with the other conditions which appear in the policy document. In fact clause 8 of the policies concerned specifically made a query as to whether the goods were stored in the open or

there was a kutcha shed or timber-built or thatched-roof building within 15 m (50ft) of the property, asking for details in this regard. But no details were given and the query in clause 8 was answered in the negative. Therefore, what was sought to be insured was the plant and machinery. It is admitted that there was no godown. Therefore, it is clear that the goods lying outside the plant were not insured. Had the intention of the parties been otherwise, then they would have answered the query in clause 8 in positive terms, which details. But it was answered in the negative. Therefore, the documents have to be construed in the manner they are presented and a different interpretation cannot be given dohors the context."

14. Learned counsel also referred to The Law :Lexicon, to give dictionary meaning to the word, "extend", which reads as follows :

"Extend. This term has a wide variety of meanings and has been defined as follows : To prolong, to continue or continue in any direction; stretch out; to stretch out of reach; to expand; to enlarge or lengthen the bounds or dimensions or; lengthen. And it is sometimes used as equivalent to the word "exceed" (as) to extend the bounds of jurisdiction."

Learned counsel also referred to K.J.Aiyar's Judicial Dictionary wherein the word "extend" has been defined as follows :

"EXTEND. The word "extend" in an enactment is not quite analogous to "shall come into force". Where it is laid down in an Act that it extends to a certain area it does not necessarily mean that it is also in that area, particularly when there is an express provision that before it can come into force, something further, such as a notification, is necessary."

Learned counsel also invited our attention to Black's Dictionary of Law (Fifth Edition) which defines the word, "extend" as follows:

"Extend. Term lends itself to great variety of meanings, which must in each case be gathered from context. It may mean to expand, enlarge, prolong, lengthen, widen, carry or draw out further than the original limit; e.g., to extend the time for filing an answer, to extend a lease, term of office, charter, railroad track, etc."

15. Learned counsel also invited our attention to a decision of this Court in General Assurance Society Ltd. v. Chandumull Jain & Anr. { [1966] 3 S.C.R. 500}. In that case it was observed as follows

“In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e., good faith on the part of the assured and the contract is likely to be construed contra proferentem that is against the company in case of ambiguity or doubt. A contract is formed When there is an unqualified acceptance of the proposal. Acceptance may be expressed in writing or it may even be implied if the insurer accepts the premium and retains it. In the case of the assured, a positive act on his part by which he recognizes or seeks to enforce the policy amounts to an affirmation of it. This position was clearly recognized by the assured himself, because he wrote, close upon the expiry of the time of the cover notes that either a policy should be issued to him before that period had expired or the cover note extended in time. In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Looking at the proposal, the letter of acceptance and the cover notes, it is clear that a contract of insurance under the standard policy for fire and extended to cover flood, cyclone etc. had come into being.”

16. Our attention was invited to Queen’s Bench decision in John Martin of London, Ltd. v. Russell ([1960] Vol.I Q.B. (Com.Cr.) 554). In this case, purchase of 7200 cartons of pure refined lard,c.i.f., J.K.Port was made by the plaintiff from Chicago company in May, 1957. In the same month lard was sold by plaintiffs to various English customers on landed terms ex-quary Liverpool. The defendant insured on June 7, 1957 covering lard against all risks and including Institute Cargo Clauses (Extended cover) and the policy provided at and from Chicago to Liverpool or held covered Institute Cargo Clauses (Extended cover). This insurance continued until the goods were delivered to the consignees’ or other final warehouse at the destination named in the policy. In terms of the aforesaid policy, lard discharged from vessel into transit shed on quary, on July 2,1957 and delivery orders were issued. On July 4, 1957 lard was found to be infested with copra beetle from another part of transit shed. Delivery orders were cancelled and reissued later. The plaintiffs claimed under the policy and it was denied that the cover terminated on discharge into transit shed which was final warehouse and that insurance ceased on discharge of goods if consignees did not intend to send goods to final warehouse. The plaintiffs’ contention was that the lard was still insured because it was in a transit shed and had not reached consignees or other final warehouse. It was also contended that transit shed was not a warehouse and the transit shed was owned by the port authority and that the transit shed was not a final warehouse. In this background, when the policy was repudiated, the claim was filed. In that context, leaned Judge held as follows:

“ that transit shed at Liverpool was the place at which goods were placed as soon as they were discharged and they were then waiting patently to go somewhere else; and that therefore, the transit shed was not the final warehouse; that insurer’s contention that cover ceased if consignee did not intend to send goods to a final warehouse did not give reasonable businesslike meaning to the clause and that there was no condition that goods were only covered so long as they were intended to go to a final warehouse; and that there fore, the insurer had failed to prove that goods were not covered when damaged..”

Mr. Divan, learned senior counsel strongly relied on the above observation and submitted that this decision given by the English Court is binding as per the terms of policy that the English law in question would be applicable. Learned senior counsel submitted that in view of the direct decision of the English Court, the repudiation of the claim by the appellant-Company is ex facie bad. Learned senior counsel also invited our attention to another English decision in Bayview Motors Ltd. v. Mitsui Marine and Fire Insurance Co.Ltd. & Ors. { [2003] Vol.1 C.A.131}. In this case the claimants were dealers in motor vehicles in Providenciales, Turks and Caicos Islands. In 1997 they bought two consignments, each of six vehicles from Toyota Tsusho Corporation. The vehicles were sold c.i.f. Santo Domingo in the Dominican Republic although the terms of the contracts of sale both referred to the destination of the goods being the Turks and Caicos Islands. The consignment was insured. The first consignment arrived in Santo Domingo on August 11, 1997 and the second consignment arrived on September 14, 1997. The vehicles were not released by the Dominican customs for transshipment to the Turks and Caicos Islands. The claimant claimed under the insurance policies alleging that the vehicles were stolen or otherwise taken without any legal justification by employees of the Dominican customs after discharge from the vessels in Santo Domingo. The defendants claim was that the cars were "confiscated" by the Dominican custom authority because of contravention of Dominican law. Therefore, loss was caused by seizure and it excluded or excepted peril under the terms of the insurance cover. It was contended that the loss was proximately caused by the claimant's failure to take reasonable steps to avert or minimize their loss in particular by ensuring that their rights against the Dominican customs were properly preserved by seeking legal advice or otherwise pursuing legal proceedings. The Queen's Bench held that the insurers' submission that the losses occurred after cover had ended and /or by seizure, an excluded peril, would be rejected. The insurers filed an appeal and in the appeal their Lordships held as follows:

" ..Where goods were intended to go to the destination named in the policy and then on to some other destination cl. 1(a) did not contemplate that there would be a final warehouse or place of storage at the destination named in the policy; in such a case the warehouse or place of storage was not final and cover would only cease if the assured elected to use it either for storage other than in the course of transit or for allocation or distribution; otherwise cover was extended for up to 60 days by cl. 1©."

Learned counsel submitted that in view of this interpretation of the clause it would mean that after the extended coverage granted by the Insurance company the goods till they reach any destination on any part of the country would equally stand covered.

17. After considering the ratio with regard to the construction of the terms of the policy it transpires that while interpreting the policy the courts should keep in view the intention of the parties as well as the words used in the policy. If the intention of the parties subserves the expression used therein then the expression used in that context should be given its full and extended meaning. In the present case, as is apparent on reading of the Institute Cargo clause and the coverage, terms of the

policy and the extended coverage, the intention that appears from these terms and conditions that the goods were first covered from port in China, destination in Calcutta port and thereafter extended coverage was sought and in that it was extended to any part of the Republic of India. If these two terms of the policy are read in conjunction then it clearly transpires that the goods are covered till they reach the destination in any part of India. If the extended cover would not be given the policy would extend to Calcutta port. If extended coverage is read, which clearly stipulates that this extension is covered on same terms and conditions of the original policy then it could mean that the policy has been covered till the goods reach the consignee in any part of the country in India. In fact, the extended coverage was only meant for the goods to be covered till they reach destination either by rail or road in any part of the country. If this extended coverage is not interpreted to mean that goods should reach the destination in any part of India, then the extended coverage on payment of higher premium would be meaningless. The coverage was sought because the final destination of the goods was not at Calcutta port. When the coverage was extended on same terms and conditions that would mean that the goods were covered till the same reached in any part of the country in India. In the present case, the goods reached the Calcutta Port and they were taken to different sheds. But unfortunately, the goods were destroyed by fire at Calcutta port itself. Therefore, we are of the view that since the goods were covered from Calcutta port till the same reach its destination and they were lying on storage, that would cover the goods by the extended policy and the insurer cannot defeat the claim of the claimant that the goods once reached the destination at Calcutta the policy stood discharged. The contention of Mr. Mehra that the extended coverage does not cover the goods in transit till they reach any part of the country is not correct because the transit infers storage also till it reaches its destination. The damage on the rail or road would also include that in transit the goods are to be kept in transit shed, the policy would cover that also. If this interpretation is not given then the extended coverage would be of no use. Looking to the expression used in the background of the intention of the parties, it clearly transpires that once the goods were insured, then till they reach any part of the country shall be covered by the extended coverage. Therefore, the contention of Mr. Mehra cannot be accepted.

18. The next question comes with regard to the quantum of compensation. In view of the fact that the reports of M/s. Apex Surveyors Pvt. Ltd as well as N.V.P.Sharma Associates Pvt. Ltd. were considered by the Commission for computing the quantum of compensation and on that basis the compensation has been granted by the Commission, that cannot be said to be in any manner bad as both the Surveyors were of the appellant company and the appellant company cannot possibly deny the amount of compensation arrived at by these surveyors. The calculation given by M/s. Apex Surveyors Pvt. Ltd. has been accepted by the Commission and there is no reason for us to take a different view from the Commission as the Commission has arrived at the amount of compensation as assessed by M/s. Apex Surveyors Pvt. Ltd. Therefore, we affirm the order passed by the Commission on this count also. However, we may modify the order of the Commission with regard to interest. The Commission has granted interest @ 9% from the date of report of the Surveyor but we modify the said order and direct that the claimant will be entitled to interest at the same rate from the date of the order of the Commission instead of the date of report of the Surveyor.

19. As a result of our above discussion, we find that the view taken by the Commission appears to be justified and there is no ground to interfere with the order of the Commission except to the extent of interest as indicated above. Hence, this appeal fails and is dismissed. There would be no

order as to costs.