SUPREME COURT OF INDIA

Deokar Exports Pvt. Ltd.

Vs.

New India Assurance Company Ltd.

C.A.No.5103 of 2002

(R.V. Raveendran and Lokeshwar Singh Panta JJ.)

23.09.2008

ORDER

R. V. Raveendran J.

1. The appellant imported a De-hydration Machine financed by Maharashtra State Finance Corporation (for short 'MSFC'). The machine was insured by the appellant with the respondent (also referred to as the `Insurer') through MSFC, against the risk of fire for the period 12.9.1986 to 12.3.1988. Long after the expiry of the policy, on 25.8.1988, MSFC sent a cheque for Rs.3,135/- on behalf of the appellant for renewal of the policy. A formal stamped receipt was issued by the insurer confirming the receipt of the cheque on 26.8.1988.

2. By letter dated 7.4.1989, the insurer informed the appellant that it had received the premium amount from MSFC, but as no proposal had been received from appellant, it was not in a position to issue the fire insurance policy. The insurer sent a standard proposal form to the appellant along with the said letter. The appellant filled and signed proposal form and delivered it to the insurer on 16.6.1989. In the said proposal, the appellant stated that insurance cover was required for the period 12.3.1988 to 12.9.1989. But the insurer issued an insurance policy dated 30.6.1989 extending insurance cover for the period 26.8.1988 to 25.8.1989. The Insurer sent the insurance policy to MSFC as required. MSFC did not raise any objection about the period of cover when the policy was received by it. Nor was the policy renewed beyond 25.8.1989.

3. On 10.2.1990, the machine was damaged in a fire accident. On 17.2.1990, the appellant lodged a claim for Rs.26,91,139/- with the insurer, in regard to the said damage. The insurer rejected the claim on the ground that there was no insurance cover on 10.2.1990. Feeling aggrieved, the appellant approached the National Consumer Disputes Redressal Commission (`Commission' for short) complaining deficiency in service by the Insurer. The said complaint was dismissed on 23.9.1992 on the ground that the complaint involved decision on complex issues of fact and, therefore, the appropriate remedy was by way of suit. The appellant thereafter filed a civil suit on 29.3.1993 claiming Rs.26,91,130/-, being the value of the damaged machine, with interest etc. The appellant submitted that the suit was in

time, if the period spent in prosecuting the claim before the Commission was excluded under section 14 of *Limitation Act, 1963*.

4. The Trial Court by judgment and decree dated 16.9.1999 dismissed the suit. It upheld the contention of the appellant that the insurance cover could only be prospective, that is for a period of one year from the date of issue of the policy; and that as the insurance policy was issued on 30.6.1989, it should be deemed to have been issued to cover a period of one year commencing from that date; and that therefore, as on the date of the fire accident - 10.2.1990, the machine must be deemed to have been insured. However, the trial court dismissed the suit as barred by limitation. It refused to exclude the time spent in prosecuting the complaint before the National Consumer Redressal Commission for purposes of limitation. Feeling aggrieved, the appellant filed an appeal before the Bombay High Court contending that the finding regarding limitation was erroneous. The insurer filed cross- objections challenging the finding that the insurance was in force on the date of fire accident. The High Court by its judgment dated 9.3.2001 dismissed the appeal by the appellant and allowed the cross-objections of the insurer. The High Court held the suit was not barred by limitation. But it held that the suit was liable to be rejected on merits, as there was no insurance cover on 10.2.1990. It held that the date of insurance policy was immaterial and what was material was the date of assumption of risk; and as the insurer had assumed risk with effect from 26.8.1988 for a period of one year upto 25.8.1989, it cannot be made liable for a fire accident which occurred after the expiry of the policy. The High Court also noted that when the policy was sent to MSFC, which was acting on behalf of the appellant, no objection was raised in regard to the period of insurance cover.

5. The said decision of the High Court is challenged in this appeal by special leave. The appellant contended that a contract of insurance, unless otherwise mutually agreed, shall always be prospective in its operation that is from the date of issuance of the policy of insurance or cover note. It was submitted that as the proposal by the appellant required insurance cover for the period 12.3.1988 to12.9.1989, the insurer could have issued the policy assuming risk from the required date, that is, 12.3.1988. If that was not possible, for whatever reason, the policy should have assumed risk prospectively from the date of issue of the policy, and not from some retrospective date chosen by the insurer. It was further submitted that as the insurer had sent the policy to MSFC, the appellant could not point out the error relating to the period of insurance cover. The appellant contended that in the circumstances, the policy should be treated as having been issued prospectively for one year effective from 30.6.1989; and if so, the machine was deemed to have been insured on the date of the accident.

6. On the contentions urged, the following questions arise for our consideration :

> "(i) Where the insurance company is not able to issue a policy of insurance, for the period required in the proposal, whether the alternative is only to issue the policy to be effective prospectively from the date of issue.

(ii) Whether the insurer was justified in issuing the policy showing the period of insurance cover as 26.8.1988 to 25.8.1989?

(iii) Whether the policy should be treated as one covering the machine against tie risk during the period 30.6.1989 to 29.6.1990?"

7. The contention and grievance of the appellant is not that the insurance policy should have covered the risk during the period specified in its proposal. Its contention is that the policy of insurance ought to have covered the risk for a period of one year with effect from the date of issue of the policy of insurance, and not for the period stipulated in the policy, nor for the period mentioned in its proposal.

8. Section 64 VB of The *Insurance Act, 1938* (`Act' for short) provides that no risk can be assumed unless premium is received in advance. Sub-sections (1) and (2) of the said section, relevant for our purpose, are extracted below:

"64-VB. No risk to be assumed unless premium is received in advance - (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the inusrer.

Explanation- Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be." (Emphasis supplied)

Two things emerge from the said section. The first is that the insurer cannot assume risk unless and until premium is received or guaranteed or deposited. The second is that a policy issued can assume the risk from a retrospective date provided such date is not earlier than the date on which premium had been paid in cash or by cheque to the insurer.

9. In this case, the proposal sent by the appellant was received by the insurer on 16.6.1989. It required that the period of insurance cover should be for the period 12.3.1988 to 12.9.1989. The reason why the respondent wanted the insurance cover retrospectively from 12.3.1988 is obvious. The initial insurance policy expired on 12.3.1988. Under the terms of finance between MSFC and the appellant, apparently it was necessary to have an uninterrupted and continuous insurance cover during the period the machine was secured in favour of MSFC. Therefore, the appellant wanted the insurance cover to be continued by way of renewal for the period 12.3.1988 to 12.9.1989. But the premium amount for one year was received by the

insurer only on 26.8.1988. Having regard to the bar contained in Section 64-VB of the Act, the insurer could not accept the request of the appellant to grant insurance cover with retrospective effect from a date prior to 26.8.1988 when it received the premium. Therefore, the insurer adopted the standard, logical and obvious course of issuing the insurance policy with effect from the date on which it received the premium amount by cheque that is with effect from 26.8.1988. As the premium paid was for one year and the standard term of fire policy was one year, the policy was issued assuming risk for the period 26.8.1988 to 25.8.1989. Non-issue of the policy for the period commencing from 12.3.1988 required by the appellant, was for a good and valid reason. There was also nothing illogical or arbitrary about the insurance of a policy specifying the period of insurance cover as one year effective from the date of receipt of the premium that is from 26.8.1988 to 25.8.1989. If the appellant wanted insurance cover prospectively it should have so specified in the proposal. Having failed to do so and having sought retrospective cover, the appellant cannot make a grievance when the insurance cover is issued retrospectively from the date of receipt of the premium.

10. Another aspect which requires to be noticed is that when the policy was sent by the insurer to MSFC, there was no protest or objection from MSFC that the policy was issued for a wrong period. Nor did it return the policy to the insurer with a request to make it prospective from the date of the policy. The appellant did not choose to examine the policy or cross-check with MSFC about the currency of the insurance policy or about the need to further renewal of the policy. In fact, it would appear from the record that MSFC had written on 31.7.1989 to the appellant that the insurance policy was due to expire in August, 1989. It is, thus, clear that both the appellant and MSFC were aware of the fact that the insurance cover under the policy was for the period 26.8.1988 to 25.8.1989 but neither of them objected to it. Nor was any premium paid for further renewal of the policy beyond 25.8.1989. Obviously, therefore, the insurer cannot be made liable for the loss which occurred on account of a fire accident on 10.2.1990.

11. A policy of insurance is a contract based on an offer (proposal) and an acceptance. The appellant made a proposal. The respondent accepted the proposal with a modification. Therefore, it was a counter proposal. The appellant had three choices. The first was to refuse to accept the counter-proposal, in which event there would have been no contract. The second was to accept either expressly or impliedly, the counter-proposal of the respondent (that is respondent's acceptance with modification) which would result in a concluded contract in terms of the counter proposal. The third was to make a counter proposal to the counter-proposal of the respondent in which event there would have been no concluded contract unless the respondent agreed to such counter-counter- proposal. But the appellant definitely did not have the fourth choice of propounding a concluded contract with a modification neither proposed nor agreed to by either party. If the appellant did not agree to the policy covering the period 26.8.1988 to 25.8.1989 instead of the period 12.3.1988 to12.9.1989, the result would never create an insurance contract effective from 30.6.1989 or any other date.

12. The contention of the learned counsel for the appellant that an equitable view must be taken is untenable. In a contract of insurance, rights and obligations are strictly governed by the policy of insurance. No exception or relaxation can be made on the ground of equity.

12. We, therefore, find no reason to interfere with the judgment of the High Court. The appeal is dismissed with costs quantified at Rs.10,000/-.