SUPREME COURT OF INDIA

United India Insurance Co. Ltd.

Vs.

Orient Treasures Pvt. Ltd.

C.A.No.2140 of 2007

(Jasti Chelameswar and Abhay Manohar Sapre,JJ.)

13.01.2016

JUDGMENT

Abhay Manohar Sapre, J.

1.This appeal under Section 23 of the Consumer Protection Act, 1986 is filed against the order dated 19.03.2007of the National Consumer Disputes Redressal Commission (hereinafter referred to as "the Commission"), New Delhi in Original Petition No. 375 of 1999 whereby the Commission allowed the petition filed by the respondent herein and directed the appellant-insurance company to pay a sum of Rs.36,10,211/- with interest @10% p.a. from 03.12.1995 till date of payment and also directed the insurance company to pay costs assessed at Rs.50,000/- to the respondent-Complainant herein.

2. In order to appreciate the issue involved in this appeal, which lies in a narrow compass, it is necessary to set out the relevant facts in brief infra.

3. The appellant herein is an insurance company incorporated under the Companies Act having its registered office at No. 24, Whites Road, Chennai. The respondent herein is also a company incorporated under the Companies Act, 1956 having its registered office at Oceanic Buildings, Quilon, Kerala and its branches inter alia at Janpriya Centre No.34, Sir Thyagaraya Road, Pondy Bazar, Chennai.

4.The respondent herein is the complainant. They are engaged in the business of sale of various kinds of Jewellery. The respondent is having their jewellery shop known as "Kanchana Mahal" which is situated at Janpriya Centre No.34, Sir Thyagaraya Road, Pondy Bazar, Chennai.

5. The respondent had insured their jewellery kept in their shop with the appellant under successive "Jewellers Block Policies" with effect from 02.07.1993 onwards. The procedure followed was that the respondent was required to submit proposal form. On receipt of the proposal form, the officials of the appellant-insurance company used to inspect the shop to verify the security and storage particulars.

6. The respondent filled up the insurance proposal form by providing necessary information as mentioned in the form. On the basis of the said proposal form, the appellant issued an insurance policy in favour of the respondent from 02.07.1993 to 01.07.1994. It was then subsequently renewed for further one year, i.e. from 02.07.1994 to 01.07.1995.

7. On 02.06.1995, the respondent alleged that there was a burglary in their Jewellery shop. According to the respondent, on the night of 02.06.1995, burglars broke open the locks of shutters, entered the shop and decamped with the gold and silver ornaments valued at Rs.40,63,735.53. The respondent accordingly lodged FIR at the concerned Police Station on 03.06.1995. The respondent also informed the appellant on 03.06.1995 by a telegraphic communication about this incident. By letter dated 05.06.1995, the appellant informed the respondent that a Surveyor has been appointed to assess the loss suffered by the respondent in the burglary. The surveyor then inspected the site and also examined all the relevant material, books, inventory etc. with a view to assess the actual loss alleged to have been suffered by the respondent and accordingly assessed the total loss at Rs.36,10,211/. Thereafter he submitted his report. After investigation, the police also submitted a final investigation report on 24.06.1995 treating the case as untraceable.

8. The respondent then submitted their claim with the appellant on the basis of the Insurance Policy and claimed that they are entitled to receive the value of Jewellery which they lost in burglary committed in their shop on 02.06.1995. On 19.01.1998, the Divisional Manager of the Insurance Company, Tuticorin after examining the respondent's claim for loss of their Jewellery repudiated the claim inter alia on the ground that the stolen gold ornaments and silver articles were found to had been kept on display window and in the sales counters at the time of burglary which took place in the night of 02.06.1995, which according to appellant, was contrary to the terms of the policy and, therefore, not covered in the policy. In other words, such items were not insured. It was further stated that the policy was issued subject to the terms, conditions, warranties and exclusion printed in the proposal form which was a part of policy. The appellant relied on clause 12 of the policy and stated that since the burglary in the shop took place during night and stolen articles kept in window display and lying out of safe in the shop were stolen, the appellant could not be made liable to indemnify such loss which, according to them, was not insured and specifically excluded from the insurance policy.

9. Being aggrieved by the decision of the appellant- Insurance Company, the Respondent sent letters and reminders pointing out therein the terms of the proposal form and policy and insisted that the loss was fully covered by the policy and hence they were entitled to claim the value of the lost articles from the appellant on the basis of Insurance Policy. As nothing was done, the respondent filed a complaint before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "the Commission") being Original Petition No. 375 of 1999 claiming a sum of Rs.1,32,06,786.30.

10. By order dated 19.03.2007, the Commission partly allowed the petition filed by the respondent and directed the appellant-Insurance Company to pay a sum of Rs.36,10,211/- with interest @ 10% p.a. from 03.12.1995 till date of payment and also directed the

Insurance Company to pay costs assessed at Rs.50,000/- to the respondent.

11. Aggrieved by the said order, the appellant- Insurance Company has filed this appeal.

12. Dissatisfied with the claim awarded by the Commission, the respondent has filed **C.A. No. 5141 of 2007** seeking enhancement in the quantum of claim. According to the respondent, they are entitled to claim a sum of Rs.1,32,06,786.30 as against Rs. 36,10,211/- awarded by the Commission.

13. Heard Mr. P.P. Malhotra, learned senior counsel for the appellant and Mr. H. Ahmadi, learned senior counsel for the respondent.

14. Shri P.P.Malhotra, learned senior counsel appearing for the appellant while assailing the legality and correctness of the impugned order mainly urged two points in support of his submissions.

15. In the first place, learned senior counsel urged that the Commission erred in partly allowing the complaint filed by the respondent herein by passing the impugned award against the appellant. According to learned counsel, had the Commission properly interpreted clauses 4 and 5 of the proposal form, which was part of the policy along with clause 12 of the policy then in such event, the respondent's complaint was liable to be dismissed in its entirety.

16. Elaborating the aforementioned submission, learned counsel pointed out that the plain reading of clauses 4 and 5 (b) with their note and clause 12 of the policy clearly show that the respondent's claim was excluded from the policy issued by the appellant because it was in relation to the items which were kept in display window and out of safe at the time of burglary.

17. In other words, the submission was that the respondent's claim was not covered under the policy and was expressly excluded by virtue of clauses 4 and 5(b) read with clause 12 of the policy because firstly, the burglary in the shop took place in night hours and secondly, the stolen articles were kept in display window and outside the safe.

18. Learned counsel, therefore, urged that due to these two admitted facts, the note appended to clauses 4 and 5 read with clause 12 was attracted rendering the respondent's complaint as not maintainable.

19. Learned counsel further pointed out that the respondent despite knowing these clauses of the proposal form/policy instead of seeking any clarification regarding meaning of the clauses paid the premium pursuant thereto the appellant issued the Insurance policy on the terms and conditions set out therein which are binding on both parties while adjudicating their rights against each other arising out of the policy.

20. Learned counsel, in the second place, submitted that the language of clauses 4, 5 and 12 being plain, clear and unambiguous conveying only one meaning, the appellant had every right to rely upon these clauses while opposing the respondent's complaint on merits.

21. Learned counsel, therefore, submitted that in the light of these facts, the respondent had no right to file a complaint against the appellant seeking monetary compensation for the loss alleged to have been suffered by them arising out of burglary of their articles stolen from their shop. Such claim, according to learned counsel, was barred by virtue of clauses 4, 5 and 12 of the policy and was therefore, liable to be dismissed as being untenable.

22. In support of his submission, learned counsel placed reliance on the decisions in *General Assurance Society Ltd. vs. Chandumull Jain & Anr.*[1], *United India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal*[2] *Oriental Insurance Co. Ltd. vs. Sony Cheriyan*[3], *Rahee Industries Ltd. vs. Export Credit Guarantee Corporation of India Ltd. & Anr*[4]*., Sikka Papers Ltd. vs. National Insurance Co. Ltd. & Ors*[5], *Vikram Greentech India Ltd. & Anr. vs. New India Assurance Co. Ltd*[6]*., New India Assurance Co. Ltd. vs. Zuari Industries Ltd. & Ors*[7]*., Amravati District Central Cooperative Bank Ltd. vs. United India Fire and General Insurance Co. Ltd*[8]*., Suraj Mal Ram Niwas Oil Mills P. Ltd. vs. United India Insurance Co. Ltd. & Anr*[9]*., Deokar Exports P. Ltd. vs. New India Assurance Co. Ltd*[10]*., Export Credit Guarantee Corp. of India Ltd. vs. Garg Sons International*[11]*,and Rust vs. Abbey Life Assurance Co. Ltd. & Anr*[12]*.,.*

23. In reply, Mr. H. Ahmadi, learned senior counsel appearing for the respondent while supporting the impugned order contended that the issue involved in this case needs to be decided in the light of the principle underlined in the rule known as ” contra proferentem rule”. According to learned counsel, there is an ambiguity in the language/words of clauses 4 and 5 of the proposal form and since the ambiguity noticed created some confusion as to what these clauses actually provide and expect the respondent to comply at the time of filling the proposal form for obtaining the insurance policy, this Court should interpret the clauses by applying the principle underlined in the aforesaid rule in such a way that its benefit would go to the respondent rather than to the appellant. It was also his submission that the appellant being the author of the proposal and policy are not entitled to claim the benefit of the clauses of proposal form/policy in their favour thereby defeating the rights of the respondent which they have got under the policy to enforce against the appellant for claiming the compensation.

24. Learned counsel also contended that the respondent had intended to insure all their articles kept in the shop regardless of timings and the manner in keeping the articles in their shop. He also pointed out that the respondent having paid the full premium for the articles which were valued at Rs. 2 crore as disclosed by the respondent in clauses 4 and 5 and therefore the respondent was entitled to claim compensation for the loss of the stolen items (jewelry) treating them as insured and covered under the policy, issued in their favour.

25. So far as the connected appeal filed by the respondent-Complainant is concerned, the submission of the learned senior counsel for the respondent was that the Commission erred in

not allowing their complaint in its entirety despite availability of evidence on record. Learned counsel, therefore, prayed for dismissal of the appellant's appeal and allowing the appeal filed by the respondent by enhancing the quantum of compensation as claimed by the respondent in the complaint.

26. Learned senior counsel also placed reliance on the same decisions which were cited by learned senior counsel for the appellant and contended that the law laid down therein also supports the respondent's case.

27. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions, we find force in the submissions of learned counsel for the appellant (Insurance company- Insurer).

28. The question which arises for consideration in this appeal is whether the Commission was justified in allowing the complaint filed by the respondent against the appellant-Insurance Company in part and was, therefore, justified in awarding a sum of Rs.36,10,211/- to the respondent.

29. In order to answer the aforementioned question, clauses 4, 5 of the proposal form and clause 12 of the policy need mention infra.

(1)

4	**WINDOW DISPLAY** State the approximate value of any of article of Jewellery or Gem stock which will be displayed in the window (A pad or tray containing a number of rings or other articles to be counted as one article). (Give separate answer for each location). Note: Window display at night is not covered.	Rs.3,50,5000/-
5	**STOCK** a. What was (i) the average daily total value of your stock during the past 12 months? (ii) Will the whole of your stock when on your premises be kept in safe at night and at all times when the state value and class of stock which will left outside safes. Note: We do not cover stocks kept out of the safe---business hours at night.	(a)(i)New Shop (b) (iii)New shop (b) All stocks of Gold, Diamond, Gems, Silver and other precious stones-kept outside the safe Rs.2,00,00,000 (Two crores).

(2)

The company shall not be liable for under this policy in respect of 1 to 11

12. Loss or damage to property, insured whilst in window display at night or whilst kept out of safe after business hours."

30. Before we examine the issue involved in the case, it is necessary to take note of the law laid down on the subject by the Constitution Bench of this Court in *General Assurance Society Ltd. vs. Chandumull Jain & Anr*[1]*.,*

31. The Constitution Bench in this case has explained the true nature of contract relating to Insurance and laid down the relevant factors which the courts should keep in mind while interpreting the contract of insurance.

32.Justice Hidayatullah,J. (as His Lordship then was) speaking for the Bench in his distinctive style of writing held in Para 11 as under:

"11. A contract of insurance is a species of commercial transactions and there is a well established commercial practice to send cover notes even prior to the completion of a proper proposal or while the proposal is being considered or a policy is in preparation for delivery. A cover note is a temporary and limited agreement. It may be self contained or it may incorporate by reference the terms and conditions of the future policy. When the cover note incorporates the policy in this manner, it does not have to recite the term and conditions, but merely to refer to a particular standard policy. If the proposal is for a standard policy and the cover note refers to it, the assured is taken to have accepted the terms of that policy. The reference to the policy and its terms and conditions may be expressed in the proposal or the cover note or even in the letter of acceptance including the cover note. The incorporation of the terms and conditions of the policy may also arise from a combination of references in two or more documents passing between the parties. Documents like the proposal, cover note and the policy are commercial documents and to interpret them commercial habits and practice cannot altogether be ignored. During the time the cover note operates, the relations of the parties are governed by its terms and conditions, if any, but more usually by the terms and conditions of the policy bargained for and to be issued. When this happens the terms of the policy are incipient but after the period of temporary cover, the relations are governed only by the terms and conditions of the policy unless insurance is declined in the meantime. Delay in issuing the policy makes no difference. The relations even then are governed by the future policy if the cover notes give sufficient indication that it would be so. 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."

33. Keeping in view the aforesaid principle of law in mind and applying the same to the facts of the case, we proceed to examine the issue involved in this appeal.

34. Mere perusal of the note appended to clause 4 quoted above would go to show that the appellant (Insurance Company) had made it clear in the proposal form itself that "window display of articles at night is not covered". This clearly meant that the insurance coverage was given to the articles kept in "window display during day time in business hours" whereas insurance coverage was not given to the articles when they were kept in "window display at night".

35. In other words, if the burglary had been committed during day time in business hours and in that burglary, the articles kept in display window were stolen then in such circumstances, the appellant was liable to reimburse the loss to the respondent of such stolen articles as insured articles under the policy. But if the burglary had been committed of the articles kept in display window during night time (after business hours) then in such circumstances the appellant having made it clear to the respondent in the note in clause 4 that they would not be liable to indemnify the loss of any such articles kept in display window after business hours, the respondent was not entitled to claim any compensation for the loss of any such stolen articles. In other words, the insurance coverage was not extended to such stolen articles under the policy.

36. Similarly, mere perusal of note appended to clause 5 quoted above would go to show that the appellant had made it clear in the proposal form itself to the respondent that "stock which is kept out of the safe after business hours at night" is not covered under the policy. This clearly meant that "stock kept out of safe during business hours", if stolen, was insured and given coverage under the policy but if it was kept out of safe after business hours at night, then it was not covered under the policy and therefore, the appellant was not liable to indemnify the loss sustained by the respondent of any such stolen articles.

37. In other words, if the burglary had been committed during day time in business hours then the appellant was liable to reimburse the loss to the respondent of the stolen articles treating them as insured articles under the policy. But if the burglary had been committed of the stock/articles kept out of safe after business hours at night then in such circumstances the appellant was not liable to indemnify the loss of any such stolen articles by virtue of note appended to clause 5. In these circumstances, the respondent was not entitled to claim any compensation for the loss sustained in the burglary of any such stolen articles.

38. In our considered opinion, there is neither any ambiguity nor vagueness and nor absurdity in the language/wording of note appended to clauses 4 or/and 5. On the other hand, we find that the language/wording of the note in both the clauses is plain, clear, unambiguous and creates no confusion in the mind of the reader about its meaning. That apart clause 12 of the policy, in clear terms, provides that the appellant would not be liable to indemnify any loss under the policy if such loss or damage to the insured property occurs while the insured property was kept in window display at night or while it was kept out of safe after business hours.

39. This takes us to the next submission of Mr. Ahmadi, learned senior counsel for the respondent that we should apply the rule of contra proferentum to interpret clauses 4 and 5 because according to him there is an ambiguity in the language/wording of clauses 4 and 5 and secondly, the appellant being the author of these clauses has no right to take benefit of the ambiguity to defeat the rights of the respondent. Learned counsel maintained that the interpretation of the clauses should, therefore, be made in such a way that its benefit would go to the respondent (insured) for claiming compensation from the appellants. We cannot accept this submission of learned counsel for the respondent for more than one reason.

40. In Halsbury's Laws of England (fifth edition- Volume 60 Para 105) principle of contra proferentem rule is stated thus :

> "Contra proferentem rule. Where there is ambiguity in the policy the court will apply the contra proferentem rule. Where a policy is produced by the insurers, it is their business to see that precision and clarity are attained and, if they fail to do so, the ambiguity will be resolved by adopting the construction favourable to the insured. Similarly, as regards language which emanates from the insured, such as the language used in answer to questions in the proposal or in a slip, a construction favourable to the insurers will prevail if the insured has created any ambiguity. This rule, however, only becomes operative where the words are truly ambiguous; it is a rule for resolving ambiguity and it cannot be invoked with a view to creating a doubt. Therefore, where the words used are free from ambiguity in the sense that, fairly and reasonably construed, they admit of only one meaning, the rule has no application."

41.The aforesaid rule, in our considered opinion, has no application to the facts of this case. It is for the reason that firstly, we find that there is no ambiguity in the language/wording used in clauses 4 and 5. In other words, as held above, the language/wording of clauses 4 and

5 and the note appended thereto is clear, plain and unambiguous and carries only one meaning. Secondly, in the absence of any ambiguity, the respondent is not entitled to invoke the principle underlined in the rule of contra proferentem for interpreting the clauses of the policy and lastly, presence of ambiguity in the language of policy being sine qua non for invocation of the contra proferentem rule, which is not present here, we cannot apply the rule for deciding the issue involved in case.

42. It is a settled rule of interpretation that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. In other words, when a language is plain and unambiguous and admits of only one meaning, no question of construction of a statue arises, for the Act speaks for itself. Equally well-settled rule of interpretation is that whenever the NOTE is appended to the main Section, it is explanatory in nature to the main Section and explains the true meaning of the main Section and has to be read in the context of main Section (See - G.P.Singh -Principle of Statutory Interpretation 13th Edition page 50 and 172). This analogy, in our considered opinion, equally applies while interpreting the words used in any contract.

43. Coming now to the facts of the case, it is not in dispute that the burglary took place in the respondent's shop during night hours on 02.06.1995 when the burglars took away the jewelry (gold/silver ornaments) kept in display window and jewelry lying out of safe. The appellant was, therefore, justified in contending that the stolen articles were not covered under the policy by virtue of clauses 4, 5 of Proposal Form and Clause 12 of the policy and no liability could be fastened on them to indemnify the loss of such articles for awarding any compensation to the respondent. Indeed clauses 4, 5 and 12 were clearly attracted in appellant’s favor.

44. We do not agree to the submission of Mr. Ahmadi, learned senior counsel for the respondent that once the respondent disclosed their intention to get their stock (ornaments) valued at Rs 2 Crores insured with the appellant by filling the details in Columns 4 and 5 of the proposal form and once they paid the necessary premium to the appellant, the respondent became entitled to claim loss of the stolen items from the appellant treating the stolen items as insured under the policy regardless of note contained in clauses 4 , 5 and clause 12 of the policy. In our view, the submission has a fallacy.

45. Firstly, as mentioned above, if the burglary had taken place during day time in business hours in respect of the items kept in display window or out of safe, the appellant was liable to compensate the respondent for the entire loss suffered by them treating the stolen items as insured items under the policy. In other words, if the burglary had taken place during business hours then item kept in display window or those lying out of safe were covered under the policy.

46. Likewise, if the burglary had taken place during night in relation to the items kept in the safe, then also the appellant was liable to compensate the loss suffered by the respondent in burglary treating the stolen items as insured items under the policy.

47. In both the category of cases mentioned above, the appellant was not entitled to rely upon clauses 4, 5 and 12 to avoid their liability because both the instances did not fall either in clause 4 or clause 5 or clause 12. However, this was not the case set up by the respondent against the appellant.

48. On the other hand, it is the case of the respondent that the burglary took place at night and the insured items kept in display window and some lying out of safe were stolen. Due to these facts, clauses 4, 5 and 12 were attracted against the respondent.

49. In order to claim benefit of the policy, it was obligatory upon the respondent to have removed the insured items from display window everyday after business hours and keep them inside safe during night hours till opening of the shop next day. Like wise all insured items in side the shop should also have been kept in side the safe everyday after business hours till opening of the shop next day. It was, however, not done by the respondent.

50. A contract of insurance is one of the species of commercial transaction between the insurer and insured. It is for the parties (insurer/insured) to decide as to what type of insurance they intend to do to secure safety of the goods and how much premium the insured wish to pay to secure insurance of their goods as provided in the tariff. If the insured pays additional premium to the insurer to secure more safety and coverage of their insured goods, it is permissible for them to do so. In this case, the respondent did not pay any additional premium to get the coverage of even two instances mentioned above to avoid rigour of note of clauses 4, 5 and clause 12.

51. In view of foregoing discussion, we cannot concur with the reasoning and the conclusion arrived at by the Commission. The appeal filed by the insurance company, i.e., Civil Appeal No. 2140 of 2007, therefore, deserves to be allowed. It is accordingly allowed. Impugned order is set aside. As a consequence thereof, the complaint filed by the respondent against the appellant out of which this appeal arises is dismissed. No costs.

Civil Appeal No. 5141 of 2007

In the light of the order passed in Civil Appeal No. 2140 of 2007, it is not necessary to examine the merits of the claim filed by the Complainant, which has been rendered infructuous. The appeal thus fails and is dismissed as having rendered infructuous. No costs.

Judgment Referred.

[1]*AIR 1966 SC 1644 = (1966) 3 SCR 0500*
[2]*(2004) 8 SCC 0644*
[3]*(1999) 6 SCC 0451*
[4]*(2009) 1 SCC 0138*
[5]*(2009) 7 SCC 0777*
[6]*(2009) 5 SCC 0599*

[7]*(2009) 9 SCC 0070*
[8]*(2010) 5 SCC 0294*
[9]*(2010) 10 SCC 0567*
[10]*(2008) 14 SCC 0598*
[11]*(2014) 1 SCC 0686*
[12]*(1979) Vol.2 Lloyd's Law Reports 0334*