

# RAJASTHAN HIGH COURT

Nand Construction Co.

Vs.

Regnl. Manager, Oriental Insurance Co.

Civil Writ Petition No. 1041 of 1999

(Shiv Kumar Sharma, J.)

04.03.2002

## ORDER

**Shiv Kumar Sharma, J.**

1. Ordinarily High Court does not entertain the writ petition filed under Article 226 of the Constitution of India for mere enforcement of a claim under a contract of insurance. But where the writ petition is filed in a case where an insurer has repudiated the claim, the High Court has to consider the facts and circumstances of the case, the nature of the dispute raised and the nature of the inquiry necessary to be made for determination of the question raised and other relevant factors before taking a decision whether it should entertain the writ petition or reject it as not maintainable. It has also to be kept in mind that in case an insured or nominee of the deceased insured is refused relief merely on the ground that the claim relates to contractual rights and obligations and he/she is driven to a long drawn litigation in the Civil Court it will cause serious prejudice to the claimant other beneficiaries of the policy. The pros and cons of the matter in the contest of the fact situation of the case should be carefully weighed and appropriate decision should be taken." ( *Life Insurance Corporation of India v. Asha Goel* <sup>1</sup> Bearing this principle in mind, I proceed to scan the material on record.

2. Contextual facts depict that the respondent No.2 entered into insurance contract with the petitioner Vide Contractors All Risk (CAR) Policy No. 44/96/00008 for a total price of Rs. 1.42 crores for four roads on different sites in Nadbai Tehsil, District Bharatpur. The petitioner paid premium of Rs. 39,661/- through cheque No. 378071 dated October 27, 1995 and the respondent No.2 issued a Misc. Provisional Cover Note No 069264/93 dated October 27, 1995 in favor of the petitioner and the period of

maintenance was specified as from October, 27,1995 to November 26, 1996 including one year maintenance period. A loss occurred in respect of above referred CAR Policy and accordingly the petitioner lodged a claim vide No. 44/97/00006 with the respondents. The respondents entrusted the job of surveying the actual loss sustained by the petitioner to different surveyors at different times, firstly to Mr. N.K.Jain (Surveyor of *Jaipur* and secondly to M/s. R.K. Singhal and Company Pvt. Limited (Surveyors of New Delhi). Sri N.K.Jain after completing his survey quantified the loss sustained by the petitioner to the tune of Rs. 29.50 lacs. The second surveyor M/s. R.K.Singhal and Company Private Ltd. New Delhi after surveying and assessing the loss sustained by the petitioner quantified the loss to the tune of Rs. 24.50 lacs. When the respondents did not settle the claim of the petitioner despite many letters of requests, a notice of demand of justice was served and the instant writ petition was filed on February 12, 1999 with the prayer that the respondents be directed to settle the claim as per the survey reports along with interest and compensation.

3. Notices were issued to the respondents and the service of the notices was effected on them on April 1, 1999. The reply to the writ petition was thereafter filed by the respondents on June 28, 1999 with the averments that the claim of the petitioner was repudiated by the respondents vide letter dated May 31, 1999. Copy of the said letter was annexed as R/1 with the reply. In view of this the respondents raised preliminary objection in regard to the maintainability of the writ petition.

4. On a close scrutiny of material on record following fact situation emerges :

- a) Surveyor N.K.Jain quantified a loss in the sum of Rs. 29.50 lacs.
- b) The respondent No. 1 vide letter dated August 29, 1996 (Annexure-3) requested the Head Office New Delhi to appoint the Joint surveyor R.K. Singhal and Co. to assess the loss and co-ordinate with N.K. Jain under cover note No. 069264/93 of Package 8H-3.
- c) R.K.Singhal and Co quantified the loss to the tune of Rs. 24.50 lacs.
- d) The respondents in their reply averred that N.K.Jain was appointed to make preliminary survey and not to make final survey. So far as the loss assessed by R.K.Singhal and Co. is concerned, the stand taken by the respondents is that the claim was governed by the terms and conditions of the Policy.
- e) The letter of repudiation of claim dated May 31, 1999 (Annexure R/1) was issued by the respondents during the pendency of the writ petition much after the service of the notices. In the said letter it was stated that while proposing for insurance the petitioner has deliberately concealed the fact that the constructions

of the roads was already complete and the extended maintenance cover during which the said damage took place covered only the loss or damage to the contract work occurring during the erection period before the certificate of completion for the loss or damage section was issued.

5. Having considered the pros and cons of the matter in the context of the fact situation in the instant case I am of the considered opinion that the act of the respondents in repudiating the claim of the petitioner after coming to know the fact that the writ petition was filed against them for the settlement of the claim by the petitioner, appears to be afterthought and mala fide. Once the claim of the petitioner was processed by the surveyors appointed by the respondents, they are estopped from taking 'U-Turn' by repudiating the claim. If the petitioner was guilty of suppressing some facts or the respondents were not liable to make good of the claim, why did they keep mum till the notices of the writ petition were received by them. This conduct of the respondents is highly dubious. In such a situation I am inclined to invoke the provision of Article 226 of the Constitution of India. I am satisfied that this is not a case for enforcement of purely contractual rights which involve disputed questions of facts.

6. I therefore allow this writ petition and set aside the letter dated May 31, 1999 (Annexure R/1) issued by the respondents during the pendency of the writ petition. I direct the respondents to settle the claim of the petitioner as per the survey reports received by them within two months from today. The petitioner shall also be entitled to the costs of the writ petition.

Petition allowed.

Cases Referred.

1. (2001) 2 SC 160