2022 INSC 502

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10671 of 2016

Narsingh Ispat Ltd. .....Appellant

Versus

Oriental Insurance Company Ltd. & Anr. .....Respondents

J U D G M E N T

Abhay S. Oka, J.

1. This is an appeal under Section 23 of the Consumer Protection Act, 1986. The appellant has challenged the judgment and order dated 18th October 2016 of the National Consumer Disputes Redressal Commission (for short, 'the Commission'). By the said Judgment, the Commission dismissed the Consumer Complaint No.165 of 2012 filed by the appellant.

2. The appellant had taken Standard Fire and Special Perils Policy from the respondent-insurance company for the period from 28th June 2009 to 27th June 2010. The policy was in respect of Engineering Workshop and Plant at Village Khunti District Saraikela, Jharkhand. The total sum assured was Rs.26,00,00,000/- under

different headings. The appellant paid a premium of Rs.2,20,462/-. According to the appellant, the policy covered the loss caused to the property of the appellant on account of fire, lightning, explosion, riots, strike etc.

3. The appellant lodged a claim on the basis of the said policy, based on the incident of 23rd March 2010. As per the claim made by the appellant, after midnight of 22nd March 2010, about 50-60 anti-social people with arms and ammunition entered the factory premises of the appellant at Village Khunti, District Saraikela in Jharkhand. According to the appellant's case, the mob demanded money and jobs for local people. According to the case of the appellant, substantial damage was caused to its factory, machinery and other equipment. According to the appellant, the object of the incident was to terrorise the management of the appellant and workers in the factory by forcing them to pay a ransom to the miscreants. A First Information Report was also registered at the instance of the appellant based on the said incident. The appellant lodged a regular claim with the respondent company on the basis of the policy. According to the appellant's case, a surveyor appointed by the respondent-insurance company carried out the survey and assessed the loss at Rs.89,43,422/-. However, by addressing a letter on 21st December 2010, the appellant claimed that the respondent-insurance company was liable to make an interim payment of Rs.1.5 crores.

4. By the letter dated 23rd December 2010, the respondent-insurance company repudiated the appellant's claim by placing reliance on the Exclusion Clause in the policy regarding loss or damage caused by the acts of terrorism. Therefore, the appellant filed the complaint mentioned above before the Commission complaining about deficiency in the service offered by the respondent-insurance company. In the complaint, a prayer was made for the grant of monetary relief of Rs.1,51,35,780/- on account of the loss suffered by the appellant. A separate amount of Rs.25,00,000/- was claimed on account of agony and harassment caused to the appellant due to illegal repudiation of the policy by the respondent-insurance company. The appellant claimed interest at the rate of 18% p.a on the amounts mentioned above and cost amount of Rs.10,00,000/-.

5. By the impugned judgment and order, the Commission held that because of the "Terrorism Damage Exclusion Warranty" (for short, 'the Exclusion Clause'), the respondent company was justified in repudiating the claim of the appellant based on the policy of insurance. It was held that the damage caused to the factory and equipment of the appellant was due to an act of terrorism.

6. For the sake of convenience, we are reproducing the said Exclusion Clause, which reads thus:

> "Terrorism Damage Exclusion Warranty :
>
> Notwithstanding any provision to the contrary within this

insurance it is agreed that this insurance excludes loss, damage cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purpose including the intention to influence any government and/or to put the public, or any section of the public in fear.

The warranty also excludes loss, damage, cost or expenses of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to action taken in respect of any act of terrorism."

(emphasis added)

7. Shri Santosh Kumar, the learned counsel appearing for the appellant, submitted that the police had registered a First Information Report against unknown persons. After completing the investigation, the police filed a closure report recording that the accused could not be traced. He submitted that though the respondent-insurance company relied upon the Investigation Report in the letter of repudiation, neither a copy thereof was supplied to the appellant nor was it produced before the Commission. He pointed out that after this Court issued a specific direction, a copy of the

Investigation Report was filed on record by the respondent, which records that it was not conclusively proved that Maoist activists or any such activists made the attack. He submitted that on a conjoint reading of the First Information Report, closure Report filed by the police and Investigation Report submitted by the Investigator appointed by the respondent-insurance company, it is apparent that it was not a case of a terrorist act within the meaning of the Exclusion Clause. The learned counsel tried to rely upon the concept of 'terrorism' under various enactments such as the Unlawful Activities (Prevention) Act, 1967 and the National Investigation Agency Act, 2006. He submitted that the burden was on the insurance company to prove that the Exclusion Clause was attracted in the facts of the case. He submitted that if there was any ambiguity about whether the Exclusion Clause was attracted, the insurance contract will have to be construed in favour of the appellant-insurer. In support of this proposition, he relied upon a decision of this Court in the case of **National Insurance Co. Ltd.** v. **Ishar Das Madan Lal**[1].

8. The learned counsel appearing for the appellant submitted that even according to the report of the surveyor appointed by the respondent company, the damage caused to the machinery and equipment has been quantified at approximately Rs.89,00,000/-. He submitted that by setting aside the impugned judgment and order,

1 (2007) 4 SCC 105

the respondent company may be directed to pay a sum of Rs.89,00,000/- to the appellant along with interest, and the Commission may be directed to consider the case of the appellant for grant of additional amount based on the evidence on record.

9. Shri Santosh Paul, the learned senior counsel appearing for the respondent-insurance company, invited our attention to the allegations made in the First Information Report regarding the incident of 23rd March 2010. He submitted that the fact that 120 people entered the factory premises of the appellant along with weapons and carried out large scale destruction shows that it was an act of terrorism to terrorise the workers of the appellant and its management. He submitted that the police have applied Sections 147, 148, 149, 323, 307, 379, 427, 435 and 447 of the Indian Penal Code read with Section 17 of the Criminal Law (Amendment) Act, 1908 (for short, 'the Amendment Act of 1908'). He submitted that it was a case of unlawful association as defined in Section 15 of the Amendment Act of 1908. He submitted that under Section 17 thereof, the unlawful association is made an offence. He submitted that the very fact that the provisions of the Amendment Act of 1908 have been applied shows that the loss caused to the appellant was due to a terrorist act. He submitted that the burden was on the appellant to show that liability arises under the said policy. He

submitted that the appellant failed to discharge the burden. He would, therefore, submit that no interference is called for with the finding of the Commission.

10. We have given a careful consideration to the submissions of the rival parties. In its letter dated 23rd March 2010 addressed to the respondent, the version of the appellant of the incident which occurred around 12:30 a.m. on 23rd March 2010 has been stated. The relevant part of the letter reads thus:

> "With reference to the above and continuation to verbal information given to you over telephone, our submissions are as follows :
>
> Please note that in last midnight 12.30 A.M. around 50-60 antisocial peoples with arm ammunitions entered into factory premises through back side door of the factory premises.
>
> Some of them marched towards DG Room and got fired one DG and tried to destroy it.
>
> Some of them moved towards control room of blast furnace and damaged control system of Blast Furnace available in control room and beaten the men working there.
>
> They have also damaged Security room, office room and computers available there.
>
> They have taken away around 15 Nos. of mobile phone, walky talky sets and cash found in drawer of factory office premises, materials particularly relating to PIG Irons.
>
> Company people informed immediately to the nearest police station over telephone.

> Since blast furnace need continuous working and once it is cooled and to get it reheated it would have been cost to the Company for Rs.30-45 lakhs so that Co-operative Housing Society Limited people took immediate steps for damaged control in main blast furnace.
>
> You are requested to kindly look into the matter very seriously and appoint Surveyors who can visit the site at the earliest possible manner."

In the subsequent letter dated 15th April 2010, the appellant stated that the purpose of the anti-social persons was to create terror so that the appellant would be forced to pay a ransom. We have already reproduced the Exclusion Clause, which defines the act of terrorism. Given the definition, the actions can be termed as acts of terrorism provided the same are committed for political, religious, ideological or similar purposes. The words "similar purposes" will have to be construed *ejusdem generis*.

11. In the present case, the repudiation of the policy made by the respondent is based on the Preliminary Survey Report, Investigation Report and the Final Survey Report. The Survey Reports cannot throw any light on the question whether there was an act of terrorism. The Survey Reports do not record any factual findings regarding the incidents which caused the loss. Reliance was placed on the Investigation Report in the letter of repudiation. A copy of the said Report, placed on record along with I.A. No.38075 of 2022, records a conclusion drawn by the Investigator appointed by the

respondent that it is not conclusively proved that the persons involved in the incident belonged to Maoist or similar groups. The FIR and Closure Report do not refer to acts of terrorism as defined under Exclusion Clause. The Final Report (Closure Report) shows that the police had registered a First Information Report against 105 miscreants who could not be traced.

12. In paragraph 8 in the case of **Ishar Das Madan Lal**[1], this Court held thus:

> "**8.** However, there may be an express clause excluding the applicability of insurance cover. **Wherever such an exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview thereof. In a case of ambiguity, it is trite, the contract of insurance shall be construed in favour of the insured**. [See *United India Insurance Co. Ltd.* v. *Pushpalaya Printers* (2004) 3 SCC 694, *Peacock Plywood (P) Ltd.* v. *Oriental Insurance Co. Ltd.* (2006) 12 SCC 673 and *United India Insurance Co. Ltd.* v. *Kiran Combers & Spinners* (2007) 1 SCC 368]"
>
> (emphasis added)

13. The respondent has not discharged the burden of bringing the case within the four corners of the Exclusion Clause. When the policy itself defines the acts of terrorism in the Exclusion Clause, the terms of the policy being a concluded contract will govern the rights and liabilities of the parties. Therefore, the parties cannot rely upon the definitions of 'terrorism' in various penal statutes since the Exclusion Clause contains an exhaustive definition of acts of terrorism.

14. Thus, the Commission committed an error by applying the Exclusion Clause. Moreover, the policy specifically covers the damage to the insured's property caused by violent means. We are reproducing the relevant clause in that behalf :

> "V. Riot Strike and Malicious Damage
>
> **Loss of or visible physical damage or destruction by external violent means directly caused to the property insured** but excluding those caused by
>
> a) total or partical (*sic*) cessation of work or the retardation or interruption or (*sic*) cessation or any process or operations or omissions of any kind.
>
> b) Permanent or temporary dispossession resulting from confiscation, commandeering, requisition or destruction by order of the Government or any lawfully constituted Authority.
>
> c) Permanent or temporary dispossession of any building or plant or unit of (*sic*) machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery or prevention of access to the same.
>
> d) Burglary, housebreaking, theft, larceny or any such attempt or any omission of any kind of any person (whether or not such act is committed in the course of a disturbance of public peace) in any malicious act.
>
> If the Company alleges that the loss/damage is not caused by any malicious act, the burden of proving the contrary shall be upon the insured."
>
> (emphasis added)

The policy covers explicitly a liability arising out of the damage to the

property of the insured due to riots or the use of violent means. Hence, the decision to repudiate the policy cannot be sustained. Under the insurance policy, there are different limits prescribed for various acts covered by the policy. In the impugned Judgment, it is noted that the parties had filed affidavits-in-lieu of evidence before the Commission. An adjudication will have to be made on the quantum of the amount payable to the appellant after appreciating the evidence on record, including the valuation reports. However, the valuer appointed by the respondent-company has valued the loss caused to the appellant at approximately Rs.89,00,000/-. We, therefore, propose to direct the respondent to deposit the said amount with the Commission with liberty to the appellant to make an application for withdrawal.

15. As there was no warrant for applying the Exclusion Clause, the impugned judgment and order will have to be set aside, and by restoring the complaint filed by the appellant, the same will have to be ordered to be heard by the Commission afresh.

16. Accordingly, the impugned judgment and order is hereby set aside. Consumer Complaint No.165 of 2012 filed by the appellant before the Commission is restored to the file. After allowing parties to lead further evidence, the Commission shall decide the complaint filed by the appellant in accordance with law and in the light of what

is held in this judgment. The Commission is requested to pass an appropriate final order on the remanded complaint within four months from today. We make it clear that we have not expressed a definitive opinion on the quantum of the amount payable to the appellant under the policy of insurance, and the said issue is left open for the decision of the Commission in accordance with law.

17. As observed earlier, the respondent shall deposit the sum of Rs.89,00,000/- in the Registry of the Commission within one month from today and the same shall be deposited in the interest-bearing account on auto renewal basis. At the same time, the appellant will be at liberty to file an application for withdrawal of the amount before the Commission pending complaint. If such an application is filed by the appellant, the Commission may examine on its own merits and decide the same in accordance with law.

18. Accordingly, the appeal is allowed in the above terms with no order as to costs.

.....J.
[AJAY RASTOGI]

.....J.
[ABHAY S. OKA]

New Delhi
May 02, 2022.