2022 INSC 86

**Reportable**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 2371 of 2019**

**M/s Shivram Chandra Jagarnath Cold Storage & Anr .... Appellant(s)**

**Versus**

**New India Assurance Company Limited & Ors ....Respondent(s)**

# JUDGMENT

**Dr Dhananjaya Y Chandrachud, J**

1. The appeal arises from a judgement of the National Consumer Disputes Redressal Commission[1] dated 14 August 2018 in Consumer Case No 37 of 2010.

2. The insurance claim of the appellants arose under a Deterioration of Stock Policy[2] which covered the stock of potatoes stored by the appellant in cold storage. The relevant terms of the DOS Policy indicated that:

> "...THIS POLICY OF INSURANCE WITNEESETH that in consideration of the insured having paid to the company the premium mentioned in the schedule hereon the company hereby agrees with the insured that at any time during the period of insurance stated in the Schedule II or during any subsequent period for which the insured pays and the company may accept the premium for the renewal of this policy the company will indemnify the insured in the manner and to the extent

1 "**NCDRC**"

2 "**DOS Policy**"

hereinafter provided for damage to the stocks described in schedule II by contamination and/or deterioration, putrefaction as a result of rise in temperature in the Refrigeration Chambers caused by any loss of or damage due to an accident, as defined hereinafter to the Plant and Machinery specified in schedule I and indemnifiable under the Machinery Insurance Policy in force. The total liability of the Company under this policy shall be limited to the sum insured specified in Schedule II."

3. The proviso to the above provision stipulated that:

"Provided always that:

(i) During the entire period of this insurance the Insured shall be in possession of a qualified permission in writing of the competent Licensing Authority to operate the Cold Storage.

(ii) At the time of loss or damage the said stocks are contained in the said Refrigeration Chambers.

(iii) The Plant and Machinery specified in schedule I is insured under the Machinery Insurance Policy in force and the payment shall have been made or liability admitted under such insurance; if no payment shall have been made under such insurance solely as a result of operation of any 'Excess' thereunder Liability of the company under this Policy shall not be affected.

(iv) The Insured maintains, on a daily basis, a stock book in the Proforma prescribed by the company, in which the type, quantity and value of the stocks stored and the beginning and end of the storage period are entered for each Refrigeration chambers separately.

(v) During the entire period of storage the Insured records in Log Book as per the Proforma supplied by the company the reading of the temperature and relative humidity of the Refrigeration Chambers as also the suction discharge and oil pressure on four hourly basis throughout the day.

(vi) stock Book, Log Book and all other records of the Insured relating to the stocks stored shall at all reasonable times be open to inspections by duly authorized representatives of the company."

4. The expression "accident" was defined in clause (a) of the definitions as follows:

> "a) Any sudden or unforeseen loss or damage to the Plant and Machinery described in schedule of this Policy due to an accident caused covered by the machinery insurance policy specified in schedule I and not hereinafter excluded."

5. Among the exceptions to the DOS Policy, clause (vi) stipulated that the insurer would not be liable for:

> "(vi) Any damage if the temperature in the Refrigeration chambers does not exceed 4.4 degree Celsius."

6. Similarly, clause (viii) provided the following exception to the liability of the insurer in the case of:

> "(viii) Any loss arising from improper storage insufficient circulation of air/non-uniformity of temperature for whatsoever reasons."

7. The warranties to the DOS Policy, inter alia, stipulated as follows:

> "6. The Insured shall take care to see that:
>
> i) the temperature inside the cold Chambers are brought down to 34 Degree F (1.1. Degree C) in all floors of all the chambers before loading commences and;
>
> ii) Further ensure that the temperature in all the chambers does not exceed 59 Degree F (10 Degree C) during the entire period of loading and 40 Degree F (4.4 Degree C) during the subsequent period of storage."

8. On 10 October 2008, the appellants furnished intimation to farmers that the stock of potatoes had sprouted while in the cold storage. On 13 October 2008, a claim was submitted to the insurer. Significantly, in the communication of the appellants dated 14 October 2008, it was stated that the loading of the stock was carried out at the normal temperature and that until then, the proper temperature was maintained, which was mentioned in the logbook. The relevant extract from the communication contains the statement that:

> "iii. …at the time of loading, the loading was done at the normal temperature and till date the proper temperature was maintained, which is mentioned in the log-book."

9. The claim form which was lodged on 11 November 2008 required a specific disclosure in Clause 12 of what, according to the insured, was the cause for the deterioration of the stock. The query was not filled up. Subsequently, on 17 February 2009, the statement of the representative of the first appellant was recorded by the surveyor in which it was asserted that the main cause for rotting of the potatoes was a rise in the temperature in the months of September and October; and that the appellants had regularly checked the temperature recorded in the logbook which the operator had erroneously recorded. This was a clear departure from the earlier statement that the required temperature had been maintained, as recorded in the log sheets.

10. The log sheets which have been produced by the appellants on the record indicate that the temperature was well within the stipulated range of $4.4^0$ C ($40^0$ F) prior to 18 October 2008. The material which has been placed on the record indicates that the case of the appellants, as evidenced in the letter dated 14 October 2008, was that both at the time of loading and until the date of the communication, the proper temperature was maintained. This submission is, in fact, borne out by the log sheet. The exceptions to the Policy made it abundantly clear that the insurer would not be liable for any damage if the temperature in the Refrigeration Chamber did not exceed $4.4^0$ C. Consequently, clause 6 of the warranties required the insurer to ensure that during the period of storage, the temperature did not exceed $40^0$ F ($4.4^0$ C). Having regard to the specific terms of the policy, the admission of the appellants that the temperature was maintained

at all material times, would clearly attract the exceptions to the policy.

11. Mr Sanjeev Kumar, counsel appearing on behalf of the appellants, however, sought to rely on the conclusion which was reflected in the report of the surveyor. The conclusion is as follows:

> "In my opinion the sprouting could have taken place only due to higher humidity and temperature in the chamber, which however does not tally with the dry and wet bulb temperatures recorded in the log book. There seems to be no other cause for the sprouting.
>
> The loading was within the licensed capacity, as per computerized stock details provided."

12. The above conclusion cannot be read in isolation from the entirety of the surveyor's report. On the contrary, the report contains a specific finding that the temperature had not exceeded $40^0$ F. Further, the surveyor notes that there is a contradiction in the statements of the appellants dated 14 October 2008 and 17 February 2009. The appellants had earlier stated on 14 October 2008 that the temperature of the storage was maintained within permissible limits, but claimed on 17 February 2009 that the sprouting was a result of the rise in the temperature in the months of September and October, and the operator had erroneously recorded the temperature. The surveyor specifically notes that "there is no evidence in support of rise in temperature…the evidence in the shape of logbooks and earlier statements of the insured establishes that the temperature never exceeded 40 Deg F till 14 October 2008". Therefore, the surveyor observed that the claim could not be accepted in view of clause (vi) of the exceptions to the policy. Thus, the insurer accordingly disclaimed any liability. In **Sikka Papers Ltd.** v. **National Insurance Company Ltd. & Ors**.[3], this Court

3 (2009) 7 SCC 777

observed that although the surveyor's report is not the last word, there must be a legitimate reason to depart from it. In the present case, the appellants have not advanced any legitimate reasons to depart from the surveyor's report and in fact have relied on a portion of the report to buttress the submission that the temperature of the cold storage had arisen over $40^0$ F, which as we have highlighted above is a partial reading of the report.

13. MN Srinivasan and K Kannan in *Principles of Insurance Law* have explained the role of exceptions in an insurance policy. The insurer seeks to indemnify the insured only against such losses that are "caused by certain perils arising under normal conditions whose effects are statistically estimated." The insurer may not wish to accept liability for other perils that may result in losses that are of great magnitude. Thus, exceptions are inserted to exempt the liability of the insurer for which it would be otherwise liable.[4] Likewise, AW Baker in *The Law Relating to Accidental Insurance* states that 'excepted clauses' are inserted *ex abundanti cautela* in insurance policies to inform the insured that losses attributable to excepted causes will not be indemnifiable. In **New India Assurance Company Ltd.** v. **Rajeshwar Sharma & Anr.**[5], the following extract from *The Law Relating to Accidental Insurance* was relied upon by a two-judge Bench of this Court, of which one of us (Justice DY Chandrachud) was a part:

> "The object of exceptions is to define with greater precision the scope of the policy by making clear what is intended to be excluded and contrasting with what is intended to be included.
>
> Since exceptions are inserted in the policy mainly for the purpose of exempting the insurers from liability for a loss which, but for the exception, would be covered by the policy, they are

4 MK Srinivasan & K Kannan, Principles of Insurance Law (LexisNexis India, 10th Ed., 2018)
5 (2019) 2 SCC 671

> construed against the insurers with utmost strictness and it is the duty of the insurers to except their liability in clean and unambiguous terms. The onus of proving that the loss falls within the exception lies upon the insurers, unless by proving the language of the exception, the assured is expressly required to prove that, in the circumstances, the exception does not apply."[6]

14. In **New India Assurance** (supra), it was held that if there is no ambiguity in the clause exempting the insurer from a liability arising from an excepted cause, the insurance claim can be rejected by the insurer. In **Oriental Insurance Co. Ltd.** v. **Sony Cheriyan**[7], a two-judge Bench of this Court observed that an insurance policy must be strictly construed to identify the extent of the insurer's liability. This Court held that where a truck was insured only for carrying unhazardous goods in terms of the permit issued under the Motor Vehicles Act 1988, an insurance claim could not have been raised when the truck caught fire while carrying ether solvent which is classified as a hazardous substance under Table III to Rule 137 of the Central Motor Vehicles Rules 1989. Though the rules mentioned 'ethyl ether' as a hazardous substance, this Court observed that ether solvent is only a descriptive term for ether and ether and ethyl ether are the same substance. This Court held thus:

> "17. **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 liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy.** That being so, the insured has also to act strictly in accordance with the statutory limitations or terms of the policy expressly set out therein.
>
> 18. In the instant case, while specifying the

6 AW Baker Welford, The Law Relating to Accidental Insurance (Butterworth & Company, 1923), p.126
7 (1999) 6 SCC 451

> "Limitations as to Use", it was clearly mentioned that the policy was meant to cover only carriage of goods as defined within the meaning of the Motor Vehicles Act, 1988. The "permit" granted to the respondent under the Act specified the nature of goods which he could carry on the vehicle. It was provided in the "permit" itself that the respondent could carry "all kinds of unhazardous goods including fish except those prohibited. It is obvious that the "permit" was not granted for carrying hazardous goods. It has already been specified above the ether which was being transported by the respondent in his vehicle is a hazardous substance indicated in Table III under Rules 137. There was, therefore, a specific prohibition operating against the respondent from carrying a hazardous and, that too, flammable substance in his vehicle which, under the "permit" granted to him, could be utilised only for carrying unhazardous goods under the Motor Vehicles Act." (emphasis supplied)

In a similar vein, a two-judge Bench of this Court in **Oriental Insurance Co. Ltd.** v. **Samayanallur Primary Agriculture Coop. Bank**[8] held that an insurance policy must be construed only with reference to its stipulations and no artificial meaning can be given to the words of the policy. This Court observed that a cash box cannot be classified as a 'safe' within the meaning of a burglary insurance policy and the insurer was exempted from any liability arising from the theft of jewelry and cash from the cash box. The exceptions to an insurance policy must be construed strictly since they reflect the agreement between the parties with respect to the losses that are covered by the insurance policy. Any departure from this principle is possible only if the terms of the policy are ambiguous or unclear. In **Sangrur Sales Corporation** v. **United India Insurance Company Ltd. & Anr.**[9], a two-judge Bench of this Court, of which one of us (Justice DY Chandrachud) was a part, held that in the event two constructions are possible or if there is any ambiguity, a construction that is beneficial to the insured should be

8 (1999) 8 SCC 543
9 (2020) 16 SCC 292

adopted consistent with the purpose of the policy.

15. Another instance where exception clauses may be interpreted to the benefit of the insured is when the exception clauses are too wide and not consistent with the main purpose or object of the insurance policy. In **BV Nagaraju** v. **Oriental Insurance Co. Ltd., Divisional Officer, Hassan**[10], a two-judge Bench of this Court read down an exception clause to serve the main purpose of the policy. However, this Court clarified that the breach of the exception clause was not so fundamental in nature that would have led to the repudiation of the insurance policy. In that case, the terms of the insurance policy allowed an insured vehicle to carry six workmen, excluding the driver. When the vehicle met with an accident, it was carrying nine persons apart from the driver. The insured had moved a claim for repair of the vehicle, which was rejected by the insurer. Allowing the claim, this Court held thus:

> "**7. It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. Here, it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to**

10 (1996) 4 SCC 647

**the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident.** In the instant case, however, we find no such contributory factor. In *Skandia case* [(1987) 2 SCC 654] this Court paved the way towards reading down the contractual clause by observing as follows: (SCC pp. 665-66, para 14)

"… When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of 'reading down' the exclusion clause in the light of the '*main purpose*' of the provision so that the 'exclusion clause' does not cross swords with the 'main purpose' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is supported by Carter's '*Breach of Contract*' vide paragraph 251. To quote:

"Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the 'main purpose rule', which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For example, in *Glynn* v. *Margetson & Co.* [1893 AC 351 : (1891-94) All ER Rep 693] (AC at p. 357), Lord Halsbury, L.C. stated:

'It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard … as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract.'

**Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in *Suisse Atlantique Societe d' Armement Maritime SA* v. *NV Rotterdamsche Kolen Centrale* [(1967) 1 AC 361 : (1966) 2 All ER 61 : (1966) 2 WLR**

> **944]. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."** (emphasis added)

16. In the present case, there is no ambiguity in the terms of the exception. The exception to the DOS Policy clearly provides that the insurer would not be liable for "[a]ny damage if the temperature in the Refrigeration chambers does not exceed 4.4 degree Celsius." The surveyor's report indicates that the temperature never exceeded $40^0$ F, which was also accepted by the appellants in their communication dated 14 October 2008. The assertion that the rotting of the potatoes resulted from a higher temperature was only made on 17 February 2009, which the NCDRC in its impugned judgement dated 14 August 2018 has characterised as an "afterthought". Thus, in terms of the insurance policy, the insurer is not liable for damage caused to the potatoes as the temperature of the storage did not rise above $40^0$ F. Further, unlike in **BV Nagaraju** (supra), the exception, in this case, is neither too wide nor in conflict with the main purpose of the insurance policy. The insurance policy covers the deterioration of potatoes that have been stocked in cold storage by the appellants. The temperature of the cold storage is fundamental to the health of the potatoes relating to which the policy has been undertaken. This is distinguishable from the exception relating to the number of persons a vehicle can carry, which was the subject matter of the exception in **BV Nagaraju** (supra). The insurer has identified a temperature of $40^0$ F as the optimum temperature, at which rotting of the potatoes should not occur and thus has exempted itself of any liability resulting from the deterioration of potatoes occurring at a temperature that is below or equivalent to $40^0$ F. There is no reason to read down clause (vi) of exceptions to the DOS Policy because it is

not in conflict with the main purpose of the policy.

17. Therefore, we have, for the reasons indicated above, accepted the submission which has been urged on behalf of the insurer by Ms Awantika Manohar, learned counsel that the claim was correctly repudiated by the insurer, having regard to the specific exceptions in the policy.

18. In this backdrop, the judgement of the NCDRC rejecting the consumer complaint does not warrant interference. The appeal shall accordingly stand dismissed.

19. Pending application, if any, stands disposed of.

**…….J.**
**[Dr Dhananjaya Y Chandrachud]**

**…….J.**
**[Dinesh Maheshwari]**

**New Delhi;**
**January 24, 2022**