

Supreme Court

JUSTICE UDAY UMESH LALIT JUSTICE S. RAVINDRA BHAT JUSTICE PAMIDIGHANTAM SRI NARASIMHA

IFFCO-TOKIO GENERAL INSURANCE COMPANY LTD. Vs. M/s NEW INDIA DETERGENTS LTD. & ANR.

CIVIL APPEAL NO.3473 OF 2022

6th May 2022

Insurance - Exclusion clause - 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power [...]”- Repudiation on the ground that civil war in Yemen began on 21.03.2015, which was in the knowledge of the Complainant in spite of that and the bill of lading was executed by the Complainant on 28.03.2015 - Opposite Party did not file any evidence to substantiate the allegation that the Complainant was aware of the fact that civil war in Yemen began on 21.03.2015 - Plea that damage or expense caused by delay was excluded under the Policy - Complainant took effective and reasonable steps to minimize the damage/loss to the cargo - The Complainant had to store the cargo at King Abdullah Port, Saudi Arabia from 03.04.2015 to 15.06.2015, due to war like situation in Yemen, which was beyond the control of the Complainant - The delay was caused in order to protect the cargo - The Opposite Party failed to prove that there was willful delay on the part of the Opposite Party - NCDRC held insurance company liable - Order upheld.

Petitioner Counsel: GOPAL SINGH

JUDGEMENT

1. The instant statutory appeal is directed against the judgment and order dated 14.02.2022 passed by the National Consumer Disputes Redressal Commission, New Delhi (“the Commission” for short) in Consumer Complaint No.2042 of 2016.
2. Accepting the claim raised by the complainant, the Commission directed the appellant to pay to the complainant a sum of Rs.80,18,944/- towards storage charges within eight weeks from the date of order passed by the Commission, failing which the appellant was directed to pay interest on that amount @ 9% per annum.
3. Mr. Shivam Singh, learned Advocate appearing for the appellant has invited our attention to Clause 6.1 of the concerned Insurance Policy to submit that there was a total ‘Exclusion’ and the insurance company would not be liable.
4. With his able assistance, we have gone through the entire record.

5. We affirm the view taken by the Commission that the matter would not be covered by the 'Exclusion Clause" in terms of Clause 6.1 of the Policy. In the circumstances, the order passed by the Commission does not call for any interference.

6. Since the matter is devoid of any merit, even though it is a statutory appeal, we see no reason to entertain the appeal. The appeal is, accordingly, dismissed.

7. The time granted by the Commission is however extended by a further period of six weeks and the interest shall become payable if the amount is not paid within six weeks from today.

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NCDRC ORDER

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI

C. VISWANATH, PRESIDING MEMBER, JUSTICE RAM SURAT RAM MAURYA, MEMBER

M/S. NEW INDIA DETERGENTS LTD.

Versus

IFFCO-TOKIO GENERAL INSURANCE COMPANY LTD. & ANR.

CONSUMER CASE NO. 2042 OF 2016

For the Complainant : Mr. Salil Paul, Advocate Mr. Sahil Paul, Advocate.
For the Opp. Party : Mr. K.V. Girish Chowdary, Advocate

Dated : 14 Feb 2022

ORDER

1. The present case is filed under Section 21(a) (1) of the Consumer Protection Act, 1986.

2. The Complainant deals with manufacturing of Labsa chemicals and selling the same to different places in India and across the world. The Opposite Party is Insurance Company.

3. The case of the Complainant is that they obtained a Marine Specific Policy with CRM Policy No.1-3FBEHHQ-P400 Policy No.21926087 from the Opposite Party Insurance Company by paying a premium of Rs.37,045/- The Policy was valid from 20.03.2015 to 19.09.2015 for a sum insured of Rs.47,100,240/. The regular mode of conveyance of the Insured commodity was sea and voyage from Gujarat Warehouse to Yemen Warehouse. The Complainant dispatched 30 Containers of Linear Alkyl Benzene Sulphonic Acid from Gujarat, India to Aden Port, Yemen through Opposite Party No.2, vide bill of lading MSCUIX883110 dated 28.03.2015. In the first week of April, 2015, there was an unrest war

like situation, which erupted in Yemen and as a result, all the ports in Yemen were closed, due to which the cargo was stored at the transit port i.e. King Abdullah Port, Saudi Arabia from 03.04.2015 till 15.06.2015 to minimize the loss/damage, for which the Complainant paid Rs.80,18,944/- to Opposite Party No.2 on 06.06.2015. The Complainant also intimated Opposite Party No.1 Insurance Company about the same, vide letter dated 20.06.2015. In the middle of June, 2015, the situation improved in Yemen and Hodeida Port in Yemen was the only port which became operational. Therefore, the carriers transported the consignment to Hodeida Port on 23.06.2015 and the buyer M/s. Red Sea Detergent Co. Ltd. received the insured items from the port of Hodeida, Yemen.

4. On 20.06.2015, the Complainant, submitted the claim before the Opposite Party for reimbursement of Rs.80,18,944/-. The Opposite Party, vide email dated 01.07.2015, asked the Complainant to furnish copy of bills of lading, invoice copy, sales contract, payment particulars, details of correspondences exchanges related to the event (with carrier/ consignees/ authorities etc.) etc. On 04.07.2015, the Complainant submitted the documents sought by the Opposite Party. The Complainant requested the Opposite Party, vide 17.11.2015, to settle the claim immediately. The Opposite Party, vide email dated 23.11.2015, repudiated the claim of the Complainant. The Complainant sent legal notice dated 11.06.2016 to Opposite Party No.1. On 05.07.2016, Opposite Party No.1 sent their reply to the Legal Notice refuting the claim of the Complainant.

5. Alleging deficiency in service and unfair trade practice on the part of Opposite Party No.1, Complainant filed the instant Complaint before this Commission the following prayer:-

"Direct the Opposite Party No. 1 to pay to the Complainant:

A. *Towards storage charges etc. paid at the transit port Rs.80,18,944/-*

B. *Interest @ 24% p.a. from the date of payment by the Complainant to Opposite Party No. 2 on 6th June, 2015 upto the date of filing of the Complaint till 28th November, 2016 on the ground that the Opposite Party wrongly, malafide and illegally is withholding the legitimate dues of the Complainant. Rs.28,31,456/-*

(B) That due to the wrong, malafide and illegal withholding the legitimate dues of the Complainant, the Complainant has suffered a great business loss, harassment, disappointment, which loss is assessed as Cost of Litigation Rs.5,00,000/-

Total Loss suffered by the Complainant Future and pendentelite interest @ 24% p.a. on the awarded amount Rs.1,17,50,400/-

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To direct the Opposite Party No. 1, Insurance Company to place on record the terms and conditions of the Insurance Policy.

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Such other or further relief as in the opinion of this Hon'ble Commission may be deemed fit and proper in the circumstances of the case"

6. The Complaint was resisted by the Opposite Party by filing Written Statement. The Opposite Party raised the preliminary issue of maintainability of the Complaint. It was submitted that the issue involved in the Complaint is of contractual nature and cannot be adjudicated by the Consumer Commission. The matter needs trial procedure and Civil Court is the appropriate Forum to adjudicate the issue.

7. Opposite Party also raised the issue of pecuniary jurisdiction of this Commission. It was stated that the Complainant had exaggerated the claim to bypass the pecuniary jurisdiction of the State Commission.

8. On merit, it was stated that the Complainant had not placed on record any material whatsoever in respect to the incident of war in Yemen, which constituted the very basis of the claim of the Complainant. Complainant also failed to prove that Civil War in Yemen began prior to the date of Voyage of the Insured cargo. The Complainant was at fault to execute the bill of lading on 28.03.2015 after Civil War broke out in Yemen. The claim of the Complainant is on Cost, Insurance and Freight (CIF) basis, meaning thereby that the charges are paid by the seller to cover the cost, insurance, and freight of a buyer's order while the Cargo is in transit. Under CIF, the risk in the goods passes from the seller to the buyer at the time goods are loaded on the vessel. The Complainant, therefore, had no insurable interest in the Complaint. The Complaint is liable to be rejected in the absence of insurable interest. It was also stated that there was delay in intimation of loss to the Opposite Party. The case of the Complainant was covered by exclusion clause 4.5 which stated that "In no case shall this insurance cover loss, damage or expense proximately caused by delay, even though the delay may be caused by a risk insured against". It was pointed out that the risks covered under the Policy were "loss or damage to the cargo" caused by war, civil strike, capture, seizure, detainment, etc. In the present case, the cargo was simply delayed, which was not covered under the Policy.

9. Heard the Learned Counsels for the Parties and carefully perused the record. Learned Counsel for the Complainant submitted that since all ports in Yemen were closed, the cargo was stored at King Abdullah Port, Saudi Arabia from 03.04.2015 to 15.06.2015 in order to avoid the loss/damage to the cargo. It was submitted that the case of the Complainant was covered under Clause 16.1 of the Policy, which states that "to take such measures as may be reasonable for the purpose of averting or minimizing a loss". The Complainant took effective and reasonable steps to minimize the losses. The delay, if any, was not due to the Complainant but was due to external situations i.e. war like situation in Yemen which was beyond the control of the Complainant. The exclusion clause of delay was, therefore, not applicable. The Complainant relied on the judgment of this Commission in "Vishal Exports Overseas Ltd. v. New India Assurance Co. Ltd., IV (2015) CPJ 546 (NC)". (i)United India Insurance Co. Ltd. v. Great Eastern Shipping Co. Ltd., II (2007) CPJ 3 (SC), ACE Glass Containers Ltd. v. United India Insurance Co. Ltd., (2011) CPJ 6 (NC). Learned Counsel also submitted that they were not supplied the terms and conditions of the Policy. He also relied on the judgment in M/s. Modern Insulators Ltd. v. Oriental Insurance Co. Ltd., I (2000) CPJ 1

(SC). It was also submitted that new grounds/stipulations/pleas other than taken in the Repudiation of claim are not permissible.

10. Learned Counsel for Opposite Party submitted that the issues raised by the Complainant are contractual in nature and need to be adjudicated by a Civil Court in trial procedure. In support of this, the Opposite Party relied on the judgement of Hon'ble Supreme Court titled "New India Assurance Company Ltd. vs. Hira Lal Ramesh Chand", 2008(10) SCC 626, at para 53. It was also submitted that the Complainant had inflated the claim to bring the case in the purview of this Commission. Learned Counsel relied on the judgement of this Commission in Dennis Exports Pvt. Ltd. v. United India Assurance Co., CC 196 of 2016, 2016 SCC Online NCDRC 1147. The Opposite Party denied the averment of the Complainant that the terms and conditions of the Policy were not provided to them. The Opposite Party alleged that the Complainant did not seek the terms and conditions of the Policy from the Opposite Party at any time, except on 01.03.2016. The Complainant had not produced any correspondence to prove that they had sought the terms and conditions of the Policy. Even in the notice dated 11.06.2016, the Complainant did not ask for the terms and conditions of the Policy. Further, Institute Cargo Clause ICC (A) + War and Strike coverage is a public document and the terms therein are binding on the Complainant. The Opposite Party submitted that as per Exclusion Clause 4.5 of ICC (A) loss or damage due to delay in delivery of the insured goods is not covered under the Policy. Learned Counsel also submitted that Institute Cargo Clauses (ICC) 55 (1) (b) also excluded loss, damage or expense proximately caused by delay even though the delay was caused by a risk insured against. Therefore, the storage charges incurred by the Complainant at King Abdullah Port, Saudi Arabia stood specifically excluded under the terms and conditions of the Policy. It was further submitted that clause 9 of the Institute Cargo Clauses (A) provides that if carriage is terminated at a port other than the scheduled destination, the contract of Insurance also terminates unless prompt notice is given to the underwriters and continuation of cover is requested. The insured goods were discharged at King Abdullah Port on 03.04.2015 and intimation of same was given to the Opposite Party on 25.04.2015, in violation of the terms & conditions of the Policy. The insured goods, at no point of time were in any danger of damage or loss while the ship carrying the goods was docked at King Abdullah Port, Saudi Arabia.

11. It is an admitted fact that the Complainant obtained Marine Specific Policy CRM Policy No.1-3FBEHHQ-P400 Policy No. 21926087 from the Opposite Party. The sum insured and the validity of the Policy is also not disputed by the Parties. The Complainant dispatched 30 Containers of Linear Alkyl Benzene Sulphonic Acid from Gujrat, India to Aden Port, Yemen through Opposite Party No.2, vide bill of lading MSCUIX883110 dated 28.03.2015. In the first week of April, 2015, as there was an unrest war like situation in Yemen, all the ports in Yemen were closed due to which the cargo was stored at King Abdullah Port, Saudi Arabia from 03.04.2015 till 15.06.2015, for which the Complainant paid Rs.80,18,944/- to Opposite Party No.2.

12. The Opposite Party raised the issue of maintainability stating that the Complaint is triable by the Civil Court. From the facts and circumstances of the case as also the evidence on record, we find that no complicated question of fact or law is involved in this case. The

judgment relied upon by the Opposite Party in Hira Lal Ramesh Chand (supra) is not applicable in the facts and circumstances of this case. This Commission is fully competent to adjudicate the issue. The Complaint is, therefore, maintainable before this Commission.

13. The Opposite Party also contested the Complaint on the ground of pecuniary jurisdiction stating that the Complainant had exaggerated the claim to invoke the jurisdiction of this Commission. The Complainant paid Rs.80,18,944/- to Opposite Party No.2. The Complainant had given the details of the amount, which reads as follows:-

- A. Shifting charges of USD 480/- Rs.31,032/-
- B. FRT 400USD per container (30 Containers i.e. 12000 USD) (WAR RISK) Rs.7,75,800/-
- C. Port Storage = already started from 22nd April @ USD 2.67/ per day/ per ton/ per container till loading vessel date. Port storage - USD 2.67 X 52 days X 693 tons =USD 96,216 Rs.62,20,364.40/-
- D. Manifest Corrector charges \$100/BL Rs.7,370/-
- E. Service Tax Rs.9,83,807/-

Apart from the above, the Complainant has also claimed Rs.5 lakhs against business loss and Rs.4 lakhs as litigation cost as also interest @ 24% from the date of payment. If we calculate the amount claimed by the Complainant, it exceeds Rs.1 crore. So far as the pecuniary jurisdiction is concerned, we hold that the Complaint is maintainable before this Commission.

14. On merit, the first argument of the Opposite Party was that the Complainant had not placed on record any evidence to prove that there was war like situation in Yemen. In para 6 of the Written Statement, Opposite Party admitted that civil war erupted in Yemen. In this regard, Opposite Party filed Wikipedia Report dated 19th March, 2015 as Annexure R/1 to the Written Statement. On one hand the Opposite stated that there was no war in Yemen, on the other hand they take the ground in the Written Statement that civil war had erupted in Yemen on 21.03.2015. The Opposite Party cannot be permitted to blow both hot and cold at the same time.

15. The Complainant submitted the claim before Opposite Party No.1 for reimbursement of loss of Rs.80,18,944/-, which was repudiated by Opposite Party No.1, vide letter dated 23.11.2015. The repudiation letter dated 23.11.2015 reads as under:-

"As per the Invoice no. NIDLIEXP/14-15/007 dated 24/03/2015 30 containers containing Linear Alkyl Benzene sulphonic Acid-90% packed in 2400 new HDPE drums were shipped from India to Yemen pursuant to bill of lading MSCUIX883110 dated 28 March 2015. After the vessel had commenced its voyage, the Port of Aden and all other ports in Yemen were closed due to war. Because of this, the shipping line held the subject matter insured at a

storage facility in Saudi Arabia and Storage Costs of Rs. 80.18,944/- were claimed to be incurred. The subject matter insured has since been diverted to the Port of Hodeida in Yemen, as this port once again became operational and the Insured has sought to recover the costs of storage at the intermediate port under the policy.

Policy Coverages

The subject matter insured was covered by our policy no. 21926087 that covers the risks as per Institute Cargo Clauses (A) which as you know, is termed as an “all risks” policy subject to listed exclusions.

As per the policy War exclusions at Clause 6, Loss, damage or expense caused by war is expressly excluded from the scope of the policy.

Further Clause 6(1) provides:

“In no case shall this insurance cover loss damage or expense caused by

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power [...]”

It is clear that the subject matter insured was stored at the intermediate port solely because of the war in Yemen. The storage costs incurred would fall within the term “expenses” in this respect, and therefore fall within the exclusion.

Further as per General Exclusions clause Loss or damage caused by delay is expressly excluded by the policy and by statute.

In addition, loss, damage or expense caused by delay is excluded under the policy, even if the delay was caused by a risk that is covered by the policy. Clause 4.5 provides:

“In no case shall this insurance cover [...]”

4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above) [...]”

Clause 2 refers to general average and salvage expenses which are not applicable to the facts.

Delay is also excluded by section 55(2)(b) the Marine Insurance Act 1906. The 1906 Act is applicable to the policy as clause 19 provides that the insurance is subject to “English law and practice”.

In addition War and Strikes Cover was included in the cover provided to the insured. Strikes cover is clearly not relevant. In terms of the War cover, the risks covered are “loss or damage to the cargo” as defined in Clause 1. In our view the provision at 1.2 referring to “detainment” relates to the detainment of the cargo in such a manner as to deprive the insured of it. In this case, the cargo was at all times available to the insured, and no

interference of his ownership rights occurred. The cargo was simply delayed. As you will be aware, delay is excluded under the policy at Clause 3.5, irrespective of the cause.

In view of the above your claim for storage costs does not fall within the purview of the policy terms and conditions. In case the Insured has different observations kindly request them to communicate with supporting documents."

16. From the above, it is seen that the Opposite Party repudiated the claim of the Complainant on the ground that damage or expense caused by delay was excluded under the Policy. Further, the Opposite Party took the ground that the case of the Complainant was covered under exclusion Clause 6 of the Policy. As held earlier the Complainant took effective and reasonable steps to minimize the damage/loss to the cargo. The Complainant had to store the cargo at King Abdullah Port, Saudi Arabia from 03.04.2015 to 15.06.2015, due to war like situation in Yemen, which was beyond the control of the Complainant. The delay was caused in order to protect the cargo. The Opposite Party failed to prove that there was willful delay on the part of the Opposite Party.

17. The Opposite Party also argued that civil war in Yemen began on 21.03.2015, which was in the knowledge of the Complainant in spite of that and the bill of lading was executed by the Complainant on 28.03.2015. Learned Counsel for Opposite Party No.1 made a bald allegation and did not file any evidence to substantiate the allegation that the Complainant was aware of the fact that civil war in Yemen began on 21.03.2015.

18. In the view of above, we are of the opinion that the repudiation of claim by the Opposite Party was not justified. The Opposite Party is directed to pay Rs.80,18,944/- incurred by the Complainant towards storage charges within 8 weeks from the date of this order, failing which Opposite Party is directed to pay interest on this amount @ 9% per annum from the date of this order. There will be no order as to costs.