

HIND OFFSHORE PVT. LTD v. FFCO - TOKIO GENERAL INSURANCE CO. LTD., 2023 SCeJ 322, 2023 SupremeCourtOnline 433603, (2023-2)210 PLR 703 (SC) (SN)

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SUPREME COURT OF INDIA

Before : Justice A.S. Bopanna and Justice M.M. Sundresh.

HIND OFFSHORE PVT. LTD. - Appellants

Versus

IFFCO - TOKIO GENERAL INSURANCE CO. LTD. - Respondent.

Civil Appeal No. 7228 of 2015.

Insurance - Marine Insurance Act, 1963 - Rules for Building and Classing - Classification Certificate - Issue - Non-reporting of the dam-age/defects to the Classification Society before issue of the certificate and the same rendering the Class Certificate invalid though issued earlier is the issue and in that circumstance whether the owner is to inform this aspect or as to whether the verification by the insurer is warranted.

(Insurance - Marine Insurance Act 1963, Sections 35, 37, 41(5) and 55 - Relating to warranties, if the requirement is not complied with, then the insurer is discharged from liability as from the date of breach of warranty but without prejudice to any liability incurred before that date - Mere knowledge on the part of the insurer that there was a breach of warranty would not amount to a waiver in the absence of an express representation to that effect - In that background, in a time policy, there is no implied warranty that the ship shall be seaworthy at any stage but where with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness - The assured is expected to bring to the notice of the Classification Society the shortcomings or the defects if any, before the issue of such Class Certificate since the insurance coverage to be provided by the insurer is based on such Class Certificate which is assumed to have been issued by the Classification Society after keeping in view all aspects including the defects if any brought to their notice - It is in that light the provisions extracted above becomes relevant as to the circumstance under which the Class will be suspended and the Certificate of Classification will become invalid in the circumstances stated therein, which also refers to such suspension and invalidation, if any dam-age, failure or deterioration repair has not been completed as recommended.

[Para 16]

Held, that during the previous insurance policy term, a claim was made for damage to the main engine of the port and crank shaft. A significant payment was made to the appellant for the engine crank shaft's replacement, based on the surveyor's recommendation. Though the insurer knew that repairs were done due to waiting time for the crank shaft supply and that a voyage was to be undertaken, there's no evidence suggesting that the replacement was waived before or during the current policy period from 09.11.2006 to 08.11.2007. The insurance company based its policy on a Class Certification, and there was no indication of any waiver, either explicit or implicit. The appellant failed to prove that they in-formed the Classification Society of the defects before obtaining the certificate. The policy would become invalid if it's found that these defects weren't re-ported and the warranty class wasn't met. The insurer became aware of the non-replacement of the engine crank shaft only after the final surveyor report was submitted on 19.02.2007, even though the policy had been issued on 09.11.2006 and the accident happened on 03.12.2006. Consequently, there was no waiver by the insurer in this case.

In the instant case though, there was an earlier damage to the engine crank shaft and on the recommendation for re-placement, the insurer had reimbursed the amount for that purpose. Though the immediate voyage with repairs had been brought to the knowledge of the insurer, the replacement was to be made in due course. The entire onus cannot be on the insurer to check as to whether subsequently the engine had been replaced by utilising the amount received. In such situation when the replacement, in fact was not made, the onus was entirely on the appellant to bring it to the notice of the Classification Society and in that circumstance when the Class Certificate was issued, the warranty class had in fact been violated by the appellant and the exclusion as indicated would apply and make it invalid.

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