

# New India Assurance Company Ltd. vs Ajambar Bhuian . on 20 January, 2020

**Bench: Deepak Gupta, Aniruddha Bose**

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 426 OF 2020  
(Arising out of S.L.P.(C) No. 7882 of 2016 )

New India Assurance Company Ltd.

.....Appel

Vs.

Ajambar Bhuian & Ors.

.....Respo

WITH

CIVIL APPEAL NO. 427 OF 2020  
(Arising out of S.L.P.(C) No. 8525 of 2016 )

O R D E R

Leave granted.

The admitted facts of the case are that the appellant-New India Assurance Company Ltd. issued a Marine Hull Insurance Policy in respect of respondent 3's Fishing Vessels/Trawlers. The deceased in both cases were engaged as workers of Fishing Vessels/Trawlers.

Unfortunately on 25.9.2003 two crewmen working on one of the insured vessels died when the boat sunk. Therefore the dependents filed petitions claiming compensation under the Workmen's Compensation Act, 1923 (in short 'The Act'). The New India Assurance Company was impleaded as a party. Both the Workman Compensation Commissioner and the High Court of Orissa, Cuttack held that the Insurance Company was liable to reimburse the owner and it was directed that the Insurance Company to disburse the awarded amount to the claimants.

The case set up by the Insurance Company was that under the terms of the Insurance policy the Insurance Company was not at all liable to cover the claim made under the Act. It was pointed out that in terms of the policy the maximum liability of the insurance in case of death of a crew member was only Rs. 25000/- each.

We have carefully gone through the insurance policy and we find that as per the terms and conditions of the policy the insured had only paid premium of Rs.15/- per crew member and the coverage of payment of this premium was limited to Rs. 25000/- per crew member.

On perusal of the insurance policy we do not find that there is any coverage under the Workmen's Compensation Act. We may point out that unlike statutory policies issued under the Motor Vehicles Act, 1988 this is a contractual policy and governed by the terms of the contract. If the parties to the contract i.e. insured and the Insurance Company have chosen not to cover the compensation payable under the Act the Court cannot force the parties to do so. In fact we find that in the policy there is a specific exclusion clause which reads as follows:

Exclusions:

“20.3: Notwithstanding the provisions of Clauses 20.1 and 20.2 this Clause 20 does not cover any liability cost or expense arising in respect of:

20.3.1: any direct or indirect payment by the Assured under workmen's compensation or employers' liability acts and any other statutory or common law, general maritime law or other liability whatsoever in respect of accidents to or illness of workmen or any other persons employed in any capacity whatsoever by the Assured or others in on or about or in connection with the Vessel or her catch materials or repairs” It is more than apparent that the Assurance Company had specifically excluded coverage of any compensation to be paid under the Workmen's Compensation Act. We are therefore of the view that the High Court erred in directing the Insurance Company to pay the amount.

Therefore, we set aside the judgment of the High Court. Having decided the legal issue in favour of the Insurance Company, keeping in view the relatively small amount(s) of Rs.4 lakhs involved in each case which has already been paid to the workers and recovery of which will be difficult, in the peculiar facts of the case the Appellant-New India Assurance Company Shall not recover the amount already paid to the claimants.

The Appeals are disposed of accordingly.

Pending application(s), if any, shall stand(s) disposed of.

.....J. (DEEPAK GUPTA) .....J. (ANIRUDDHA BOSE) New Delhi;

20th January, 2020.

ITEM NO.1

COURT NO.15

SECTION XI-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 7882/2016

(Arising out of impugned final judgment and order dated 09-09-2015 in FAO No. 117/2014 passed by the High Court Of Orissa At Cuttack) NEW INDIA ASSURANCE COMPANY LTD. Petitioner(s) VERSUS AJAMBAR BHUIAN . & ORS. Respondent(s) WITH SLP(C) No. 8525/2016 (XI-A) Date : 20-01-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA HON'BLE MR. JUSTICE ANIRUDDHA BOSE For Petitioner(s) Mr. C.K.Gola,Adv.

Mr. Akshat Agarwal,Adv. Mr. Abhishek Kumar,Adv. Mr. Viresh B. Saharya, AOR For Respondent(s) Mr. S.K.Patri,Adv.

Mr. Vellashree S.,Adv. Mr. T.K.Samantray,Adv. Mr. Arshad Khan,Adv.

Ms. Kiran Mahate,Adv. Mr. Bijaya Nayak,Adv. Mr. Brahmananda,Adv. Mr. Robin Khokhar, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The Appeals are disposed of in terms of the signed order. Pending application(s), if any, shall stand(s) disposed of.

(SUMAN WADHWA)  
AR CUM PS

(PRADEEP KUMAR)  
BRANCH OFFICER

Signed order is placed on the file.