United India Insurance Co. Ltd vs M/S. Pushpalaya Printers on 25 February, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1700, 2004 AIR SCW 1140, 2004 ALL. L. J. 932, (2004) 16 ALLINDCAS 826 (SC), (2005) CAL WN 122, 2004 (2) SLT 263, 2004 (2) COM LJ 23 SC, 2004 (16) ALLINDCAS 826, 2004 (2) ACE 591, 2004 (2) CTLJ 398, 2004 (3) SCC 694, (2002) 1 CPR 8, (2004) 4 JT 352 (SC), (2004) 2 ALLMR 336 (SC), (2004) 2 CTC 69 (SC), (2004) 2 COMLJ 23, 2004 (1) BLJR 649, 2004 (3) SRJ 489, (2004) 3 CIVLJ 10, (2004) 2 ALL WC 1876, (2004) 3 GCD 73 (SC), (2004) 2 CPR 62, (2004) 2 ICC 770, (2004) 16 INDLD 378, (2004) 120 COMCAS 132, (2004) 2 SCALE 684.2, (2004) 4 BOM CR 920, (2004) 2 MAD LJ 182, (2004) 2 SUPREME 225, (2004) 1 WLC(SC)CVL 679, (2004) 1 EASTCRIC 200, (2004) 2 CIVILCOURTC 296, (2004) 2 RECCIVR 253, (2004) 2 PUN LR 296, (2004) 3 MAD LW 314, (2004) 3 CAL HN 66, (2004) 1 CPJ 22

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil, Ar.Lakshmanan

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           CASE NO.:
Appeal (civil)  391 of 1999

PETITIONER:
United India Insurance Co. Ltd.

RESPONDENT:
M/s. Pushpalaya Printers

DATE OF JUDGMENT: 25/02/2004

BENCH:
Shivaraj V. Patil & Dr. AR.Lakshmanan.

JUDGMENT:
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J U D G M E N T Shivaraj V. Patil, J.

The respondent filed a complaint before the District Consumer Disputes Redressal Forum (District Forum) under Section 12 of the Consumer Protection Act, 1986 (for brevity 'the Act') praying for settlement of an insurance claim at Rs.75,000/- along with interest at the rate of 18% per annum. The appellant repudiated the claim on the ground that damage caused to the building and printing press of the respondent was not covered by Clause 5 of the insurance policy. The District Forum

accepting the contention urged on behalf of the appellant held that there was no deficiency of service on the part of the appellant and dismissed the complaint as not maintainable. The respondent filed appeal before the State Consumer Disputes Redressal Commission (State Commission) against the order of the District Forum. The State Commission, on interpretation of the word "impact" contained in Clause 5 of the insurance policy, allowed the appeal, set aside the order of the District Forum and granted relief to the respondent directing the appellant to pay a sum of Rs.75,000/- with interest at the rate of 12% per annum with effect from 18.10.1994 till the date of payment. The appellant, dissatisfied with the order of the State Commission, filed revision petition before the National Consumer Disputes Redressal Commission (National Commission). The National Commission, while accepting the interpretation given by the State Commission, however, reduced the amount of payment to the respondent from Rs.75,000/- to Rs.56,000/-. Aggrieved by said order of the National Commission, this appeal is brought before this Court by the appellant. Before us, learned counsel for the parties in their arguments reiterated their respective contentions, which were urged before all the forums. In order to consider the respective contentions urged on behalf of the parties, it is both necessary and useful to quote the relevant portions from the insurance policy: -

> "IN CONSIDERATION OF THE insured named in the Schedule hereto having paid to United India Insurance Company Limited (hereinafter called THE COMPANY) the premium mentioned in the said schedule. Till company agrees, (subject to the condition and exclusion contained herein or endorsed or otherwise expressed hereon) that if after payment of premium the property insured described in the said schedule or any part of such property, be destroyed or damaged by the following: -
>
> 1. .....
>
> 2. .....
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> 3. .....
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> 4. .....
>
> 5. Impact by any rail/road vehicle or animal."

In the order of the District Forum it is noticed that the appellant contested the claim by filing written objection contending that the damage caused due to vibration from the operation of bulldozer was not an incident of impact by any road vehicle, as per Clause 5 of the insurance policy for risk, and so the complaint was not maintainable. Para 4 of the order of the District Forum reads: -

> "4. Neither party led any evidence because it was admitted by the Opposite Party that in connection with a road construction with the help of a bulldozer near the complainant's printing press in question there was damage to that building. And, both parties agreed that it all depends upon the interpretation of the term (5) of the Insurance Policy."

Thus, from the order of the District Forum it is clear that the appellant did not dispute as to damage caused to the building and machinery of the respondent on account of the bulldozer driven close to the building on the road for the purpose of road construction and that both the parties agreed that the sustainability of the claim depended upon the interpretation of Clause 5 of the insurance policy. The District Forum took a narrow view that the word "impact" contained in clause 5 of the insurance policy covered risk of only contingent impact of a road vehicle forcibly coming in contact with another. It held that the damage caused to the building and machinery in the instant case was not due to such forcible contact but it was due to the consequential effect of vibration on account of operating of a bulldozer by the side of the respondent's printing press building and as such it was not covered by clause 5 of the insurance policy; thus, there being no deficiency of service on the part of the appellant the complaint filed by the respondent was not maintainable.

According to the State Commission the only point, which arose for decision in the appeal was whether the damage caused to the building and the machinery of the respondent was the resultant of the impact by the bulldozer. Considering the meaning of the word "impact" given in various dictionaries the State Commission took the view that when the word "impact" has got meanings more than one and the word "impact" not only means "coming forcibly in contact with another", it also means "to drive close", "effective action of one thing upon another" and "effect of such action". The "impact" covered damage caused to the building and machinery in view of the admitted fact that such damage was caused because of close drive by the bulldozer on the road. Expressing thus the State Commission set aside the order of the District Forum and granted relief to the respondent.

The National Commission concurring with the view expressed by the State commission interpreting the expression "impact" observed that the said word has to be construed liberally and in its wider sense. The only point that arises for consideration is whether the word "impact" contained in clause 5 of the insurance policy covers the damage caused to the building and machinery due to driving of the bulldozer on the road close to the building. It is evident from the terms of the insurance policy that the property was insured as against destruction or damage to whole or part. The appellant company agreed to pay towards destruction or damage to the property insured to the extent of its liability on account of various happenings. In the present case both the parties relied on clause 5 of the insurance policy. Clause 5 is also subject to exclusions contained in the insurance policy. That a damage caused to the building or machinery on account of driving of vehicle on the road close to the building is not excluded. Clause 5 speaks of "impact" by any rail/road vehicle or animal. If the appellant company wanted to exclude any damage or destruction caused on account of driving of vehicle on the road close to the building, it could have expressly excluded. The insured possibly did not understand and expect that the destruction and damage to the building and machinery is confined only to the direct collusion by vehicle moving on the road to the building or machinery. In the ordinary course, the question of a vehicle directly dashing the building or the machinery inside the building does not arise. Further, "impact" by road vehicle found in the company of other words in the same clause 5 normally indicates that damage caused to the building on account of vibration by driving of vehicle close to the road is also included. In order to interpret this clause, it is also necessary to gather the intention of the parties from the words used in the policy. If the word "impact" is interpreted narrowly the question of impact by any rail would not arise as the question of a rail forcibly coming to the contact of a building or machinery would not arise. In the absence of

specific exclusion and the word "impact" having more meanings in the context, it cannot be confined to forcible contact alone when it includes the meanings "to drive close", "effective action of one thing upon another"

> and "the effect of such action", it is reasonable and fair to hold in the context that the word "impact"

contained in clause 5 of the insurance policy covers the case of the respondent to say that damage caused to the building and machinery on account of the bulldozer moving closely on the road was on account of its "impact". It is also settled position in law that if there is any ambiguity or a term is capable of two possible interpretations one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken, namely, to cover the risk on the happening of certain event. Although there is no ambiguity in the expression "impact", even otherwise applying the rule of contra proferentem, the use of the word "impact" in clause 5 in the instant policy must be construed against the appellant. Where the words of a document are ambiguous, they shall be construed against the party who prepared the document. This rule applies to contracts of insurance and clause 5 of the insurance policy even after reading the entire policy in the present case should be construed against the insurer. A Constitution Bench of this Court in General Assurance Society Ltd. vs. Chandumull Jain & Anr. [1966 (3) SCR 500] has expressed that "in a contract of insurance, there is requirement of uberrima fides, i.e. good faith on the part of the assured and the contract is likely to be construed contra proferentem i.e. against the company in case of ambiguity or doubt." In the light of what is stated above, no fault can be found with the impugned order. The interpretation placed by the State Commission as well as by the National Commission in relation to the expression "impact" is in order and appropriate. Hence the point is answered in the affirmative.

Under the circumstances we find no merit in the appeal. Consequently it is dismissed. No costs.