

NARSINGH ISPAT LTD.

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v.

ORIENTAL INSURANCE COMPANY LTD. & ANR.

(Civil Appeal No. 10671 of 2016)

MAY 02, 2022

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[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Insurance – Insurance policy – Exclusion Clause – Applicability of insurance cover – Appellant had taken an insurance policy from respondent-insurance company in respect of its’ factory – Claim lodged by appellant on basis of said policy, stating that about 50-60 people with arms and ammunition entered its factory premises and caused substantial damage to the factory, machinery and other equipment – Respondent-insurance company repudiated appellant’s claim placing reliance on the Exclusion Clause in the policy regarding loss or damage caused by the acts of terrorism – If warranted – Held: Wherever an Exclusion Clause is contained in an insurance policy, it would be for the insurer to show that the case falls within the purview thereof – On facts, respondent-insurer did not discharge the burden of bringing the case within the four corners of the Exclusion Clause in the insurance policy – When the policy itself defined the acts of terrorism in the Exclusion Clause, the terms of the policy being a concluded contract governed the rights and liabilities of the parties – Definitions of ‘terrorism’ in various penal statutes could not be relied upon, since the Exclusion Clause contained an exhaustive definition of acts of terrorism – Moreover, on facts, the policy explicitly covered a liability arising out of the damage to the property of the insured due to riots or use of violent means – Hence, the decision to repudiate the insurance policy cannot be sustained – There was no warrant for applying the Exclusion Clause contained in the insurance policy.

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Words and Phrases – Words “similar purposes” – Meaning of.

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Allowing the appeal, the Court

HELD:1. In the present case, the Exclusion Clause in the insurance policy in question defines the act of terrorism. Given

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A the definition, the actions can be termed as acts of terrorism provided the same are committed for political, religious, ideological or similar purposes. The words “similar purposes” will have to be construed *ejusdem generis*. [Para 10][158-A-B]

2. The repudiation of the policy made by the respondent is
B based on the Preliminary Survey Report, Investigation Report and the Final Survey Report. However, the Survey Reports cannot throw any light on the question whether there was an act of terrorism. The Survey Reports do not record any factual findings regarding the incidents which caused the loss. Reliance was placed
C on the Investigation Report in the letter of repudiation. A copy of the said Report however records a conclusion drawn by the Investigator appointed by the respondent that it is not conclusively proved that the persons involved in the incident belonged to Maoist or similar groups. The FIR and Closure Report do not refer to acts of terrorism as defined under
D Exclusion Clause. The Final Report (Closure Report) only shows that the police had registered a First Information Report against 105 miscreants who could not be traced. [Para 11][158-B-D]

3. Wherever an exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the
E purview thereof. In a case of ambiguity, it is trite, the contract of insurance shall be construed in favour of the insured. The respondent-insurer has not discharged the burden of bringing the case within the four corners of the Exclusion Clause in the insurance policy in question. When the policy itself defines the
F acts of terrorism in the Exclusion Clause, the terms of the policy being a concluded contract will govern the rights and liabilities of the parties. Therefore, the parties cannot rely upon the definitions of ‘terrorism’ in various penal statutes since the Exclusion Clause contains an exhaustive definition of acts of terrorism. [Paras 12, 13][158-E-H; 159-A]

G *National Insurance Co. Ltd. v. Ishar Das Madan Lal*
(2007) 4 SCC 105 : [2007] 2 SCR 1014 – relied on.

4. The National Consumer Disputes Redressal Commission committed an error by applying the Exclusion Clause. Moreover, the policy specifically covers the damage to the insured’s property
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caused by violent means. The policy covers explicitly a liability arising out of the damage to the property of the insured due to riots or the use of violent means. Hence, the decision to repudiate the policy cannot be sustained. As there was no warrant for applying the Exclusion Clause, the consumer complaint filed by the appellant before the Commission is restored to the file. [Paras 14, 15, 16][159-B; 160-C-D]

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Case Law Reference

[2007] 2 SCR 1014 relied on Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No.10671 of 2016.

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From the Judgment and Order dated 18.10.2016 of the National Consumer Disputes Redressal Commission in Consumer Complaint No.165 of 2012.

Santosh Kumar-I, Shashwat Singh, Advs. for the Appellant.

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Santosh Paul, Sr. Adv., Vedant Mishra, Sriharsh N. Bundela, M. J. Paul, Ms. Maithreya Shetty, Akshay Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY S. OKA, J.

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1. This is an appeal under Section 23 of the Consumer Protection Act, 1986. The appellant has challenged the judgment and order dated 18th October 2016 of the National Consumer Disputes Redressal Commission (for short, 'the Commission'). By the said Judgment, the Commission dismissed the Consumer Complaint No.165 of 2012 filed by the appellant.

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2. The appellant had taken Standard Fire and Special Perils Policy from the respondent-insurance company for the period from 28th June 2009 to 27th June 2010. The policy was in respect of Engineering Workshop and Plant at Village Khunti District Saraikela, Jharkhand. The total sum assured was Rs.26,00,00,000/- under different headings. The appellant paid a premium of Rs.2,20,462/-. According to the appellant, the policy covered the loss caused to the property of the appellant on account of fire, lightning, explosion, riots, strike etc.

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A 3. The appellant lodged a claim on the basis of the said policy,
based on the incident of 23rd March 2010. As per the claim made by the
appellant, after midnight of 22nd March 2010, about 50-60 anti- social
people with arms and ammunition entered the factory premises of the
appellant at Village Khunti, District Saraikela in Jharkhand. According
B to the appellant's case, the mob demanded money and jobs for local
people. According to the case of the appellant, substantial damage was
caused to its factory, machinery and other equipment. According to the
appellant, the object of the incident was to terrorise the management of
the appellant and workers in the factory by forcing them to pay a ransom
to the miscreants. A First Information Report was also registered at the
C instance of the appellant based on the said incident. The appellant lodged
a regular claim with the respondent company on the basis of the policy.
According to the appellant's case, a surveyor appointed by the
respondent-insurance company carried out the survey and assessed the
loss at Rs.89,43,422/-. However, by addressing a letter on 21st December
D 2010, the appellant claimed that the respondent-insurance company was
liable to make an interim payment of Rs.1.5 crores.

 4. By the letter dated 23rd December 2010, the respondent-
insurance company repudiated the appellant's claim by placing reliance
on the Exclusion Clause in the policy regarding loss or damage caused
by the acts of terrorism. Therefore, the appellant filed the complaint
E mentioned above before the Commission complaining about deficiency
in the service offered by the respondent-insurance company. In the
complaint, a prayer was made for the grant of monetary relief of
Rs.1,51,35,780/- on account of the loss suffered by the appellant. A
separate amount of Rs.25,00,000/- was claimed on account of agony
F and harassment caused to the appellant due to illegal repudiation of the
policy by the respondent-insurance company. The appellant claimed
interest at the rate of 18% p.a on the amounts mentioned above and
cost amount of Rs.10,00,000/-.

 5. By the impugned judgment and order, the Commission held that
G because of the "Terrorism Damage Exclusion Warranty" (for short, 'the
Exclusion Clause'), the respondent company was justified in repudiating
the claim of the appellant based on the policy of insurance. It was held
that the damage caused to the factory and equipment of the appellant
was due to an act of terrorism.

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6. For the sake of convenience, we are reproducing the said
Exclusion Clause, which reads thus: A

“Terrorism Damage Exclusion Warranty :

Notwithstanding any provision to the contrary within this insurance
it is agreed that this insurance excludes loss, damage cost or
expense of whatsoever nature directly or indirectly caused by,
resulting from or in connection with any act of terrorism regardless
of any other cause or event contributing concurrently or in any
other sequence to the loss. B

**For the purpose of this endorsement an act of terrorism
means an act, including but not limited to the use of force
or violence and/or the threat thereof, of any person or
group(s) of persons whether acting alone or on behalf of or
in connection with any organization(s) or government(s),
committed for political, religious, ideological or similar
purpose including the intention to influence any government
and/or to put the public, or any section of the public in fear. C**

The warranty also excludes loss, damage, cost or expenses of
whatsoever nature directly or indirectly caused by, resulting from
or in connection with any action taken in controlling, preventing,
suppressing or in any way relating to action taken in respect of
any act of terrorism.” D E

(emphasis added)

7. Shri Santosh Kumar, the learned counsel appearing for the
appellant, submitted that the police had registered a First Information
Report against unknown persons. After completing the investigation, the
police filed a closure report recording that the accused could not be
traced. He submitted that though the respondent-insurance company
relied upon the Investigation Report in the letter of repudiation, neither a
copy thereof was supplied to the appellant nor was it produced before
the Commission. He pointed out that after this Court issued a specific
direction, a copy of the Investigation Report was filed on record by the
respondent, which records that it was not conclusively proved that Maoist
activists or any such activists made the attack. He submitted that on a
conjoint reading of the First Information Report, closure Report filed by
the police and Investigation Report submitted by the Investigator appointed

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- A by the respondent-insurance company, it is apparent that it was not a case of a terrorist act within the meaning of the Exclusion Clause. The learned counsel tried to rely upon the concept of ‘terrorism’ under various enactments such as the Unlawful Activities (Prevention) Act, 1967 and the National Investigation Agency Act, 2006. He submitted that the burden was on the insurance company to prove that the Exclusion Clause was attracted in the facts of the case. He submitted that if there was any ambiguity about whether the Exclusion Clause was attracted, the insurance contract will have to be construed in favour of the appellant-insurer. In support of this proposition, he relied upon a decision of this Court in the case of **National Insurance Co. Ltd. v. Ishar Das Madan Lal**¹.

8. The learned counsel appearing for the appellant submitted that even according to the report of the surveyor appointed by the respondent company, the damage caused to the machinery and equipment has been quantified at approximately Rs.89,00,000/-. He submitted that by setting aside the impugned judgment and order, the respondent company may be directed to pay a sum of Rs.89,00,000/- to the appellant along with interest, and the Commission may be directed to consider the case of the appellant for grant of additional amount based on the evidence on record.

9. Shri Santosh Paul, the learned senior counsel appearing for the respondent-insurance company, invited our attention to the allegations made in the First Information Report regarding the incident of 23rd March 2010. He submitted that the fact that 120 people entered the factory premises of the appellant along with weapons and carried out large scale destruction shows that it was an act of terrorism to terrorise the workers of the appellant and its management. He submitted that the police have applied Sections 147, 148, 149, 323, 307, 379, 427, 435 and 447 of the Indian Penal Code read with Section 17 of the Criminal Law (Amendment) Act, 1908 (for short, ‘the Amendment Act of 1908’). He submitted that it was a case of unlawful association as defined in Section 15 of the Amendment Act of 1908. He submitted that under Section 17 thereof, the unlawful association is made an offence. He submitted that the very fact that the provisions of the Amendment Act of 1908 have been applied shows that the loss caused to the appellant was due to a terrorist act. He submitted that the burden was on the appellant to show

¹ (2007) 4 SCC 105

that liability arises under the said policy. He submitted that the appellant failed to discharge the burden. He would, therefore, submit that no interference is called for with the finding of the Commission. A

10. We have given a careful consideration to the submissions of the rival parties. In its letter dated 23rd March 2010 addressed to the respondent, the version of the appellant of the incident which occurred around 12:30 a.m. on 23rd March 2010 has been stated. The relevant part of the letter reads thus: B

“With reference to the above and continuation to verbal information given to you over telephone, our submissions are as follows :

Please note that in last midnight 12.30 A.M. around 50- 60 antisocial peoples with arm ammunitions entered into factory premises through back side door of the factory premises. C

Some of them marched towards DG Room and got fired one DG and tried to destroy it. D

Some of them moved towards control room of blast furnace and damaged control system of Blast Furnace available in control room and beaten the men working there. D

They have also damaged Security room, office room and computers available there. E

They have taken away around 15 Nos. of mobile phone, walky talky sets and cash found in drawer of factory office premises, materials particularly relating to PIG Irons. E

Company people informed immediately to the nearest police station over telephone. F

Since blast furnace need continuous working and once it is cooled and to get it reheated it would have been cost to the Company for Rs.30-45 lakhs so that Co-operative Housing Society Limited people took immediate steps for damaged control in main blast furnace. G

You are requested to kindly look into the matter very seriously and appoint Surveyors who can visit the site at the earliest possible manner.”

In the subsequent letter dated 15th April 2010, the appellant stated that the purpose of the anti-social persons was to create terror so that H

A the appellant would be forced to pay a ransom. We have already reproduced the Exclusion Clause, which defines the act of terrorism. Given the definition, the actions can be termed as acts of terrorism provided the same are committed for political, religious, ideological or similar purposes. The words “similar purposes” will have to be construed *ejusdem generis*.

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D 11. In the present case, the repudiation of the policy made by the respondent is based on the Preliminary Survey Report, Investigation Report and the Final Survey Report. The Survey Reports cannot throw any light on the question whether there was an act of terrorism. The Survey Reports do not record any factual findings regarding the incidents which caused the loss. Reliance was placed on the Investigation Report in the letter of repudiation. A copy of the said Report, placed on record along with I.A. No.38075 of 2022, records a conclusion drawn by the Investigator appointed by the respondent that it is not conclusively proved that the persons involved in the incident belonged to Maoist or similar groups. The FIR and Closure Report do not refer to acts of terrorism as defined under Exclusion Clause. The Final Report (Closure Report) shows that the police had registered a First Information Report against 105 miscreants who could not be traced.

E 12. In paragraph 8 in the case of **Ishar Das Madan Lal¹**, this Court held thus:

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G “8. However, there may be an express clause excluding the applicability of insurance cover. **Wherever such an exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview thereof. In a case of ambiguity, it is trite, the contract of insurance shall be construed in favour of the insured.** [See *United India Insurance Co. Ltd. v. Pushpalaya Printers* (2004) 3 SCC 694, *Peacock Plywood (P) Ltd. v. Oriental Insurance Co. Ltd.* (2006) 12 SCC 673 and *United India Insurance Co. Ltd. v. Kiran Combers & Spinners* (2007) 1 SCC 368]”

(emphasis added)

H 13. The respondent has not discharged the burden of bringing the case within the four corners of the Exclusion Clause. When the policy itself defines the acts of terrorism in the Exclusion Clause, the terms of the policy being a concluded contract will govern the rights and liabilities

of the parties. Therefore, the parties cannot rely upon the definitions of 'terrorism' in various penal statutes since the Exclusion Clause contains an exhaustive definition of acts of terrorism. A

14. Thus, the Commission committed an error by applying the Exclusion Clause. Moreover, the policy specifically covers the damage to the insured's property caused by violent means. We are reproducing the relevant clause in that behalf : B

"V. Riot Strike and Malicious Damage

Loss of or visible physical damage or destruction by external violent means directly caused to the property insured but excluding those caused by C

- a) total or partial (*sic*) cessation of work or the retardation or interruption or (*sic*) cessation or any process or operations or omissions of any kind.
- b) Permanent or temporary dispossession resulting from confiscation, commandeering, requisition or destruction by order of the Government or any lawfully constituted Authority. D
- c) Permanent or temporary dispossession of any building or plant or unit of (*sic*) machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery or prevention of access to the same. E
- d) Burglary, housebreaking, theft, larceny or any such attempt or any omission of any kind of any person (whether or not such act is committed in the course of a disturbance of public peace) in any malicious act. F

If the Company alleges that the loss/damage is not caused by any malicious act, the burden of proving the contrary shall be upon the insured."

(emphasis added) G

The policy covers explicitly a liability arising out of the damage to the property of the insured due to riots or the use of violent means. Hence, the decision to repudiate the policy cannot be sustained. Under the insurance policy, there are different limits prescribed for various H

A acts covered by the policy. In the impugned Judgment, it is noted that the parties had filed affidavits-in-lieu of evidence before the Commission. An adjudication will have to be made on the quantum of the amount payable to the appellant after appreciating the evidence on record, including the valuation reports. However, the valuer appointed by the respondent-company has valued the loss caused to the appellant at approximately Rs.89,00,000/-. We, therefore, propose to direct the respondent to deposit the said amount with the Commission with liberty to the appellant to make an application for withdrawal.

15. As there was no warrant for applying the Exclusion Clause, the impugned judgment and order will have to be set aside, and by restoring the complaint filed by the appellant, the same will have to be ordered to be heard by the Commission afresh.

16. Accordingly, the impugned judgment and order is hereby set aside. Consumer Complaint No.165 of 2012 filed by the appellant before the Commission is restored to the file. After allowing parties to lead further evidence, the Commission shall decide the complaint filed by the appellant in accordance with law and in the light of what is held in this judgment. The Commission is requested to pass an appropriate final order on the remanded complaint within four months from today. We make it clear that we have not expressed a definitive opinion on the quantum of the amount payable to the appellant under the policy of insurance, and the said issue is left open for the decision of the Commission in accordance with law.

17. As observed earlier, the respondent shall deposit the sum of Rs.89,00,000/- in the Registry of the Commission within one month from today and the same shall be deposited in the interest-bearing account on auto renewal basis. At the same time, the appellant will be at liberty to file an application for withdrawal of the amount before the Commission pending complaint. If such an application is filed by the appellant, the Commission may examine on its own merits and decide the same in accordance with law.

18. Accordingly, the appeal is allowed in the above terms with no order as to costs.