

V.

(Civil Appeal No. 378 of 2020)

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**[DR. DHANANJAYA Y CHANDRACHUD AND  
HRISHIKESH ROY, JJ.]**

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*that the two constructions are possible or in the event of an ambiguity, the construction which is beneficial to the insured should be accepted consistent with the purpose for which the policy was taken, i.e. to cover the risk on the happening of a certain event – Impugned judgment set aside – Order of the District Forum, as affirmed by SCDRC is restored.*

**Allowing the appeal, the Court**

**HELD: 1.1 Clause VIII brings within the purview of the insured perils a loss, destruction or damage directly caused by subsidence of a part of the site on which the property stands or a land slide/rock slide, but excludes, what is stipulated in Sub-clauses (a) to (e) thereafter. Clause (e) relates to the demolition, construction or structural alterations or repair of any property or groundworks or excavations. [Paras 6, 8] [47-C] [48-C-E]**

**1.2 The appellant was not engaged in any work of demolition, construction or structural alterations nor was it engaged in any repair of its property. The excavation which was the cause of the loss, was being carried on in a neighbouring plot and not by the appellant in his own property. In the absence of a specific qualification indicating that the exclusion will apply to an excavation being carried on by a third party, the reasonable construction of Sub-clause (e) of Clause VIII is that it should apply only to a situation where the excavation is being carried on by the insured himself in his own property. Significantly, the words “of any property” qualify the words preceding them namely, “demolition, construction, structural alterations or repair” and not the words that follow. In the event that the two constructions are possible or in the event of an ambiguity, that construction which is beneficial to the insured should be accepted consistent with the purpose for which the policy was taken, namely to cover the risk on the happening of a certain event. The error of the NCDRC lies in reading the exclusion in regard to excavations as being applicable in a situation such as the present where the cause which resulted in the damage was a work of a third party which was carrying on an excavation in independent premises. It is not in dispute that no part of the excavation was attributable to any act or omission on the part of the appellant. Hence, to read the exclusion, as being attracted**



was appointed. The claim was repudiated by the insurer on 11 May 2012. This led to the institution of the consumer complaint before the District Consumer Disputes Redressal Forum<sup>2</sup>, Sangrur. The District Forum allowed the claim in the amount of Rs 18,00,000, together with interest at nine per cent per annum from the date of the institution of the complaint. The order of the District Forum was upheld by the State Consumer Disputes Redressal Commission<sup>3</sup>, Punjab on 5 May 2016. However, in a revision filed by the insurer, the NCDRC reversed the order awarding the claim. A B

5. Notice was issued in the present proceedings on 22 April 2019. The office report indicates that the insurer has been served. There is no appearance on its behalf. C

6. The dispute between the parties turns on a construction of clause VIII (e) of the policy of insurance. Before advertng to the exclusions, it is necessary to extract the relevant part of the insurance policy, which reads as follows:

“In consideration of the insured named in the Schedule hereto having paid to the United India Insurance Company Limited (hereinafter called the Company) the full premium mentioned in the said schedule, the company agrees, (subject to the conditions and exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the Property insured described in the said Schedule or any part of the such property to be destroyed or damaged by any of the perils specified hereunder during the period of insurance named in the said schedule or of any subsequent period in respect of which the Insured shall have paid and the Company shall have accepted the premium required for the renewal of the policy, the Company shall pay to the Insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof.” D E F

7. Clause VIII is in the following terms: G

“VIII. Subsidence and Landslide including Rock slide: Loss, destruction or damage directly caused by subsidence of part of

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<sup>2</sup> District Forum

<sup>3</sup> SCDRC

A the site on which the property stands or land slide/rock slide  
excluding:

a) the normal cracking, settlement or bedding down of new  
structures

b) the settlement or movement of made up ground

B c) coastal or river erosion

d) defective design or workmanship or use of defective  
materials

e) demolition, construction, structural alterations or repair  
of any property or groundworks or excavations.”

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8. Clause VIII brings within the purview of the insured perils a  
loss, destruction or damage directly caused by subsidence of a part of  
the site on which the property stands or a land slide/rock slide, but  
excludes, what is stipulated in sub-clauses (a) to (e) thereafter. The  
exclusion in sub-clause (a) refers to the normal cracking, settlement or  
D bedding down of new structures. The exclusion in clause (d) refers to  
defective design or workmanship or use of defective materials. The  
crucial exclusion is the one in sub-clause (e) which has weighed with  
the NCDRC. Clause (e) relates to the demolition, construction or  
structural alterations or repair of any property or groundworks or  
excavations.

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9. In the present case, the appellant was not engaged in any work  
of demolition, construction or structural alterations nor was it engaged  
in any repair of its property. The excavation which was the cause of  
the loss, was being carried on in a neighbouring plot and not by the  
appellant in his own property. In the absence of a specific qualification  
F indicating that the exclusion will apply to an excavation being carried  
on by a third party, the reasonable construction of sub-clause (e) of  
Clause VIII is that it should apply only to a situation where the  
excavation is being carried on by the insured himself in his own property.  
Significantly, the words “of any property” qualify the words preceding  
G them namely, “demolition, construction, structural alterations or repair”  
and not the words that follow.

10. It is well-settled that in the event that the two constructions  
are possible or in the event of an ambiguity, that construction which is  
beneficial to the insured should be accepted consistent with the purpose  
for which the policy was taken, namely to cover the risk on the

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happening of a certain event. [See in this context, the decision of this Court in **United India Insurance Co Ltd v Pushpalaya Printers**<sup>4</sup>. A

11. The NCDRC, in reversing the concurrent views of the District Forum and the SCDRC, held thus:

“On bare reading of the above, it is clear that as per the above noted condition, the loss caused to the insured property due to demolition, construction, structural alterations or repair of any property or ground works or excavations is excluded from the risk covered. On perusal of para 3(b) of the copy of complaint placed on record, it is evident that as per the stand taken by the complainant on 29.03.2012 the insured showroom had fallen accidentally as a result of subsidence and land sliding due to digging work being carried out by the neighbour in adjacent plot. It is also alleged in the said paragraph that a daily diary report no.54 dated 30.03.2012 regarding the incident was duly lodged with the P.S. Sangrur. From the aforesaid admission on the part of the complainant, it is evident that loss was caused to the insured because of collapse of the insured building as a result of excavation work being carried out in the adjacent plot resulting in subsidence and land sliding. Thus, in my view, in view of the above noted specific exclusion clause, the petitioner/ insurance company was justified in repudiating the insurance claim.” B C D E

12. The error of the NCDRC lies in reading the exclusion in regard to excavations as being applicable in a situation such as the present where the cause which resulted in the damage was a work of a third party which was carrying on an excavation in independent premises. It is not in dispute that no part of the excavation was attributable to any act or omission on the part of the appellant. Hence, to read the exclusion, as being attracted in the present case, would not be to a reasonable construction of the policy of insurance. F

13. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the NCDRC dated 7 March 2018. In consequence, we restore the order of the District Forum dated 5 May 2016, as affirmed by the SCDRC. In the circumstances, there shall be no order as to costs. G

Divya Pandey

Appeal allowed.

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<sup>4</sup> (2004) 3 SCC 694