

JSK INDUSTRIES PVT. LTD.

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v.

ORIENTAL INSURANCE COMPANY LIMITED

(Civil Appeal No. 7630 of 2022)

OCTOBER 18, 2022

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[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]

Insurance: Insurance Claim – Repudiation of – Appellants took insurance coverage – However, insurance company repudiated their claim on the ground that there was no sufficient balance to cover the declaration and/or loss – State Commission as also National Commission rejected the claim – Held: Insurance company took a defense which did not form the basis of repudiation of the claim – National Commission ought not to have gone beyond the grounds of repudiation and into the nature of coverage, which according to the National Commission had effectively changed from “anywhere in India to anywhere in India” to a sales turnover policy, limiting the policy coverage of the subject- goods from the points of departure at the two locations – Matter remanded to State Commission for taking decision afresh on the claim of the appellants on the ground which formed the basis of repudiation.

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Allowing the appeal, the Court

HELD: 1.1 The National Commission rejected the appeal of the appellant on the ground that they had converted “from anywhere in India to anywhere in India” policy into the sales turnover policy covering transportation of goods only from two locations specified in the endorsement. The repudiation of the appellants’ claim was on the ground of exhaustion of insurance coverage and the State Commission also determined the issue primarily on that ground. Both the National Commission and the State Commission had referred to the nature of the policy but the State Commission did not come to a specific finding as to whether the goods otherwise remained insured from the port to the appellants’ factory. It was the finding of the National Commission on the other hand that the policy was only applicable on supplies made from the two locations. As regards financial limit of the

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- A policy, the appellants' stand before the National Commission was that there was available coverage to accommodate their claim. On this count, the observation of the National Commission was that if exhaustion of the coverage limit was the sole reason for repudiation of the claim, the matter could have been remanded to the State Commission for the decision of the complaint on merits. That was the course which ought to have been directed by the National Commission because the only ground on which repudiation of the claim was made was lack of financial coverage. The National Commission ought not to have gone beyond the grounds of repudiation and into the nature of coverage. Thus, the order of the National Commission as also State Commission are set aside and the matter is remanded to the State Commission for taking a decision afresh on the claim of the appellants on the grounds which formed the basis of repudiation and determine as to whether at the material point of time there was sufficient balance to cover the claim on account of declaration made as regards loss suffered by the appellants. [Paras 14, 15][589-C-G; 590-B-C]

Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd. (2019) 19 SCC 70 – referred to.

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Case Law Reference

(2019) 19 SCC 70 referred to Para 14

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7630 of 2022.

From the Judgment and Order dated 15.01.2018 of the National Consumer Disputes Redressal Commission at New Delhi in First Appeal No. 700 of 2012.

G Gopal Shankarnarayan, Sr. Adv., D. Bharat Kumar, Tadimall Bhaskar Gowtham, Aman Shukla, Ms. Tanya Srivastava, M. Chandrakanth Reddy, Gopal Jha, Advs. for the Appellant.

H S. M. Suri, Ms. Manjeet Chawla, Yashvardhan S. Soam, Advs. for the Respondent.

The Judgment of the Court was delivered by

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ANIRUDDHA BOSE, J.

Leave granted.

2. The repudiation of a claim in respect of a “Marine Cargo-Open Policy” gives rise to this appeal and the appellants are the claimants before us. The policy, initially covered a sum of rupees two hundred crores. Under the heading “Risk Details”, against Sl.No.1 of the policy document, next to the column “Voyage”, it was indicated “from anywhere in India to anywhere in India”. Period of Insurance was from 29th October 2009 to Midnight on 28th October 2010. There was subsequent addition of terms and raising of insurance coverage as well. Fresh endorsement schedules were issued incorporating the changes. These endorsement schedules, however, carried the expression “Attached to and forming part of policy No.12012/21/2010/876” (that being the original policy number). The endorsement schedule dated 25th November 2009 described the policy as “On the Sales Turnover basis”. This endorsement became effective from 14:50 hrs on 25th November 2009. The next endorsement was made on 8th April 2010, also attached to the original policy, by which sum insured was raised by a further rupees two hundred crores.

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3. The appellants are traders and manufacturers of aluminium products. They claim to have purchased, by high seas sale agreement dated 22nd June 2010, eight containers of aluminium ingots. These containers had arrived at Jawaharlal Nehru Port Trust (JNPT) and from there, they were sent to the appellants’ factory unit at Silvassa by a transporter by road. The appellants’ case is that out of the eight containers, one was stolen and the incident of theft took place on 2nd July 2010. According to the appellants, value of stolen goods was rupees thirty-four lakhs ninety two thousand and eighty one. Their claim was lodged with the respondent on 18th March 2011 but this was repudiated by the latter. The appellants then approached the State Consumer Disputes Redressal Forum (Maharashtra) against the insurance company. We shall henceforth refer to the said forum as the State Commission.

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4. The appellants’ initial Complaint Case no. CC/12/177 was rejected by the State Commission, by an order passed on 27th July 2012 and the appeal against that dismissal order registered as Appeal No. 700 of 2012, was also dismissed by the National Consumer Disputes

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A Redressal Commission (“National Commission”) by an order pronounced on 15th January 2018. This decision is under appeal before us.

5. As we have already narrated, the policy underwent some changes. Clause 3 of the endorsement schedule dated 25th November 2009 specified:-

B “3. The supplies made from the following two works locations are held covered under the locations mentioned below.

a) JSK Industries Private Limited,

Survey No. 369/1/1/2,

C Behind Siyaram Silk Mills,

Village Sayil,

Slivassa-396230,

UT of Dadra and Nagar Haveli.

D b) JSK Industries Private Limited,

126/1-8 Rakholi High School Road, Rakholi Village,
Slivassa-396240

UT of Dadra and Nagar haveli.

E Other terms and conditions of the policy remain unaltered.

| SCHEDULE OF PREMIUM | | | | |
|---|----------------------|-------------------------|---------------------|---------------------|
| Cover Description | Original Sum Insured | Endorsement Sum Insured | Revised Sum Insured | Endorsement Premium |
| Total Amount in figures and words: 0 (INDIAN RUPEED only) | | | | |

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(quoted verbatim from the paperbook)

6. After the appellants lodged the claim, the insurance company by a communication dated 7th September 2011, raised certain queries.

G These included:-

“1. The above stock turn over policy was issued on 29.10.2009 for a sum insured of Rs. 200 crores. As per the documents and statements submitted the above sum insured has exhausted as on 22.12.2009 & no balance was available to cover further declarations.

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2. Endorsement for increase in sum insured was passed on 08.04.2010 for Rs. 200 crores which was fully utilized to cover declarations for the period 08.04.2010 till May 2018 as per the documents and statements submitted.

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3. The above loss has occurred between 10.07.2010 & 12.07.2010 and as per 1 % 2 above there is no sufficient balance to cover the above declarations and/ or loss.

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However you being given one more opportunity to substantiate your claim in view of the grounds of repudiation mentioned before a final decision is taken of cure end your representation/ clarification must reach us within 2 weeks from the date of receipt of this letter, Please note that in case we have response from you within 2 weeks from the date of receipt of this letter the claim shall stand repudiated for the reasons indicated above without further advices from us."

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(quoted verbatim from the paperbook)

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7. As it would be evident from the aforesaid communication, the appellants were given an opportunity to explain their stand in the light of the preliminary view of the insurance company that their claims were not tenable. The appellants took a stand that their insurance coverage was enhanced to Rs.400 crores and in a table contained in their response dated 20th September 2011, it was explained by them that the aforesaid coverage of Rs.400 crores was not exhausted. The insurance company, however, stuck to their stand and formally repudiated their claim by a letter issued on 24th January 2012. The ground for repudiation was that there was no sufficient balance to cover the declaration and/or loss. The repudiation letter recorded:-

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"The reply submitted by you have been examined and the Competent Authority has concluded that no new facts have been brought/furnished by you which could satisfactorily answer the issues raised in our above letter.

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Your claim therefore has been repudiated for the reason mentioned in our above letter i.e. "there is no sufficient balance to cover the above declaration and/or loss"

(quoted verbatim from the paperbook)

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A 8. The State Commission rejected the claim of the appellants, taking into account the fact that their policy was subsequently converted into Sales Turnover basis to cover sale transaction up to Rs.400 crores in a given time and though their policy coverage had been enhanced, the same did not cover the loss on which their claim was raised. It was, inter-alia, held by the State Commission:-

B *“5. On the date of occurrence i.e. cause of action (02/07/2010) insurance cover under the policy though earlier increased with sum assured of 400 crores but such contingency was not covered as admittedly, the sales transactions taken*
C *place were not covered for lack, of balance of sales transaction to cover under insurance policy. Even during the course of argument, Ld. counsel for the complainant company conceded to this position, yet he tried to press for admission of this complaint. Interestingly, survey report of the authorized*
D *surveyor available on record to assess the loss due to theft of the container with material therein states that such a cover under insurance policy is not extended and rightly so on going through the policy terms and conditions. Complainant company has not made carrier as a party against whom possibly the complaint could have been processed. We do not*
E *find any merit in complaint and, therefore, complaint is rejected in limine at the admission stage itself.”*

(quoted verbatim from the paperback)

F 9. As we have already indicated, the National Commission, in appeal, also rejected the appellants’ contention. The National Commission in its decision under appeal construed the implication of Sales Turnover and held:-

G *“8. I have thoroughly examined the record and have given a thoughtful consideration to the arguments advanced by both the sides. It is true that the order of the State Commission is very cryptic and does not clearly state the details of the reasons on which the complaint has been dismissed. Prima facie, the State Commission has dismissed the complaint on the basis of the facts mentioned in the repudiation letter that the insurance limit was exhausted before the claim arose. This assertion has been disputed by the complainant and it has been claimed*
H *that there was still an insurance limit left for Rs.3.89 crores*

and, therefore, it was not correct to hold that the total insurance limit was exhausted and that too, without getting the version of the OP. Had this been the only reason, the matter could have been remanded to the State Commission, for the decision of the complaint on merits, but the fact of the matter is that the nature of the policy after the endorsement dated 25.11.2009 became such that only the sold material was covered and not the imported material. The State Commission has obliquely mentioned this fact, but has not made this a point for dismissal of the complaint. In fact, the complainant should have taken some other insurance for transport of the goods from JNPT to Silvassa. The complainant had neither taken any extra policy nor has he made the transporter, a party in the complaint case.

9. The endorsement of 25.11.2009 that the policy would be on “sales turn-over basis” also mentions that the insurance would be on “sales turn-over basis” on the material going out from the two premises of the industry at Silvassa.

10. Learned counsel for the Appellant has not shown any document to controvert this assertion of the insurance company that the policy was only applicable on the sales supplies from the two premises of the industry at Silvassa.

11. It is a settled principle of law that the terms of the policy are to be construed as per the written agreement of the policy. It could not be shown by the learned counsel for the Appellant that any imported material would also be included in the covered items under the policy even after the endorsement dated 25.11.2009 which restricts the policy to only on “sales turn-over basis” on the supplies, from two locations of the industry at Silvassa.”

(quoted verbatim from the paperbook)

10. Mr. Gopal Shankarnarayan, learned senior counsel for the appellants has argued both on substantive and procedural points to assail the aforesaid orders. His first submission is that the insurance company cannot resist a claim petition on grounds beyond those cited by them while repudiating a claim. In support of this argument, a decision of this Court in the case **Saurashtra Chemicals Ltd. v. National Insurance**

- A **Co. Ltd.** [(2019) 19 SCC 70] has been cited. In this judgement, it has been held:-

B “23. Hence, we are of the considered opinion that the law, as laid down in *Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161 : (2017) 2 SCC (Civ) 765]* on Issue (2), still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC.”

C As regards implication of the Sales Turnover Policy, his argument is that the said policy cannot be construed to mean to cover only those goods which are already sold. His submission on this count is that in such a situation the title of the goods would have passed on to the buyer and the appellants would not have any insurable interest in the said goods.

D 11. He has further argued that the National Commission erred in interpreting the terms of the policy. According to him, the policy endorsement dated 25th November 2009 did not withdraw coverage of any of the goods named in the policy while in transit “from anywhere in India to anywhere in India” and the implication of including the two locations specified meant that as per the ‘Sales Turnover policy’ the appellants were required to declare their sales made from the mentioned two work locations (factories) on monthly/quarterly basis to the respondent only for the purpose of computing the balance cover.

E 12. Mr. S. M. Suri, learned counsel for the respondent-insurance company submitted that the main case of the insurance company is that the policy covered only those goods within the coverage which left the two units which have been specified in the earlier part of this judgment.

G 13. First, we shall examine the ratio of the decision of this Court in the case of **Saurashtra Chemicals Ltd.** (supra). In that case, it was a claim relating to standard fire and special perils policy. Repudiation was solely on the ground that a spontaneous combustion did not result into fire and loss had not been caused by the fire as stipulated by policy conditions. The insured had approached the National Commission. One of the defenses taken by the insurance company in the Commission was that the intimation of claim was with delay for over a month. This delay,

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according to the insurance company vitiated condition 6(i) of the general conditions of the policy, as applicable in that case. The insurance company was successful before the National Commission. The insured preferred an appeal which was heard and decided by a Coordinate Bench. Before the Bench, the main point on which the case turned was that the insurance company was taking a defense which did not form the basis of repudiation of the claim. It is in that context this Court held this was impermissible. The reasoning of the Court appeared in paragraph 23 of the report, which we have quoted above.

14. Addressing the merits of the present case, we find that the National Commission mainly rejected the appeal of the appellant on the ground that they had converted “from anywhere in India to anywhere in India” policy into the sales turnover policy covering transportation of goods only from two locations specified in the endorsement made on 25th November 2009. The repudiation of the appellants’ claim was on the ground of exhaustion of insurance coverage and the State Commission also determined the issue primarily on that ground. Both the National Commission and the State Commission had referred to, in their respective decisions, the nature of the policy but the State Commission did not come to a specific finding as to whether the goods otherwise remained insured from the JNPT port to the appellants’ factory. It was the finding of the National Commission on the other hand that the policy was only applicable on supplies made from the two locations at Silvassa. We have quoted this passage from the order of the National Commission earlier in this judgment. As regards financial limit of the policy, the appellants’ stand before the National Commission was that there was available coverage of Rs. 3.89 crores to accommodate their claim. On this count, the observation of the National Commission was that if exhaustion of the coverage limit was the sole reason for repudiation of the claim, the matter could have been remanded to the State Commission for the decision of the complaint on merits. In our opinion, that was the course which ought to have been directed by the National Commission because the only ground on which repudiation of the claim was made was lack of financial coverage. Thus, following the ratio of the decision of the Coordinate Bench in the case of **Saurashtra Chemicals Ltd.** (supra), the National Commission ought not to have gone beyond the grounds of repudiation and into the nature of coverage, which according to the National Commission had effectively changed from “anywhere in India to anywhere in India” to a sales turnover policy, limiting the policy

A coverage of the subject-goods from the points of departure at the two locations at Silvassa. These are all terms of art applicable to the insurance trade but we do not consider it necessary to dilate on this aspect of the dispute having regard to the decision of this Court in the case of **Saurashtra Chemicals Ltd.** (supra).

B 15. Under these circumstances, we set aside the decisions of the National Commission as also of that State Commission and remand the matter to the State Commission for taking a decision afresh on the claim of the appellants on the grounds which formed the basis of repudiation and determine as to whether at the material point of time there was sufficient balance to cover the claim on account of declaration made as regards loss suffered by the appellants.

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16. The appeal stands allowed in the above terms.

17. There shall be no order as to costs.

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