

ORIENTAL INSURANCE COMPANY LIMITED

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v.

MAHENDRA CONSTRUCTION

(Civil Appeal No. 3359 of 2019)

APRIL 01, 2019

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[DR. DHANANJAYA Y CHANDRACHUD AND

HEMANT GUPTA, JJ.]

Insurance – Insured – Duty of Disclosure – Respondent-Complainant purchased hydraulic excavator machine in 2004-05 – Excavator was insured with New India Assurance Company Limited (earlier insurer) from 15 Nov. 2004 to 14 Nov. 2005 – Claim lodged on 12 April 2005 on the ground that the excavator had been set on fire by Naxalites – Claim settled – On 10 Oct. 2006, the excavator was insured with the appellant-insurer from 11 Oct. 2006 to 10 Oct. 2007 – Excavator allegedly caught fire on 15 Oct. 2006 – Insurance claim repudiated on the ground that u/para.25(g) of the printed proposal form, the details of claims lodged during the preceding three years were required to be disclosed, but were not furnished and hence, the insurer was deprived of the opportunity to assess the risk profile of the vehicle at the time of accepting the proposal for insurance – Complaint before State Consumer Dispute Redressal Commission (SCDRC) – Allowed – National Consumer Dispute Redressal Commission (NCDRC) inter alia held that the insurer was not justified in repudiating the claim – On appeal, held: Insurance is governed by the principle of utmost good faith, which imposes a duty of disclosure on the insured with regard to material facts – Information regarding insurance claims lodged by the respondent for his excavator in the preceding three years was a material fact – Mere disclosure of previous insurance policy did not discharge the obligation cast on the respondent, as the proposer, to make a true and complete disclosure of the claims lodged under the previous policy in the preceding three years – Burden of establishing that the insured made false representation and suppressed material facts lies on the insurer – Insurer placed on record the best possible evidence in support of the plea that there was misrepresentation and suppression of material facts – Respondent was under bounden

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- A *duty to disclose that the excavator was previously insured with another insurer and that a claim for damage to the excavator on 12 April 2005 was settled— It was only in the affidavit of evidence dtd. 6 Jan. 2017, that the respondent disclosed that the earlier insurer had paid Rs 36.66 lakhs by cheque on 23 Sep. 2005 – This material fact was suppressed from the proposal form – Impugned order set aside.*

Respondent-Complainant purchased a hydraulic excavator machine in 2004-05. The excavator was insured with the New India Assurance Company Limited (earlier insurer) from 15 Nov. 2004 to 14 Nov. 2005. Claim lodged by the respondent on the

- C *ground that the excavator had been set on fire by Naxalites. Claim was settled. On 10 Oct. 2006, the excavator was insured with the appellant-insurer from 11 Oct. 2006 to 10 Oct. 2007. Excavator allegedly caught fire on 15 Oct. 2006. Appellant repudiated the insurance claim. Complaint filed by the respondent before SCDRC, which was allowed. NCDRC, in appeal, *inter alia* held that the insurer was not justified in repudiating the claim. Hence, the present appeal.*

Allowing the appeal, the Court

- HELD: 1.1 Insurance is governed by the principle of utmost good faith, which imposes a duty of disclosure on the insured with regard to material facts. Information regarding insurance claims lodged by the respondent for his excavator in the preceding three years was a material fact. The burden of establishing that the insured made false representation and suppressed material facts lies on the insurer. The insurer has placed on record the best possible evidence in support of the plea that there was misrepresentation and suppression of material facts. Mere disclosure of previous insurance policy did not discharge the obligation which was cast on the respondent, as the proposer, to make a full, true and complete disclosure of the claims which were lodged under the previous policy in the preceding three years. It was only in the affidavit of evidence dated 6 January 2017, that the respondent disclosed that New India Assurance Company Limited had paid an amount of Rs 36.66 lakhs by cheque on 23 Sep. 2005. This material fact was suppressed from the proposal form. [Para 11][678-F-G; H 680-F-H; 681-A-B]**

1.2 The burden cannot be cast upon the insurer to follow up on an inadequate disclosure by conducting a line of enquiry with the previous insurer in regard to the nature of the claims, if any. It was the plain duty of the respondent while making the proposal to make a clear and specific disclosure. The insurance policy with earlier insurer was for the period from 15 November 2004 to 14 November 2005. The excavator remained uninsured from 15 November 2005 until 10 October 2006. The case of the respondent was that during that period, it was under repair. This fact, together with the receipt of the earlier insurance claim, was material to the decision of the insurer on whether to accept the proposal for insurance. The disclosures which were required in paragraph 25(g) of the proposal form were material to assess the risk profile of the vehicle at the time of accepting the proposal for insurance. Material information which was required to be disclosed was suppressed by the insured. The proposal form contains a declaration of the insured that the statements which are made are true to the knowledge of the proposer and the declaration forms the basis of the contract with the insurer. [Paras 12-14][681-C-E; G]

1.3 The respondent was under obligation to make full disclosure of the status of the previous insurance policy, together with the material facts relevant to the claim which had been lodged with the earlier insurer. The fact that such a claim was lodged and was settled at Rs 36.66 lakhs was suppressed. This suppression goes to the very root of the contract of insurance which would validate the grounds on which the claim was repudiated by the insurer. The impugned judgment and order of the NCDRC is set aside. The complaint filed by the respondent shall stand dismissed. [Paras 15, 16][682-A-C]

Mac Gillivray on Insurance Law Twelfth Edition, Sweet and Maxwell (2012)– referred to.

Life Insurance Corporation of India v Smt. G M Channabasamma (1991) 1 SCC 357 ; LIC of India v Asha Goel (2001) 2 SCC 160 : [2000] 5 Suppl. SCR 646 ; Satwant Kaur Sandhu v New India Assurance Co. Ltd. (2009) 8 SCC 316 : [2009] 10 SCR 560 – relied on.

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- A** **Case Law Reference**
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| (1991) 1 SCC 357 | relied on | Para 11 |
| [2000] 5 Suppl. SCR 646 | relied on | Para 11 |
| [2009] 10 SCR 560 | relied on | Para 11 |
- B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3359 of 2019.
- From the Judgment and Order dated 19.09.2018 of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 8 of 2018.
- C** Mohan Babu Agarwal, Celeste Agarwal, Chetanya Siddarth, Mukesh Kumar Sharma, Advs. for the Appellant.
- Ms. Pankaj Bala Verma, Dr. (Mrs.) Vipin Gupta, Advs. for the Respondent.
- D** The Judgment of the Court was delivered by
- DR. DHANANJAYA Y. CHANDRACHUD, J.**
1. Leave granted.
2. This appeal arises from a decision rendered by the National Consumer Disputes Redressal Commission¹ on 19 September 2018. The NCDRC partly allowed the appeal filed by the insurer against a decision of the State Consumer Disputes Redressal Commission² dated 3 April 2017, directing the insurer to pay seventy-five percent of the amount awarded by the SCDRC. The SCDRC had allowed an insurance claim in the amount of Rs 23.84 lakhs, together with interest at the rate of 7% per annum from the date of the institution of the complaint.
3. The respondent, Mahendra Construction, was the original complainant before the SCDRC. The respondent purchased a hydraulic excavator machine in 2004-05. The excavator was insured with New India Assurance Company Limited from 15 November 2004 to 14 November 2005. A claim was lodged under the insurance policy on 12 April 2005 on the ground that the excavator had been set on fire by Naxalites. The claim was settled by the earlier insurer. According to the respondent, the machine was under repair until 10 October 2006.

¹ “NCDRC”

² “SCDRC”

4. On 10 October 2006, the excavator was insured with the appellant from 11 October 2006 to 10 October 2007. A premium of Rs 43,847 was paid to the appellant for an insurance cover of Rs 32 lakhs. Five days after the issuance of the insurance cover, the excavator is alleged to have caught fire at a work site on 15 October 2006. The insurer deputed a surveyor for a spot survey on 17 October 2006 and a report was submitted on 26 October 2006. It appears that other surveyors were also appointed.

5. On 25 November 2008, the insurance claim was repudiated on the ground that all material facts which were required to be disclosed through the proposal form to enable the insurer to assess the risk profile had not been disclosed. More specifically, it was stated that under paragraph 25(g) of the printed proposal form, the details of claims lodged during the preceding three years were required to be disclosed but were not furnished and, in consequence, the insurer was deprived of the opportunity to assess the risk profile of the vehicle at the time of accepting the proposal for insurance. This led to the institution of a complaint before the SCDRC.

6. The claim was allowed by the SCDRC in the amount of Rs 23.84 lakhs, together with interest. The SCDRC accepted the contention of the insured that the Administrative Officer who had prepared the pre-insurance report had been “fully satisfied” about the previous insurance cover and claim and with reference to paragraph 25(g) of the proposal form, the insurance policy with New India Assurance Company Limited had been “enclosed”.

7. In appeal, the NCDRC held that since the previous insurance policy was annexed to the proposal, the appellant could have known of the claims lodged with the previous insurer on making an enquiry. Alternatively, it was held that if there was a non-disclosure of information under paragraph 25(g), the appellant could have returned the proposal. The NCDRC held that the insurer could have discovered the true state of facts with the exercise of ordinary diligence and was, hence, not justified in repudiating the claim.

8. Learned counsel appearing on behalf of the appellant has drawn the attention of the Court to the disclosure which was required to be made in paragraph 25(g) of the proposal for insurance. Paragraph 25 requires a disclosure of:

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- A (i) The date of purchase of the vehicle by the proposer;
 - (ii) Whether the vehicle was new or second-hand at the time of purchase;
 - (iii) Whether the vehicle was in a good condition and, if not, full details;
 - B (iv) The name and address of the previous insurer;
 - (v) The previous policy number, together with the period of insurance;
 - (vi) The type of cover; and
 - C (vii) Claims lodged during the preceding three years.
9. The proposal form which was filled up in order to obtain the policy of insurance merely records the date of purchase of the vehicle as 2004. As against the other queries, there is a handwritten endorsement, namely, “enclosed”.
- D 10. The NCDRC entered a finding that since the previous insurance policy had been enclosed with the proposal form, the insurer could, upon further enquiry, have learnt of the status of the claims under the earlier policy. The NCDRC considered the exception to Section 19 of the Indian Contract Act, 1872 and held that the insurer could have easily verified the claims submitted by the insured under the previous policy. It was thus held that the insurer cannot deny the benefit of insurance on account of the information not having been disclosed in the proposal form. However, the NCDRC noted that the insured had not expressly disclosed the previous claim and in consequence, deducted twenty-five F of the amount payable under the contract of insurance.
 - E 11. In our view, this line of reasoning of the NCDRC is flawed. Insurance is governed by the principle of utmost good faith, which imposes a duty of disclosure on the insured with regard to material facts. In **MacGillivray on Insurance Law**³ the rule concerning duty of disclosure G is stated in the following terms:
- “[Subject to certain qualifications considered below], the assured must disclose to the insurer all facts material to an insurer’s appraisal of the risk which are known or deemed to be known by the assured but neither known or deemed to be known by the
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- H ³ Twelfth Edition, Sweet and Maxwell (2012)

insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms...”

Elaborating on the principle, in **Life Insurance Corporation of India v Smt. G M Channabasamma**⁴, this Court has held:

“7...It is well settled that a contract of insurance is contract *uberrima fides* and there must be complete good faith on the part of the assured. The assured is thus under a solemn obligation to make full disclosure of material facts which may be relevant for the insurer to take into account while deciding whether the proposal should be accepted or not. While making a disclosure of the relevant facts, the duty of the insured to state them correctly cannot be diluted...”

In **LIC of India v Asha Goel**⁵, a two-judge Bench of this Court held thus:

“12...The contracts of insurance including the contract of life assurance are contracts *uberrima fides* and every fact of material (sic material fact) must be disclosed, otherwise, there is good ground for rescission of the contract. The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may take place between the proposal and its acceptance. If there are any misstatements or suppression of material facts, the policy can be called into question. **For determination of the question whether there has been suppression of any material facts it may be necessary to also examine whether the suppression relates to a fact which is in the exclusive knowledge of the person intending to take the policy and it could not be ascertained by reasonable enquiry by a prudent person.**”

(Emphasis supplied)

In **Satwant Kaur Sandhu v New India Assurance Co. Ltd**⁶, a two-judge Bench of this Court held that under a contract of insurance, the insured is under a “solemn obligation” to make a true and full

⁴ (1991) 1 SCC 357

⁵ (2001) 2 SCC 160

⁶ (2009) 8 SCC 316

A disclosure of information asked for in the proposal form:

- “18...Nonetheless, it is a contract of insurance falling in the category of contract uberrimae fidei, meaning a contract of utmost good faith on the part of the assured. **Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge.** It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, the obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment...”

D (Emphasis supplied)
It was further held there is a clear presumption that any information sought in the proposal form is a “material fact”:

- “25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a “material fact”. If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance.”

G Information regarding insurance claims lodged by the respondent for his excavator in the preceding three years was a material fact. The burden of establishing that the insured made a false representation and suppressed material facts lies on the insurer. The insurer has placed on the record the best possible evidence in support of the plea that there was a misrepresentation and a suppression of material facts. The mere disclosure of a previous insurance policy did not discharge the obligation which was cast on the respondent, as the proposer, to make a full, true and complete disclosure of the claims which were lodged under the

previous policy in the preceding three years. The proposal form contained a specific question regarding claims lodged in the preceding three years. The respondent was under a bounden duty to disclose that the excavator was previously insured with another insurer and that a claim for damage to the excavator on 12 April 2005 had been settled. It was only in the affidavit of evidence dated 6 January 2017, that the respondent disclosed that New India Assurance Company Limited had paid an amount of Rs 36.66 lakhs by cheque on 23 September 2005. This material fact was suppressed from the proposal form.

12. The burden cannot be cast upon the insurer to follow up on an inadequate disclosure by conducting a line of enquiry with the previous insurer in regard to the nature of the claims, if any, that were made under the earlier insurance policy. On the contrary, it was the plain duty of the respondent while making the proposal to make a clear and specific disclosure. The insurance policy with New India Assurance Company Limited was for the period from 15 November 2004 to 14 November 2005. The excavator remained uninsured from 15 November 2005 until 10 October 2006. The case of the respondent was that during that period, it was under repair. This fact, together with the receipt of the earlier insurance claim, was material to the decision of the insurer on whether to accept the proposal for insurance. The disclosures which were required in paragraph 25(g) of the proposal form were material to assess the risk profile of the vehicle at the time of accepting the proposal for insurance.

13. The SCDRC proceeded on the hypothesis that the insurer had not denied the averment of the respondent in the complaint that the Administrative Officer was 'fully satisfied' of the previous insurance cover and claim, as is evident from the use of the expression "enclosed" in paragraph 25(g). The averment in paragraph 8 of the complaint was specifically denied by the insurer. But, that apart, it is evident on a bare reading of the proposal form that material information which was required to be disclosed was suppressed by the insured. The proposal form contains a declaration of the insured that the statements which are made are true to the knowledge of the proposer and the declaration forms the basis of the contract with the insurer.

14. In the circumstances, the decision of the SCDRC to allow the claim was erroneous and the NCDRC equally erred in affirming the decision.

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- A 15. Learned counsel appearing on behalf of the insured urged that the respondent relied on the Administrative Officer who filled in the requisite details in the proposal form. The fact of the matter is that the respondent was under an obligation to make a full disclosure of the status of the previous insurance policy, together with the material facts relevant to the claim which had been lodged with New India Assurance Company Limited. The fact that such a claim was lodged and had been settled at Rs 36.66 lakhs was suppressed. This suppression goes to the very root of the contract of insurance which would validate the grounds on which the claim was repudiated by the insurer.
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- C 16. We accordingly allow the appeal and set aside the impugned judgment and order of the NCDRC dated 19 September 2018. The complaint filed by the respondent shall stand dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Divya Pandey

Appeal allowed.