

A MAHAVIR ROAD AND INFRASTRUCTURE PVT LTD.

v.

IFFCO TOKIO GENERAL INSURANCE CO LTD.

(Civil Appeal No. 7315 of 2016)

B MARCH 25, 2019

[DR. DHANANJAYA Y. CHANDRACHUD AND
HEMANT GUPTA, JJ.]

Consumer Protection:

C *Deficiency in service – Insurance policy – Taken by appellant*
who was undertaking resurfacing, metalling and asphaltting of roads
– Insurance cover encompassed ‘material damage’ – The policy
excluded damage due to normal wear and tear or gradual
deterioration as a result of atmospheric conditions – Insurance claim
D *on the ground that between 25.06.2007 and 5.7.2007 there was*
loss and damage to the roads due to “abnormal rainfall and water
logging” – Claim denied – Complaint before National Consumer
Commission alleging deficiency in service – Complaint was rejected
– On appeal, held: The evidence on record does not sustain the
basis of the claim – National Consumer Commission was right in
E *rejecting the claim.*

Dismissing the appeal, the Court

HELD: The basis of the claim which was submitted by the
appellant was that there was abnormal rainfall and water logging
between 25 June 2007 and 5 July 2007. Subsequently, in its
F letter dated 14 September 2007, the appellant claimed that it
was due to heavy rains on 29 June 2007 that the roads were
inundated and the top layer had been washed out. As per the
report of the Surveyor, there was only surface damage and no
evidence of the road having been washed out as a result of
G excessive monsoon rain or inundation. That apart, it is also noted
from the findings of the National Consumer Commission, the dates
on which the alleged damage is stated to have occurred, had not
witnessed excessive rainfall and the rain was within normal
parameters. The failure of the appellant to examine any expert
in regard to the cause of the damage is a significant omission
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which has been correctly relied upon by the National Consumer Commission. The insurance policy specifically excluded normal wear and tear. In order to establish that this was not a case involving normal wear and tear, the appellant sought to rely upon what it described as abnormal rainfall and water logging. The evidence on the record did not sustain the basis of such a claim. Therefore, the order passed by the National Consumer Commission does not suffer from any error. [Paras 12, 16, 17 and 18][984-G-H; 985-F-H; 986-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7315 of 2016

From the Judgment and Order dated 23.02.2016 of the National Consumer Disputes Redressal Commission, New Delhi in Consumer Complaint No. 58 of 2010

Anirudha Joshi, Abhishek Singh, Onkar Singh, Saurabh Mishra, Advs. for the Appellant.

Abhishek Mishra, Rajat Khattri, Vivek Kishore, Advs. for the Respondent.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

1. Delay condoned.

2. Admit.

3. This appeal arises from a judgment and order dated 23 February 2016 of the National Consumer Disputes Redressal Commission¹. The NCDRC rejected the complaint of the appellant alleging a deficiency of service in the rejection of a claim under an insurance policy.

4. The appellant was undertaking the resurfacing, metalling and asphaltting of roads in Nashik. An insurance policy was obtained by the appellant. The insurance cover encompassed ‘material damage’. Section 1 of the insurance policy was in the following terms:

“SECTION-1 MATERIAL DAMAGE

The Company hereby agrees with the insured (subject to the exclusions and conditions contained herein or endorsed hereon)

¹ “NCDRC”

A that if, at any time during the period of insurance stated in the said
Schedule, or during any further period of extension thereof the
property (except packing materials of any kind) or any part thereof
described in the said Schedule be lost, damaged or destroyed by
any cause, other than those specifically excluded hereunder, in a
manner necessitating replacement or repair the Company will pay
B or make good all such loss or damage upto an amount not
exceeding in respect of each of the items specified in the Schedule
the sum set opposite thereto and not exceeding in the whole the
total sum insured hereby.

C The Company will also reimburse the insured for the cost of
clearance and removal of debris following upon any event giving
rise to an admissible claim under this Policy but not exceeding in
all the sum (if any) set opposite thereto in the Schedule.”

D However, the exclusions to Section 1, *inter alia*, were to the
following effect:

“EXCLUSIONS TO SECTION – 1

The Company shall not, however, be liable for:

E c) normal wear and tear, gradual deterioration due to atmospheric
conditions or lack of use or obsolescence or otherwise, rust
scratching of painted or polished surfaces or breakage of glass;”

F 5. There were specific conditions applicable to Section 1. Among
the ‘major perils/Act of God perils’ described in Memo 8 was “Flood/
Inundation”.

G 6. The appellant submitted a claim on the ground that between 25
June 2007 and 5 July 2007, it had suffered a loss and damage to the
roads which had been worked upon due to “abnormal rainfall and water
logging”. By its letter dated 14 September 2007, the appellant stated
that due to heavy rains on 29 June 2007, the roads were inundated and
the top layer had been washed out.

H 7. By a communication dated 28 March 2008, the insurer rejected
the claim, *inter alia*, on the ground that the damage had been caused by
defective workmanship and materials and due to the failure to provide
an alternative route for traffic. Subsequently, after further

correspondence, the insurer informed the appellant on 13 May 2008 that the loss or damage to the roads had been caused due to (i) monsoon rains; and (ii) damage/peeling off of the top surface of the asphalt due to the plying of vehicular traffic on wet roads, resulting in wear and tear. The exclusion in the insurance policy of damage due to normal wear and tear or due to gradual deterioration as a result of atmospheric conditions was relied upon. A B

8. The report of the Surveyor, B.P. Shah & Associates, dated 21 March 2008, was in the following terms, insofar as is material:

“PROBABLE CAUSE:

According to the insured loss was caused due to heavy abnormal rains etc. Copy of their letter dated 28th July 2007 is enclosed herewith (Encl.4). C

What was observed was surface damages & neither any rain cuts nor erosion of base soil of the roads by flowing floodwater were seen. Top surface of the asphalt had peeled off/got damaged due to movement of traffic over a period of time on wet roads and normal wear & tear which also created few pot holes. Policy excludes normal wear & tear, gradual deterioration due to atmospheric conditions (Exclusion C under Section 1) & also damage due to movement of traffic, which is by no means fortuitous.” D E

The NCDRC rejected the consumer complaint on several grounds. It held that:

(i) The appellant had initially stated in its claim form that the loss had occurred between 25 June 2007 and 5 July 2007. In its letter dated 14 September 2007, the appellant claimed that due to heavy rains on 29 June 2007, the roads were inundated and the top layers were washed out. The report of the Surveyor indicated that the stand taken before it was that the damage had occurred on 2/3 July 2007. Thus, the appellant had not been consistent in the date of the alleged damage; F G

(ii) In breach of the obligation contained in the insurance policy which required that the damage should be immediately notified, intimation was furnished only on 9 July 2007 and there was no explanation for the delay in reporting the damage to the insurer; H

A (iii) According to the Surveyor, there was no evidence of any damage on account of flood water and only surface damage was found. The data of the Meteorological Department indicated minimal rains on the alleged dates of damage;

B (iv) No expert had been examined by the appellant in support of its claim that rainfall, to the extent that had occurred, would have resulted in severe damage to the road.

C 9. Mr. Anirudha Joshi, learned counsel appearing on behalf of the appellant, submits that the insurance policy covered damage due to ‘any cause whatsoever’. Hence, it was urged that whether or not the damage had been caused by excessive rainfall was really not material at all since the appellant was entitled to be indemnified for the damage which was sustained to the roads. In this regard, Section 1 of the insurance policy was relied upon, which has been extracted earlier.

D 10. On the alleged failure of the appellant to intimate the insurer of the cause of the loss or damage, learned counsel submitted that Clause 5 of the General Conditions stipulated that the insurer shall not be liable, in any case, when no notice has been received within fourteen days of the occurrence. In the present case, it was submitted that the notice on 9 July 2007 was within a period of fourteen days. On these grounds, it has been submitted that the reasons which have weighed with the NCDRC in dismissing the complaint are unsustainable.

F 11. On the other hand, it was urged on behalf of the insurer by Mr. Abhishek Mishra, learned counsel that the specific ground on which the claim was filed under the terms of the insurance policy was that there was abnormal rainfall and water logging. This was evidently in pursuance of the provisions of the insurance policy under which flood/inundation constituted the major perils which were within the purview of the insurance cover. Learned counsel has adverted to the claim form, the letter dated 14 September 2007 and the Surveyor’s report dated 21 March 2008. The basis of the claim was found to be false.

G 12. While analyzing the rival submissions, it must, at the outset, be noted that the basis of the claim which was submitted by the appellant was that there was abnormal rainfall and water logging between 25 June 2007 and 5 July 2007. Subsequently, in its letter dated 14 September 2007, the appellant claimed that it was due to heavy rains on 29 June

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2007 that the roads were inundated and the top layer had been washed out. A

13. While dealing with this submission, the NCDRC has made the following findings:

“As per the data quoted from the Meteorological Department, the rainfall was 15.2 mm on 25.6.2007, 9.2 mm on 26.6.2007, 0 mm on 27.6.2007, 5mm on 28.06.2007, 0 mm on 29.6.2007, 0 mm on 30.6.2007, 10.6 mm on 01.7.2007, 49.2 mm on 02.7.2007 and 116.6 mm on 30.7.2007.” B

14. Upon analysing the data which was placed before it, the NCDRC observed: C

“In fact, there was no rain at all on 29.6.2007 or even on 30.6.2007. In fact, the rainfall from 25.6.2007 to 01.7.2007 was nil or nominal. The rainfall on 02.7.2007 was 49.2 mm, whereas the rainfall on 03.7.2007 was 111.6 mm.”

15. But, it has been urged on behalf of the appellant that, whether or not, there was abnormal rain and water logging is irrelevant because the appellant was entitled to claim in terms of Section 1 of the insurance policy where damage had been caused by any cause other than what was specifically excluded. In this background, it is necessary to note that among the exclusions provided in the insurance policy was normal wear and tear and gradual deterioration due to atmospheric conditions. The case of the appellant was that it was due to excess rainfall that the roads were damaged. By necessary implication, the submission was that this would not constitute normal wear and tear in terms of the exclusions contained in the policy. D E F

16. We have adverted to the report of the Surveyor, which found that there was only surface damage and no evidence of the road having been washed out as a result of excessive monsoon rain or inundation.

17. That apart, as we have noted from the findings of the NCDRC, the dates on which the alleged damage is stated to have occurred had not witnessed excessive rainfall and the rain was within normal parameters. The failure of the appellant to examine any expert in regard to the cause of the damage is a significant omission which has been correctly relied upon by the NCDRC. The insurance policy specifically G

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A excluded normal wear and tear. In order to establish that this was not a case involving normal wear and tear, the appellant sought to rely upon what it described as abnormal rainfall and water logging. The evidence on the record did not sustain the basis of such a claim.

18. In this view of the matter and for the reasons we have indicated,
B we are unable to come to the conclusion that the order passed by the NCDRC suffered from any error. We accordingly do not find any reason to entertain the appeal. The appeal is dismissed.

19. Pending application, if any, stands disposed of.

C

Kalpana K. Tripathy

Appeal dismissed.