

CASE DETAILS

M/S. ISNAR AQUA FARMS

v.

UNITED INDIA INSURANCE CO. LTD.

(Civil Appeal No. 1077 of 2013)

AUGUST 08, 2023

[A. S. BOPANNA AND SANJAY KUMAR, JJ.]

HEADNOTES

Issue for consideration : Appellant, which undertook prawn cultivation, had obtained insurance coverage from respondent under a prawn insurance policy. Major outbreak of a bacterial disease called ‘White Spot Disease’ led to mass mortality of the prawns in the appellant’s farm. The insurance claim submitted by appellant was repudiated by respondent-insurance company in its entirety, which was challenged before the National Consumer Disputes Redressal Commission (NCDRC); and, in this second round of litigation before this Court, the further issue was whether the claim amount and interest quantified by NCDRC was just and equitable.

Insurance – Requirement of uberrima fides:

Held : *Uberrima fides*, i.e., good faith, is the requirement in a contract of insurance – This obligation and duty would rest on both parties not only at the inception of the contract of insurance but throughout its existence and even thereafter – On facts, despite the second surveyors report dated 22.09.1995 quantifying the appellant’s loss at ₹17,64,097/-, the respondent insurance company chose to repudiate the appellant’s claim in its entirety, basing on the wholly unfounded assertion that the appellant had failed to maintain and provide proper records – This was also despite the clear finding of its earlier surveyors, M/s. Frank and Fair Investigators, that total loss was suffered by the appellant – Further, having attached great importance to the death certificate given by the MPEDA/State Fisheries Department in its policy and its prescribed claim procedure, the insurance company baldly brushed aside the Death Certificate dated 01.05.1995 furnished by the officials of the State Fisheries Department

at Visakhapatnam – It is not open to an insurance company to ignore or fail to act upon a certificate or document that it had itself called for from independent and impartial authorities, subject to just exceptions, merely because it is averse to it or to its detriment – Having undertaken to indemnify an insured against possible loss in specified situations, an insurance company is expected to make good on its promise in a bonafide and fair manner and not just care for and cater to its own profits. [Paras 12 and 13]

Insurance – Computation of admissible loss – Methodology:

Held : On facts, the insurance policy itself provided the method of computation of the admissible loss –There were three ways of computing the admissible loss (Input Cost Method; Unit Cost Method and Fortnightly Valuation Method) – NCDRC had assessed the appellant's total loss as ₹30,69,486.80 and awarded simple interest @ 10% p.a. – However, the values of loss worked out by the appellant were: ₹75,98,361/- (as per Input Cost Method); ₹75,87,750/- (as per Unit Cost Method); and ₹79,20,000/- (as per Fortnightly Valuation Method) – Computations made by appellant are accurate – Appellant would be entitled to lowest of the aforestated three valuations, viz., ₹75,87,750/- – Further, delay on part of insurance company in settling the appellant's claim fairly and in a timely manner warrants that it pays interest on the amount due and payable to appellant – Interest rate fixed by NCDRC, viz, 10% is just and equitable. [Paras 7, 8 and 14]

LIST OF CITATIONS AND OTHER REFERENCES

General Assurance Society Limited v. Chandumull Jain and another
AIR 1966 SC 1644 : [1966] SCR 500 – followed.

Jacob Punnen and another v. United India Insurance Company Limited(2022) 3 SCC 655; *Modern Insulators Limited v. Oriental Insurance Company Limited* (2000) 2 SCC 734 : [2000] 1 SCR 1076 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1077 of 2013.

From the Judgment and Order dated 21.07.2011 of the National Consumer Disputes Redressal Commission, Delhi in Original Petition No. 55 of 1996.

Appearances:

Sridher Potaraju, K. P. Sundar Rao, Aayush, Rajat Srivastava, Sumit Panwar, C. K. Rai, Advs. for the Appellant.

Pramit Saxena, A. K. De, Zahid Ali Khan, Ms. Ananya De, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SANJAY KUMAR, J.

1. Being the second round of litigation before this Court, the issues that arise for consideration in this appeal fall within a narrow compass.

2. During the year 1994, the appellant, a registered partnership firm, undertook prawn cultivation in an extent of 100 acres, with a water-spread area of 68 acres, at Vakapadu Village in S. Rayavaram Mandal of erstwhile Visakhapatnam District. It obtained insurance coverage from the respondent Insurance Company for a period of five months from 7-10.09.1994 in relation to all the 37 ponds in its operation, covering 22,67,000 prawns, for a maximum insured value of ₹1,20,00,000/- . The appellant paid a total premium of ₹2,44,800/- along with sales tax of ₹12,240/- and was issued a ‘Brackish Water Prawn Insurance Policy’ by the respondent Insurance Company on 25.11.1994. At the time of insurance, the prawn larvae were stated to be at PL 20 stage and the date of their stocking in the ponds was 7-10.09.1994. The insurance policy indicated that the expected yield for 22,67,000 prawn larvae, in terms of weight, was 80.400 kgs. and the average body weight of the prawns, at full size, ranged from 11 grams to 33.5 grams each. The expected dates of harvesting were from 07.02.1995 to 11.02.1995. The policy provided that the insurance period would be split up into fortnights and each calendar month was to be treated as two fortnights, irrespective of the number of days in the month. The policy further stipulated that a loss due to any peril covered thereunder would be treated as a total loss if the loss percentage at any particular stage was equal to or exceeded

80% of the total population of the prawns in the pond and no claim would be admissible under the policy if the loss percentage in a pond due to any of the covered perils was below 80%. A separate table was appended to the policy, indicating the maximum liability, in terms of percentages of the sum insured, during the ten fortnights covered by the insurance policy.

3. While so, there was a major outbreak of a bacterial disease called 'White Spot Disease' along the east coast of Andhra Pradesh, which led to mass mortality of prawns in the area, including the appellant's farm. This led to invocation of the insurance policy by the appellant. However, upon submission of a claim thereunder by the appellant and after two separate surveys were conducted at its own behest, the respondent insurance company repudiated the appellant's claim in its entirety, under letter dated 15.07.1997. According to the insurance company, there was a breach by the appellant of the policy conditions, inasmuch as records were not maintained properly and accurately; records were not produced at the time of the survey; and whatever records were produced were unsubstantiated.

4. Aggrieved thereby, the appellant instituted Original Petition No. 55 of 1996 before the National Consumer Disputes Redressal Commission, New Delhi [for brevity, 'the NCDRC']. The appellant prayed for a sum of ₹75,98,362/- towards the loss suffered by it along with interest thereon @ 24% per annum and compensation of ₹10,00,000/-. By common order dated 29.04.2004, the NCDRC disposed of the appellant's Original Petition No. 55 of 1996 along with Original Petition No. 54 of 1996 filed against the respondent insurance company by one Mr. V.V. Rama Raju, a similarly situated prawn cultivator from Visakhapatnam, Andhra Pradesh. The NCDRC recorded a clear finding therein that the repudiation of the appellant's claim by the respondent insurance company was unjustifiable. It was noted that insurance coverage was provided after thorough inspection of the appellant's ponds by the senior officers of the insurance company on 25.11.1994, who were fully satisfied in all respects, and only thereafter, the policy was issued upon payment of the premium. The NCDRC therefore opined that it was totally unreasonable on the part of the insurance company to allege that the appellant was not maintaining proper records on 2-3.12.1994. Reference was made to the two surveyors' reports and accepting the salvage value suggested by one of them, the NCDRC held that the appellant was entitled to a sum of ₹17,64,097/- with interest

thereon @ 9% per annum from 01.07.1995 till realization. Original Petition No. 54 of 1996 filed by Mr. V.V. Rama Raju, the other prawn cultivator, was also disposed of on similar lines, awarding him a sum of ₹24,97,609/- with interest thereon @ 9% per annum.

5. Dissatisfied with the common order passed by the NCDRC, both the claimants and the insurance company approached this Court, by way of a batch of appeals, viz., Civil Appeal Nos. 5294, 7091, 8051 and 4182 of 2004. By order dated 10.11.2009, this Court disposed of the appeals, opining that the NCDRC had not calculated the compensation properly, including the interest to be paid to the claimants. The matter was accordingly remanded to the NCDRC for an expeditious decision in that regard.

6. It is on the strength of this remand order that the NCDRC again undertook the exercise of quantification of the amount to be paid to the claimants and the interest to be awarded to them, leading to the order impugned presently by the appellant. Insofar as the appellant is concerned, the NCDRC took note of the survey report dated 01.09.1995 procured by the insurance company from M/s. Frank & Fair Investigators, Rajahmundry, wherein it was confirmed that it was a case of severe loss due to disease. The NCDRC also took note of the Death Certificate dated 01.05.1995 issued by the Regional Deputy Director of Fisheries, Andhra Pradesh, Visakhapatnam, and the Inspector of the Fisheries Branch, Visakhapatnam, which certified that the total weight of dead prawns was 50,585 kgs.; that the average body weight of the dead prawns was 17.78 grams each; and that the total value of the prawns at the time of death, in terms of incurred expenses, was ₹94,97,952/-. The cause of death of the prawns was noted in this certificate as 'White Spot Disease'. As regards the second survey report dated 22.09.1995 procured by the insurance company from the team comprising A.R. Rao, P.S. Ramnathan and B. Nageswara Rao, the NCDRC noted that several conclusions/remarks made therein were in the nature of value judgments/surmises, which were not supported by the evidence on record or even the contents of the report itself. The observation of these surveyors to the effect that the records were not submitted by all or any of the farmers, including the appellant, was dismissed by the NCDRC as a 'sweeping' remark. Having stated so, the NCDRC surprisingly accepted the estimation of the average body weight of each prawn by these surveyors at 9.086 grams and their valuation of the total loss, based thereon, as

₹30,69,486.80. The NCDRC however rejected the deductions from this amount proposed by these surveyors and assessed the appellant's total loss as 30,69,486.80. Simple interest was awarded thereon @ 10% per annum from the date of the complaint. Dissatisfied with the quantum of the amount and the interest awarded thereon, the appellant is again before this Court.

7. Significantly, the insurance policy itself provided the method of computation of the admissible loss. It stated as follows:

"In the event of loss, all loss adjustment will be made on declared value/unit cost basis or input cost (production cost) basis, whichever is less.

For a loss to be admissible the agreed mortality rate will be on the residual stock as on date anterior to loss. The residual quantity being as per the cumulative mortality percentage for the applicable fortnight as per the valuation table or actual as per pond record, whichever is less."

8. Therefore, the three ways of computing the admissible loss are: -

- (i) Input Cost Method: 80% of the value of inputs on the date of the loss.
- (ii) Unit Cost Method: The actual survival number is calculated on the date anterior to the loss. The prevailing average body weight is applied to that number and then multiplied by the unit cost of 150 per kilogram.
- (iii) Fortnightly Valuation Method: As the crop period was up to ten fortnights, the maximum claim admissible in the first fortnight is 25% of the sum assured and scales up through the fortnights proportionately.

9. The admissible loss is the lowest of the values computed on the strength of the above three calculation methods. The following values of loss were worked out by the appellant: Input Cost Method – ₹75,98,361/-; Unit Cost Method - ₹75,87,750/-; and Fortnightly Valuation Method – ₹79,20,000/- . The respondent insurance company, however, disputes the same. Thus, the issue primarily boils down to quantifying the insurance amount payable to the appellant, in terms of the aforestated three methodologies.

10. As noted hereinbefore, the NCDRC deemed it fit to place reliance on a part of the report dated 22.09.1995 of the three surveyors, despite rejecting several observations made therein as baseless value judgments and surmises. In such a situation, the average body weight of each prawn assessed by those valuers was equally suspect. It may also be noted that the earlier report dated 01.09.1995 of M/s. Frank & Fair Investigators had estimated the average body weight of the dead prawns/salvaged prawns to be between 10 grams to 12 grams each. This report also recorded that Professor M.Rama Seshaiah from the Department of Marine Living Resources had visited the appellant's prawn farm on 02.12.1994 and had observed, when the cast nets were hauled in 6 to 8 ponds, that the salvaged prawns/dead prawns were not more than 12 grams in weight each. Similarly, Dr. G. Sudhakar Rao, Scientist, CMERI, had stated that the average weight of the dead prawns was not more than 10 grams each. It is an admitted fact that the average body weight of the prawns would decrease drastically upon death. Therefore, if the earlier survey report placed the average body weight of the dead prawns between 10 grams to 12 grams each, their weight while they were alive would have been far higher. This estimation is fortified by the Death Certificate dated 01.05.1995 issued by the Directorate of Fisheries, Andhra Pradesh, Visakhapatnam, which confirmed that the average weight of each prawn at the time of death/loss would have been 17.78 grams. This figure is more logical and acceptable, as the insurance policy itself envisaged the average body weight of the prawns to go up to 33 grams at the time of yield, which was just two months after the outbreak of the fatal disease.

11. The respondent insurance company seeks to wash its hands off the aforestated Death Certificate dated 01.05.1995 and dismiss it altogether. It may, however, be noted that in its written statement filed before the NCDRC, the insurance company had itself stated that it was the duty of the claimant/insured to obtain the death certificate from the Marine Products Export Development Authority (MPEDA), Ministry of Commerce and Industry, Government of India, or from the State Fisheries Department. Reference was made by the insurance company to its letter dated 17.04.1995 addressed to the appellant, wherein it had pointed out that it was clearly mentioned in the claim form that the death certificate must be signed either by the MPEDA authorities or by the State Fisheries Department and called upon the appellant to obtain the certificate from either of the authorities and submit it to the company for further action. In the

light of the insurance company's own direction and its tacit recognition of the value and importance to be attached to the death certificate from either of these independent bodies, it is not open to it to dismiss the Death Certificate dated 01.05.1995 issued by the officials of the Directorate of Fisheries, Visakhapatnam. Pertinent to note, under Clause 10 of the insurance policy, the claims procedure required the insured/claimant to furnish a fully completed claim form along with a death certificate with details, certified by officials of the Directorate of Fisheries/MPEDA.

12. Be it noted, in ***General Assurance Society Limited Vs. Chandumull Jain and another*** [AIR 1966 SC 1644], a Constitution Bench had observed, in the context of the insured, that *uberrima fides*, i.e., good faith, is the requirement in a contract of insurance. More recently, in ***Jacob Punnen and another Vs. United India Insurance Company Limited*** [(2022) 3 SCC 655], this Court affirmed and reiterated the edict laid down earlier in ***Modern Insulators Limited Vs. Oriental Insurance Company Limited*** [(2000) 2 SCC 734], that it is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties; that good faith forbids either party from non-disclosure of the facts which the party knows; and that the insured has a duty to disclose and similarly it is the duty of the insurance company to disclose all material facts within their knowledge since the obligation of good faith applies to both equally. This obligation and duty would rest on both parties not only at the inception of the contract of insurance but throughout its existence and even thereafter.

13. Applying this standard presently, it may be noted that despite the second surveyors report dated 22.09.1995 quantifying the appellant's loss at ₹17,64,097/-, the respondent insurance company chose to repudiate the appellant's claim in its entirety, basing on the wholly unfounded assertion that the appellant had failed to maintain and provide proper records. This was also despite the clear finding of its earlier surveyors, M/s. Frank and Fair Investigators, that total loss was suffered by the appellant. Further, having attached great importance to the death certificate given by the MPEDA/ State Fisheries Department in its policy and its prescribed claim procedure, the insurance company baldly brushed aside the Death Certificate dated 01.05.1995 furnished by the officials of the State Fisheries Department at Visakhapatnam. Merely because the contents thereof were not to its liking,

the insurance company could not have ignored the same and swept it under the carpet. More so, as such certification was being made by impartial and independent bodies of significant stature and that, perhaps, was precisely the reason why the insurance company had attached such importance to it in its norms. In any event, it is not open to an insurance company to ignore or fail to act upon a certificate or document that it had itself called for from independent and impartial authorities, subject to just exceptions, merely because it is averse to it or to its detriment. Having undertaken to indemnify an insured against possible loss in specified situations, an insurance company is expected to make good on its promise in a bonafide and fair manner and not just care for and cater to its own profits. In effect, the action of the insurance company in refusing to act upon the Death Certificate dated 01.05.1995 issued by the Directorate of Fisheries, Visakhapatnam, cannot be countenanced.

14. Computations made by the appellant and recorded by the NCDRC in paragraph 21 of the order under challenge, viz, ₹ 75,98,361/- (as per Input Cost Method) and ₹ 75,87,750/- (as per Unit Cost Method) are found to be accurate, in terms of the figures mentioned in the Death Certificate dated 01.05.1995. As per the Fortnightly Valuation Method, the loss would work out to ₹ 79,20,000/-. Admittedly, the appellant would be entitled to the lowest of the aforestated three valuations, viz., ₹ 75,87,750/-. As the respondent company would have already paid the appellant the amount quantified by the NCDRC in the impugned order, viz., ₹ 30,69,486.80, the appellant would be entitled to receive the balance amount of ₹ 45,18,263.20. The delay on the part of the insurance company in settling the appellant's claim fairly and in a timely manner warrants that it pays interest on the amount due and payable to the appellant in terms of this order.

15. Though the appellant claims that bank deposit interest rates ranged between 12% to 13% during the financial year 1995-1996, we find from the RBI statement, relied upon in this regard, that the interest rate for the financial year 1994-95 was 11% and for the year 1996-97, it was between 11% to 13%. That being so, the interest rate fixed by the NCDRC, viz, 10% is held to be just and equitable.

16. The sum of ₹ 45,18,263.20 shall be remitted by the respondent insurance company to the appellant, with simple interest thereon @ 10% from the date of the complaint till the date of realization, within six weeks from today.

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The appeal is disposed of accordingly.

Parties shall bear their own costs.

Headnotes prepared by:
Bibhuti Bhushan Bose

Appeal disposed of.