Saurashtra Chemicals Ltd.(Presently ... vs National Insurance Co. Ltd. on 13 December, 2019

Equivalent citations: AIR 2020 SUPREME COURT 548, AIRONLINE 2019 SC 1940, 2020 (2) ABR 222, 2020 (1) AJR 799, (2019) 17 SCALE 746, (2019) 4 ACC 757, (2020) 1 CGLJ 107, (2020) 1 RECCIVR 559, (2020) 1 WLC(SC)CVL 241

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Bench: Krishna Murari, Mohan M. Shantanagoudar

REP

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2059 OF 2015

Saurashtra Chemicals Ltd.
(Presently known as Saurashtra
Chemicals Division of Nirma Ltd.) ...APPEL

VERSUS

National Insurance Co. Ltd ...RESPOND

JUDGMENT

KRISHNA MURARI, J.

The appellant purchased a standard fire and special perils policy from the respondent National Insurance Company Ltd. thereby insuring the risk of loss/damage to the stock of coal and lignite stored in its factory compound. An additional premium of Rs. 59,200/- was paid by the appellant company so as to cover the risk of loss of the aforesaid stock on account of spontaneous combustion. The appellant was declared a Sick Unit and was accordingly registered under SICA. The factory remained closed from 17.02.2006 to 09.08.2006 and was re-opened on 10.08.2006.

2. After re-opening it was noticed between the period from 11.8.2006 to 20.8.2006 that some amount of stock of coal and lignite has been diminished/destroyed on account of spontaneous combustion, causing loss and damage. Intimation in this regard was sent to the respondent-insurer on 12.09.2006.

3. Pursuant to the claim made, a surveyor was appointed who visited the premises of the appellant on 18.09.2006 and sought certain details, which were provided on 28.11.2006. After carrying out the requisite survey, the surveyor submitted his report on 11.04.2007 assessing total loss to the tune of Rs. 63,43,679/-.

4. The claim lodged by the appellant was however repudiated by the respondent-insurer vide communication dated 27.07.2007 on the ground that since spontaneous combustion did not result into fire thus, loss had not been caused by fire as stipulated in the relevant endorsement with respect to spontaneous combustion of the insurance policy. The appellant was further informed through the letter that unless spontaneous combustion results into fire, there is no liability under the policy.

5. On denial of the claim the appellant approached the National Consumer Disputes Redressal Commission (hereinafter referred to as the NCDRC) vide consumer complaint no. 115 of 2007 seeking following reliefs:-

> (a) To direct the respondent company to allow the demanded claim of Rs. 98,46,732/- on account of loss suffered by it on account of loss of stock of goods insured with the respondent;
>
> (b) To award compensation of a sum of Rs. 25,00,000/- on account of pain and suffering suffered by the appellant on account of deficient service provided by the respondent company;
>
> (c) Award of sum of Rs. 11,81,608/- being interest @ 18% from the date of the claim till the filing of the petition;
>
> (d) Award further interests @ 18% pendent lite on amounts specified in Clause (a) and (b);
>
> (e) Award cost of Rs. 1,00,000/- to the complainant;

The complaint was resisted by the Insurer on three main grounds:-

> (i) No claim was payable under the terms and conditions on which policy was issued inasmuch as destruction or damage, if any, caused to the property by fire on account of its own fermentation, natural heating or spontaneous combustion or undergoing natural heating or drying process is not covered.
>
> (ii) Since the factory remained closed from 17.02.2006 to 09.08.2006, the insurance cover ceased to operate in view of the condition no. 3 of the policy which provides that unless the insured has obtained the prior sanction of the company in this regard, the insurance would cease to operate as regards the property affected :

(a) if the trade or manufacture carried on be altered or if the nature of occupation of or other circumstances affecting the building insured or containing the property insured be changed in such a way as to increase the risk of loss or damage.

(b) if the building insured or containing the insured property becomes unoccupied and so remains for a period of more than 30 days.

(iii) Intimation of claim was sent with considerable delay of over a month thereby violating condition no. 6(i) of the General Conditions of Policy.

6. Insofar as ground nos. (i) and (ii) are concerned, the same were not accepted by NCDRC and were decided against the respondent-insurer. The said two grounds (i) and (ii) are not in issue before us in this appeal as such we need not enter into the same.

7. However ground no. (iii) raised by the respondent-insurer in defence to the claim of the appellant found favour with the NCDRC and the complaint was dismissed on the premise that there was breach of conditions incorporated in Clause 6(i) of the General Conditions of Policy. Under Clause 6(i) the intimation of loss and damage was required to be given in writing by way of notice within 15 days of the occurance thereof. It is an admitted case between the parties that intimation of loss/damage was given by the appellant to the respondent- insurer for the first time on 12.09.2006 and a claim for loss for a sum of Rs. 1.4 Crores to 1.5 Crores was made vide letter dated 14.09.2006.

8. The NCDRC rejected the claim holding that since the complainant (Appellant herein) had contravened Clause 6(i) of the General Conditions of Policy, no claim is payable.

9. We have heard Sh. Nikhil Goel, Learned Counsel for the appellant and Sh. Yogesh Malhotra for the respondent.

10. It is submitted by Learned Counsel for the appellant that the NCDRC has erred in holding that the claim stands defeated because of delayed intimation as postulated in Clause 6(i) of the General Conditions of Policy. It is also contended that, since respondent company had appointed a surveyor, its right to advance the plea, with respect to the claim being not maintainable because of delayed intimation as envisaged in Clause 6(i), stood waived. It is further contended that since the letter of repudiation does not even remotely refer to delayed intimation or delayed claim, as postulated in Clause 6(i), the said ground cannot be taken as a defence to the claim. Reliance in support of the above contentions is placed upon judgment rendered by this Court in Galada Power and Telecommunication Ltd. vs. United India Insurance Company Ltd & Another.1

11. Mr. Yogesh Malhotra, Learned Counsel for the respondent-insurer while supporting the order passed by the NCDRC contended that by mere appointment of a surveyor, the insurer is not estopped from raising a plea of the violation of a condition warranting repudiation of the claim. Hence there is no waiver of the condition relating to delay in intimation as stipulated in the General Conditions of Policy. It is further submitted that the judgment rendered by the two judge Bench of this Court in the case of Galada (Supra) was _____ (2016) 14 SCC 161

considered by a three Judge Bench in the case of Sonell Clocks and Gifts Ltd. v/s New India Assurance Company Ltd.2 and was distinguished on the ground that dictum in Galada case was in context of peculiar facts of that case.

12. We have considered the argument advanced by Learned Counsel at the bar.

The twin issues which arise for consideration in this appeal are:-

> (1) Whether the respondent-insurer had waived the condition relating to delay in intimation and lodging of the claim, by appointing a surveyor.
>
> (2) Whether in the absence of any mention, of aspect of delay in intimation and violation of conditions of Clause 6(i) of General Conditions of Policy, in the repudiation letter, the same could be taken as defence before the NCDRC.

13. It is not disputed that on the basis of the communication made by the appellant, the respondent-insurer appointed a surveyor on 18.09.2006 without any caveat and qualification.

14. The Surveyor submitted his report dated 11.04.2007 assessing total loss to the tune of Rs. 63,43,679/-. Subsequently, vide letter dated 27.07.2007 the _____ (2018) 9 SCC 784 respondent-insurer repudiated the claim by stating as under:-

> M/s Saurashtra Chemicals Ltd.
>
> Nirma House, Ashram Road, Ahmedabad, Kind Attn: Sh. Deepak Shah, Company Secretary.
>
> Dear Sir, Re:- Policy No. 301200/11/06/3300000033 Claim No. 301200/33/37/2007 Loss/Damage due to Spontaneous Combustion to Lignite and Coal.
>
> This has reference to the claim lodged by you as above.
>
> On scrutiny of survey reports, various claim documents, the nature cause and circumstances of the loss, it is noticed that in the instant case the Spontaneous Combustion has occurred, but it did not result into the fire and loss has not been caused by fire only as stipulated in the relevant endorsement of spontaneous combustion.
>
> Further, the spontaneous combustion endorsement is clear and unambiguous in this regard and unless the spontaneous combustion results into fire, there is no liability under the policy.

> In view of the above the competent authority has decided to repudiate the said claim which please note.
>
> Sd/-
>
> (George Valamchery) Sr. Divisional Manager.

15. As is evident from the repudiation letter there is no reference to any of the aspects enumerated in Clause 6(i) of the General Conditions of Policy which reads as under:-

> "6(i) On the happening of any loss or damage, the insured shall forthwith give notice thereof to the company and shall within 15 days after the loss or damage or such further time as the company may in writing allow in that behalf deliver to the company."

16. Insofar as issue (1) is concerned, a two Judge Bench of this Court in the case of Galada (supra) where despite violation of duration clause stipulated in Clause 5(3) to Clause 5(5) of the policy insurance company had appointed a surveyor held as under:-

> "13. The National Commission has relied upon Clause 5 and on that basis has rejected the claim by putting the blame on the complainant. The letter of repudiation dated 20-9-1999, which we have reproduced hereinbefore, interestingly, does not whisper a single word with regard to delay or, in fact, does not refer at all to the duration clause. What has been stated in the letter of repudiation is that the claim lodged by the complainant does not fall under the purview of transit loss because of the subsequent investigation report. It is evincible, the insurer had taken cognizance of the communication made by the Appellant and nominated a surveyor to verify the loss. Once the said exercise has been undertaken, we are disposed to think that the insurer could not have been allowed to take a stand that the claim is hit by the clause pertaining to duration.....
>
> 18. In the instant case, the insurer was in custody of the policy.

It had prescribed the clause relating to duration. It was very much aware about the stipulation made in Clauses 5(3) to 5(5), but despite the stipulations therein, it appointed a surveyor. Additionally, as has been stated earlier, in the letter of repudiation, it only stated that the claim lodged by the insured was not falling under the purview of transit loss. Thus, by positive action, the insurer has waived its right to advance the plea that the claim was not entertainable because conditions enumerated in duration clause were not satisfied. In our considered opinion, the National Commission could not have placed reliance on the said terms to come to the conclusion that there was no policy cover in existence and that the risks stood not covered after delivery of goods to the consignee."

17. However, the dictum in Galada case (supra) came up for consideration before a three Judge Bench of this Court in the case of Sonnel Clocks and Gifts Ltd. (supra) and it was distinguished on the ground that dictum in Galada is in context of the peculiar facts and circumstances of that case and does not lay down that on appointment of the surveyor, the insurer is estopped from raising of plea of violation of condition stipulated in the insurance policy. It may be relevant to extract the following from the said report:-

> "20. The Respondent has rightly pointed out the other distinguishing features in the present case. To wit, in that case [Galada], the Court had considered Clause 5 of a Marine Insurance Policy wherein the issue was whether the insurance cover itself had extinguished by efflux of time and that the intimation given by the insured to the insurer was not made within 7 days of arrival of the vehicle at the destination mentioned in the policy. According to the insurer, on expiry of 7 days from delivery the insurance cover stood perished and no cover would subsist beyond the said 7 days' period. It is in that context, the Court noted that appointment of the surveyor by the insurer beyond the said period can be construed as an act of waiver by the insurer of the position that the policy stands extinguished. In other words, appointment of a surveyor by the insurer was interpreted as a manifestation of the stand of the insurer that the insurance cover still subsists. This is evident from the dictum in para 13 of the reported decision as the Court noted that once a surveyor was nominated to verify the loss, the insurer could not be allowed to take a stand that the claim is hit by the clause pertaining to duration and more so because of absence of any mention in the letter of repudiation. Thus, it went on to hold that from the positive conduct of the insurer in unequivocally appointing a surveyor, the insurer had waived the right which was in its favour under the duration clause.
>
> 21. The expression "duration" is of some significance which is reflective of the existence or otherwise of the policy itself. In the present case, there is no dispute about the subsistence of the policy but is one of violation of Condition 6 of the policy.

Furthermore, in the present case the controversy will have to be answered on the basis of Standard Fire and Special Perils Policy relatable to Condition 6 obligating the insured to give forthwith intimation of the loss to the insurer. The two clauses are materially different and relate to two different and distinct insurance policies. In other words, Clause 5 of the Marine Insurance Policy and Clause 6 of the present policy are incomparable being qualitatively different.

22. To put it differently, Galada case was not a case which considered repudiation based on a premise or a reason similar to Condition 6 of the present policy and a specific plea taken by the insurer in that behalf in the repudiation letter itself. Notably, Clause 5 of the Marine Insurance Policy which was the subject- matter in Galada case did not have a negative covenant as in this case in the proviso to Condition 6 of the subject policy. The fulfilment of the stipulation in Clause 6 of the General Conditions of the Policy is the sine qua non to maintain a valid claim under the policy.

23. We, therefore, agree with the Respondent that the dictum in Galada case is in the context of the facts of that case and does not lay down that on the appointment of a surveyor, per se, the insurer is estopped from raising a plea of violation of the condition warranting a repudiation of the claim. The factum of waiver has to be gathered from the totality of the obtaining circumstances." (Emphasis supplied)

18. In view of the law laid down by the three Judge Bench in the Sonnel Clocks (supra), the argument that by appointing a surveyor the respondent- insurer is estopped from raising the plea of violation of condition prescribing a time limit for intimation/lodging of the claim, has no legs to stand. Thus issue no. (1) is answered accordingly.

19. Insofar as issue no. (2) is concerned it is undisputed that the letter of repudiation did not even remotely mention anything about violation of duration clause stipulated in Clause (6) (i) of the General Conditions of Policy. The Respondent-insurer repudiated the claim solely on the ground that since spontaneous combustion did not result into fire and loss had not been caused by fire as stipulated by policy conditions, there was no liability under the policy. It was for the first time the respondent-insurer raised the issue of delayed intimation of claim and violation of stipulation of Clause 6(i) of the General Conditions of Policy in its reply filed before NCDRC.

20. This court in the case of Galada Power Ltd. (supra) has elucidated upon issue (2) as under :

> "It is evincible, the insurer had taken cognizance of the communication made by the Appellant and nominated a surveyor to verify the loss. Once the said exercise has been undertaken, we are disposed to think that the insurer could not have been allowed to take a stand that the claim is hit by the clause pertaining to duration. In the absence of any mention in the letter of repudiation and also from the conduct of the insurer in appointing a surveyor, it can safely be concluded that the insurer had waived the right which was in its favour under the duration clause. In this regard, Mr. Mukherjee, learned Senior Counsel appearing for the Appellant has commended us to a decision of the High Court of Delhi in Krishna Wanti v. LIC, wherein the High Court has taken note of the fact that if the letter of repudiation did not mention an aspect, the same could not be taken as a stand when the matter is decided. We approve the said view." (Emphasis supplied)

21. Undoubtedly, as mentioned supra, this Court in Sonnel Clocks (supra) has distinguished Galada Power on facts and held that the appointment of a surveyor cannot, as a matter of law, be construed as a waiver of the terms and conditions of the insurance policy. However, in Sonnel Clocks, the insurer had taken a specific plea in the repudiation letter that the loss was not conveyed within the stipulated period. Hence the singular issue before this Court was only whether the insurer had waived the condition as to delay in intimation by appointing a surveyor. This Court in Sonnel Clocks did not have the occasion to consider whether the insurance company could have raised delay as a ground for repudiation for the first time before the consumer forum.

22. Hence we are of the considered opinion that the law as laid down in 'Galada' 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.

23. Admittedly in the case at hand there was no reference of delay in intimation or lodging of the claim as stipulated in Clause 6(i) of the General Conditions of Policy in the repudiation letter.

24. The NCDRC has failed to take into consideration this aspect of the matter and, therefore, cannot be held to be justified in rejecting the claim of the appellant, on that ground.

25. In view of the aforesaid analysis the appeal stands allowed and the impugned judgment and the order of the NCDRC is set aside. The Respondent- insurer is directed to make payment of Rs. 63,43,679/-, as assessed by the surveyor, to the appellant with interest @ 8% from the date of the filing of the claim of petition till date of payment. The payment, as above, be made within eight weeks from today.

26. There will be no order as to costs.

.....J. (MOHAN M. SHANTANAGOUDAR) .....J. (KRISHNA MURARI) NEW DELHI;

DECEMBER 13, 2019.