# United India Insurance Co. Ltd vs M.K.J. Corporation on 21 August, 1996

## Equivalent citations: AIR 1997 SUPREME COURT 408, 1996 AIR SCW 3787, 1997 BRLJ 14, 1997 CCJ 9, (1996) 7 JT 503 (SC), 1996 (7) JT 503, 1996 (6) SCC 428, (1996) 3 PUN LR 720, 1996 (114) PUN LR 720, (1997) 3 LANDLR 140, (1997) 2 MAHLR 191, (1997) 1 RECCIVR 32, (1996) 3 ICC 829, (1996) 2 APLJ 82, (1997) 1 BLJ 276, (1997) 1 CIVLJ 539, (1998) 92 COMCAS 331, (1996) 3 CURCC 365, (1996) 3 CPJ 8

## Author: K. Ramaswamy

## Bench: K. Ramaswamy

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           CASE NO.:
Appeal (civil)  6075-6076 of 1995

PETITIONER:
UNITED INDIA INSURANCE CO. LTD.

RESPONDENT:
M.K.J. CORPORATION

DATE OF JUDGMENT: 21/08/1996

BENCH:
K. RAMASWAMY & G.B. PATTANAIK

JUDGMENT:
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JUDGMENT The following Order of the Court was delivered : We have heard learned counsel on both sides.

Both the appeals are heard and disposed of together since claims arising out of them arise out of the same cause of action.

These appeals arise from the orders dated January 12, 1995 of the National Consumer Redressal Commission (the "Commission", for short) made in Original Petition No. 62 and 102 of 1993. Admittedly, the respon-dent was holding two policies. First policy covered the period from March 31,1986 to March 31, 1987 and the second policy covered the period from April 1, 1987 to March 31, 1988. During the said period, admittedly, due to the employees' strike the leather in process was damaged due to the spoilage. The respondent laid claims for damages caused during the first period for a sum of Rs. 4,99, 453.23 and for the second period for Rs. 5,000 amount to the total of Rs. 5,04,453.23 with interest from the date of the claim. The Tribunal accepted the claim and directed

payment of the said amount with interest at 18% from one month after the date of the claim. The respondent's appeal Nos. 11443-44/95, though arise from the im-pugned order, is for the claim of consequential loss in the sum of Rs. 14,00,000.

Shri Suri, the learned counsel for the appellant 'Company contended that insurance coverage is only for riots and strikes and malicious damages and spoilage "under spoilage item 8" clearly enumerates as under :

> "Stocks or leather of all kinds in process during soaking, liming, fleshing tamning, wet blue, sammarying, splitting, shaving, dye liquer-ing setting, vacumming drying,"

The learned counsel relying upon these clauses, seeks to read clause (b) of "Section 2 - Fire Policy 'C of Part II - Fire Policies. Endorsements, Clauses and Warranties" as recommended by Tariff Advisory Committee constituted Under Section 64(U) of the Insurance Act, 1958. Since these recommendations are made by the Advisory Committee which is a statutory authority binds the appellant-insurer they are integral part of the policies referred to hereinbefore. Resultantly, by operation of Clause (b), the Insurance does not cover if loss or damage results from total or partial cessation of work or the retarding or interruption or cessation of any process of operation or omissions of any kind; According to the learned counsel, since the damages was caused due to the strike organised by the workmen of the insured, by operation of clause (b); the appellant-insurer is not liable for the loss to the goods while the leather remains unattended in its process during the period of strike. We are unable to agree with the learned counsel. It is true that the Advisory Committee is a statutory body which has gone in and recommended the policies for riot, strike and malicious damages. The clause would exclude the insurance company from the coverage, if the loss or damage resulted from total or partial cessation of work or the retarding or interruption of cessation of any process of Operation or omissions of any kind which would include strike by its workers. This may be due to either the operational inconvenience due to non-supply of the electricity or strike by the employees or any cause but the insured must be put on notice of this clause.

It is a fundamental principle of Insurance Law that utmost good faith must be observed by the contracting parties. Good faith forbids either party from concealing (non-disclosure) what he privately knows, to draw the other into a bargain, from his ignorance of that fact and his believing the contrary. Just as the insured has a duty to disclose, "similarly, it is the duty of the insurers and their agents to disclose all material facts within their Knowledge, since obligation of good faith applies to them equally with the assured.

The duty of good faith is of a continuing nature. After the completion of the contract, no material alteration can be made in its terms except by mutual consent. The materiality of a fact is judge by the circumstances existing at the time when the contract is concluded. In the present case, the introduction of the Tariff Advisory Committee document materially affects the terms of the policy, resulting in the denial of the very indemnity of claim. And this was what the appellant sought to do, at the stage of Clearing of the complaint. The Commission rightly rejected the appellant's plea. Notwithstanding this, on behalf' of the appellant, it was insisted that the instructions of the Tariff

Advisory Committee form part of the contract. Admittedly, the appellant-Insurer had not incorporated the above quoted clause as part of the policy undertaken with the insured. Consequently, the insured is not bound by this exclusionary clause of liability since the appellant-insurer, admittedly, had undertaken liability for the riot or strike, damage due to riot or strike.

Since the surveyor had submitted a report after due verification that the damages to the leather was caused due to the strike organised by the workmen, in our considered view, the insurance is overed by the RSD and MD clause. Accordingly, the appellant-insurer is liable to pay the insured amount for spoilage of the leather caused due to strike organised by the workmen.

It is then contended that the appellant is not liable to pay interest from the time of the loss which occurred only from the date of the claim rejected by the appellant-Insurer. It is difficult to accept the contention

-in to. It is exiomatic that the insured requires to lay specific claim for damages giving details of the damages caused to the leather due to the strike organised by the workmen. On prefering claim thereof, admittedly, the surveyor, which is an independent agency, should inspect the factory and submit a report. From the record, it would be clear that the claim was made for the first time on November 13, 1989. Thereafter, all the par- ticulars were furnished by the insured-respondent in August 1990. Thereon, the surveyor inspected and submitted his report on October 30, 1990. Thereafter, the Insurance company is required to take a decision. Admit- tedly, 5 months have elapsed for taking decision to reject the claims. We think that a reasonable time of two months would be justified for them to take decision whether claim requires to be settled or rejected in accord- ance with the policy. Therefore, two months would be computed from October 30, 1990. Accordingly we give the benefit of the time taken to decide the claim up to December 31, 1990. The appellant-Insurer is liable to pay interest from January 1, 1991 till date of payment.

The next question is ; what rate of interest the insured- respondent is entitled to get? In common parlance, when the insure d-respondent is deprived of right to enjoy his money or invest the money in business, necessarily the loss has to be compensated by way of payment of interest by the insurance company. We are informed that as per the directions of the Government of India the appellant-insurance company has ho option but to invest the money in the securities specified by the Government of India under which the insurance company is securing interest on invest-ment at the rate of 11.3% per annum. Under these circumstances, the appellant- insurance company is liable to pay interest at 12% per annum from January 1, 1991 till date of payment. It is then contended that as per the policy, the respondent is entitled to consequential loss as per the independent policy. The Commission no doubt did not give any inde-pendent reason for the same but all the claims were heard and disposed Of together. Under these circumstances, we are of the view that the claims must be deemed to have been rejected.

The appeals are accordingly disposed of but, in the circumstances, without costs.