Shree Ambica Medical Stores vs The Surat Peoples Co-Operative Bank Ltd on 28 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 803, AIRONLINE 2020 SC 75, 2020 (1) KCCR SN 37 (SC), (2020) 2 SCALE 671, 2020 (2) AJR 212

Author: D.Y. Chandrachud

Bench: Ajay Rastogi, Dhananjaya Y Chandrachud

REPOR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 562 of 2020
(Arising out of SLP(C) No 4362 of 2016)

Shree Ambica Medical Stores & Ors …Appellant

Versus

The Surat People’s Co-operative Bank Limited & Ors …Responden

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 The National Consumer Disputes Redressal Commission 1 allowed an appeal instituted by the first respondent and set aside the decision of the State Consumer Disputes Redressal Commission of Gujarat 2. The State Commission found substance in the consumer complaint of the appellants and decreed their claim for compensation in the amount of Rs 53,66,877 with interest at 9 percent per annum. In addition, the State Commission awarded Rs 25,000 towards mental agony and Rs 5,000 towards litigation costs. The claim of the appellants arose under an insurance cover pertaining to goods hypothecated by the appellants with the first respondent under a cash credit facility. The insurer, New India Assurance Company Limited, repudiated the claim of the appellants. As a 1 “National Commission” 2 “State Commission” consequence of the order of the National Commission which is challenged in the present appeal, the claim of the appellants stands rejected. 2 On 31 May 1998, the appellants and the first respondent entered into an agreement for a cash credit facility. In terms of clause 15 of the agreement, the appellants were under an obligation to insure the goods which were hypothecated to the bank. Clause 15 also contained a stipulation that in the event that the appellants failed to insure the goods, it was open to the bank to secure a cover of insurance for the goods and to recover the expenses

incurred along with the premium from the appellants. The clause is extracted below:

> "(15) We have to insure the goods given in hypothecation to the Bank against fire etc. at our own costs in favour of the Bank and if we fail to take insurance then the Bank can take the insurance and can recover all the expenses incurred and also the premium amount borne by them from us as the Bank has Right as per this Document."

3 The first respondent bank has stated that it was acting as a corporate agent of the insurer and, as a matter of routine practice, obtained policies for all its borrowers. As a practice, the first respondent upon receipt of an intimation, would remit the premium payable on behalf of the borrowers. The same course of action was followed by the first respondent under the lending facility granted to the appellants. The first respondent obtained the first insurance policy for the period 1998-99 in the sum of Rs 60 lakhs from the insurer, who is the third respondent to the appeal. The insurance policy covered a specific location of the borrower where the goods were stored, namely:

> "12/1123-1124, Basement, Meghdoot Apartment, Surat"

4 The policies of insurance for the succeeding years 1999-2000, 2000-2001 and 2001-02 covered the goods of the borrower stored at the above premises. From 2001, the insurance policy was renamed as a 'Standard Fire and Special Perils Policy'. The perils insured included those occasioned by storm, tornado, flood and inundation. These together are referred to as "STFI Perils". In 2001-02 the value of the insurance cover was enhanced by an amount of Rs 25 lakhs so as to increase the total sum insured to Rs 85 lakhs. For 2002-03, the insurer issued a policy covering a sum insured of Rs 25 lakhs in terms of the same location at Meghdoot Apartment, Surat noted above. However, a separate insurance cover in the amount of Rs 60 lakhs was issued in respect of the goods stored at following location:

> "B-205, Plot No 17-B, Village Karnaj"

5 Similarly, for 2003-04 and 2004-05 there were two insurance covers; one in the amount of Rs 25 lakhs in respect of the location at Meghdoot Apartment, Surat and the second in the amount of Rs 60 lakhs covering the location at B- 205, Plot 17-B, Village Karnaj. For 2005-06 and 2006-07, the position of the insurance cover is reflected in an extract from a tabulated chart filed by the insurer:

> Year Policy No Policy Period Location Sum Insured Rs 2005-06 2293 4.8.2005 to (A) 12/1123- 25 lakhs 3.8.2006 1124;

Basement, Meghdoot Apartment, Surat 2298 1.8.2005 to (A) 12/1123- 60 lakhs 31.7.2006 1124; (Changed to Basement, Location A) Meghdoot Apartment, Surat 2006-07 2537 4.8.2006 to (A) 12/1123- 25 lakhs 3.8.2007 1124;

Basement,
Meghdoot
Apartment,

			Surat
1884	1.8.2006 to 31.7.2007	(A) 12/1123-1124; Basement, Meghdoot Apartment, Surat	60 lakhs

6 For 2005-06, the location contained in the policy with a sum insured of Rs 60 lakhs was changed from B-295, Plot 17-B, Village Karnaj to 12/1123-1124, Basement, Meghdoot Apartment, Surat. Thus, both the policies for 2005-06 covered the same location. For 2006-07, the same position continued for both the insurance covers.

7 On 3 August 2005, the first respondent while filling up the proposal form handed over a cheque of Rs 29,038 to the insurer for a cover which would also extend to STFI perils. On 26 September 2005, the premium of Rs 992 covering STFI perils was refunded by the insurer to the bank by a cheque which was deposited by the bank in the appellants' account. Hence for 2005-06, the policy cover of Rs 60 lakhs extended to fire and allied perils but specifically excluded STFI perils.

8 On 7 August 2006, the city of Surat was hit by floods. The appellants claim that as a result of the floods the goods which were stored in their premises were destroyed. The appellants made a claim to the insurer for an alleged loss of Rs 78,66,857. A surveyor was appointed by the insurer to inspect the extent of damage. The insurer accepted and paid the claim of Rs 23 lakhs under the policy cover of Rs 25 lakhs but repudiated the entire claim under the policy cover of Rs 60 lakhs. There was an exchange of correspondence between the bank and the insurer. The bank, by its letter dated 11 November 2006, submitted that it was surprised as to how the policy cover of Rs 60 lakhs had contained an exclusion of STFI perils despite the fact that both the policies had been renewed under a common proposal form and through a single cheque. An affidavit dated 6 September 2007 of the Manager of the bank was filed stating that the bank was a corporate agent and was working on behalf of the insurer. The insurer repudiated the claim of the appellants on 24 June 2008.

9 A consumer complaint was instituted by the appellants on 26 July 2008 before the State Commission, Gujarat alleging that the insurer had committed an unfair trade practice by repudiating the claim under the insurance cover of Rs 60 lakhs.

10 In its written statement before the State Commission, the bank stated that according to the terms of the agreement governing the grant of credit facilities, the primary duty of obtaining a cover of insurance for the hypothecated goods was that of the appellants as borrowers. For 2005-06, the bank had renewed the policies of Rs 60 lakhs and Rs 25 lakhs. However, the insurer had excluded STFI perils while issuing a policy cover of Rs 60 lakhs. According to the bank, a copy of the policy was given to the appellants from which the exclusion of STFI perils would have been evident. Moreover, a part of the premium which was returned by the insurer was deposited by the bank in

appellant's account, which should have been in the knowledge of the appellants. The bank therefore denied that it was guilty of any deficiency of service. The bank, however, stated that it had not been served with any notice by the insurer explaining why the STFI perils were excluded from the policy of Rs 60 lakhs. The bank denied that its officers or staff had mistakenly indicated the location of the place of business in the proposal form associated with the policy cover where STFI perils had been excluded. 11 The defence of the insurer was that for the period between 1 August 2005 and 31 July 2006 the policy cover of Rs 60 lakhs specifically excluded STFI perils from the coverage. The insurer stated that upon receiving the claim, it had appointed a surveyor and the claim on account of damage due to flooding had been accepted in respect of the policy cover of Rs 25 lakhs. However, the policy cover of Rs 60 lakhs specifically excluded the STFI perils and the insurer had refunded the premium of Rs 992 paid for an STFI cover by a cheque dated 26 September 2005 which had been accepted and deposited by the bank in the appellant's account without any protest. The insurer denied its liability on the ground that the policy cover of Rs 60 lakhs excluded STFI perils. 12 The State Commission, by its order dated 14 February 2019, allowed the complaint only against the bank and its manager, who were directed to pay an amount of Rs 55,66,877 together with interest of 9 percent per annum and damages on account of mental agony of Rs 25,000. The State Commission held that the insurer could not be held liable since STFI perils had been excluded from the policy cover of Rs 60 lakhs and the excess premium of Rs 992 had been refunded to the bank on 26 September 2005. The bank was however, held liable on the ground that it had deposited the cheque of Rs 992 for return of the premium amount without making enquiries from the insurer. The State Commission further held that the bank had made an error in filling up the proposal form sent to the insurer and as a consequence the bank was liable to compensate the appellant.

13 The National Commission reversed the judgment of the State Commission. It observed that the bank had sought an insurance cover to the extent of Rs 85 lakhs which covered STFI perils and had also deposited a cheque of Rs 29,038 towards the premium of the policy. The National Commission observed that though it had been argued by the bank as well as the complainant that the insurer could not have excluded the STFI cover while renewing the policy, no rule or regulation mandating the insurer to accept the entire proposal had been brought to its notice. Before the National Commission, reliance was sought to be placed on the general rules and regulations framed by the Tariff Advisory Committee which came into force on 31 March 2001. The regulations, in so far as is material, provided that it is permissible to exclude STFI perils at the inception of the policy. The National Commission noted that even according to these regulations, deletion of STFI perils from a policy was permissible when a new policy was issued. The National Commission held that since a new address of the location was contained in the proposal form submitted for 2004-05, a fresh policy was issued, and the insurance company was entitled to exclude the STFI cover. The National Commission also noted that the policy of Rs 25 lakhs which at the time of renewal contained the same location, the STFI perils had specifically not been excluded.

14 The National Commission noted that there was no protest either from the bank or the borrower to the exclusion of STFI perils by the insurer. It noted that no loss was sustained in the first year of the exclusion of STFI perils and it was only in the subsequent year that the loss was sustained. Consequently, the National Commission held that having accepted the policy without the STFI cover, both the bank and the borrower were estopped from questioning the terms of the policy. The

National Commission held that the bank had specifically stated in its reply before the State Commission that a copy of the insurance policy was given to the borrowers and that the premium amount which was returned back by the insurance company had been credited to their account. It noted that the receipt of the insurance policy had not been specifically denied in the rejoinder filed by the complainants before the State Commission though there was a vague denial of the averments in the corresponding paragraph of the reply. In this background, the National Commission observed that the appellants did not take up the issue of the exclusion of the STFI perils with the insurer nor did they call upon the bank to do so. It was noted that though the appellants received the premium amount in their account, they did not seek any explanation in regard to the refund of the premium. In this view of the matter, the National Commission allowed the appeal filed by the bank and set aside the State Commission's order. 15 Mr Mehul Shah, learned counsel appearing on behalf of the appellants submitted that clauses 3(2) and 4(1) of the notification issued by the Insurance Regulatory and Development Authority on 16 October 2002 provides as follows:

> "3(2) An insurer or its agents or other intermediatory shall provide all material information in respect of a proposed cover to the prospect to enable the prospect to decide on the best cover that would be in his or her interest." "4(1) Except in cases of a marine Insurance cover, where current market practices do not insist on a written proposal form in all cases, a proposal for grant of a cover, either for life business or for general business, must be evident by a written document. It is the duty of an insure to furnish to the insured free of charge, within 30 days of the acceptance of a proposal, a copy of the proposal form."

16 Learned counsel submitted that the insurer did not intimate the exclusion of STFI perils at the time of the renewal of the policy either in 2005-06 or 2006-

07. Moreover, the proposal form was not remitted either to the bank or to the appellants within a period of 30 days, or at any time. It was urged on behalf of the appellants that the policy issued in 2005-06 was in the nature of a renewal and though the proposal form indicated that the risk would commence on 3 August 2005 and not on 2 August 2006, the policy of Rs 60 lakhs was issued on 1 August 2005. The grievance of the appellants is that the proposal form for 2005-06 had been signed by the Manager of the bank and the appellants were not aware of the proposal by the bank which was acting as the corporate agent of the insurer. It was urged that the cheque of Rs 29,038 dated 1 August 2005 was duly encashed by the insurer and it was only on 26 September 2005 that an amount of Rs 992 was returned to the bank without a written intimation about the exclusion of STFI perils by the insurer. Learned counsel submitted that the policies for 2005-06 and 2006-07 were not new policies but renewals and hence the insurer could not have excluded the STFI perils. In this context, reliance was placed on the judgment of this Court in Biman Krishna Bose v United India Insurance Co Ltd3.

17 On the other hand, Mr Sukumar Pattjoshi, learned Senior Counsel appearing on behalf of the first respondent bank submitted that there was no deficiency of service on the part of the bank. It was argued that under the terms of the hypothecation agreement, the duty of obtaining an insurance cover was primarily that of the appellants as borrowers. Supporting the findings of the National

Commission, it was urged that the bank had specifically denied having entered an incorrect address or a different address in the proposal form. Mr Pattjoshi urged that the bank had specifically stated that a copy of the policy had been furnished to the insured. The appellants could not, hence, disavow knowledge of the fact that STFI perils stood excluded from the insurance cover. 18 Mr K K Bhat, learned counsel appearing on behalf of the third respondent urged that the insurance cover of Rs 60 lakhs did not cover STFI perils. Though the bank had remitted the entire premium, the insurer had returned a part of the premium covering STFI perils. The cheque returning the premium amount of Rs 992 was deposited by the bank in the account of the appellants. Mr Bhat submitted that it was a commercial decision of the insurer to exclude STFI perils 3 (2001) 6 SCC 477 from the insurance cover of Rs 60 lakhs and therefore, the insurer could not be made liable. It was urged that since the appellants received the policy from the bank, it was not open to them to disclaim knowledge of the exclusion or of the deposit of the premium into their account.

19 The rival submissions fall for consideration.

20 This Court, while interpreting the contract of insurance must interpret the words of the contract by giving effect to the meaning and intent which emerges from the terms of the agreement. In a Constitution Bench decision of this Court in General Assurance Society Ltd v Chandumull Jain4, it was observed thus:

> "11. ...In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves..." The court through its interpretative process cannot rewrite or create a new contract between the parties. The court has to simply apply the terms and conditions of the agreement as agreed between the parties.

21 In the present case, the policy of insurance with a cover of Rs 60 lakhs for the period 2004-05 was issued for the location at B 205, Plot No 17-B, Village Karnaj. The insurance policy for 2005-06 was sought for different premises situated at 12/1123-1124, Basement, Meghdoot Apartment, Surat. The address mentioned in the policy for 2004-05 differs from that of 2005-06. The insurer proceeded on the basis that this was a 'fresh contract of insurance'. The 4 AIR 1966 SC 1644 insurance policy for 1 August 2005 to 31 July 2006 was issued with the exclusion of STFI perils. This is clear from the use of words "Warranted that STFI risk is excluded from the risk" in the above insurance policy. The terms of the policy will govern the contract between the parties. The STFI risks were specifically excluded from the coverage of the policy. The extra premium of Rs 992 was refunded by the insurer to bank and the bank deposited the amount in the appellants' account.

22 Section 64(VB) of the Insurance Act 1938 provides as follows:

> "64VB. No risk to be assumed unless premium is received in advance.—(1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner

> and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.
>
> (2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. —Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer." 23 The above provision states that no risk can be assumed by the insurer unless the premium payable is received in advance. Sub-Section (3) of Section 64 (VB) provides for refund of the premium amount to the insured in case of cancellation or alteration of the terms and conditions of the policy. In the present case, the premium of Rs 992 to cover STFI perils was refunded by the insurer to the bank and the amount was deposited in the insured's account. The proposal does not conclude the contract. A contract postulates an agreement between the parties. In the present case, the insurer while issuing the new policy at a fresh location specifically excluded STFI perils and refunded the premium. The insured at the time when the loss occurred was covered by a policy that excluded STFI perils. Therefore, the insurer cannot be held to be liable. To hold to the contrary would be rewriting the agreement between the parties and creating a fresh contract to which the parties had not agreed.

24 The bank in its written statement filed before the State Commission, specifically averred in paragraph 2 that:

> "..The real fact is that one copy of the Policy is given to the Complainant and from this the Complainant can know the fact. One copy of the said Policy was given to them.

> Moreover, the Premium Amount which was returned back was debited in their Account. They could have inquired from this that what this Premium Amount was returned by the Insurance Company." The appellants in their rejoinder did not specifically deny the averment that they were furnished with a copy of the policy. The appellants have also not denied the fact that the premium on account of STFI perils which was refunded by the insurer was credited to their account. This being the position, it is not open to the appellants to disavow knowledge of the exclusion of the STFI perils in the insurance cover of Rs 60 lakhs which was issued for 2005-06 and renewed for 2006-07.

25 The appellants have placed reliance on the decision of this Court in Biman Krishna Bose v United India Insurance Co Ltd5, where this court while dealing with a mediclaim policy, observed:

> "5. A renewal of an insurance policy means repetition of the original policy. When renewed, the policy is extended and the renewed policy in the identical terms from a different date of its expiration comes into force. In common parlance, by renewal, the old policy is revived and it is sort of a substitution of obligations under the old policy unless such policy provides otherwise. It may be that on renewal, a new contract comes into being, but the said contract is on the same terms and conditions as that of the original policy. Where an insurance company which has exclusive privilege to carry on insurance business has refused to renew the mediclaim policy of an insured on extraneous and irrelevant consideration, any disease which an insured had contacted during the period when the policy was not renewed, such decease cannot be covered under a fresh insurance policy in view of the exclusion clause. The exclusion clause provides that the pre-existing diseases would not be covered under the fresh insurance policy. If we take the view that the mediclaim policy cannot be renewed with retrospective effect, it would give handle to the insurance company to refuse the renewal of the 5 (2001) 6 SCC 477 policy on extraneous consideration thereby deprive the claim of insured for treatment of diseases which have appeared during the relevant time and further deprive the insured for all time to come to cover those diseases under an insurance policy by virtue of the exclusion clause. This being the disastrous effect of wrongful refusal of renewal of the insurance policy, the mischief and harm done to the insured must be remedied. We are, therefore, of the view that once it is found that the act of an insurance company was arbitrary in refusing to renew the policy, the policy is required to be renewed with effect from the date when it fell due for its renewal." (Emphasis supplied)

26 The above case, as the extract indicates, dealt with a situation where the act of the insurer in refusing to renew the mediclaim policy was held to be arbitrary. This Court noted the serious consequence flowing out of the arbitrary refusal to renew the contract since it would result in the exclusion of the cover and the rejection of the claim in respect of a disease which the insured had contracted during the period when the policy was not renewed. The situation in the present case is clearly distinguishable. The terms and conditions of the new policy specifically excluded STFI perils and evidently there was a change in the obligations of the insurer. There was no renewal but the

issuance of a new policy. The change in the location of the premises in the present case led to the issuance of a new policy. It was open to the insurer to specifically exclude STFI perils as a commercial decision. The appellants had knowledge of the exclusion of the STFI perils as they were provided with a copy of the policy and also received the refund of the premium. Having lodged no protest with the insurer during 2005-06 or in the renewed term of 2006-07, the insured cannot lay a claim that they had no knowledge that the STFI cover was excluded from the insurance cover. Nothing prevented the appellants from either approaching the insurer or any other insurance company for obtaining a policy that covered STFI perils. 27 For the above reasons, we are of the view that there is no merit in the present appeal. The appeal shall, accordingly, stand dismissed but with no order as to costs.

……..……..…..…..…..…..……..……J. [DR DHANANJAYA Y CHANDRACHUD]
……J. [AJAY RASTOGI] New Delhi;

January 28, 2020