Supreme Court of India
State Of Orissa vs United India Insurance Co. ... on 1 April, 1997
Bench: K. Ramaswamy, D.P. Wadhwa

PETITIONER:
STATE OF ORISSA

Vs.

RESPONDENT:
UNITED INDIA INSURANCE CO. LTD.REPRESENTED BY DIVISIONAL OFF

DATE OF JUDGMENT: 01/04/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R This appeal by special leave arise from the judgment of the Division Bench of the Andhra Pradesh High Court, made on April 21, 1976 in Appeal No. 157/73.

The admitted facts are that Vijay Commercial Corporation submitted a proposal for insurance to cover certain risks, viz., supply of 12 Bulldozers of Yugoslavian make, under Ex.A-22 dated July 23, 1966, which was subsequently extended by fresh policy, Ex.A-3, dated July 27, 1966, wherein the Chief Engineer of State of Orissa was also included as one of the insured. The insurance coverage was for Rs. 27 lakhs. Before commencement of the contract for said supply, a notice was issued on December 6, 1966 cancelling the insurance. Since the appellant has claimed under the insurance policy, the Insurance Company, namely, Hindustan Ideal Insurance Company Ltd. laid a suit in the trial Court for declaration that the insurance coverage was duly cancelled and for consequential injunction. The trial Court granted the decree. On appeal, the High Court confirmed the same by the above judgment. Thus, this appeal by special leave.

The only question is : whether the appellant is entitled to damages from the Insurance Company for non- supply of 12 bulldozers through their agent, Vijay Commercial Corporation, who had the insurance from the Insurance Company. The High Court extracted all the relevant clauses in the contract of insurance and held that it was a "Marine and Transit Insurance" policy under Ex.A-22 and non- supply of bull-dozers was not a condition of this policy and further, since under the

contract the insurer was entitled to terminate the contract in terms of the insurance, the cancellation thereof was valid in law and that the respondents were not liable for damages for non-supply of the goods.

Section 3 of the Marine Insurance Act, 1963, Act (11 of 1963) (for short, the `Act') contemplates that a contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure. The expression "Contract of Marine Insurance" has been defined in Section 2(a) to mean a contract of marine insurance as defined by Section 3. "Marine Adventure" has been defined under Section 2(d) to include any adventure where any insurable property is exposed to maritime perils. "Maritime perils" has been defined in Section 2(e) and means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, battery and any other perils which are either of the like kind or may be designated by the policy. Section 3 of the Act envisages that :

> "A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to stay, the losses incidental to marine adventure."

Section 4 of the Act is a composite policy as regards mixed sea and land risks. It contemplates thus:

> " "4(1) A contract of marine insurance may, by its express terms, or by usage or trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage."

Sub-section (2) and the explanation thereto are not relevant for the purpose of this case, hence omitted.

The question, therefore, is: whether the insurance coverage under Ex.A-22 includes non-supply of 12 bulldozers contracted by Vijaya Commercial Corporation, which had undertaken to supply the same to the appellant. Though it is contended that the insurance liability starts only from destination Calcutta Port to any place in Orissa, we cannot accept the same of the reason that the contract of insurance under Ex.A-22 is a composite one. It read as under:

> "Risk to attach only when the goods hereby insured are inspected and certified as sound by a representative of the Insurer before dispatch from Calcutta." "The said Company promises and agree that the insurance aforesaid shall commence from the time when the goods and Merchandise shall laden on board the said ship or Vessel Craft or Boat as above. And continue until the said Goods and Merchandise be discharged and safely landed at as above."

It is also seen, as extracted by the High Court, that the insurance was from part to part, in other words, from the part in Yugoslavia to the part in Calcutta. Thus, it could be seen that for the

insurance to be operative, it is a transit policy and when non-supply during the transit occurs, the liability is undertaken came to be effective, a notice was issued by the Insurance Company cancelling the same. One of the clause in the contract is that "this contract is subject to 7 days' notice of cancellation by either side in writing." Thus, it is mutual right to be exercised by the parties to cancel the contract duly entered into.

The High Court has recorded the finding that the Branch Manager of insurance company exceeded his authority as an agent by underwriting in the policy the guarantee for the non-supply of bulldozers. The principal is not bound by such an undertaking, by operation of Section 237 of the Contract Act, which read thus:

> "When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced subh third persons to believe that such acts and obligations were within the scope of the agent's authority."

It is found, as a fact, that he had no authority to undertake such liability by subsequent incorporation into the policy of such under writing and, therefore, by operation of Section 237 of the Contract Act, the Insurance Company was not bound by such act of the manger.

A contract of Indemnity is a contract by which one party promise to save the other from loss caused to him by the conduct of any other person as contemplated in Section 124 of the Indian Contract Act. But indemnity, as applicable to marine insurance, must not be an indemnity, as contemplated by the Indian Contract Act, as the loss in such a contract is covered by the contract itself and such loss is not caused to the assured by the conduct of the insurer nor by the conduct of any other persons. Brett. L.J., observed, with regard to this indemnity, thus:

> "this contract means that the assured, in case of loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified. That is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it, that is to say, which either will prevent the assured from obtaining a full indemnity, or which will give to the assured more than a full indemnity, that proposition must certainly be wrong."
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> vide Marine Insurance by Banerji.

In view of the fact that the Branch Manger was not authorised to cover the risk of the loss on account of non- supply, the agent, namely, the Insurance Company is not liable for any damages. But in view of the fact that the contract has been duly terminated under the insurance itself, the declaration sought, viz., for that the contract was duly cancelled, is clearly within the power and legal competence. This controversy is covered by the judgment of a Constitution Bench of this Court is General Assurance Co. vs. Chandumull Jain [(1966 (3) SCR 500 at 512]. Therein, this Court had held thus:

> "This condition gives mutual rights to the parties to cancel the policy at any time. To the assurer it gives a right to cancel the policy at will."

Therefore, the High Court has not committed any error of law warranting interference.

The appeal is, therefore, dismissed. No costs.