

Sharda Associates Vs. United India Insurance Company Ltd.

Civil Appeal No. 4910 of 2022 arising out of SLP (C) No. 5100 of 2020
2022-07-25 | Dr. Dhananjaya Y. Chandrachud · A.S. Bopanna
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Full judgment text

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[Civil Appeal No. 4910 of 2022 arising out of SLP (C) No. 5100 of 2020]

Dr. Dhananjaya Y. Chandrachud, J

1. Leave granted.

2. This appeal arises from a judgment dated 12 July 2019 of the National Consumer Disputes Redressal Commission.¹ While exercising its revisional jurisdiction, the NCDRC, by its judgment, reversed concurrent findings of fact which were recorded by the District Consumer Disputes Redressal Forum² and by the State Consumer Disputes Redressal Commission.³

3. The appellant purchased a JCB Excavator Model 3DX on 25 April 2007. The excavator was insured with the respondent for the period between 5 March 2009 and 4 March 2010 at an Insured Declared Value⁴ of Rs 13.50 lakhs. On 25 May 2009, the excavator was being used on the Shivpuri-Timli Road near Rishikesh in the State of Uttarakhand. A portion of the road gave way, as a result of which the excavator fell into a deep ditch resulting in the death of the operator and helper and the total loss of the excavator.

A First Information Report was filed on 26 May 2009. The FIR states that the accident had occurred due to a sudden caving of the road. The surveyor appointed by the insurer conducted a spot survey on 28 May 2009 and reported that the accident had taken place due to the edge of the road side collapsing due to which the excavator fell into a ditch. The final survey report was submitted on 18 July 2009. The appellant filed for an insurance claim but the insurer did not settle it.

The respondent repudiated the claim on 13 April 2010 on the ground that the overturning of the excavator was not covered in terms of the policy condition Indian Motor Tariff⁵ 47 as the JCB excavator was being used as a 'tool of trade' and no additional premium was paid. The appellant filed a complaint before the District Forum alleging a deficiency in service on the part of the insurer and the award of a sum of Rs 13.50 lakhs towards the IDV plus interest at twelve percent, along with compensation for mental harassment.

The District Forum allowed the complaint on 26 September 2011 by directing the insurer to pay an amount of Rs 13.50 lakhs, together with interest at nine per cent. The judgment of the District Forum was upheld in appeal by the SCDRC on 1 May 2014. On the issue of IMT 47, The SCDRC made the following observations:

"9. So far as another plea taken by the insurer that at the time of the accident, the machine, was being used as "Tool of Trade", for which additional premium was required to be paid by the complainant and which was not paid by the complainant is concerned, we also do not find any force in the said plea raised by the insurer.

The reason being that as per IMT 47 mentioned in the insurance policy and which has also been quoted by the District Forum in the impugned order, the claim is not payable in the event when the JCB machine is used as tool of Trade and it overturns while working as such. In the instant case, the JCB machine was being used for construction of road and debris was being removed from the machine. The JCB machine was being used a whole and not as "Tool of Trade" and since the machine was being used a whole, no additional premium was required to be paid by the complainant."

The respondent assailed the order of the SCDRC in Revision Petition No 3306 of 2014. The NCDRC, by its judgment dated 12 July 2019, reversed the findings and the award of compensation by the SCDRC. The NCDRC reversed the decision on the ground that earth moving equipment, such as a JCB excavator, could be used either as a tool or as a vehicle, at a given point of time.

Since the case of the respondent was that the excavator was being used for the purpose of road making when it met with an accident, the NCDRC held that it was being used as a tool and not as a vehicle. In arriving at its findings, the NCDRC upheld the submissions of the insurer that the claim could not have been allowed under IMT 47 unless additional premium was paid. The relevant observations of the NCDRC are extracted below:

"7. A dissection of IMT 47, which applied inter-alia to excavators and is reproduced in the repudiation letter would show that unless additional premium is paid, in case of loss of or damage to the excavator, the insurer is not liable if the following conditions are made: (a) The loss or damage results from overturning of the vehicle (b) The excavator is being used as a tool of the vehicle or of the plant forming part of the vehicle or attached thereto, unless the loss or damage arises directly from fire, explosion, self-ignition, lightning, burglary, house breaking or theft.

8. An excavator machine cannot be used for road construction unless it is attached to the said vehicle or is used as a tool of the vehicle. This is complainant's own case that the excavator was being used for road making when it met with an accident. Therefore, it cannot be disputed that the operation i.e. the construction of the road was being carried when the excavator vehicle while being used as a tool, suddenly rolled down on account of road side edge having got broken.

Earthmoving equipment such as a JCB can be used either as a tool or as a vehicle at a given time. It cannot work simultaneously as a tool as well as a vehicle. Since this is complainant's own case that the excavator was being used for road making when it met with an accident, it is evident that it was being used as a tool and not as a vehicle at the time it fell 500 ft. down the road."

4. We have heard Mr Jaideep Singh, counsel appearing on behalf of the appellant and Mr Abhishek Gola, counsel appearing on behalf of the respondent.

5. The narrow issue which falls for determination in this appeal turns on the interpretation of the insurance policy. There is no dispute about the fact that the term of insurance was valid between 5 March 2009 until 4 March 2010. Section I of the policy, inter alia, provides as follows:

"SECTION - I: LOSS OF OR DAMAGE TO THE VEHICLE INSURED

1. The Company will indemnify the insured against loss or damage to the vehicle insured hereunder and/or its accessories thereon:

- i. by fire explosion self-ignition or lightning;
- ii. by burglary housebreaking or theft;
- iii. by riot and strike;
- iv. by earthquake (fire and shock damage);
- v. by flood typhoon hurricane storm tempest inundation cyclone hailstorm frost;
- vi. by accidental external means;
- vii. by malicious act;
- viii. by terrorist activity;
- ix. whilst in transit by road rail inland waterway lift elevator or air;
- x. by landslide/rockslide."

6. However, the insurance policy contains a specific stipulation in regard to the application of IMT 47 in the following terms:

"IMT 47: Mobile Cranes/ Drilling Rigs/ Mobile Plants/ Excavators/ Navvies / Shovels/ Grabs/ Rippers

It is hereby declared and agreed notwithstanding anything to the contrary contained in this Policy that in respect of the vehicle insured the insurer shall be under no liability:

a) Under Section I of this policy in respect of loss or damage resulting "from overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto except for loss or damage arising directly from fire, explosion self-ignition or lightening or burglary housebreaking or

theft.

b) Under Section II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the insured arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto.

N.B.: Omit paragraph (a) for:-

i. Liability only Policies.

ii. Package Policies where an additional premium has been paid for inclusion of damage by overturning.

NOTE:

Insert make, number or some other means of identification.

Where a premium reduction is allowed for exclusion of damage when in use as a tool of trade omit from paragraph (a) the words "resulting from overturning" and "except for loss ... or theft".

7. Mr. Jaideep Singh, counsel appearing on behalf of the appellant, urges that:

i. The NCDRC was not justified in reversing concurrent findings of fact which were recorded by the District Forum and by the SCDRC to the effect that the excavator was not being used as a tool of trade, when the accident occurred; and

ii. In any event, it is apparent from the survey report as well as the findings of fact which have emerged on the record that the excavator suffered an accident due to a landslide or the collapsing of the road, to which IMT 47 would not stand attracted.

8. On the other hand, Mr Abhishek Gola, counsel appearing on behalf of the insurer, submitted that IMT 47 was specifically designed to meet such contingencies in which event the insurer would not be liable unless an additional premium was paid.

In this context, counsel relied upon the complaint which was lodged to the police station which specifically adverted to the fact that the soil under the machine had collapsed resulting in the excavator falling into a deep ditch. Moreover, the counsel has also adverted to the survey report, according to which, there was a sudden collapse of the edge of the road side, as a result of which the machine rolled down about 500 meters.

9. In order to attract the applicability of IMT 47, certain specific conditions have to be fulfilled.

IMT 47 excludes liability:

i. Where the loss or damage has resulted from "overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto";

ii. Unless the loss or damage is directly arising from fire, explosion, selfignition, lightning, burglary, house breaking or theft.

10. It is important to note that clause 1 of the insurance policy, which has been extracted earlier, specifically covers a loss or damage which arises as a consequence of a landslide. IMT 47 applies to a situation where the loss or damage has been caused due to 'overturning' arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or forming a part thereto.

In other words, for the provisions of IMT 47 to be applied, it is essential to establish that the loss or damage was caused due to overturning and that the overturning should arise out of the operation as a tool of such vehicle. The NCDRC was persuaded to adopt the view of the insurer that an excavator could be used either as a tool of trade or as a vehicle and, in the present case, since it was being used for the purpose of road construction, it was not being used as a vehicle.

However, the line of reasoning of the NCDRC clearly missed the point that in the present case the accident was caused as a result of a portion of the road having given way. The accident was in the nature of a landslide, as a result of which the vehicle fell into a deep ditch occasioning the death of the operator and the helper and a total loss of the machine.

11. The situation, in the present case, therefore, did not involve loss or damage due to the overturning of the vehicle. Consequently, even if, for the sake of argument, the submission of the insurer that the vehicle was being used as a tool were to be accepted, it is impossible to subscribe to the findings of fact of the NCDRC. The damage or loss was not as a result of the overturning of the vehicle, but was plainly due to the collapsing of the road, which resulted in the vehicle falling into a deep ditch in a hilly terrain of the State of Uttarakhand.

12. Counsel appearing on behalf of the appellant submitted that NCDRC could not have reappreciated the facts in its revisional jurisdiction of NCDRC under Section 21(b) of the Consumer Protection Act 1986. In a judgment of a three judge Bench in *Lourdes Society Snehanjali Girls Hostel v H&R Johnson (India) Ltd*,⁶ this Court held that the NCDRC should not have interfered with the concurrent findings of fact in the judgments impugned before it, particularly having regard to the nature of jurisdiction conferred upon it by Section 21 of the Consumer Protection Act 1986:

"17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons."

The limited ambit of the revisional jurisdiction of the NCDRC has been reiterated in subsequent decisions of this Court, most recently in *Sunil Kumar Maity v State Bank of India*.⁷

13. Having regard to the above findings, the judgment of the NCDRC is unsustainable. We accordingly allow the appeal for the reasons set out above and set aside the impugned judgment and order of the NCDRC dated 12 July 2019 in Revision Petition No 3306 of 2014.

In consequence, the judgment of the SCDRC in First Appeal No 201 of 2011 dated 1 May 2014, which directed the insurer to pay a sum of Rs 13.50 lakhs to the appellant, together with interest at the rate of seven per cent from the date of the filing of the consumer complaint, shall stand restored.

14. Pending application, if any, stands disposed of.

1 "NCDRC"

2 "District Forum"

3 "SCDRC"

4 "IDV"

5 "IMT"

6 (2016) 8 SCC 286

7 Civil Appeal 432 of 2022 (Arising out of SLP(C) 21711 of 2019)

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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