

Oriental Insurance Company Ltd. Vs. M/s. J.K. Cement Works

Civil Appeal No. 7402 of 2009

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Full judgment text

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[Civil Appeal No. 7402 of 2009]

Mohan M. Shantanagoudar, J.

1. This appeal arises out of the judgment dated 18.11.2008 passed by the National Consumer Disputes Redressal Commission ('NCDRC') in Original Petition No. 59 of 2005. Vide the impugned judgment, the NCDRC allowed the consumer complaint filed by the Respondent herein, directing the Appellant to pay Rs. 58,89,400/to the Respondent, along with interest @ 9% per annum from 01.06.2004 till the date of payment.

2. The brief facts giving rise to this appeal are as follows:

2.1 Respondent herein (Complainant) is a cement manufacturer, having a factory in Nimbahera, District Chittorgarh, Rajasthan. These factory premises included an open coal yard, where a stock of coal that was used in the manufacturing process was stored.

2.2 The Respondent purchased a Standard Fire and Special Perils insurance policy from the Appellant herein for the stock of coal for the period between 20.11.2002 and 19.11.2003. Among other things, the policy covered damage caused by "Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation".

2.3 Due to heavy rains in Nimbahera on 29.08.2003 and 30.08.2003, some of the coal was washed off, and the stock of coal suffered damage. Consequently, on 01.09.2003, the Respondent informed the Appellant of the damage and requested the appointment of a surveyor. The surveyor so appointed submitted its report on 29.03.2004, assessing the loss caused to the Respondent at Rs.58,89,400/.

2.4 Upon receiving such report, the Appellant sought a clarification from the surveyor, as to whether the loss could be said to have been caused by "Flood and Inundation" in terms of the wording of the insurance policy. The Appellant also hired a Chartered Accountant to verify the declarations submitted by the Respondent visàvis its accounts books and daily stocks.

2.5 On 13.08.2004, the surveyor reaffirmed its stand that the losses in question were payable to the Respondent as per the terms and conditions of the policy. On the other hand, the Chartered Accountant hired by the Appellant reported on 02.09.2004 that he was unable to verify the declarations because the Respondent had not provided the necessary documents to him.

2.6 Notably, vide letter dated 14.12.2004, the Appellant repudiated the Respondent's claim on the ground that the loss caused to it did not fall within the scope of the policy, having occurred due to heavy and extraordinary rain and not 'flood' or 'inundation'.

2.7 Aggrieved by this repudiation, the Respondent filed a consumer complaint before the NCDRC seeking compensation to the tune of Rs.1.32 crores. Vide the impugned order dated 18.11.2008, the NCDRC allowed the complaint to the extent of the loss assessed by the surveyor, i.e. Rs.59,89,400/, and directed the Appellant to pay the said amount along with interest at the rate of 9% per annum. The instant appeal has been filed by the Appellant against this order.

3. Heard learned counsel for the parties.

4. Learned counsel for the Appellant argued that the terms 'flood' and 'inundation' refer to two significantly different phenomena that cannot be equated with each other. He contended that the term 'flood' refers to overflowing of water bodies such as rivers, ponds, lakes etc. Accordingly, he submitted that since it was not the case of the Respondent that there was a water body near the factory which had overflowed into the coal

yard, the loss cannot be said to have been caused by a 'flood'. With respect to the term 'inundation', he argued that the same refers to 'accumulation of water' and could thus not be applied to the instant case as the coal had merely been washed off due to heavy rains.

5. Per contra, learned counsel for the Respondent submitted that even if the Appellant's definition of 'inundation' as 'accumulation of water' were to be accepted, the surveyor's report had clearly observed that there was an accumulation of water in the coal yard, thereby making the policy applicable. Further, it was brought to our attention that the surveyor had relied on the rainfall data of Nimbahera for 29.08.2003 and 30.08.2003, as received from the Meteorological Department of the Government of India, to conclude that there were adequate rains in the area to cause floods/inundation. It was also submitted that the Appellant could not have appointed a second surveyor unilaterally, as the procedure under Section 64UM of the Insurance Act, 1938, requiring permission from the Insurance Regulatory and Development Authority before appointing a second surveyor, had not been followed.

6. At the very outset, we note that as far as the Respondent's contention regarding the appointment of a second surveyor is concerned, the Appellant had only appointed a Chartered Accountant for the purposes of verifying the accounts books of the Respondent regarding its daily stock of coal. In our considered opinion, the appointment of a Chartered Accountant for this limited purpose is not tantamount to the appointment of a surveyor. Thus, we do not consider it necessary to deal with the prerequisites for the appointment of a second surveyor in the instant case.

7. Further, it is pertinent to note that the quantum of compensation or the date of the incident are not in dispute here. Nor has it been argued by the Appellant that the date of the incident did not fall within the insurance period. The central question that then remains to be considered is whether the loss caused to the Respondent occurred due to 'flood' or 'Inundation'.

8. Before delving into the particular facts of this case, it may be useful to refer to the dictionary meanings of the terms 'flood' and 'inundation'.

8.1 The word 'flood' is defined in the Concise Oxford English Dictionary, 8th edition (1990) as follows:

"1 a an overflowing or influx of water beyond its normal confines, esp. over land; an inundation.

b the water that overflows.

2 a an outpouring of water; a torrent (a flood of rain)" Particularly in the context of insurance contracts, Stroud's Judicial Dictionary, 5th edition (1986) defines the word 'flood', in reference to *Young v. Sun Alliance and London Insurance*, [1977] 1 W.L.R. 104, an English case decided by the Court of Appeal, and reads as follows: "Flood" in an insurance policy meant a large movement or irruption of water, and did not cover mere seepage from a natural source."

8.2 The word 'inundate' is defined in the Concise Oxford English Dictionary, 8th edition (1990) as follows:

"1 flood.

2 overwhelm (inundated with enquiries)" Further, per Black's Law Dictionary, 9th edition (1990), the word 'inundate' means: "To overflow or overwhelm; esp. to flood with water"

9. Simply put, a flood may be described as overflow of water over land. Floods can be broadly divided into the following categories: coastal floods, fluvial floods (river floods), and pluvial floods (surface floods).

9.1 Coastal floods occur when water from a sea or an ocean flows into nearby areas. They are caused either by extreme tidal activity (high tides) or by a storm surge - b winds from a hurricane or other storms forcing the water onshore - or by the simultaneous occurrence of both these phenomena.

9.2 Fluvial or river flood occurs when the water level exceeds the capacity of a river, stream, or lake, resulting in the overflow of the surplus water to surrounding banks and neighbouring land. They are usually caused by either excessive rainfall or unusually high melting of snow because of rising temperatures.

9.3 Lastly, pluvial or surface floods refers to the accumulation of water in an area because of excessive rainfall. These floods occur independently of an overflowing water body. Pluvial floods include flash floods which take place due to intense, torrential rains over a short period of time. A pluvial flood may also occur if the area is surrounded by hilly regions from where the runoff water comes and accumulates in the lowlying area. In urban localities, because of concrete streets and dense construction, rainwater is unable to seep

into the ground. Steady rainfall over a few days or torrential rains for a short period of time may overwhelm the capacity of the drainage systems in place, leading to accumulation of water on the streets and nearby structures, and resulting in immense economic damage.

10. So far as the term 'inundation' is concerned, it can be used to refer to both the act of overflow of water over land that is normally dry and to the state of being inundated. Inundation can also be intentional, which is sometimes carried out for military purposes, as well as for agricultural and rivermanagement purposes. In the latter sense, i.e. as a state of being, inundation refers to accumulation of water in which objects or land may be submerged. In simpler terms, inundation can be used to refer both the act of overflow of water as well as the result of such overflow.

11. It flows from the above discussion that overflow of water due to a flood may result in the state of inundation. As discussed above, floods are of different types, and may be caused due to several factors complementing each other. Usually, noncoastal floods originate from rainfall, but the magnitude of rainfall sufficient to cause a flood, and the damage that a flood causes, may vary depending on a variety of aspects such as the location of land (lowlying or altitudinous), the water retention capacity of the soil, and the density of population and manmade construction in the area, among other things. In rare cases, a noncoastal flood may also occur without any rainfall. For instance, shortcomings in the construction of a dam may lead to its complete breakdown, resulting in a flood.

12. It is not the case of the appellant that the coal was not properly stocked or that there was any negligence on part of the Respondent. The only arguments advanced by the Appellant are: firstly, that the terms 'flood' and 'inundation' cannot be equated, and, secondly, that 'flood' needs to be understood in a narrow sense to refer only to the overflowing of a water body, and to exclude instances where overflowing of water occurs due to excessive rainfall.

12.1 We have already highlighted that the terms 'flood' and 'inundation' are often used synonymously to refer to the act of overflowing of water over land that is generally dry. Therefore, the first argument of the Appellant cannot be sustained.

12.2 Similarly, given our prior discussion on pluvial floods, which occur independently of a water body, it is clear that floods are not restricted to overflow of water bodies. Thus, the second argument raised by the Appellant also lacks merit.

12.3 Furthermore, the second argument made by the Appellant seems tenuous even if we look into the intent of the parties entering into the contract, as it has not come on record that there was any water body near the coal yard or the factory premises. In such a scenario, where there was no risk of water from a water body overflowing onto the dry land where the coal yard was located, it could not have been the intention of the parties entering into the contract to give a restrictive meaning to the term 'flood'. Such a narrow interpretation would lead to the conclusion that the insertion of the term 'flood' was superfluous, which could not have been the case.

13. In the instant case, the Appellant has not disputed that there were heavy rains on 29.08.2003 and 30.08.2003 in the Nimbahera region. In fact, the surveyor appointed by the Appellant had also observed in its report that heavy rainfall had occurred in the area, causing floodlike conditions that resulted in some of the coal kept in the insured premises being washed off. Moreover, the surveyor's report also stated that there was accumulation of water due to the heavy rains, that had caused the coal to get washed off.

14. The NCDRC in the following cases:

(i) Bajaj Allianz General Insurance Co. Ltd. v. M/s. Gondamal Hardyal Mal, [2009] NCDRC 127,

(ii) Oriental Insurance Co. Ltd. v. M/s Sathyanarayana Setty & Sons, [2012] NCDRC 124, and

(iii) Oriental Insurance Co. Ltd. v. M/s R.P. Bricks, [2013] NCDRC 494, had held that damage caused by heavy rainfall would not fall beyond the 'flood and inundation' clause of the Standard Fire and Special Perils insurance policies. It is brought to our notice by the learned counsel appearing for the Respondent that the aforesaid view has been consistently taken by the NCDRC. The aforementioned view of the NCDRC supports the impugned judgment and the same cannot be said to be erroneous.

15. In view of the above, the appeal stands dismissed. The Appellant is directed to pay the sum awarded by the NCDRC within a period of eight weeks from the date of this order, to the Respondent.

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