

# Sangrur Sales Corporation Vs. United India Insurance Company Ltd. & Anr.

Civil Appeal No. 378 of 2020 arising out of SLP (C) No. 1899 of 2020 arising out of SLP (C) D. No. 47437 of 2018

2020-01-17 | Dr. Dhananjaya. Y Chandrachud, J.

Repository ID: F2J-C-1836

## Full judgment text

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Dr. Dhananjaya. Y Chandrachud, J.

1. Delay condoned.

2. Leave granted.

3. This appeal arises from a judgment and order of the National Consumer Disputes Redressal Commission<sup>1</sup> dated 7 March 2018.

4. The appellant obtained a "Standard Fire and Special Perils Insurance Policy" from the first respondent to cover his shop situated at Gausala Road, Sangrur. The shop was insured in the value of Rs 18,00,000 and the policy was valid from 21 June 2011 to 20 June 2012. On 29 March 2012, the showroom in which the appellant carried on the business of sanitaryware collapsed as a result of the work of excavation which was being carried on in an adjacent plot. A First Information Report was lodged on 30 March 2012 at the Police Station, Sangrur and intimation of the loss was given to the insurer. A surveyor was appointed.

The claim was repudiated by the insurer on 11 May 2012. This led to the institution of the consumer complaint before the District Consumer Disputes Redressal Forum<sup>2</sup>, Sangrur. The District Forum allowed the claim in the amount of Rs 18,00,000, together with interest at nine per cent per annum from the date of the institution of the complaint. The order of the District Forum was upheld by the State Consumer Disputes Redressal Commission<sup>3</sup>, Punjab on 5 May 2016. However, in a revision filed by the insurer, the NCDRC reversed the order awarding the claim.

5. Notice was issued in the present proceedings on 22 April 2019. The office report indicates that the insurer has been served. There is no appearance on its behalf.

6. The dispute between the parties turns on a construction of clause VIII (e) of the policy of insurance. Before advertng to the exclusions, it is necessary to extract the relevant part of the insurance policy, which reads as follows:

"In consideration of the insured named in the Schedule hereto having paid to the United India Insurance Company Limited (hereinafter called the Company) the full premium mentioned in the said schedule, the company agrees, (subject to the conditions and exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the Property insured described in the said Schedule or any part of the such property to be destroyed or damaged by any of the perils specified hereunder during the period of insurance named in the said schedule or of any subsequent period in respect of which the Insured shall have paid and the Company shall have accepted the premium required for the renewal of the policy, the Company shall pay to the Insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof."

7. Clause VIII is in the following terms:

"VIII. Subsidence and Landslide including Rock slide: Loss, destruction or damage directly caused by subsidence of part of the site on which the property stands or land slide/rock slide excluding:

(a) the normal cracking, settlement or bedding down of new structures

(b) the settlement or movement of made up ground

(c) coastal or river erosion

(d) defective design or workmanship or use of defective materials e) demolition, construction, structural alterations or repair of any property or groundworks or excavations."

8. Clause VIII brings within the purview of the insured perils a loss, destruction or damage directly caused by subsidence of a part of the site on which the property stands or a land slide/rock slide, but excludes, what is stipulated in sub-clauses (a) to (e) thereafter. The exclusion in subclause (a) refers to the normal cracking, settlement or bedding down of new structures. The exclusion in clause (d) refers to defective design or workmanship or use of defective materials. The crucial exclusion is the one in sub-clause (e) which has weighed with the NCDRC. Clause (e) relates to the demolition, construction or structural alterations or repair of any property or groundworks or excavations.

9. In the present case, the appellant was not engaged in any work of demolition, construction or structural alterations nor was it engaged in any repair of its property. The excavation which was the cause of the loss, was being carried on in a neighbouring plot and not by the appellant in his own property. In the absence of a specific qualification indicating that the exclusion will apply to an excavation being carried on by a third party, the reasonable construction of sub-clause (e) of Clause VIII is that it should apply only to a situation where the excavation is being carried on by the insured himself in his own property. Significantly, the words "of any property" qualify the words preceding them namely, "demolition, construction, structural alterations or repair" and not the words that follow.

10. It is well-settled that in the event that the two constructions are possible or in the event of an ambiguity, that construction which is beneficial to the insured should be accepted consistent with the purpose for which the policy was taken, namely to cover the risk on the happening of a certain event. [See in this context, the decision of this Court in *United India Insurance Co Ltd v Pushpalaya Printers*<sup>4</sup>.

11. The NCDRC, in reversing the concurrent views of the District Forum and the SCDRC, held thus:

"On bare reading of the above, it is clear that as per the above noted condition, the loss caused to the insured property due to demolition, construction, structural alterations or repair of any property or ground works or excavations is excluded from the risk covered. On perusal of para 3(b) of the copy of complaint placed on record, it is evident that as per the stand taken by the complainant on 29.03.2012 the insured showroom had fallen accidentally as a result of subsidence and land sliding due to digging work being carried out by the neighbour in adjacent plot. It is also alleged in the said paragraph that a daily diary report no.54 dated 30.03.2012 regarding the incident was duly lodged with the P.S. Sangrur. From the aforesaid admission on the part of the complainant, it is evident that loss was caused to the insured because of collapse of the insured building as a result of excavation work being carried out in the adjacent plot resulting in subsidence and land sliding. Thus, in my view, in view of the above noted specific exclusion clause, the petitioner/ insurance company was justified in repudiating the insurance claim."

12. The error of the NCDRC lies in reading the exclusion in regard to excavations as being applicable in a situation such as the present where the cause which resulted in the damage was a work of a third party which was carrying on an excavation in independent premises. It is not in dispute that no part of the excavation was attributable to any act or omission on the part of the appellant. Hence, to read the exclusion, as being attracted in the present case, would not be to a reasonable construction of the policy of insurance.

13. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the NCDRC dated 7 March 2018. In consequence, we restore the order of the District Forum dated 5 May 2016, as affirmed by the SCDRC. In the circumstances, there shall be no order as to costs.

1 NCDRC

2 District Forum

3 SCDRC

4 (2004) 3 SCC 694

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[With IA No. 61971/2019 - Condonation of Delay in filing, IA No. 61972/2019 - Condonation of Delay in Refiling/Curing the Defects]

[Special Leave Petition (Civil) Diary No(s). 47437/2018 arising out of impugned final judgment and order dated 07-03-2018 in RP No. 2399/2016 passed by the National Consumer Disputes Redressal Commission, New Delhi]

Date : 17-01-2020 This petition was called on for hearing today.

CORAM: HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Navneet Kumar, Adv. Mr. Vikas Bhadana, Adv. Mr. Mohit Singh, Adv. Mr. Parijat Kishore, AOR

For Respondent(s) Mr. Raunak Jain, Adv. Mr. A. V. Rangam, AOR Mr. Buddy A. Ranganadhan, Adv.

UPON hearing the counsel the Court made the following

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed reportable judgment. Pending application, if any, stands disposed of.

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

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