

CASE NO.:
Appeal (civil) 559 of 1994
Appeal (civil) 633 of 1994

PETITIONER:
NATIONAL INSURANCE CO. LTD.

Vs.

RESPONDENT:
SKY GEMS

DATE OF JUDGMENT: 09/01/2002

BENCH:
D.P. Mohapatra & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

Civil Appeal No. 559 of 1994 by National Insurance Co. Ltd. and Civil Appeal No. 633 of 1994 by M/s Sky Gems are filed against the judgment dated 21st December, 1993, passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as 'National Commission'). The respondent-Sky Gems exported two parcels of precious stones (Emerald) to London through the Foreign Post Office, New Delhi on 10.9.1990. However, the consignment did not reach the consignee and was believed to have been either stolen or lost in transit. The respondent had taken two insurance policies from the appellant-insurance company. The total sum assured was Pound Sterling 85,740.55 (CIF value + 10%). M/s. W.K. Webster & Company, London, were appointed as investigators and their report dated 25.3.1991 confirmed that the consignment had either been lost or stolen. Non-delivery certificate was issued by the Department of Posts (Foreign Post), New Delhi, in respect of the consignment. The postal authorities admitted their liability and made payment at the rate of Rs. 10,254.50 for each parcel representing the full insured value and service charges. In respect of the two policies obtained from the appellant-insurance company, respondent preferred a claim and the appellant agreed to settle the same for Rs. 28,30,000. The respondent claimed from the appellant an amount of Pounds Sterling 1,07,175.60 and insisted that the payments be made in Pounds. For some reason or the other, there was a delay in settlement of the claim and the respondent filed a petition before the National Commission. The appellant resisted the claim and contended that it was not liable to pay the respondent in Pounds Sterling. It was also contended that as the title in the goods had not passed to the consignee, the respondent continued to be the owner of the goods and, therefore, the payment could be effected only in Indian currency.

The National Commission held that as the insurance policies clearly stated that the claim was "payable at London" and the declared invoice value and the insured value of the consignments were in terms of Pounds Sterling, the appellant was liable to pay to the respondent in Pounds Sterling and ultimately ordered the appellant to pay Pounds Sterling 85,740/- + 10% or Pounds Sterling 94,314/-. The respondent was also

held entitled to recover interest at the rate prevalent on commercial borrowings in U.K. from time to time, commencing from January, 1991 to the end of December, 1993. The appellant was entitled to adjust the amount of Rs. 20,000 received as compensation from the postal authorities. A sum of Rs. 50,000/- was also ordered as compensation for delayed payment. This Order of the National Commission has been challenged before us.

We heard Mr. M.S. Nargolkar, learned senior Counsel on behalf of the appellant and Mr. V.A. Mohanty, learned senior Counsel on behalf of the respondent. The dispute in this case is only with regard to the mode of payment to be effected by the appellant in favour of the respondent. The counsel for the respondent contended that as per the terms of the policy, the insured amount was payable at London and, therefore, the payment to be effected has to be in Pounds Sterling. The consignment of the precious stones was dispatched in favour of M/s. Emdico (London) Limited. As per the insurance policy, the claim for settlement was given to M/s. W.K. Webster & Company, 6 Lloyd's Avenue, London. The contention of the respondent is that as the insurance policy specifically stated that the claim was payable at London, the payment should be made by the appellant only in Pounds Sterling.

But, some important facts are to be noted in this case. The two consignments were sent from India on 10.9.1990. After survey, it was found that these consignments were either lost or stolen. The consignee of these goods had approached M/s. W.K. Webster & Company for the settlement of the claim and there was correspondence between the consignee and M/s. W.K. Webster & Company. Some of this correspondence has been placed before us. It is noticed that in the letter dated 2nd April, 1991, M/s. W.K. Webster & Co. had asked the consignee, M/s Emdico (London) Limited, for the original Policies of Insurance together with all correspondence exchanged with the postal authorities concerning their liability, and also a clarification as to whether they had remitted full payment of the value of the missing merchandise to the Indian suppliers. In another letter dated 20th June, 1991, M/s. W.K. Webster & Co. offered to settle the claim as soon as they received the necessary documentation from India and also mentioned that they shall present the same to the Bank in order to obtain the required funds against the Letter of Credit, which was available to them for payment of claims. The consignee, Emdico (London) Limited, sent a reply to M/s. W.K. Webster & Co. on 8th April, 1991 and the last paragraph of their letter reads as follows:-

"As regards the question whether we have remitted full payment of the value of the missing merchandise to our Indian suppliers, the answer is that we haven't done so and we suggest that the settlement may be concluded direct with Sky Gems in India, however, if you will feel it is more convenient for you to deal with us as the consignees of the goods, we shall be happy to do so. One way or the other it doesn't seem to make much difference."

From the above correspondence, it is evident that the consignee, Emdico (London) Limited, did not pay the value of the missing merchandise to the respondent. There is no evidence to show that the necessary documents were endorsed in favour of the consignee and that they were transferred to them. These facts will show that the title to the goods in question had not passed to the consignee, M/s. Emdico (India) Limited and the respondent continued to be the owner having insurable interest over the goods.

The learned senior Counsel for the respondent contended that the goods were sent on CIF contract and the moment the goods were consigned, the title would pass to the consignee. We do not find much

force in this contention. It is true that the goods are ascertained, but even then the title would pass based on the contract between the parties. The rights and liabilities of the parties in a CIF contract have been described by Lord Porter in *Comptoir d'Achat vs. Luis de Ridder; The Julia* [1949] A.C. 293 at 309, which is quoted in the Book *Schmitthoff's Export Trade - The Law and Practice of International Trade* by Leo D'Arcy, Carole Murray and Barbara Cleave [10th edition], at page 29, and read as follows:

"The obligations imposed on a seller under a c.i.f. contract are well known, and in the ordinary case, include the tender of a bill of lading covering the goods contracted to be sold and no others, coupled with an insurance policy in the normal form and accompanied by an invoice which shows the price and, as in this case, usually contains a deduction of the freight which the buyer pays before delivery at the port of discharge. Against tender of these documents the purchaser must pay the price. In such a case the property may pass either on shipment or on tender, the risk generally passes on shipment or as from shipment, but possession does not pass until the documents which represent the goods are handed over in exchange for the price. In the result, the buyer, after receipt of the documents, can claim against the ship for breach of the contract of carriage and against the underwriters for any loss covered by the policy. The strict form of c.i.f. contract may, however, be modified. A provision that a delivery order may be substituted for a bill of lading or a certificate of insurance for a policy would not, I think, make the contract be concluded on something other than c.i.f. terms."

(Emphasis supplied)

From the above passage, it is clear that the right of the buyer to claim policy amount would arise when he obtained title to the property and he must produce the documents of transfer. Here, the buyer was not in possession of any such documents of title. The letter written by the consignee, M/s. Emdico (London) Limited on 8th April, 1991 clearly shows that they had not paid the value of the missing merchandise and had suggested to M/s. W.B. Webster & Co. that the claim may be settled with the respondent-Sky Gems in India. The consignee could not produce any documents concerning their title to the goods before M/s. W.K. Webster & Company and this evidently shows that the title had not passed to the consignee at London. The insurable interest over the goods continued to be with the respondent. Under such circumstances, the respondent is not entitled to receive the payment in Pounds Sterling.

The respondent has paid the insurance premium in Indian currency and continued to have title over the goods as it never passed to the consignee. Had the title passed to the consignee, and if they had preferred the claim, the insurance amount would have been payable in London in Pound Sterling. The National Commission did not notice these points and directed the appellant to pay the amount in Pound Sterling mainly on the ground that the policies issued by them stated that the insurance amount was payable at London.

Having regard to the facts and circumstances of the case, we do not think that the appellant is liable to pay the insurance amount in Pounds Sterling. We set aside the direction of the National Commission to pay the amount in Pounds Sterling and hold that the respondent is entitled to get Rs. 28,30,000 with interest @ 18% from the date on which it preferred the claim petition before the appellant, till payment. The respondent is

also entitled to receive Rs.20,000 towards costs ordered by the National Commission.

The Order passed by National Commission shall stand modified to the extent indicated above.

With the above directions, Civil Appeal No. 559 of 1994 is disposed of. Civil Appeal No. 633 of 1994 is without any merits and is dismissed. The cost of these proceedings shall be borne by the respective parties.

J.
(D.P. Mohapatra)

J.
(K.G. Balakrishnan)

January 9, 2002.