REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1375 OF 2003

M/S SURAJ MAL RAM NIWAS OIL MILLS (P.) LTD. — APPELLANT (S)

VERSUS

UNITED INDIA INSURANCE CO. LTD. & ANR. — RESPONDENT (S)

J U D G M E N T

D.K. JAIN, J.:

1. This appeal, by special leave, is directed against the judgment and order dated 12th July 2002, delivered by the National Consumer Disputes Redressal Commission (for short "the National Commission") in First Appeal No. 354 of 1996, whereby it set aside order dated 24th June, 1996 passed by the Consumer Disputes Redressal Commission, Rajasthan (for short "the State Commission") and held that the respondents – insurance

company was justified in repudiating the insurance claim of the appellant.

2. Both the respondents are the same insurance company, the first being the registered and head office and the second its local branch office.

3. Shorn of unnecessary details, the facts material for the purpose of disposal of this appeal may be stated thus:

The appellant company is engaged in the business of manufacture and sale of "Bhisham" brand mustard oil and cakes. They had obtained an open transit insurance policy from the respondents covering "all types of edible oils in tins…" transported by rail/road (which had to be declared) from Jaipur to anywhere in India. Initially, the liability of the respondents was limited to `10 lakhs but during the relevant period, the limit was enhanced to `1 crore. The insurance policy was subject to certain conditions attached as schedule to the policy. Additionally, the cover note also contained the following special condition and warranty:

> "Each & every consignment must be declared immediately before dispatch of goods."

4. On 14th August 1992, the appellant dispatched 1194 tins of oil valued at ` 5,84,790/- from Jaipur to Dharamnagar by rail and from Dharamnagar to Agartala by road to one M/s Sree Sree Kaibalia Bhandar, Agartala.

5. The railway wagon carrying the said goods met with an accident on 28th September 1992, resulting in extensive damage to the consignment.

6. It is an admitted fact that the appellant did not inform either of the two respondents herein about the said accident till 30th September 1992 but claims to have informed their Agartala office on 28th September 1992 itself, who had also appointed a surveyor. The consignment, in damaged condition, was forwarded to Agartala by road on 29th September 1992. The challans bearing Nos. 40336, 40337 and 40338 prepared by the road carrier M/s Paul Brothers clearly mentioned the damaged state of the goods. The said goods were received by the consignee on the same day.

7. On 30th September 1992, the consignee informed the Agartala branch office of respondent No. 1 about the damage to the goods. The road carrier, M/s Paul Brothers also reported the matter to the respondent No. 2, herein. Subsequently, on 3rd October 1992, the road carrier issued a shortage/damage certificate stating that 153 tins were handed over in

fully empty condition and in the remaining 1041 tins, there was shortage of oil.

8. It appears from the report of the surveyor, one Mr. Tapan Kumar Saha, that the Agartala branch of respondent No.1 had issued instructions for survey on 28th November 1992. On 10th November 1992, he submitted his report whereby he assessed the total loss at `4,39,178/- payable by the respondents. The said report was also communicated to respondent No. 2.

9. On 6th August 1993, another surveyor, Mr. S.K. Bakliwal, was appointed by respondent No. 2, who reported that during the period from 1st April 1992 to 14th August 1992, the appellant had only declared dispatches worth `91,22,778/- whereas the total dispatches by the appellant during that period were to the tune of `1,43,59,303/-.

10. Respondent No. 2 thereafter requested Mr. Tapan Kumar Saha to segregate the damage caused to the goods at the place of accident, and the subsequent damage that occurred during the transportation of the damaged consignment to Agartala. In his report dated 22nd March 1994, the surveyor observed that loss of oil due to the railway accident was 2,048 kgs. and from Dharamnagar to Agartala, it was 10,676 kgs.

11. On 23rd August 1993, the appellant requested the respondents to honour their claim, followed by a reminder on 12th May 1994. On 1st August 1994, the respondents, vide letter No. UIIC:DOII:JPR:1994-95, repudiated the claim of the appellant on the following grounds:

> "i) As per the terms and conditions of the policy, you were supposed to declare each and every dispatch. From 10-4-1992 to 14-8-1992, you have dispatches goods worth `1,43,59,303/- while you have only declared as per your record, goods worth `91,22,778/-. Out of these declarations, a number of declarations have not reached the company's office. Even considering it to be correct as the dispatched have exceeded rupees one crore long back, the policy has not continued to cover the dispatch in question, and thus your claim cannot be entertained.
>
> ii) You have further violated the terms and conditions of the policy by removing goods from the rail accident site without survey of the loss having been done by the Insurance Company's Surveyor immediately after the accident, and without the permission of the Insurance Company. You have not given any information or sought any permission before removing the goods from the rail accident site to Agartala.
>
> iii) You have aided in increasing the losses knowingly that the goods dispatched from the rail accident site to Agartala were not properly packed, and carrying of the oil in damaged tins is clear violation of the terms and conditions of the policy and the normal conduct of behaviour. From the Surveyor's Report, it is evident that the losses which have been quantified on the basis of the certificates while the rail authorities are to the tune of `71,130/- while the rest of the damages have occurred during the transshipment from the rail accident site to Agartala in damaged tins by M/s Paul Brothers, the Road carriers. It is also not disputed that during the carriage of the goods by road from rail accident site to Agartala, there was no accident and these losses are contributed to your own fault, negligences and want

of proper care to carry the oil only after transferring the oil from tins damaged as a result of the rail accident into new tins."

12. Being aggrieved with the rejection of their claim, the appellant filed a complaint before the State Commission, preferring a claim of `5,50,798/- along with interest at the rate of 24% payable from 10th November 1992 till its payment against the respondents.

13. The State Commission, vide its order dated 24th June 1996, allowed the complaint of the appellant and directed the respondents to pay `4,39,178/- with interest at the rate of 12% per annum from 1st January 1993 till payment, and `2,000/- as costs. In relation to the grounds of repudiation pressed into service by the respondents, the State Commission, *inter alia*, observed that *firstly,* the effect of non-declaration of the consignments could only be that they were not covered by the insurance policy, and the appellant company having not crossed the limit of `1 crore in relation to consignments which were desired to be covered by insurance, the consignment in question would be covered by the insurance policy as declaration was duly made in regard to it; *secondly,* the liability of the respondents would not be affected by the reason that the assessment of loss was not done immediately after the unloading of goods at Dharamnagar*;* and *thirdly,* it did not matter that the loss or damage to the

consignment was remotely caused by the negligence of the insured unless the loss was due to the wilful act of the insured.

14. Aggrieved by the said order of the State Commission, the respondents preferred an appeal before the National Commission. As aforestated, the National Commission allowed the appeal of the respondents, observing thus:

> "The insured's failure to report the loss caused by Rail accident and removal of consignment without giving Surveyor a chance to assess the loss at first hand and on the contrary aggravating the loss on account of improper care while transporting it by Road after the initial damage as well violating the terms of the policy by not reporting each and every dispatch as per terms of the policy prejudices the interest of the appellant and in our view repudiation by the appellant was in order."

15. Being dissatisfied with the said order, the appellant is before us in this appeal.

16. Mr. A.K. Ganguli, learned senior counsel appearing for the appellant, strenuously urged that admittedly the respondents were informed of the accident on 28th September 1992 by the consignee through their Agartala office and this fact has been overlooked by the National Commission while recording the finding that the surveyor was not given a chance to assess the real loss. To buttress the contention that intimation of loss of

subject matter of insurance even by the consignee was sufficient and appellant's claim could not be rejected for want of intimation about the accident by the insured themselves, learned counsel commended us to the decision of the Court of Appeal in ***Barratt Bros. (Taxis), Ltd.*** *Vs.* ***Davies***[1], wherein it was held that if the insurance company receives all material knowledge from another source so that they are not prejudiced at all by the failure of the insured himself to inform them, then they cannot rely on such a condition in the insurance contract to defeat the claim. It was pleaded that in the present case the surveyor had also surveyed the consignment as soon as the goods reached their destination and had assessed the loss at `4,39,178/-. It was contended that since insurance contracts are a different species of contract, their interpretation is governed by different principles and in the event of any ambiguity in any clause or where two interpretations are possible, an interpretation which favours the policy holders should be given. In support of the proposition, learned counsel relied on the decisions of this Court in ***General Assurance Society Ltd.*** *Vs.* ***Chandumull Jain & Anr.***[2], ***Polymat India (P) Ltd. & Anr.*** *Vs.* ***National Insurance Co. Ltd. & Ors.***[3], ***Shashi Gupta***

[1] [1966] 2 Lloyd's Rep.1
[2] (1966) 3 SCR 500
[3] (2005) 9 SCC 174

Vs. ***Life Insurance Corporation of India & Anr.***[4] and ***Life Insurance Corporation of India*** *Vs.* ***Raj Kumar Rajgarhia & Anr.***[5].

17. As regards the objection of the respondents about the non-disclosure of dispatch of each and every consignment, as pointed by the second surveyor, learned counsel submitted that the said condition has to be understood in the context of the fundamental condition that the insurance cover was intended to secure only the "insurable interest" of the appellant in the dispatches. It was urged that the appellant had declared only those consignments in which they had an "insurable interest" as in relation to dispatches which had not been declared, the consignees had desired that their consignments should be dispatched without an insurance cover. In all such cases, the purchasers took the risk of loss to their goods, and hence the appellant had no "insurable interest" in them, unlike in the consignment in question for which due declaration was made. Reference was made to the decisions of this Court in ***New India Assurance Co. Ltd.*** *Vs.* ***G.N. Sainani***[6] and ***New India Assurance Company Limited*** *Vs.* ***Hira Lal Ramesh Chand & Ors.***[7], wherein it was held that "insurable interest"

[4] 1995 Supp (1) SCC 754
[5] (1999) 3 SCC 465
[6] (1997) 6 SCC 383
[7] (2008) 10 SCC 626

over a property is "such interest as shall make the loss of the property to cause pecuniary damage to the assured."

18. It was then contended by learned counsel for the appellant that in the instant case the insurance policy covered all risks from the point of loading at Jaipur till the final delivery and the appellant was only under a duty to ensure that goods were in a properly packed condition when they were handed over at Jaipur for transport by train. It was asserted that the appellant had done everything possible to ensure that the goods reached their destination in proper condition as the event that had occurred at Dharamnagar station was beyond their control. In order to buttress the contention that the goods were in transit till they reached their destination, viz. Agartala, learned counsel relied on ***Kilroy Thompson, Ltd.*** *Vs.* ***Perkins & Homer, Ltd.***[8] and ***United India Insurance Co. Ltd.*** *Vs.* ***Great Eastern Shipping Co. Ltd.***[9] It was argued that in the instant case the respondents have not led any evidence to prove negligence on the part of the appellant.

19. Relying on the decisions rendered by the National Commission in ***Divisional Manager, LIC of India*** *Vs.* ***Shri Bhavanam Srinivas Reddy***[10],

[8] [1956] 2 Lloyd's Rep. 49
[9] (2007) 7 SCC 101
[10] (1991) CPJ 189

Divisional Manager, LIC India of India *Vs.* ***Smt. Uma Devi***[11] and ***M/s Raj Kamal & Co.*** *Vs.* ***M/s United Insurance Company***[12], learned counsel contended that the jurisdiction of a consumer forum has to be construed liberally and it covers unilateral repudiation of a claim arising out of insurance. It was also submitted that apart from the fact that the present case does not involve any complicated issues of fact for which very detailed evidence would have to be led, which the State or the National Commission would not be able to do, mere complication either of facts or of law cannot be a ground for shutting the doors of those fora to the person aggrieved. To buttress the submission, reliance was placed on the decisions of this Court in ***Dr. J.J. Merchant & Ors.*** *Vs.* ***Shrinath Chaturvedi***[13] and ***CCI Chambers Coop. Hsg. Society Ltd.*** *Vs.* ***Development Credit Bank Ltd.***[14]

20. *Per contra,* Mr. Vineet Malhotra, learned counsel appearing for the respondents, while supporting the judgment of the National Commission, urged that the claim of the appellant could not be considered as the appellant had violated the special condition of the policy by not disclosing each and every consignment before it had left the factory

[11] (1991) CPJ 516
[12] (1992) CPJ 121
[13] (2002) 6 SCC 635
[14] (2003) 7 SCC 233

premises. It was asserted that the said condition was the basic condition of the policy and on its breach the liability of the respondents stood repudiated. It was also pleaded that the moment goods worth Rs.1 crore had been dispatched from the factory of the appellant, the policy ceased to exist. It was argued that prior to the dispatch of the goods in question, goods worth `1,43,59,303/- had already been dispatched, whereas the appellant had declared dispatches of goods only worth `91,22,778/- and, therefore, liability of the respondents under the policy ceased to exist both on account of non-declaration of material facts, as also due to the fact that the value of dispatches had exceeded the policy limit. In support of his plea that it was not open to the insured to pick and choose the consignments for the purpose of declaration, learned counsel relied on the decision of the Kings Bench in ***Dunlop Brothers & Company*** *Vs.* ***Townend***[15]. Learned counsel contended that appellant had also violated the terms of policy by not informing the respondents immediately about the accident as well as not taking adequate steps to minimise the losses, in as much as the goods dispatched from Dharamnagar to Agartala were not properly packed. According to the learned counsel, the insurance policy casts an obligation on the insured and its agents to take steps for

[15] 1919 (2) 127 (KB)

minimizing losses, and the fact that the appellant permitted the carriage of oil in broken tins clearly establishes that the appellant had violated the terms of the policy and, therefore, the respondents cannot be made liable for the losses.

21. Lastly, learned counsel urged that there must be strict compliance with the terms and conditions of an insurance policy, and the appellant having breached a fundamental condition of the policy, the respondent is not liable to pay any amount to them. In support of the contention that in a contract of insurance, rights and obligations are strictly governed by the terms of the policy and no exception or relaxation can be given on the ground of equity, learned counsel relied on the judgments of this Court in ***Deokar Exports Private Limited*** *Vs.* ***New India Assurance Company Limited***[16], ***United India Insurance Co. Ltd.*** *Vs.* ***Harchand Rai Chandan Lal***[17] and ***Vikram Greentech India Limited & Anr.*** *Vs.* ***New India Assurance Company Limited***[18]**.**

22. Before embarking on an examination of the correctness of the grounds of repudiation of the policy, it would be apposite to examine the nature of a contract of insurance. It is trite that in a contract of insurance, the

[16] (2008) 14 SCC 598
[17] (2004) 8 SCC 644
[18] (2009) 5 SCC 599

rights and obligations are governed by the terms of the said contract. Therefore, the terms of a contract of insurance have to be strictly construed, and no exception can be made on the ground of equity. In ***General Assurance Society Ltd.*** (supra), a Constitution Bench of this Court had observed that:

> "In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves." (See also: ***Oriental Insurance Co. Ltd. Vs. Sony Cheriyan***[19]; ***Vikram Greentech*** (supra); ***Sikka Papers Limited*** *Vs.* ***National Insurance Company Limited & Ors.***[20]; ***New India Assurance Company Limited*** *Vs.* ***Zuari Industries Limited & Ors.***[21]; ***Amravati District Central Cooperative Bank Limited*** *Vs.* ***United India Fire and General Insurance Company Limited.***[22]***)***

23. Similarly, in ***Harchand Rai Chandan Lal's*** case (supra), this Court held that:

> "The terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever liberally we may construe the policy but we cannot take liberalism to the extent of substituting the words which are not intended."

[19] (1999) 6 SCC 451
[20] (2009) 7 SCC 777
[21] (2009) 9 SCC 70
[22] (2010) 5 SCC 294

24. Thus, it needs little emphasis that in construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the Court to add, delete or substitute any words. It is also well settled that since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the court should always be to interpret the words in which the contract is expressed by the parties.

25. Having considered the instant case on the touchstone of the aforenoted broad principles to be borne in mind while examining the claim of an insured, we are of the opinion that the claim of the appellant must fail on the short ground that there was a breach of the afore-extracted special condition incorporated in the cover note. The special condition viz. "each and every consignment" must be declared before dispatch of goods is clear and admits of no ambiguity. The appellant was obliged to declare "each and every consignment" before it left the appellant's factory premises and there is nothing in the policy to suggest that the insured had the liberty to pick and choose the dispatches which they wanted to

declare to the insurer, not even at the instance of the consignee, who otherwise is a stranger to the contract between the insurer and the insured. We have no hesitation in rejecting the plea of the appellant that they were required to declare only those dispatches in which they had an insurable interest. It bears repetition that notwithstanding any request by the consignee, the policy of insurance postulated declaration in respect of each and every dispatch by the appellant. Therefore, the fact that purchasers did not want an insurance cover on certain dispatches had no bearing on the obligation of the appellant to declare each and every dispatch under the policy. It is a settled proposition of law that a stranger cannot alter the legal obligations of parties to the contract.

26. We are in complete agreement with the National Commission that there was a breach of the special condition in the cover note for the insurance policy on the part of the appellant and, therefore, the repudiation of the claim of the appellant by the respondents was justified.

27. Having come to the conclusion that the repudiation of the claim preferred by the appellant on the aforestated ground was valid, we deem it unnecessary to evaluate the correctness of the other rival submissions made before us by the learned counsel.

28. Resultantly, the appeal being devoid of any merit deserves to be dismissed. It is dismissed accordingly, leaving the parties to bear their own costs.

….....J.
[D.K. JAIN]

….....J.
[T.S. THAKUR]

NEW DELHI,
OCTOBER 8, 2010.