

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5822 OF 2006

Kokkilagadda Subba Rao

....Appellant

Versus

Divisional Manager, United India Assurance
Co. Ltd. & Ors.

..Respondents

J U D G M E N T

Madan B. Lokur, J.

1. The appellant (Subba Rao) was the owner of a fishing boat in Andhra Pradesh registered with the respondent insurance company. There is no dispute that the fishing boat capsized on 27th July 1992 while the insurance policy covering the boat was still valid.

2. Upon the boat having capsized, Subba Rao made a claim with the insurance company on 3rd August 1992 for a sum of Rs. 6 lakhs. The insurance company appointed M/s Reliance

Surveillance as a surveyor. Reliance Surveillance submitted its report on 3rd May 1993 to the effect that the case may be treated as a total loss.

3. Apparently dissatisfied with the report, the insurance company appointed another surveyor M/s Coastal Consultants Private Limited. The second surveyor submitted its report on 15th July 1993 but expressed a doubt whether the vessel sank in the Andhra Pradesh coastal waters or the Orissa coastal waters. Subsequently, Coastal Consultants submitted an addendum to its report on 14th February 1994 in consultation with M/s Mohanty Associates. It was then concluded that the fishing boat sank in the Orissa coastal waters. Since the vessel had transgressed the required territorial limits, there was a violation of the policy conditions.

4. Based on the report submitted by Coastal Consultants and the addendum thereto, the insurance company repudiated the claim of Subba Rao on the ground that contrary to the insurance policy, the boat was used for fishing in the high seas and the

insurance policy did not permit fishing in the high seas from 1st November to 31st March and 1st May to 30th September.

5. Feeling aggrieved, Subba Rao approached the Andhra Pradesh State Consumer Dispute Redressal Commission seeking compensation from the insurance company of Rs. 6 lakhs with 24% interest. By an order dated 28th March 2002 the State Commission rejected Subba Rao's claim and this led to his filing an appeal before the National Consumer Disputes Redressal Commission being First Appeal No.397 of 2002. By an order dated 10th January 2005 (under challenge) the National Commission rejected the appeal filed by Subba Rao.

6. The State Commission noted that the only point for consideration was whether there was any deficiency on the part of insurance company and if so to what extent. While answering this question on the basis of the evidence adduced, the State Commission concluded that the vessel was used for fishing in the high seas and eventually sank in the Orissa coastal waters and therefore there was no material to hold that the repudiation of the claim by the insurance company was illegal. Accordingly, the

complaint filed by the appellant before the State Commission being C.D. No.94/1995 was dismissed.

7. Feeling aggrieved, the appellant filed First Appeal No. 397 of 2002 before the National Consumer Disputes Redressal Commission. The National Commission held that the fishing vessel was used in the high seas for fishing and that it sank in the Orissa sea coast. Accordingly, the claim made by the appellant was not covered by the policy issued by the insurance company. The view expressed by the State Commission was upheld.

8. Before us, learned counsel for the appellant argued that in view of the Section 64 UM(3) of the Insurance Act, 1938 the insurance company could not have called for a second survey report. We are afraid this contention is not open to the appellant at this stage. This contention was not raised before the State Commission or before the National Commission. Before both the fora the only question raised was whether the fishing vessel capsized in the Orissa sea coast or in the Andhra sea coast and it was found as a matter of fact that the vessel sank in the Orissa sea coast and was utilized for fishing in the high seas contrary to

the insurance policy. Therefore the insurance company was entitled to repudiate the claim made by Subba Rao.

9. We see no reason to disturb the finding of fact arrived at by the State Commission as well as by the National Commission nor do we see any reason to entertain a fresh argument raised in this court for the first time without its having been agitated before any of the earlier fora. The contention urged by learned counsel involves some factual determination and in the absence of any evidence having been led by either of the parties on this issue, we are not inclined to entertain the submission.

10. Under the circumstances, there is no merit in this appeal and it is accordingly dismissed.

JUDGMENT

.....J
(Gyan Sudha Misra)

.....J
(Madan B. Lokur)

**New Delhi;
April 16, 2014**

ITEM NO.1A

COURT NO.14

SECTION XVII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5822 OF 2006

KOKKILAGADDA SUBBA RAO

Appellant (s)

VERSUS

DIV.MNG.UNITED INDIA ASSURA.CO.LTD.&ORS.

Respondent(s)

[HEARD BY HON'BLE GYAN SUDHA MISRA AND HON'BLE MADAN B. LOKUR, JJ.]

Date:16/04/2014 This Appeal was called on for judgment today.

For Appellant(s) Mr. Mukesh K. Giri,AOR

For Respondent(s) Mr. Rajesh Dwivedi, Adv.
Mr. Zahid Ali, Adv.
for Mr. Debasis Misra,AOR

Hon'ble Mr. Justice Madan B. Lokur pronounced the judgment of the Bench comprising Hon'ble Mrs. Justice Gyan Sudha Misra and His Lordship.

For the reasons given in the Non-Reportable judgment, which is placed on the file, the appeal is dismissed.

(Parveen Kr.Chawla)
Court Master

(Phoolan Wati Arora)
Assistant Registrar