IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6892 OF 2008

New India Assurance Co.Ltd. .. Appellant(s)

Versus

Parakh Food Ltd. .. Respondent(s)

WITH

CIVIL APPEAL NO. 879 OF 2009

O R D E R

By this order we propose to dispose of the aforesaid two appeals. Civil Appeal No. 6892 of 2008 is filed by the New India Assurance Co. Ltd. as the appellant, whereas Civil Appeal No. 879 of 2009 is filed by M/s. Cargil India Pvt. Ltd. as a cross appeal. Since the facts and the issues involved in the two appeals are similar, we propose to dispose of both the appeals by this common judgment and order.

The appeals are filed against the judgment and order passed by the National Consumer Disputes Redressal Commission, New Delhi (for short, 'the National Commission') in Original Petition No. 146 of 2003, whereby the National Commission came to a definite conclusion that the loss suffered by the respondent (M/s. Cargil India Pvt. Ltd.) had occurred on account of fire causing damage to the soya bean stock and,

therefore, as per terms of the policy, the respondent is entitled to receive Rs. 1,70,72,876/- which is the amount of loss assessed by the surveyor by report dated 29.10.2002 along with the interest @ 9% per annum from 1.1.2003 till the date of payment. The National Commission also directed for payment of cost of Rs. 25,000/-. Being aggrieved by the aforesaid judgment and order, the appellant has filed this appeal whereas the respondent has filed the appeal seeking enhancement of the compensation awarded by the National Commission.

Counsel appearing for the appellant has drawn our attention to the entire facts of the case in support of his contention that the soya bean stock was damaged before the fire had taken place and in that view of the matter the stipulation in the agreement between the parties does not entitle the respondent to receive any damage or compensation for the loss or damage caused to the goods. In support of the said contention the counsel also relied upon the endorsement in the agreement between the parties, which reads as follows:

> **"In consideration of the payment by the insured to the company of additional premium of Rs. …….the company agrees notwithstanding what is stated in the printed exclusions of this policy to the contrary that the insurance by (items ….) of this policy shall extend to the property insured caused by its own**

fermentation, natural heating or spontaneous combustion.

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N.B. – The expression 'by fire only' in the endorsement above must not be omitted under any circumstances."

Our attention was also drawn to the policy, which is the subject matter of the claim in the present case. There is an exclusion clause in the said policy which provides that the aforesaid insurance policy would not cover loss or damage to property caused by its own fermentation, natural heating or spontaneous combustion or by its undergoing any heating or drying process. However, the respondent herein paid an extra premium of Rs. 25,000/- due to which the exclusion clause was relaxed. In other words, because of the payment of the aforesaid extra premium, the exclusion clause as stated hereinbefore also became a part of the contract between the parties and, therefore, the said exclusion clause would not be treated as excluded terms of contract but would be treated as an inclusive clause of the contract between the parties.

At the instance of the counsel appearing for the parties, we have also gone through the findings recorded by the National Commission. The National Commission on appreciation of the entire records has come to a definite finding that there was loss to the respondent on account of fire causing damage to the soya bean stock and, therefore, in

terms of the stipulation in the contract, the respondent is entitled to the compensation, which was awarded by the

National Commission. We have considered the evidence on record and we have no reason to take a different view than what is taken by the National Commission.

Even when we examine the submission of the counsel of the appellant to the effect that there was no fire at the time when the soya bean stock was damaged, even then in terms of the Full Bench decision of the National Commission, the appellant would be liable to pay the loss or damage in terms of the endorsement thereof whereby it was provided that the policy would extend to include loss or damage even to the property insured, caused by spontaneous combustion. In other words, even if there was no loss or damage by fire even then, for any loss or damage caused to the property insured due to spontaneous combustion, the respondent would be entitled to claim damages to the extent it was found to be so damaged. The aforesaid Full Bench decision of the National Commission although was challenged in this Court was not interfered with in the decision in Civil Appeal No. 873 of 2005 titled Oriental Insurance Co. Ltd. v. M/s. Murli Agro Products Ltd. disposed of on 13.03.2008. It could not be disputed before

us that the present case would also be covered by the aforesaid decision, so far aforesaid alternative arrangement is concerned. The NCL has given a report in terms of the request of the surveyor assessing damage of

Rs. 1,70,72,876/-, which is the amount awarded. In terms thereof, we do not find any ground to interfere with the order passed by the National Commission.

So far as the counter claim is concerned, we have heard learned counsel appearing for the parties. On going through records, we find no reason to enhance the compensation, which is fixed by the National Commission. The aforesaid amount, which is awarded as damages to the respondent, is based on the loss assessed by the surveyor. That being the position, no case for any enhancement is made out by the respondent. The cross appeal has no merit and is dismissed. The appeal filed by the Assurance Company also stands dismissed being devoid of any merit.

We are informed at the bar that the entire amount, which was awarded by the National Commission, was paid to the respondent on execution of a bank guarantee. Since we have now dismissed the appeal of the appellant also, the respondent stands discharged from the bank guarantee.

The parties will bear their own costs.

.....J.
[Dr. MUKUNDAKAM SHARMA]

.....J.
[R.M. LODHA]

NEW DELHI,
OCTOBER 27, 2009