Supreme Court of India
New India Assurance Company Ltd vs Shri G.N. Sainani on 9 July, 1997
Author: D Wadhwa.
Bench: K. Ramaswamy, D. P. Wadhwa

PETITIONER:
NEW INDIA ASSURANCE COMPANY LTD.

Vs.

RESPONDENT:
SHRI G.N. SAINANI

DATE OF JUDGMENT: 09/07/1997

BENCH:
K. RAMASWAMY, D. P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T D.P. Wadhwa. J.

Leave granted.

This appeal is directed against the order of the National Consumer Disoutes redressal Commission dismissing the appeal of the appellant and confirming the order of the Maharashtra State Commission by which order the State commission had allowed the Complaint of the respondent filed under sections 17/16 of the Consumer protection Act, 1986 (for short 'the Act') . In fact there were two complaints before the State Commission: in one complaint the claim of the complainant against the appellant was settled for Rs.5.54,841,23 and the second for Rs. 9,99,500/-. The complaint was also awarded costs of Rs.500/- in each of the two complaints.

In this judgment, the appellant M/s. New India Assurance Company Ltd. is described as 'insurer'. the respondent as complainant or assigned and M/s Ajanta Paper and Several products Ltd. as the consignee or assured'.

The complainant is an assigned of two insurance policies taken out by M/s Ajanta paper and General products Ltd., from the appellant being the insurer. One policy was to insure 244 bales

computer wastes computer prints out valued at Rs. 5,87,000/- and the second was for 170 bales computer waste computer print out valued at Rs. 4,04,000/- to cover the risk from the port of onward to Bombay. The pointed were taken out on February 27,1984. by letter dated April 12, 1984 the consignee informed the insurer, the appellant herein that at had been given to understand that due to strike in Indian ports the vessel s.s IRISH MAPLE' which was bringing the goods, had been diverted to Muscat and the Cargo had been discharged there. The consignee, therefore, requested the insurer to cover the risk accordingly. The insurer replied by its letter dated May 4,1984 . it informed the consignee that the consignments in question were required to re-shipped from Muscat to Bombay within 60 days; time from the date the same were discharged at Muscat and that falling which there would be no liability of any claim covered under the two policies in question. The consignees again wrote to the insurer on May 21,1984 informing it that the consignment had not been brought to Bombay by the steamer company and same was still lying at Muscat and further that consignee was arranging to bring the cargo from Muscat in order to avoid further delay, and damage and also to minimise financial losses. The consignee also stated in this letter that by doing to it was holding the insurer and therefore, the additional expenditure such as freight from Muscat to Bombay, warehousing charge at Muscat and other incidental expenses that might be levied by the steamer Company shall be on account of the insurer. it, therefore, requested the insurer to endorse the certificate for covering the risk for forced transshipment from Muscat to Bombay. By letter dated May 24, 1984 the insurer repeated what was written in its letter of May 4, 1984. It had informed the consignee that it was consignee's responsibility to arrange for the re-shipment of the consignment to Bombay within the specified time-limit and that insurer would not be responsible for any loss or damage resulting from non-cooperation of the statement agent of the consignee in arranging re-shipment of Cargo to Bombay. The Consignee was specifically told that under no circumstances insurer was liable for additional expenses incurred by the consigned by way of extra freight. warehousing etc. in the process of re-shipment of the cargo from Muscat to Bombay. Again on June 2, 1992 the consigned wrote to the insurer informing it that arrangement was being made to bring the cargo as early as possible. the insurer was, however. requested to extend the validity of the Certificate. While itself agreeing to pay necessary charges for the same. Again on June 8, 1984. the consignee informed the insured that the shipping company had agreed to bring the cargo and that the subject consignment was being loaded per M.V. MICHEL `C' which was expected at Bombay port shortly. It may be noted that earlier the consignment was being brought by s.s. 'IRISH MAPLE' which had off-loaded the consignment at muscat. The insurer acknowledged the letter of June 2, 1984 of the consignee but at the same time the request of the consigned for extension of the time beyond 60 days was not granted. The consignee was informed that on the expiry of 60 days time limit from the date of discharge at the port of Muscat. the risk under the policy in question would cease.

The consignee, being the insured. preferred a claim for Rs. 1,74,708,52 and for Rs. 3,99,007,52 on account of short handing of the consignment under transshipment and obtained the short handing certificates issued by the Bombay port Trust docks of Bombay. The claim was, therefore, on account of shortage of goods.

It would appear from the letter dated July 25, 1989 of the insurer to M/s. national consultants (proprietor Mr. G.N. Sainani, the complainant) that the policies had been assigned by the consigned

in favour of M/S National Consultants. By this letter the insurer acknowledged letter dated July 18,1989 of the assignee. The insurer in this letter informed the assigned as under:

> "1) The vessel carrying g the insured consignments had diverted its course, and the consignments wore discharged at Muscat, for onward carriage to Bombay. Our Marine insurance cover had ceased at this stage. Moreover no extension of insurance cover was obtained by you.
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> ii) Insured consignments were discharged at Bombay ex Michalle `C' on 30.7.84 where as claims on ocean carriers were lodged on 16.7.85/17.7.85 respectively, i.e. about a year after discharging of the consignments. Further more no extension of time-limit was obtained from them to safeguard our rights of recoveries. Our recoveries therefore are lost. as claims against carriers have now become time barred/suit barred.
>
> Owing to the above irregularities/lapses, it will be appreciated that we have no liabilities to meat towards the above subject claims."

On July 23,1992 the assignee instituted two complaints before the Consumer Disputes Redressal Commission. Maharashtra State, Bombay against the insurer alleging deficiency while rendering the service. The state Commission considered the question if by not extending the insurance cover during re-shipment and repudiating the insurance claim constituted deficiency in service by the insurer. By the order dated October 29, 1994 it held against the insurer. The appeal of the insurer was dismissed by the national Consumer Disputes Redressal Commission by the order dated September 30,1996.

All this narration of events was necessary to understand the issues involved into the appeal. it is submitted by Mr. Midha, learned counsel for the appellant that the complaint was barred by limitation; that the complainant was not a consumer within the meaning of the Act and under clause 9 of the Policy the appellant was absolved from claim as the policy had lapsed.

Before insertion of Section 24A in the Act with effect from June 18,1993 the Act did not prescribe any period of limitation for filing a complaint. It was, however, not disputed that early to this the consumer commissions have been applying the limitation act 1963 to find out if a complaint was barred by limitation or not. Since at the time when the complaint in the present case was filed Section 24A was not there, we, therefore, fall back from the provisions of the limitation Act. Article 44 of Schedule to the Limitation Act, in relevant part. is as under:

---------- Description of suit Period Time from which period of Limitation begins to run

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44. (b) On a policy Three years The date of the occurrence of insurance when the causing the loss. or where sum insured is payable the claim on the policy is after proof of the loss denied either partly or has been given to or wholly, the date of such received given to or denial".

received by the insurers.

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It would appear that the complaint was filed on the basis that claim on he policy was denied wholly by the insurer which was by letter dated July 25, 1989 of the insurer. The cause of action, therefore, arose on the date of denial or repudiation of the policy by the insurer. The question does arise as to when the claim on the policy should have been lodged. it appears the claim on the policy should be lodged within a reasonable time. As to what is reasonable time would depend on the facts and circumstances of each case. Since on the basis of the record we are handicapped to know as to when the claim was lodged. we would, therefore, treat the date, July 25, 1989, when the time for the purpose of limitation had begun to run . As noted above this is the date when the insurer repudiated the claim on the policy. From this angle. therefore, the complaint filed by the assignee on July 23, 1992 is within the period of limitation. It is, however, a different matter when the insurer raises the defence that it had earlier informed the insured that the policy had ceased to be operative in terms para 9 of the policy. As far as the insured is concerned he can file the complaint with in three years of the date of occurrence causing loss or from the date when the claim on the policy is denied by the insurer. Far him time for lodging the complaint would not start running while the goods are still in transit as he can claim the policy to be valid till he lodges the complaint.

The relevant portion of the policy would be paras 8,9, and 11 of the policy which are reproduced as under:

> "8.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either 8.1.1 on delivery to the Consignees or other final warehouse or place of storage at the destination named herein 8.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either 8.1.2.1 for storage other than in the ordinary course of transit or 8.1.2.2 for allocation or distribution or 8.1.3 on the expiry of 60 days after completion of discharge overside of the goods hereby insured from the oversea vessel the final port of discharge. which shall first occur. 8.2 If, after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance. the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.
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> 8.3 This insurance shall remain in force (subject to termination as provided for above and to the provisions for Clause 9 below) during delay beyond the control of the

Assured, any deviation. forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers granted to shipowners or charterers under the contract of affreightment.

9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause B above, then this insurance shall also terminate unless prompt notice is given to the Under writers and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters. either 9.1 until the goods are sold and delivered at such port or place. or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur. or 9.2 If the goods are forwarded with in the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination. Until terminated in accordance with the provisions of Clause 8 above. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject- matter insured at the time of the loss.

11.2 Subject to 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not."

Para 8 above states as to when insurance policy would start and upto what stage it would terminate. Under sub-para 8.3 which is subject to clause 9 the insurance remains in force during the delay beyond the control of the assured. But then under para 9 the insurance terminates if owing to the circumstances beyond the control; of the assured as mentioned therein unless prompt notice is given and continuation of cover is requested. In that case insurance shall remain in force subject to an additional premium if required (1) within 60 days of the arrival of the goods at such port or place other than that named in the policy or until those goods are sold whichever shall occur first unless otherwise specially agreed or (2) if the goods are forwarded within the period of 60 days to the destination named in the policy or within any further extension if agreed to. Since the extension of the period was not agreed to by the insurer the goods had to be forwarded or transshipped from Muscat to Bombay within 60 days of the discharge of the goods there. If these goods are not transshipped within 60 days to the destination as agreed to then clause 8 will not remain in operation. In the present case, there is no evidence that goods were transshipped within 60 days of their discharge at Muscat. That being so the policy would lapse in terms of the agreement between the parties. However. it was submitted by Mr. Mudnaney, learned counsel for the respondent, that the policy was governed by the English law and would remain in force till the goods reached their destination. He referred to para 19 of the policy which provided that the insurance was subject to English law and practice. We were, however, not told as to under which provision of English law the policy would remain in force in spite of its various clauses and the terms of agreement between the

parties. Reference was drawn to Section 51 of the Marine Insurance Act. 1963 providing for an excuse for deviation or delay. This section and its relevant part is as under:

> "5.1 Excuse for deviation or delay.
>
> (1) Deviation or delay in prosecuting the voyage contemplated prosecuting the voyage contemplated by the policy is excused -
>
> (a)----------
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> (b) where caused by circumstances beyond the control of the master and his employer: or
>
> (c)----------
>
> (d)----------
>
> (e)----------
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> (f)----------
>
> (g)---------- (2) When the cause excusing the deviation or delay ceases to operate. the ship must resume her course. and prosecute her voyage, with reasonable despatch."

To our mind the section would appear to apply when the ship in which the goods were originally being carried resumed her voyage and not to situation where the goods are discharged and then these are carried to the part of destination in another ship. We have not been shown any provision of law or practice or term of the policy under which the insurer was sound to extend the policy beyond the period of 60 days as per para 9 of the policy. The appellant is right therefore, in its contention that it is abolished from any claim under the policy in view of para 9 above and it could not, therefore, be said that there was any deficiency in service to come within the purview of the Act.

Under para 11 in order to prefer a claim under the policy the insured must have an insurable interest in the subject-matter insured at the time of loss. Assuming the policy as valid and para 9 did not apply the insured could prefer the claim under the policy for the loss. But that is not the case here. The policy has been assigned in favour of the complainant. Marine Insurance Act provides for assignment of policy. Sections 52 and 53 are relevant. these are reproduced as under:

"52 When and how policy is assignable -(1) A Marine policy may be transferred by assignment unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such polity, the assignee of the policy is entitled to sue thereon in his own name as the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by endorsement thereon or in other customary manner.

53. Assured who has no interest cannot assign. where the assured has parted with or lost his interest in the subject matter insured, and has not, before or at the time of so doing expressly or impliedly agreed to assign the policy any subsequent assignment of the policy is in operative.

Provided that nothing in this section affects the assignment of a policy after loss."

No doubt the policy can be assigned either before or after the loss But then the assignee must have insurable interest in the subject matter as provided in para 11.1 of the policy.

The provisions of the Marine Insurance Act and terms of the policy have to be read in the context of definition of "consumer" as contained in clause (d) of Section 2 of the Act. The relevant part of this clause is as under:

> "(d) 'consumer means any person who,-
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> (i) ----------
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> ----------
>
> (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the service for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person:"

The question that arises is if the assignee in the facts and circumstances of the present case could be said to be beneficiary so as to stake his claim under the policy. if we see the definition of "service" as provided under the Act it means and includes the provision of facilities in connection with the insurance as well. The complaint under the Act in the present case has to show that the service hired or availed of or agreed to be hired or availed of by the complainant suffers from deficiency in any respect. The complainant, of course, means a consumer and as we have seen above includes any beneficiary. "Deficiency" has been defined in clause (g) of section 2 of the Act as Under:

> "(g) deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by

a person in pursuance of a contract or otherwise in relation to any service."

The interest of the insured must exist in the case of marine insurance at the time of loss and the assured must have some relation to or concern in, the subject of the insurance. The service which the insurer offers is with reference to the goods and the insurable interest has to be in respect of the goods. To put it in other words, insurable interest in property would be such interest as shall make the loss of the property to cause pecuniary damage to the assured. To come under the scope of the word "consumer" as defined in the Act it should be possible for the assured to assign his insurable interest in the goods subject matter of the policy for the assignee as a consumer to enjoy;; the benefit of the policy with reference to the goods which are insured. What has been assigned in the present case is the amount of loss suffered by the assured on account of short handing of the goods, meaning thereby that right to recover the loss is assigned to the assignee and not that any service is to be rendered under the policy by the insurer with reference to the goods. We are loading at the whole thing from the point of the consumer under the Act with reference to certain relevant provisions of the Marine Insurance Act. Unless the assignee has some insurable interest in the property subject matter of the insurance the time the policy terminates he cannot be beneficiary of any service required to be rendered by the insurer under the policy. Admittedly it was much after the goods had reached the port of destination and appropriated that the policy was transferred by the insured to the complainant to recover the amount of loss suffered by the assured. Thus, what is assigned is in effect a mere right to sue for the loss on account of short handing of the goods. It is difficult to see as to how it could be said that the respondent, that is the assignee. is the beneficiary of any service under the policy. He may, however, have right to recover the loss from the insurer by filing a suit in a civil court but certainly to seek remedy under the Act he must be a consumer. If the policy had been assigned during the course of its validity and before the goods were appropriated after their arrival at the port of destination, it could perhaps be said that the assignee had beneficial interest therein but not otherwise. By not extending the policy beyond a particular period. that is 60 days the insurer acted within the terms of the contract of insurance and on that account it could not be said that there was deficiency in service to be provided by the insurer under the policy.

It is not necessary for us to examine in depth various provisions of the Marine Insurance Act as in the Present case we are primarily concerned with the provisions of the consumer protection act. The Policy in question is though designated as Marine Insurance policy but we think it is more a question of interpretation of relevant clauses of the policy. The Act is not a general law for all remedies. it is for the protection of the consumer as defined in the Act. To succeed in the present case the complainant must show that he is a consumer and that there has been deficiency in service by the insurer. This he has been unable to show. He, therefore, could not maintain complaint under the Act.

We do not think that the National commission has taken the correct view of the matter. Accordingly, the appeal is allowed. the orders of the National Commission and State Commission are set aside and complaints of the respondents dismissed. We, however, direct that the parties bear their own costs.