2025 INSC 902

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.6406 OF 2016

M/S. BENGANI FOOD PRODUCTS PRIVATE LIMITED AND ANOTHER ... APPELLANTS

Versus

NATIONAL INSURANCE CO. LTD. AND OTHERS ... RESPONDENTS

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. The Appellants challenged the repudiation decision dated 07.09.2007 of Marine Transit Open (Declaration) Insurance Policy claim of M/s Bengani Food Products Pvt. Ltd., being Appellant No. 01 herein, by the National Insurance Company Ltd., being Respondent No. 01 herein, owing to damage of goods while being in transit at the Shalimar Railway Godown at Howrah in West Bengal. Vide impugned order dated 18.02.2016, the National Consumer Disputes Redressal Commission at New Delhi affirmed the repudiation of the said insurance claim, which is now being challenged through this Civil Appeal.

2. M/s Bengani Food Products Pvt. Ltd. (hereinafter the "Appellant-Insured") is a company dealing in the export of poultry and cattle feed. On the other hand, the National Insurance Co. Ltd. (hereinafter the "Respondent-Insurer") is the concerned insurer for the marine open transit policy.

3. The relevant facts pertaining to this matter are that the Appellant-Insured had obtained a Marine Insurance Policy from the Respondent-Insurer which had a coverage of INR 200 Crores for the period between 25.01.2007 to 24.01.2008. The consignment consisting of maize meant for the commercial use in poultry feed weighing 24,700 quintals in railway rake of 40 wagons was unloaded on 07.02.2007 at the Shalimar Railway Yard in Howrah, West Bengal. The stock was dumped at the open siding of the railway yard and out of which around 2,627 quintals were immediately sold to a third-party by the Appellant-Insured. On the evening of 07.02.2007 and then from the afternoon of 08.02.2007, the area experienced heavy rainfall and since the consignment of maize in gunny bags was left in the open siding, it got exposed to rain leading to the fungal contamination and mycotoxins were developed, thereby making it unfit for poultry consumption.

4. The Appellant-Insured informed the Respondent-Insurer regarding the incident vide Letter dated 09.02.2007 seeking instructions for urgent disposal of the maize,

valued at INR 2.12 Crores and to stop incurring the Wharfage from Indian Railways. The Respondent-Insurer appointed a surveyor the same day to assess the extent of the loss. The report submitted by the surveyor on 06.03.2007 estimated the loss at INR 62,25,012.77/- (Rupees Sixty-Two Lakh Twenty-Five Thousand Twelve and Seventy-Seven Paise only). Subsequently the report submitted by the surveyor on 22.05.2007, the amount was revised to INR 36,17,610/- (Rupees Thirty-Six Lakh Seventeen Thousand and Six-Hundred Ten only) as it came to light that substantial part of the consignment about 10,910.4 quintal was on 14.02.2007-15.02.2007 shifted to a warehouse in Rishra without intimation to the Respondent-Insurer. As the surveyor took in account the salvage value and made adverse observations that the Appellant-Insured failed to take reasonable preventive measures as there was a delay in mitigating the damage.

5. However, vide letter dated 07.09.2007, the Respondents repudiated the whole claim citing Clause 5 of the Inland Transit (Rail/Road) Clause A of the Insurance Policy. According to the Respondents, the coverage of the insurance had ceased once the goods were unloaded at the Shalimar Railway yard, and the loss occurred outside the period of risk covered under the policy. Clause 8 of the Insurance Policy was also invoked by the Respondents. It

was alleged that the Appellant-Insured had failed to exercise reasonable care to protect the goods and breached the packaging standards by packing the maize in second hand gunny bags and basic storage norms which resulted in the direct violation of the policy terms related to the duty of the Appellants to prevent and minimise the loss.

6. Thereafter, the Appellants filed a Writ Petition in the Calcutta High Court challenging the repudiation of the claims. The High Court directed the Respondent-Insurer to furnish detailed reasons for the repudiation vide order dated 27.06.2008. In compliance with the directions of the High Court order, the Respondents reissued the same rejection letter under cover letter dated 17.07.2008 which reconfirmed their stand.

7. The Appellants then filed a Consumer Complaint No. 42 of 2009 before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred as "NCDRC"), under the Consumer Protection Act, 1986. Seeking compensation of INR 3,06,38,351/- (Rupees Three Crore Six Lakh Thirty-Eight Thousand Three Hundred and Fifty-One only) which included the estimated loss, compensation, interest and legal costs.

8. The NCDRC dismissed the complaint vide its order dated 18.02.2016. The commission upheld the Respondents

position as the loss had occurred after the goods had been finally delivered and unloaded. At that point the transit had ended and the coverage of the insurance had lapsed. The Commission also highlighted that the Appellant-Insured failed to exercise the required degree of care to protect the consignment of maize from foreseeable rain damage. The Appellant-Insured also did not act in accordance with the terms and obligations under the Insurance Policy. Leading to the filing of the present Civil Appeal challenging this order.

9. Learned Counsel for the Appellant-Insured contends that the repudiation of the insurance claim was contrary to the terms of the Marine Open Policy issued by the Respondent-Insurer. He submitted that as per Clause 5 of the Inland Transit (Rail/Road) Clause A, the Policy was on a warehouse-to-warehouse basis and covered the goods during the ordinary course of transit, including up to seven days after the arrival of the consignment at the final destination.

10. He further submitted that the consignment was still within the control of Indian Railways and the delivery was not complete. Due to the logistical limitations and the need to release the railway rakes, the consignment of the maize was dumped at the siding temporarily. Therefore, the risk under the policy continued to operate at the time when the

damage occurred to the consignment.

11. Counsel for the Appellant-Insured submits that prompt steps were taken to protect the consignment from rain by covering it with tarpaulin. The Respondents were informed and requested for instructions for the disposal of the deteriorating cargo. The Respondent-Insurer failed to take timely decision or steps, which led to increase in the damage of the consignment.

12. He submitted that the Marine Insurance Policy did not mandate the use of new gunny bags. As these are ambiguous words and there was no clarity regarding what kind of gunny bags are to be used. The use of old gunny bags is a trade custom followed in the industry. He asserted that both the survey reports acknowledged the damage and despite that the Respondents repudiated the entire claim. He prayed for allowing the Appeal by setting aside the impugned order dated 18.02.2016 and grant the compensation as claimed.

13. On the other hand, Learned Counsel appearing for the Respondent-Insurer submitted that the Insurance Policy provided that the coverage ceased either upon delivery or after seven days of arrival of the consignment at the destination whichever is earlier. He submitted that the railway rakes were fully unloaded and the goods were

received by the Appellant-Insured on 07.02.2007 and the Railway Receipt was also received by the Appellant-Insured. Hence, the risk was terminated on that day itself. To support this contention the Respondent-Insurer has relied upon the decision of this Court in ***Bajaj Allianz General Insurance Company Limited and Another v. State of Madhya Pradesh***[1]**.**

14. He also relied upon another judgment of this Court in ***Vikram Greentech India Limited and Another v. New India Assurance Company Limited***[2] to the effect that the terms and conditions specified in the Insurance Policy binding effect as the insurance contract is a species of commercial transactions and must be constructed like any other contract. In the light of above principle, Counsel asserts that there was a breach of the terms and conditions on behalf of the Appellants in not exercising reasonable care and thus, the repudiation is in accordance with the terms of contract.

15. It is further submitted that there was a breach of Clause 8 of the Insurance Policy. The Appellant-Insured failed to take reasonable measures to protect the consignment despite having reasonable time on 08.02.2007. The consignment was stored in an open siding and only the top

[1] (2020) 18 SCC 376
[2] (2009) 5 SCC 599

layer of the stacks was covered with tarpaulin, the sides of the consignment were exposed to the rain. Old gunny bags were used to pack the maize which also breached the Clause 8 of the Insurance Policy. Damage caused due to weather condition could have been avoided if the packaging material was of good quality.

16. He asserts that the Appellant-Insured had dispatched 10,910.40 quintals of maize to a warehouse in Rishra on 15.02.2007 to 16.02.2007. This was further delivered to the buyers, but this fact was concealed by the Appellant-Insured. The non-disclosure of the fact violated the duty of utmost good faith under insurance law.

17. He also contended that the surveyor had assessed the goods as not wholly damaged and concluded that part of the total consignment was salvageable. The repudiation of the claim was justified as the damage occurred outside the coverage period and the Appellant-Insured failed to take timely action to mitigate the loss.

18. We have heard Learned Counsel for both the parties at length and have carefully considered their respective submissions. The issue that falls for determination in the present appeal is whether the repudiation of the insurance claim by the first Respondent–Insurer was valid in light of the terms of the Marine Open Policy and the factual matrix

of the case. The core questions revolve around the construction of Clause 5 of the Inland Transit (Rail/Road) Clause A and the insured's obligations under Clause 8 of the same.

19. It is not in dispute that the maize consignment arrived at the Shalimar Railway Yard on 07.02.2007 and was fully unloaded by that evening. A portion of the goods was promptly dispatched weighing 2627 quintals displaying the possession having been taken by the Appellant-Insured of the unloaded goods, although a substantial quantity remained stacked at the siding. On 07.02.2007 evening and afternoon 08.02.2007, the area experienced heavy rainfall, resulting in damage to the consignment, allegedly rendering it unfit for poultry consumption.

20. The legal position governing the interpretation of Insurance Policies is well settled. In ***Vikram Greentech India Limited and Another (Supra)*** this Court held that:

> *"16. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberrima fides i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract."*

21. Clause 5 of the Inland Transit (Rail/Road) Clause A, which governs the termination of coverage, reads as under:

> *"This insurance attaches from the time the goods leave the warehouse and/or the store at the place named in the policy for the commencement of transit and continues during the ordinary course of transit including customary transshipment, if any.*
>
> *(i)Until delivery to the final warehouse at the destination named in the policy or*
>
> *(ii) in respect of transits by Rail only or Rail and road, until expiry of 7 days after arrival of the railway wagon at the final destination railway station or*
>
> *(iii) in respect of transits by Road only until expiry of 7 days after arrival of the vehicle at the destination town named in the policy whichever shall first occur."*

22. It has not been shown by the Appellants that the Shalimar Railway Yard was declared as the final warehouse or the named destination under the Insurance Policy. The consignment was admittedly unloaded and taken into possession by the Appellant-Insured on 07.02.2007 when the railway receipt was issued on delivery. No documentary evidence was placed on record to show that onward movement was scheduled or arranged within the next seven days. In the absence of any declaration followed by arrangement to that effect, the conclusion that the coverage ceased upon unloading is, in our view, fully justified.

23. The Court affirmed that the insured cannot claim anything more than what is covered under the Insurance Policy, and that policy terms must be construed as they stand without

adding or subtracting words. The principle laid down above applies squarely to the facts before us. Clause 5 of the Inland Transit (Rail/Road) Clause A of policy is clear and unambiguous. No extended interpretation can be given to continue coverage once the goods were delivered and remained stored at the siding.

24. The argument that the maize remained in the 'course of transit' cannot be accepted in the present factual circumstances. The consignment, once unloaded and lying at the open siding under the control of the insured, no longer retained the character of goods in movement. Mere logistical delay or the need to vacate wagons does not extend the policy coverage.

25. Coming to the duty of the insured to exercise reasonable care, Clause 8 of the Insurance Policy provides as follows:

> *"It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder*
> *8.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and*
> *8.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised by lodging a monetary claim against railway road carriers/bailees within 6 months from the date of railway/lorry receipt or as prescribed by the relevant statute and the underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonable incurred in pursuance of these duties."*

26. The factual findings recorded by the surveyor, who conducted multiple inspections at the site, reveal that the damaged maize was stacked in old and torn gunny bags, inadequately covered by the HDPE sheets as the outer periphery was vulnerable to weather and human hazard. The observations show that the consignment was left exposed in an open railway yard, despite sufficient opportunity to take protective steps. The rainfall began around 2:30 p.m. on 08.02.2007 and the Appellant-Insured had the entire morning and early afternoon to act but failed to do so.

27. While it may be true that second-hand gunny bags are often used in the trade, such a practice cannot justify the absence of basic precautions, particularly in the face of an approaching weather event. It is not the use of second-hand material *per se* that is in question, but the failure to ensure that such material was adequate under the circumstances.

28. Of particular significance is the subsequent transportation of 10,910.40 quintals of maize from Shalimar Railway Yard, Howrah to Rishra Warehouse during the period between 14.02.2007 and 15.02.2007, a fact that was neither disclosed by the Appellants in their initial claim nor during the course of the preliminary correspondence. It is only upon inspection of material by the Respondents that

this fact surfaced. The belated explanation tendered by the Appellants that the said consignment was returned due to alleged rejection remains wholly unsubstantiated by any contemporaneous documentation or credible evidence on record. Such a substantial movement of stock, occurring shortly after the alleged incident of loss, militates against the foundational plea of total destruction. In the realm of insurance contracts, the doctrine of uberrima fides demands complete and truthful disclosure of all material facts. A departure therefrom strikes at the very root of the contractual obligation and materially impairs the integrity of the claim so preferred.

29. The plea that the surveyor acted arbitrarily or without application of mind is also devoid of substance. The surveyor submitted a preliminary estimate followed by a final report after site visits and assessment of loss. While the reduction in the loss figure may not have pleased the Appellants, the reports cannot be discarded merely on that account. The Appellants did not bring any independent expert evidence to discredit or rebut the survey findings.

30. As regards the argument of the Appellants based on the principle of contra proferentem, it must be noted that Clause 5 is worded with clarity and precision. There is no ambiguity in the manner of termination of coverage which has been rightly invoked. Therefore, the said principle has

no application. Reliance placed by the Respondents on the judgment in ***Bajaj Allianz General Insurance Company Limited and Another (Supra)*** is well founded which reiterates that once goods are voluntarily stored post-delivery or the risk environment is altered, as in the case in hand, the Respondent-Insurer stands discharged.

31. In view of the above discussion, we find no fault with the decision of the NCDRC. The conclusions arrived at are supported by the record and are in consonance with the terms of the Insurance Policy calling for no interference.

32. The Civil Appeal is dismissed. The judgment and final order dated 18.02.2016 passed by the National Consumer Disputes Redressal Commission, New Delhi, in Consumer Complaint No. 42 of 2009 is upheld.

33. There shall be no order as to costs.

34. Pending applications, if any, shall stand disposed of.

.....CJI.
[B. R. GAVAI]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
JULY 24, 2025.