

PETITIONER:
M/S MODERN INSULATORS LTD.

Vs.

RESPONDENT:
THE ORIENTAL INSURANCE CO. LTD.

DATE OF JUDGMENT: 22/02/2000

BENCH:
S.Saghir Ahmad, S.N.Phukan

JUDGMENT:

PHUKAN, J,

This appeal is directed against the order dated 08.01.97 passed by the National Consumer Disputes Redressal Commission whereby the Commission set aside the order passed by the State Commission of Rajasthan in the appeal filed by the respondent.

The appellant has a factory wherein it manufactures high tension insulators for transmission lines. The appellant had taken out an insurance policy known as 'All Risk Insurance Policy' for Rs. 50 lakhs for installation of 25 M3 kiln with furniture. The policy covered risks against loss during storage-cum-erection including trial and testing. After completion of the erection of 25 M3 kiln, the same was loaded with insulators on 12.7.88 for trial and testing and when it was opened on 16.7.88 it was found that complete structure of kiln furniture with insulators had collapsed on kiln car and various items of kiln furniture were damaged. A claim of Rs. 5,73,397.43 was lodged with the respondent and the surveyors assessed the damage at Rs. 4.66,873. As the claim was not settled a complaint was filed before the State Commission alleging negligence on the part of the respondent and claiming the amount assessed by the surveyor with interest. ..

The respondent - Insurance Company in the reply to the complaint filed before the State Commission pleaded that damaged property was not covered by the insurance policy. The State Commission after considering the materials on record rejected the plea of the respondent and directed the respondent to indemnify the loss by making payment of Rs. 4,66,873/- with interest (@). 18% per annum.

An appeal was filed before the National Consumer Disputes Redressal Commission and in the grounds of appeal it was stated that the appellant violated the terms and conditions of the policy by using used kiln furniture. This was denied by the appellant.

The appellant also urged before the National Commission that only the cover note and the schedule of insurance policy were supplied and other terms and conditions including the exclusion clause were not communicated. According to the appellant the above document supplied did not contain the exclusion clause. The said

exclusion clause runs as follows:

"In the case of second hand/used property the insurance hereunder shall, however, cease immediately on the commencement of the test"

The National Commission asked the parties to file affidavits to prove that the exclusion clause was duly communicated to the appellant. We have been taken through the affidavits filed and we find in the affidavit of the appellant the letter received by the appellant from the Branch Manager of the respondent was referred to wherein it was confirmed that appellant was supplied only with a cover note and the schedule of the policy. So the other terms and conditions containing the above exclusion clause were not communicated. In the reply affidavit filed by the respondent it was not specifically mentioned that the exclusion clause was also communicated to the appellant..

The National Commission was of the view that "it is equally responsibility of the respondent to call for these terms and conditions even if they were not sent by the appellant as alleged, to understand the extent of risks covered under the policy and the associated aspects."

It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material facts in their knowledge since obligation of good faith applies to both equally.

In view of the above settled position of law we are of the opinion that the view expressed by the National Commission is not correct. As the above terms and conditions of the standard policy wherein the exclusion clause was included, were neither a part of the contract of insurance nor disclosed to the appellant respondent cannot claim the benefit of the said exclusion clause. Therefore.. the finding of the National Commission is untenable in law.

We may refer to the next ground on which appeal has to be allowed. It is settled position of law that in an appeal the parties cannot urge new facts. From the pleadings of the respondent before the State Commission it is found that respondent pleaded that the property damaged was not covered under the insurance policy. This plea was given ago by before the National Commission and a new plea was taken up in the grounds of appeal that the terms and conditions of the insurance policy were violated by the appellant by using used kiln furniture. The National Commission accepted this new ground and allowed the appeal, which in our opinion is not sustainable in law.

For the reasons stated above we hold that the present appeal has merits.

In the result, appeal is allowed. The judgment of the National Commission is set aside and the judgment of the State Commission is restored.

Considering the facts and circumstances of the case we direct the parties to bear their own cost.

JUDIS