

A UNITED INDIA INSURANCE COMPANY LTD.

v.

KANTIKA COLOUR LAB & ORS.
(Civil Appeal No. 6337 of 2001 etc.)

MAY 6, 2010

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[D.K. JAIN AND T.S. THAKUR, JJ.]

Insurance – Contract of insurance – For transit of imported goods (two machines) – Surveyors' Reports prove that on the transit one machine got extensively damaged while the other was in working condition – Authorized representative of the manufacturer-company stating that the damaged machine could not be repaired in India – Insured claiming damage of the amount i.e. the actual cost of the machines – National Commission held that the Insurance company and the carrier were jointly and severally liable – On appeal, held: Contracts of insurance are generally in the nature of contracts of indemnity – Except the cases of life insurance, personal accident, sickness and contingency insurance, all other contracts of insurance entitle the insured only to the actual loss suffered, not exceeding the amount stipulated in the contract – The happening of event against which insurance cover taken by itself does not entitle the insured to claim – On facts insured not entitled to damage in respect of the machine which was not damaged – The machine which was damaged requires complete replacement – The insured is entitled to the cost of machine and custom duty component paid on the said machine.

Respondent No. 1 imported a Printer Process and a Film Processor from Japan. The machines, after arrival in India, were entrusted to the carrier-respondent for onward road transportation. A pre-dispatch survey confirmed that the machines were in sound condition. Respondent No. 1 had obtained a transit insurance policy

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from the appellant-Insurance Company.

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Respondent No. 1 claimed a sum of Rs. 55 lakhs alleging that the machines got damaged in the transit. In preliminary survey, it was reported that only printing machine had suffered damage and there was no apparent damage to the Film Processor. The second survey report also stated that printing machine had suffered damages and not the Film Processor. However, it opined that the damage was repairable and assessed the repair cost at Rs. 5,76,730/-. Appellant-Insurance Company on the basis of surveyor's report, offered the amount assessed towards repairs which was refused by respondent No. 1.

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Respondent No. 1 lodged a complaint before National Consumer Disputes Redressal Commission, against the appellant claiming damage of Rs. 55 lakhs i.e. the cost equivalent to the machines. The Commission allowed the claim holding that the appellant-Insurance company and the respondent-carrier were jointly or severally liable to pay Rs. 53 lakhs with interest @ 10% p.a.

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Appellant filed the appeal challenging the order. Respondent No. 1 also filed the appeal challenging the order to the extent of the Commission awarding 10% interest, instead of the rate at which the insured borrowed the money from the Bank for purchase of the machines.

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Partly allowing the appeal of the Insurance Company and dismissing the appeal of the insured, the Court

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HELD: 1.1. Two aspects stand out from the evidence of Senior Sales and Service Engineer of the manufacturer of the machines. Firstly, it is clear that the damage has been caused only to the printer model and not to the film

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- A processor which was found to be in working condition and about which there was only an apprehension and no more that its working may run into difficulty in future. There is no real basis for such an apprehension. In any case in the absence of proved damage affecting the performance of the machine, it is difficult to assume that the film processor was also damaged either wholly or in part so as to call any repair or replacement of the said machine. [Para 18] [214-E-G]

- 1.2. Contracts of Insurance are generally in the nature of contracts of indemnity. Except in the case of contracts of Life Insurance, personal accident and sickness or contracts of contingency insurance, all other contracts of insurance entitle the assured for the reimbursement of actual loss that is proved to have been suffered by him. The happening of the event against which insurance cover has been taken does not by itself entitle the assured to claim the amount stipulated in the policy. It is only upon proof of the actual loss, that the assured can claim reimbursement of the loss to the extent it is established, not exceeding the amount stipulated in the contract of Insurance which signifies the outer limit of the insurance company's liability. The amount mentioned in the policy does not signify that the insurance company guarantees payment of the said amount regardless of the actual loss suffered by the insured. [Para 19] [214-H; 215-A-C]

Halsbury's Laws of England – 4th Edition – referred to.

- 1.3. The other aspect that is established is that printer model has been extensively damaged and the manufacturing company has no arrangement in India for carrying out the repairs to the damaged machine. The Insurance Company's version that a company in India undertakes the repairs does not appear to be acceptable specially when the manufacturing company's authorized

representatives has in no uncertain terms denied the competence of that company to undertake any such repairs. Such being the position, the National Commission was justified in holding that the printer processor being extensively damaged requires complete replacement. [Para 20] [215-G-H; 216-A-B]

1.4. The Sale and Service Engineer of the manufacturer has referred to the letter addressed by the manufacturing company to the insured and stated that the price of a brand new printer processor model QSS-1923, works out to Singapore \$62100. There is no reason why the said amount can not be awarded to the insured by way of compensation for the damage caused to the machine. Besides the cost of the machines, the insured would also be entitled to the customs duty component paid on the import of the said machine. The total amount payable to the insured by way of compensation for the damage caused to the machine in question would work out to rupees equivalent of Singapore \$ 62100 at the exchange rate prevalent as on the date of this judgment plus a custom duty component of Rs.12,73,513.36 rounded off to Rs.12,74,000/-. The sum total of the two figures would be payable with interest @ 10% p.a. for the period mentioned in the National Commission's order. [Paras 21 and 22] [216-C-G]

2. Keeping in view the bank rate of interest prevalent during the relevant period there is no reason to award a higher rate of interest as claimed by the insured. [Para 22] [216-H; 217-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6337 of 2001.

From the Judgment & Order dated 31.05.2001 of the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 153 of 1999.

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C.A. No. 6975 of 2001

B R.P. Bhatt, Vishnu Mehra, B.K. Satija, Kailash Pandey,
K.V. Sreekumar, Dr. Vipin Gupta (NP), Arun K. Sinha (NP), for
the appearing parties.

The Judgment of the Court was delivered by

C T.S. THAKUR, J. 1. These appeals under Section 23 of
the Consumer Protection Act, 1986 arise out of an order dated
31st May, 2001 passed by National Consumer Disputes
Redressal Commission, New Delhi, whereby Original Petition
No.153 of 1999 filed by respondent no.1 has been allowed and
the appellant-company held liable to pay to the said respondent
a sum of Rs.53 lakhs with interest @ 10% p.a. jointly and
D severally with the Carrier M/s Super Road Lines towards
compensation for the damage which machines entrusted to the
later suffered in the course of transportation from Mumbai to
Hardwar.

E 2. Respondent No.1-Kantika Colour Lab imported one set
of Noritsu QSS-1923 printer process and QSF-V50 film
processor from Japan. The machines arrived at Mumbai on 1st
November, 1998 and were entrusted to M/s Super Road Lines
for onward transportation to Hardwar under L/R No.005495
F dated 20th November, 1998. A pre-dispatch survey conducted
by the Surveyor confirmed that the machines were in sound
condition at the time of dispatch from Mumbai.

G 3. To secure the machines against any possible damage
respondent No.1-the owner of the machines obtained from the
appellant Insurance Company a transit insurance policy for a
sum of Rs.53 lakhs. The policy covered loss against all risks
including damage/breakage, theft pilferage, road risk and non-
delivery etc. The insurance was extended to cover SRCC as
per limits and conditions of the Marine Policy.

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4. The case of the owner-respondent no.1 is that the machines suffered damage on account of mishandling in the course of transportation from Mumbai to Hardwar. A damage certificate issued by respondent no.7 acknowledged that the damage to the machines had occurred during transportation. Respondent no.1 accordingly lodged a claim for a sum of Rs.55 lakhs against the appellant company and the Carrier-respondent no.7 in this appeal. A preliminary survey of the damage to the machines was ordered by the appellant company and conducted by Shri Ajay Kumar Arora, who submitted a report stating that while Printing Machine QSS 1923 had suffered damage, there was no apparent damage to the Film Processor QSF-V50 which machine outwardly appeared to be in sound condition.

5. The appellant-company then appointed Shri Vinod Sharma licensed Surveyor to survey the machine and assess the loss as required under Section 64UM of the Insurance Act 1938. Shri Sharma submitted a report dated 17th April, 1999 after the machines were inspected by Shri Amit Bose, the Technical Director and Engineer of M/s Satyam Equipment Services Ltd. In his report Shri Sharma opined that the damage/loss to the machine was repairable and assessed the same at Rs.5,76,730/-. The report categorically stated that there was no damage to the Film processor QSF-V50 which was found to be in working condition. Accepting the said report, the appellant company offered an amount of Rs.5,76,730/- to respondent no.1 towards compensation which the said respondent refused to accept. Instead respondent no.1 filed complaint No.153 of 1999 before the National Consumer Disputes Redressal Commission, New Delhi, claiming an amount equivalent to the cost of the machines which according to the respondent were a total loss on account of the damage suffered by them.

6. The appellant-company contested the claim and took several objections to the maintainability of the complaint

- A including the objection that the complaint raised complicated questions of law and fact which could not be tried under Consumer Protection Act. It was also alleged that damage suffered by the machine was repairable and that the loss was limited to Rs.5,76,730/- which the company had offered to
 B make good.

7. In support of its complaint the respondent-company examined Shri Pradeep Kumar Sharma, one of its partners. The statement of Shri Taposh Dev, Senior Sales and Service
 C Engineer was also recorded, on behalf of the manufacturing company who too was arrayed as a party respondent. Depositions of Shri Vinod Sharma, Surveyor and Shri Amit Bose, Technical Director of M/s Satyam Equipment Services Pvt. Ltd. examined on behalf of the appellant-company, were
 D also recorded.

8. By its order dated 1st May, 2001 the National Commission allowed the claim made before it and held the appellant-company as also the Carrier to be jointly and severally
 E liable to pay a sum of Rs.53 lakhs together with interest @ 10% p.a. for the period commencing two months after the second Surveyor's report was submitted till the actual payment of the claim is made. The Commission directed surrender of the salvage to the Insurance Company against payment of its claim within eight weeks. The complainant was also held entitled to
 F costs of Rs.10,000/.

9. The present appeals call in question the correctness of the above order. While Civil Appeal No.6337 of 2001 filed by the Insurance Company assails the order passed by the National Commission in its entirety, Civil Appeal No.6975 of 2001 filed
 G by the owner challenges the said order to the extent it awards interest @ 10% p.a. only instead of the rate at which the insured claims to have borrowed money from the bank for the purchase of the machines in question.

H 10. Appearing for the appellant-Insurance Company Mr.

Vishnu Mehra, learned counsel, strenuously argued that the National Commission had committed a palpable error in awarding Rs.53 lakhs towards compensation for the damage caused to the machine insured with the appellant for its transportation from Mumbai to Hardwar. He contended that the order passed by the National Commission proceeded on an erroneous assumption that the damage suffered by the machine had rendered the same unusable hence a total loss. The material available on record argued the learned counsel clearly established that it was only the printer process QSS-1923 that was damaged and not the film processor QSF-V50. The latter was in fact found to be in perfect condition and in use at the time of the survey. It was also argued by Mr. Mehra that the damage caused to the printer model QSS-1923 was repairable and that the report of the Surveyor had assessed the cost of the repair at Rs.5,76,730/- which amount alone was payable to the insured. It was alternatively submitted that even if this Court were to hold that the entire printer model QSS-1923 was rendered useless on account of the damage caused to it, the maximum that could be claimed by the insured was the replacement cost of the said machine and no more.

11. On behalf of respondent-claimant it was contended by Mr. R.P. Bhatt, learned senior counsel, that while there was no apparent damage to the film processor QSF-V50, the fact that the printer model QSS-1923 had suffered damage raised a reasonable apprehension in the mind of the insured that the impact which the machine had suffered in the course of transportation may have damaged even the film processor QSF-V50. It was submitted that merely because the film processor QSF-V50 was found to be in working condition did not rule out the possibility of the machine giving trouble in future.

12. As regards the damage to printer model QSS-1923 it was argued by Mr. Bhatt that the manufacturers had clearly ruled out any possibility of repairs to the machine in India. It was also submitted that the expenses on repairs which could be carried out only in Japan would be far more than the price of a brand

A new machine making it unwise to insist on repairs. The manufacturer had also ruled out the possibility of any such repairs being satisfactorily carried out either by M/s Satyam Equipment Services Ltd. or by any other agency in India.

B 13. The Surveyor report submitted by Shri Vinod Sharma certifies damage to the printer model QSS-1923 which comprises two distinct sections, namely, (1.A) Paper Processor and Dryer Section and (1.B) Printer Section. The report records the damage in the following words:

C "1. PRINTER MODEL QSS-1923

1.A. PAPER PROCESSOR AND DRYER SECTION

D Chemical tank broken, Roller transportation gone out of alignment, replansher system were broken, processor came out of the base completely, all processor racks damaged. As such complete Tank Unit & Rack Unit requires replacement in addition to Resetting of complete Processor.

E 1.B. PRINTER SECTION

F Many parts were found displaced from original setting and screws also came out. It requires Resetting of Machine along with replacement of Monitor Unit which was found damaged. Since the machine i.e. paper processor & printer requires resetting, there will be requirement of imported wires & some gears & metal spares."

G 14. In so far as film processor QSF-V50, is concerned the report specifically states that there is no apparent damage to the said machine, no matter the insured apprehends that the same may also have been damaged from inside which fact can be verified only when the machine is tested. The report further states that at the time of the second visit to Hardwar along with the engineer of M/s Satyam Equipment Services Ltd. the film
H processor QSF-V50 was found to have been already tested by

the supplier's engineer and the tank of the machine was found filled with chemicals. Around 40-50 number of empty Film rolls were found lying on the spot. The report certifies that the machine was in working condition. The following passage from the report is in this regard relevant: A

"On our second visit on 24.02.99 alongwith Engineers of M/s Satyam Equipment Services Ltd. we found that Film Processor had already been testified by the Suppliers Engineers. The tanks of the machine was found filled with Chemicals and around 40-50 No. of empty Film Rolls were lying there, as the same were informed to be developed on the machine. The Insured informed that though this machine is working at present but chances are there that later on its PC Board may have to be changed. The Insured could not explain the reasons for replacement of PCB, at a later stage. Once it is found working in good condition." B C D

15. In his deposition before the National Commission Shri Vinod Sharma, Surveyor and author of the report reiterated that the film processor QSF-V50 was not found damaged upon inspection at site. He refuted the suggestion made to him that the machines were totally damaged. E

16. We may at this stage refer to the deposition of Shri Taposh Dev, Senior Sales and Service Engineer of respondent no.2 the manufacturer of the machines in question. In the affidavit filed by the said witness it is, inter alia, stated that a thorough visual inspection of the machines in question was made by the engineers of respondent no.2 company and a report based on the said inspection submitted on 21st December, 1998. The witness on the basis of the said inspection report stated that Noritsu QSS-1923 printer process was subjected to a strong impact from the sides during transit from Mumbai to Hardwar resulting in severe damage, especially to the Paper Processor & Dryer Section thereof. The mechanical alignment and the optical accessories also had been badly affected. The witness also stated that it was not F G H

- A economical to undertake such repair work on account of the high cost involved in the same especially when the repair may not exclude the possibility of any future complications arising in the working of the machines. The witness also referred to manufacturer's letter dated 7th January, 1999 informing the
- B insured about the price of Noritsu QSS-1923 Printer Process and QSF-V50 Film Processor after deducting the value of the optional accessories. According to the witness the price of Printer Process QSS-1923 works out to Singapore \$ 62,100. The witness asserted that M/s Satyam Equipment Services Ltd.
- C were appointed as authorized sales representatives during early 1996 but since their services were not found to be satisfactory the agreement between the parties was terminated. He has further stated that respondent no.2-company had not trained any engineer to repair the Printer Process QSS-1923.

D 17. Not much has been extracted from the witness in cross-examination who has stuck to his version that the machine is not at all repairable, and that the cost of getting the machine repaired in Japan would be much more than the cost of a new machine.

E 18. Two aspects stand out from the above evidence. Firstly, it is clear that the damage has been caused only to the printer model QSS-1923 and not to the film processor QSF-V50 which was found to be in working condition and about

F which there was only an apprehension and no more that its working may run into difficulty in future. We, however, see no real basis for such an apprehension. In any case in the absence of proved damage affecting the performance of the machine, it is difficult to assume that the film processor was also

G damaged either wholly or in part so as to call any repair or replacement of the said machine.

H 19. Contracts of Insurance are generally in the nature of contracts of indemnity. Except in the case of contracts of Life Insurance, personal accident and sickness or contracts of contingency insurance, all other contracts of insurance entitle

the assured for the reimbursement of actual loss that is proved to have been suffered by him. The happening of the event against which insurance cover has been taken does not by itself entitle the assured to claim the amount stipulated in the policy. It is only upon proof of the actual loss, that the assured can claim reimbursement of the loss to the extent it is established, not exceeding the amount stipulated in the contract of insurance which signifies the outer limit of the insurance company's liability. The amount mentioned in the policy does not signify that the insurance company guarantees payment of the said amount regardless of the actual loss suffered by the insured. The law on the subject in this country is no different from that prevalent in England; which has been summed up in *Halsbury's Laws of England* – 4th Edition in the following words:

“The happening of the event does not of itself entitle the assured to payment of the sum stipulated in the policy; the event must, in fact, result in a pecuniary loss to the assured, who then becomes entitled to be indemnified subject to the limitations of his contract. He cannot recover more than the sum insured for that sum is all that he has stipulated for by his premiums and it fixes the maximum liability of the insurers. Even within that limit, however, he cannot recover more than what he establishes to be the actual amount of his loss. The contract being one of indemnity only, he can recover the actual amount of his loss and no more, whatever may have been his estimate of what his loss would be likely to be, and whatever the premiums he may have paid, calculated on the basis of that estimate.”

20. The other aspect that is established is that printer model QSS-1923 has been extensively damaged and the manufacturing company has no arrangement in this country for carrying out the repairs to the damaged machine. The Insurance Company's version that M/s Satyam Equipment Services Ltd. undertakes the repairs does not appear to us to be acceptable

- A specially when the manufacturing company's authorized representatives has in no uncertain terms denied the competence of the M/s Satyam Equipment Services Ltd. to undertake any such repairs. Such being the position, the National Commission was, in our opinion, justified in holding
- B that the printer processor model QSS-1923 being extensively damaged requires complete replacement.

21. The question, however, is as to what is the cost of such replacement. Shri Taposh Dev, has referred to letter dated 7th January 1999 addressed by the manufacturing company to the insured M/s Kantiak Colour Lab and stated that the price of a brand new printer processor model QSS-1923, works out to Singapore \$62100. We see no reason why the said amount can not be awarded to the insured by way of compensation for the damage caused to the machine. Besides the cost of the machines the insured would also be entitled to the customs duty component paid on the import of the said machine. From the Surveyor's report submitted by Mr. P.M. Patel and Co. it is evident that the invoice value of the goods comprising the printer processor and the film processor was Singapore \$
- C 104000 with an assessable value of Rs.27,36,292/-. A sum of
- D Rs.21,32,776/- was on that value paid towards customs duty on the import of the said equipment. The duty payable on a machine valuing Singapore \$ 62100 would, therefore, come to
- E $\text{Rs.}21,32,776 \times 62100 / 104000 = \text{Rs.}12,73,513.36$.

- F 22. To sum up the total amount payable to the insured by way of compensation for the damage caused to the machine in question would work out to rupees equivalent of Singapore \$ 62100 at the exchange rate prevalent as on the date of this judgment plus a custom duty component of Rs.12,73,513.36
- G rounded off to Rs.12,74,000/-. The sum total of the two figures would be payable with interest @ 10% p.a. for the period mentioned in the National Commission's order. We make it clear that keeping in view the bank rate of interest prevalent during the relevant period we see no reason to award a higher
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rate of interest as claimed by the insured appellant in Civil Appeal No.6975 of 2001. A

23. In the result Civil Appeal No.6337 of 2001 succeeds in part and to the extent that the appellant-company and the carrier M/s Super Road Lines shall be liable jointly and severally to pay the rupee equivalent of Singapore \$ 62100 at the exchange rate prevalent on the date of this order besides a sum of Rs.12,74,000/- towards customs duty paid by the insured on the import of the damaged machine. The amount so determined shall earn interest @ 10% p.a. as observed above. B C

24. The amount awarded in favour of the insured-respondent no.1 in Civil Appeal No.6337 of 2001 shall be paid upon surrender to the appellant Insurance Company of the printer process model QSS-1923 comprising the damaged Printer Process machine (1.A and 1.B) within two months from today. Civil Appeal No.6975 of 2001 filed by the insured is, however, dismissed. D

25. We make it clear that if the insured has already received directly or through its bank any part of the amount awarded by the National Commission it shall refund the excess, if any received by it or paid on its behalf to the bank within a period of two months failing which the excess amount so received but not refunded shall also earn interest in favour of the insurance company @ 10% p.a. from the date the period of two months hereby granted expires. E F

26. Parties are left to bear their own costs.

K.K.T.

Appeals disposed of. G