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C.A.No. 5155-5235 OF 1999

ITEM No.101(Part-Heard)

Court No. 8

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal Nos. 5155-5235 of 1999

Mahad Coop. Urban Bank Ltd.

Appellant (s)

VERSUS

Oriental Insurance Co. Ltd. & Anr. Etc.

Respondent (s)

WITH

Civil Appeal Nos. 5236-5316 of 1999

Date : 02/09/2003 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N.VARIAVA

HON'BLE MR. JUSTICE H.K.SEMA

For Appellant (s) Mr. Harish N.Salve, Sr.Adv.

In CA 5155-5235/99Mr. Dushyant A.Dave, Adv.

& for Res. inMr. R.Nedumaran, Adv.

CA 5236-5316/199Mr. R.M. Patnaik, Adv.

Mr. Beno Bencigar, Adv.

For Appellant inMr. M.N.Krishnamani, Sr.Adv.

CA 5236-5316/99 &Mr. S.M.Suri, Adv.

For Res. In CA Mr. M.K.Dua, Adv.

5155-5235/99Ms. Meenu Pandey, Adv.

For Respondent (s)Mr. V.A.Mohta, Sr.Adv.

No. 1 in CA 5236-Mr. Abhith Kumar, Adv.

5316/99Mr. Abhijit Sengupta, Adv.

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For Res.No.2 inMr. P.N.Misra, Sr.Adv.

CA 5155-5235/99 Mr. Abhith Kumar, Adv

Mr. Abhijit Sengupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr.Harish N.Salve, learned senior counsel resumed his arguments at 11.25 A.M. and concluded at 11.45 A.M. Thereafter, Mr. M.N.Krishnamani, learned senior counsel started his arguments and concluded at 12.35 P.M. Mr. V.A.Mohta, learned senior counsel made his submissions for ten minutes.

The Civil Appeal Nos. 5236-5316 of 1999 are dismissed and Civil Appeal Nos. 5155-5235 of 1999 are allowed in terms of the signed order.

Anita

(Gyan Bhatia)

Court Master

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5155-5235 OF 1999

Mahad Coop. Urban Bank Ltd ... Appellant (s)

Versus

Oriental Insurance Co. Ltd. & Anr. Etc.Etc. ... Respondent (s)

WITH

Civil Appeal Nos. 5236-5316 of 1999

Oriental Insurance Co.Ltd. ... Appellant (s)

Versus

Dawood Umar Taj And Others ... Respondent (s)

O R D E R

All these appeals can be disposed of by this common order as all these appeals are against the Order passed by the National Consumer Disputes Redressal Commission dated 9th November, 1998. Briefly stated the facts are as follows:-

The appellant in Civil Appeal Nos. 5155-5235 of 1999 (hereinafter called 'The Bank') is a Co-operative Bank operating in Raigad district. The appellant in Civil Appeal Nos. 5236-5316 of 1999 is a Nationalized Insurance Company (hereinafter called 'The Insurance Company'). The Bank gave loans to the fishermen in that district. As per the normal practice the Bank got the stock of fish, in this case dry fish, insured with the Insurance Company. As per the normal practice, the Bank would debit insurance premium from the account of the fishermen and forward the same to the Insurance Company who then issued the Insurance Policy.

It is admitted that in respect of the concerned period, the Bank had forwarded the premium as in the past to the Insurance Company. Admittedly the same had been received by the Insurance Company.

On 24th July, 1989 a cyclone took place in this area. Heavy rains caused damage to the stock of dry fish. The result was that the entire stock of the dry fish putrefied and as per the orders of the local authority the stock had to be destroyed as otherwise it would cause a health hazard.

In 1992 claims were filed by various fishermen before various forums. We are concerned with the claims filed before the State Consumer Disputes Redressal Commission. The defence taken up before the State Consumer Forum, by the Insurance Company, was that the policy for this particular period did not cover risk for damage by flood but covered risk against spontaneous combustion. In support of this they relied upon cover notes and the Insurance Policies issued by them.

The State Consumer Forum recorded evidence. On the basis of evidence, both oral and documentary, the State Consumer Forum arrived at a finding of fact that the cover notes and the policies had been manipulated, after the event, in order to get out of liability. The State Consumer Forum also held, and in our view correctly, that it was a well known fact that this area was prone to heavy rains and flood. The State Consumer Forum noted that in all the previous years the policies were of A type and covered the risk of floods. It was noted that there were no proposals, during this year, that the policy should not cover the risk of flood. It was held that the Insurance Company could not on its own delete the risk covering flood. It was found as a fact that no intimation was given of this alleged change to the bank or the fishermen. It was also found that in case of dry fish there was hardly any necessity to cover risk of spontaneous combustion. It was held that if any clause had to be dropped, the clause covering risk by spontaneous combustion should have been dropped. On these findings the State Consumer Forum directed the Insurance Company to pay the claims of the fishermen. It must be mentioned that having found that there was manipulation the State Consumer Forum directed that the matter be placed before the Chairman, General Insurance Corporation of India so that remedial action could be taken by him.

The Insurance Company appealed before the National Consumer Forum. By the impugned order, the findings of fact have been upheld. However, the National Consumer Forum has concluded that the Bank was also equally negligent inasmuch as (a) they had not verified the amount of premium required; (b) not insisted on the issuance of cover notes and (c) not seriously pursued the c

claims on behalf of the claimants. The National Consumer Forum therefore by the impugned Judgment held the bank liable to pay to the fishermen 50% of the amount awarded.

The Bank has, thus, filed the appeal against the portion of the order whereby it has been directed to pay 50% of the amount. The Insurance Company's appeal is against the portion whereby it has been held liable to pay.

As findings of fact by the State Consumer Forum have been confirmed by the National Consumer Disputes Redressal Commission, this Court would not interfere on facts. However in order to satisfy ourselves, we also looked into this aspect and are satisfied that there were manipulation, after the event, to get out of liability. We, thus, see no reason to interfere with the findings against the Insurance Company. The appeals of the Insurance Company accordingly stand dismissed. We would also like to express our anguish at the manner in which a Nationalized Insurance Company has behaved. We hope that the Chairman of the Oriental Insurance Company will look into the matter and take remedial measures to see that this is not repeated. Hopefully the Chairman will also take action against the delinquent officers if they are still available.

As regards the appeals of the Bank, in our view, once it is factually held that there was coverage in respect of flood, there was absolutely no justification in directing the Bank to pay 50% of the amount. If there is coverage, it is Insurance Company which is liable to pay the amount. We, therefore, allow the appeals of the Bank and delete the direction of the National Consumer Forum to the Bank to pay 50% of the amount. The entire claim amount shall be paid by the Insurance Company within a period of two months from today, with interest as decreed by the State Consumer Forum. The Insurance Company shall also pay to each claimant Fishermen costs fixed at Rs.5,000/- each. The same to be also paid within 2 months from today.

.....J.

(S.N.Variava)

.....J.

(H.K.Sema)

New Delhi,  
September 02, 2003.