IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 1451 OF 2005

M/S. SILVERSONS Appellant(s)

VERSUS

THE ORIENTAL INSURANCE COMPANY LTD.
THROUGH MANAGING DIRECTOR AND ANOTHER Respondent(s)

O R D E R

This appeal is directed against order dated 17.11.2003 passed by the National Consumer Disputes Redressal Commission (for short, 'the National Commission') whereby the order passed by the State Consumer Disputes Redressal Commission, Maharashtra (for short, 'the State Commission') holding the insurer i.e. the Oriental Insurance Company Limited and the carrier i.e. M/s. Greenways Shipping Agencies Private Limited jointly and severely liable to pay Rs.11,45,000/- to the appellant with 15% interest from the date of complaint till payment and cost of Rs.30,000/- in lieu of the loss allegedly suffered by it was set aside.

The appellant entered into an agreement with M/s. Allchem Industries Inc., Florida, USA for the supply of Diphenyl Oxide. The goods were to be shipped from Bombay to

Norfolk (USA). For this purpose, the appellant obtained Marine Cargo Policy. The container containing the barrels of Diphenyl Oxide were loaded by the carrier in MV "Aken" some time in November, 1993. When the ship reached the Port at Colombo, the container containing Diphenyl Oxide was discharged and was positioned at Jaya Container Terminal awaiting shipment to the destination. During the course of inspection at the Container Terminal, it was noticed that there was leakage of chemical from the container. Thereupon, the carrier appointed SGF Marine

Surveyors to undertake the survey. The surveyor submitted report dated 16.12.1993, the relevant portions of which are extracted below:

> "SURVEY FINDINGS
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> The said container was discharged from MV. "Aken" on 20th November 1993 and was positioned at the Jaya Contained Terminal awaiting shipment to the destination. However, prior to arranging formalities for shipment representative from the agents of the carried (M/s. Greenlanka Shipping) had observed leakage of chemicals from the container who in turn applied for the survey.
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> On opening the container at the said yard at about 1445 hrs. (Local Time) the cargo of chemical barrels appeared well stowed in the container.
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> Subsequently all barrels were pulled out from the container and on close examination it was found that some barrels were leaking.
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> The liquid was leaking from small holes at the bottom beam and plate joints on the sides of the

> barrels. It was further observed that the chemical was oozing out in bubble from the holes giving a gaseous odour.
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> All leaking barrels were separated and a count was made where 43 barrels were found leaking and rest in good condition. The same container was reloaded with all the barrels with leaking barrels placed horizontally on top of the non-leaking barrels in order to avoid further leakage. The container was released finally with seal No.2664431.
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> CONCLUSION
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> The cause of leak may be attributed to sub standard barrels being used for gaseous chemical (name unknown) where due to accumulation of gas the barrel would have ruptured emanating the gas followed up with the liquid. Few photographs taken at the time of survey form part of this survey report."

Immediately after receiving the surveyor's report, the carrier sent letter dated 18.12.1993 to the appellant and informed it about the leakage of chemical from the barrels. This was followed by some correspondence between the appellant and the carrier, perusal of which reveal that the container was not reloaded for further shipment. After about 3 months, the petitioner sent communication dated 14.3.1994 to the insurer

enclosing therewith letter received from the carrier about leakage of the cargo and the fact that the same was lying at Colombo Port.

The claim lodged by the appellant was repudiated by

the insurer on the ground that intimation regarding discharge of the cargo at Colombo Port was given after a gap of more than 60 days. Thereupon, the appellant filed complaint under Section 15 of the Consumer protection Act for award of compensation of Rs.10,44,621/- with interest at the rate of 17%. The insurer contested the claim by relying upon clause 9 of the Institute Cargo Clauses ‘A’ of the Policy and pleaded that it cannot be accused of deficiency in service because the appellant did not promptly give intimation about the termination of the cargo at Colombo Port.

The State Commission allowed the complaint against the insurer and the carrier and declared that they are jointly and severely liable to compensate the appellant. The reasons assigned by the State Commission for allowing the complaint against the insurer read as under:

> "Now, when we travel to the consideration of the claim of the complainant against the Insurance Co. we find that the claim has been declined by final letter dated 15.6.1994 by the Insurance Company to the complainant. This we read as clear repudiation on the part of the Insurance Company. The only ground which seems is that 60 days expired after the discharge of the consignment at Colombo. The Insurance Company raised the question of expiry of 60 days that period is considered as 17.12.1993 which we gather from the letter of Surveyor dated 16.12.1993, when he perused the letter, we find that the Survey took place on 30.11.1993 and leakage was noticed and the same was communicated by the messenger dated 30.12.1993.
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> The Insurer informed the complainant on 17.1.1993 i.e. the date of knowledge for the policy provides consignment of risk at the final port of Norfolk. The goods were unloaded at Colombo and we therefore, believe that the period of limitation was nothing to do with the claim of the complainant. Even if for a moment, we hold that such a limitation shall be operated against the complainant, we are of the view that the intimation dated 17.1.1994 to the

complainant would be the date of commencement of the limitation. The complainant informed the Insurer on 14.3.1994. We believe that this claim is within 60 days. We hold that limitation would operate after the discharge at final port and not unscheduled port. The date of discharge at final port would give the cause of action to the Insurance Company. The date of discharge at final port could be relied. The insurance policy provides for that only. We are, therefore, of the view that the bar of limitation cannot survive.
Since this does not survive, the Insurance Company can not resist the claim of the complainant. We therefore, hold that even against the Insurance Company, the claim is maintainable. We therefore accept both complaints and proceed to calculate the compensation that would be payable to the complainant."

Both the insurer and the carrier appealed against the order of the State Commission. The National Commission reversed the finding recorded by the State Commission on the issue of deficiency in service and relieved the insurer of its obligation to compensate the appellant by observing that even though the appellant had been intimated about discharge of the cargo at Colombo Port, it did not promptly inform the insurance company as per the requirement of clause 9 of the Institute

Cargo Clauses.

We have heard Shri R. Sundarvardan, learned senior counsel appearing for the appellant and Shri Santosh Paul, learned counsel for the respondents and carefully scrutinized the records. Clause 9 of the Institute Cargo Clauses, which formed part of the policy obtained by the appellant, reads thus:

"9 Termination of Contract of Carriage Clause

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 8 above, then this insurance shall also terminate unless prompt notice is given to the Underwriters 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 within 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."

The National Commission interpreted the above

reproduced clause and observed:

"The question which arises before us is to determine if this period could be said to mean "Prompt" notice within the terms of the policy. Purpose, undoubtedly of requiring prompt notice is to enable the insured to inspect the goods, satisfy themselves about the case of loss/damage and to ascertain of it falls within the terms of Policy or no? In this case no such follow-up action could be taken by the insurers to safeguard their own interest. Prompt notice in our view will mean immediately informing the insurer which normally we have seen is done within 24 hours. It could be extended to 48 to 72 hours but in no case extended to three months. Non sending of any "prompt notice" to the insurers is a clear case of violation of terms/clauses of the policy by the Insured/complainant, thus depriving them of an opportunity to ascertain the full facts and to safeguard its interest. In our view the State Commission went wrong in this case on two counts - one relying upon the date of intimation to the complainant being 17.1.1994 which is contrary to record and secondly misinterpreting clause 9 & 9.1 of ICC 'A' which led them to hold the insurers deficient in rendering service with which we do not agree. In our view the violation/non adherence of the clauses 9 on not sending "prompt notice" is crucial enough to agree with the repudiation of the claim of the complainant against the insurers, i.e. the Insurance Company."

Although, the view taken by the National Commission that for availing benefit of the Policy, the insured should give intimation to the insurer within 24 hours or 48 hours or at best within 72 hours appears to be too narrow and we are inclined to agree with the learned counsel for the appellant

that it would be sufficient if intimation is given to the

insurer within a reasonable period, but what should be the reasonable period within which the insured should inform the insurer about the loss of goods would depend upon the facts of each case and no straight jacket formula can be laid down to determine as to what would constitute prompt notice within the contemplation of clause 9 of the Institute Cargo Clauses.

Insofar as this case is concerned, we are convinced that the long time gap of almost three months between the date when the appellant had been informed about discharge of the cargo by MV "Aken" at Colombo Port and the intimation given by the appellant to the insurer was unreasonable and, by no stretch of imagination, it could be construed as a prompt notice.

Learned counsel for the appellant made considerable efforts to convince us that after the cargo had been discharged at Colombo Port, the same was reloaded in the container and this should give rise to a presumption that the container had been reloaded on the ship for final destination, but we have not felt persuaded to agree with him. A reading of the averments contained in the complaint leaves no manner of doubt that the appellant knew that the cargo was lying at Colombo Port and the same had not been shipped for final destination.

The survey report dated 16.12.1993 does show that the barrels (leaking or non-leaking) were loaded in the container, but the same cannot lead to an inference that the container was reloaded for being shipped to Norfolk (USA).

In view of the above, we hold that the conclusion recorded by the National Commission that the insurer was not liable to indemnify the appellant for the alleged loss of cargo does not suffer from any legal error.

In the result, the appeal is dismissed.

.....J.
(G.S. SINGHVI)

.....J.
(H.L. DATTU)

NEW DELHI,
September 15, 2011.
ITEM NO.101 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

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(With prayer for interim relief)

Date: 15/09/2011 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. DATTU

For Appellant(s) Mr. R. Sundarvardan, Sr.Adv.
Mr. P.B. Suresh, Adv.
Mr. Vipin Nair, Adv.

For Respondent(s) Mr. Santosh Paul, Adv.
Mr. M.J. Paul, A.O.R.[Not present]

UPON hearing counsel the Court made the following
O R D E R

In terms of signed order, the appeal is dismissed.

(A.D. Sharma) (Phoolan Wati Arora)
Court Master Court Master
(Signed Order is placed on the file)