[2023] 12 S.C.R. 959 : 2023 INSC 697

CASE DETAILS

HIND OFFSHORE PVT. LTD.

v.

IFFCO – TOKIO GENERAL INSURANCE CO. LTD.

(Civil Appeal No. 7228 of 2015)

AUGUST 09, 2023

[A.S. BOPANNA AND M.M. SUNDRESH, JJ.]

HEADNOTES

Issue for consideration: NCDRC whether justified in passing the impugned order holding that the respondent-insurance company was under no contractual or legal obligation to reimburse the appellant for the loss suffered by it on account of sinking of the vessel as the Class Certificate was obtained by the appellant by concealing vital information, with respect to the damage to the vessel, from the Classification Society.

Consumer Protection – Marine Hull Insurance Policy – Non-reporting of the damage/defects to the Classification Society before issue of the certificate, class Certificate if rendered invalid though issued earlier – Whether the owner is to inform this aspect or whether the verification by the insurer is warranted – Warranty class, if violated:

Held: In the instant case, prior to the instant policy(covering the period between 09.11.2006 to 08.11.2007), the vessel was covered under a policy for the period 09.11.2005 to 08.11.2006 – During the subsistence of the earlier insurance policy, there was a damage to the engine crank shaft and connecting rods and on the recommendation for replacement, the insurer-respondent had reimbursed the amount for that purpose – Though the immediate voyage with repairs were brought to the knowledge of the insurer, the replacement was to be made in due course – No material brought on record by the appellant to indicate that the damage to the engine crank shaft which was required to be replaced and on account of which payment was obtained, was replaced or if it had not been replaced, whether it was reported to American Bureau of Shipping (ABS) so that the Classification Society

would have thereafter assessed as to whether even in that circumstance where the replacement had not been made, whether the repairs carried out were sufficient to certify the seaworthiness of the vessel – On being aware, an informed decision was to be taken to issue the Class Certificate – Entire onus cannot be on the insurer to check as to whether subsequently the engine had been replaced by utilising the amount received – In such situation when the replacement, in fact was not made, the onus was entirely on the appellant to bring it to the notice of the Classification Society and in that circumstance when the Class Certificate was issued, the warranty class had in fact been violated by the appellant and the exclusion as indicated would apply and make it invalid – Appellant failed to establish that the warranty class had not been breached by them and in that context the seaworthiness or otherwise at the point of accident is not of relevance – Impugned order passed by NCDRC does not call for interference – Marine Insurance Act, 1963. [Paras 18 and 24]

Marine Insurance Act, 1963 – ss.35, 37, 41(5) and 55 – Warranties requirement – Rules for Building and Classing:

Held: If the requirement is not complied with, then the insurer is discharged from liability as from the date of breach of warranty but without prejudice to any liability incurred before that date. In a time policy, there is no implied warranty that the ship shall be seaworthy at any stage but where with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness – In view of the warranty requirement, the assured is expected to bring to the notice of the Classification Society the shortcomings or the defects if any, before the issue of such Class Certificate since the insurance coverage to be provided by the insurer is based on such Class Certificate which is assumed to have been issued by the Classification Society after keeping in view all aspects including the defects if any brought to their notice. [Para 16]

Consumer Protection – Marine Hull Insurance Policy – Surveyor recommended rejection of the claim of the appellant – Plea of the appellant that the word of the surveyor is not final:

Held: Such plea would not assist the appellant – The surveyor recommended rejection of the claim mainly on the reason that the earlier defect with reference to seaworthiness was not brought to the notice of

the Classification Society – It is in that regard the surveyor referred to the inquiries made by him from the Classification Society and indicated that the persons representing the Classification Society stated that the said deficiencies were not brought to their knowledge – Though it was contended that such indication in the surveyor's report being hearsay cannot be relied upon, in the absence of any material on behalf of the appellant to indicate that they had intimated the Classification Society, there was no obligation in terms of the legal position for the insurance company to make such inquiry – Therefore, the inquiry made by the surveyor was an additional factor which was not rebutted or controverted with any other evidence by the appellant. [Para 20]

Consumer Protection – Marine Hull Insurance Policy was subject to the vessel possessing a Class Warranty – Knowledge on the part of the insurer that there was breach of warranty, if amounts to a waiver:

Held: Mere knowledge on the part of the insurer that there was a breach of warranty would not amount to a waiver in the absence of an express representation to that effect – Though during the subsistence of the insurance policy for the earlier term there was a claim lodged towards damage to the main engine of the port and crank shaft, based on the recommendation of the surveyor substantial amount had been paid, on account, to the appellant since such advancement of the amount was towards the replacement of the engine crank shaft – Except for the knowledge of the insurer that in view of the waiting period prescribed by the manufacturers for supply of the engine crank shaft for replacement, repairs were carried out and a voyage would be undertaken for urgent delivery of the cargo during the subsistence of the earlier policy period, there is nothing on record to indicate that prior to the issue of the instant insurance policy for the period 09.11.2006 to 08.11.2007 or during subsistence the replacement of the engine had been waived – Thus, when the respondent insurance company relied upon the Class Certification to issue the policy there was no express or implied waiver – Appellant has not established that the defects were brought to the notice of the Classification Society and thereafter the certificate was obtained – Thus, when it is subsequently noticed that these defects were not intimated and the warranty class had not been complied, the Classification Certificate would automatically become invalid – In fact, the fact that the replacement

of the engine crank shaft had not been made came to the knowledge of the insurer only when the final surveyor report was submitted on 19.02.2007 after the policy had already been issued on 09.11.2006 and the accident had occurred on 03.12.2006 – As such there was no waiver on the part of the respondent insurer in this case. [Para 21]

LIST OF CITATIONS AND OTHER REFERENCES

Ceyaki Shipping Pvt. Ltd. vs. New India Assurance Pvt. Co. Ltd. Consumer Case No.278 of 2011 dated 21.03.2017; *Marine Offshore Pvt. Ltd. vs. China Insurance Company (Singapore) Pvt. Ltd. & Anr.,* (2006) 4 SLR 689 – distinguished.

New India Assurance Company Limited vs. Protection Manufacturers Private Limited, (2010) 7 SSC 386 : [2010] 8 SCR 61; *New India Assurance Company Ltd. vs. Pradeep Kumar,* (2009) 7 SCC 787 : [2009] 16 SCR 508 – held inapplicable.

Ranjan Kumar and Brothers v. Oriental Insurance Co., (2020) 4 SCC 364 : [2020] 6 SCR 163; *Sea Lark Fisheries vs. United India Insurance Company and Anr.,* 2008 (4) SCC 131 : [2008] 2 SCR 346; *Contship Container Lines Limited vs. D.K. Lall & Ors.,* 2010 (4) SCC 256 : [2010] 3 SCR 460 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No.7228 of 2015.

From the Judgment and Order dated 15.05.2015 of the National Consumer Disputes Redressal Commission, New Delhi in Consumer Complaint No.166 of 2008.

Appearances:

Neeraj Kishan Kaul, Sr. Adv., Arunabh Chowdhary, Jacob Kadantot, Kush Chaturvedi, Gaurav Adusumalli, Dechen W. Lachungpa, Ms. Ira Mahajan, Syed Faraz Alam, Atharva Gaur, Aayushman Aggarwal, Advs. for the Appellant.

Devdatt Kamath, Sr. Adv., K.V. Girish Chowdary, Anubhav Kumar, D. Satya Sai Sumanth, Revanta Solanki, Ms. Tatini Basu, Kumar Shashank, Ms. Nitipriya Kar, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

A. S. BOPANNA, J.

1. The present appeal is directed against the order of the National Consumer Disputes Redressal Commission (hereinafter for short "NCDRC") dated 15.05.2015 dismissing the consumer complaint filed by the appellant herein.

2. The brief facts leading to the claim before the NCDRC are that the appellant entered into Bareboat Charter Party Agreement dated 02.10.2006 for a sea vessel known as M.V. Sea Panther (hereinafter for short "vessel"), the registered owner whereof is Astron Equities S.A. The appellant obtained 'Marine Hull Insurance Policy' in respect of the said vessel from the respondent bearing policy no. 21212985 covering the vessel for various risks including the 'perils of the seas' for an insured sum of Rs. 8,26,92,000/-for the period 09.11.2005 to 08.11.2006. The Marine Hull Insurance Policy is subject to the vessel possessing a Class Warranty.

3. On 22.02.2006, the vessel on a voyage from Singapore to Mumbai suffered major damage to its port main engine. Dhiraj Offshore Surveyors and Adjusters Pvt. Ltd. conducted a preliminary inspection on 22.04.2006 and opined that the crankshafts and connecting rods were found beyond repair. Since the wait time for the replacement of the engine crank shaft was six months, considering the urgent commercial commitments, the main port engine was temporarily repaired. The appellant had presented an invoice of Rs.1,32,66,803/- towards the cost to be incurred. The respondent on the recommendation of Dhiraj Offshore Surveyors and Adjusters Pvt. Ltd. issued a cheque for Rs. 1,00,00,000/- dated 09.06.2006 as an advance payment for replacing the engine crank shaft and other components.

4. Subsequent to the term of the first policy ending, the appellant entered into a fresh Marine Hull Insurance Policy in respect of the vessel, bearing policy no. 21306557 covering the vessel for various risks including

the 'perils of the seas' for an insured sum of Rs. 8,26,92,000/- for the period 09.11.2006 to 08.11.2007. The American Bureau of Shipping (hereinafter for short "ABS") conducted a survey on the vessel on 29.09.2006 and 14.10.2006 and issued Class Certificate dated 19.10.2006 extending the Class Certificate until 30.06.2009. The Class Certificate constitutes a representation by ABS as to the structural and mechanical fitness of the vessel.

5. Unfortunately for the appellant, on 03.12.2006, the vessel on a voyage from Mumbai to SLQ Complex, Mumbai High South Field was struck by a Tug Boat 'Sea Ways 9' as a result of which the vessel sank with all cargo on board. The appellant submitted a claim amounting to Rs. 8,26,92,000/- due to the total loss of the vessel and cargo. As per the procedure, the respondent appointed M/s. J. Basheer & Associates Surveyors Pvt. Ltd. (hereinafter for short "surveyor") as the surveyors to assess the loss. The surveyor on visiting the ABS ascertained that the owners/representatives of the appellant had not informed the ABS about the previous damage to the port main engine and ABS only based on their inspection, had issued the Class certificate dated 19.10.2006. The surveyor's report also states that the Country Manager of ABS also reported that if a Vessel sustains any damage to either Hull or Machinery and the same is not reported to the Class, then the Class would deem to be automatically suspended as per ABS Rules for Building and Classing Steel Vessels-2005 Edition, Part 1, Chapter 1, Section 2 heading 'Suspension and Cancellation of Classification'.

6. In the meanwhile, Dhiraj Offshore Surveyors and Adjusters Pvt. Ltd. submitted its final report on 19.02.2007. As per their conclusion, it was considered unlikely that the vessel will be recovered and as such permanent repairs to the port main engine will not be effected, as were supposed to be done as a consequence of the first accident. Thus, it was recommended that the sum of Rs.1,00,00,000/- paid as "on account" on the basis of their report dated 22.04.2006 be recovered.

7. In that background, since the claim of Rs. 8,26,92,000/- was not settled by the respondents, the appellant approached the NCDRC by filing Consumer Complaint No.166 of 2008 claiming Rs.16,62,51,467/- comprising of Rs.8,26,92,000/- towards loss of insured asset, loss of earnings of Rs.5,41,98,144/-, and interest on the insured asset @ 18% along with the cost of proceedings i.e. Rs.2,93,61,324/-.

8. The gist of contentions raised by Sri Neeraj Kishan Kaul, learned senior counsel for the appellant is as follows:

(a) It is submitted on behalf of the appellants that though ABS was empowered to reconsider, withhold, suspend or cancel the Class of any vessel or any part of the machinery for non-compliance of the Rules, at no point of time did the ABS alter the Class Certificate accorded to the Vessel or impose any conditions thereon. There was no withdrawal, suspension or cancellation of the Class by ABS and in the absence thereof, the same cannot and could not be presumed to have been automatic.

(b) It is further submitted on behalf of the appellant that the Class Certificate issued by the ABS was after a rigorous physical inspection of the vessel and its machinery that was conducted by ABS on 14.10.2006.

(c) It was further submitted that there was no breach of class warranty insofar as there were neither any recommendations, requirements or restrictions imposed by ABS relating to unseaworthiness to be complied with by the appellant as per clause 1.2 of class warranty nor was there any obligation on the appellant regarding reporting to ABS of accident and defects in the vessel as per clause 1.5 of class warranty, as the same was applicable prospectively i.e. to accident and defects in the vessel after issuance of the Class Certificate and not during the term of the earlier Class Certificate or Policy. The appellant's vessel was classed with ABS and the existing class was maintained as per clause 1.1 of the class warranty. The appellant complied with all statutory requirements relating to the seaworthiness of the vessel as per clause 1.4 of class warranty and provided clarification by ABS that the vessel's Class has been maintained as per clause 4 of the class warranty.

(d) It was also submitted that the factum of the meeting between the surveyors and the ABS on 22.12.2006 was only hearsay and there was no evidence which was led regarding to the purported meeting. The surveyor purportedly approached the Classification Society directly, without seeking authorisation of the Appellant as required under clause 3 of class warranty. This assumes

significance in view of the comments of this Court on the tailor-made report of this very Surveyor in the case of ***The New India Assurance Ltd*** *vs.* ***M/s. Protection Manufacturers Pvt. Ltd.,*** (2010) 7 SCC 386.

9. The gist of the contentions put forth by Sri Devdatt Kamath, learned senior counsel for the respondent is as follows:

(a) The main contention of the sole respondent is that appellant's vessel was without Class Certification on the date of the incident, being invalid and the respondent was under no contractual and/or legal obligation to reimburse the appellant. As per Section 2 of the Rules of the ABS Classification Society, any damage to the Hull or Machinery of the vessel has to be necessarily reported to the Classification Society of the vessel and repairs conducted thereto have to be as per the recommendations and under supervision of the Classification Society. Any violation and/or breach of the rules of classification society leads to withdrawal/ suspension of the class of the vessel.

(b) It was further argued that there was a breach of warranty by the appellants. As per the terms of the insurance policy, the termination clause at 4.1 reads "Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of change of the Classification Society of the vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the Vessel is at sea, such automatic termination shall be deferred until arrival at her next port. However, where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance, such automatic termination shall only operate, should the Vessel sail from her next port without the prior approval of the Classification Society".

(c) Clause 6 covers perils and includes the perils of the sea. Rivers, lakes or other navigable waters.

(d) Class warranty as per the policy warranted that the Assured Owner's Manager and Superintendents shall comply with all requirements of the Classification Society regarding the reporting

to the society of accident to and defects in the vessel and for the purpose of any claim the Assured will provide certification by the Classification Society that the vessel's Class has been maintained. It is contended that the said warranty constitutes an express warranty in terms of Section 37 of the Marine Insurance Act, 1963 which was breached by the appellants by not disclosing the first accident and damage to the vessel. The appellant's failure to comply with the requirements of ABS Rules and warranties by not reporting the accidents and damages to the vessel discharge the respondent from any liability under the insurance policy as per Section 35(3) of the Marine Insurance Act, 1963. Reliance has been placed in this regard on ***Ranjan Kumar and Brothers v. Oriental Insurance Co.***, (2020) 4 SCC 364.

(e) It is further submitted that it is a settled principle of Law that a contract of insurance is based on the principle of Ubberimae fide, as stipulated under Section 19 of the Marine Insurance Act, 1963. The appellant after receiving an amount of Rs. 1,00,00,000/- from the respondent on 09.06.2006, never replaced the crank shaft and connecting rods. As per the Preliminary report of Surveyor the same was stated to be done in six months. The respondent issued the second Insurance Policy to the appellant on 09.11.2006. Emphasis is supplied on the fact that the appellant never informed the insurer that they had not carried out the replacement of the vital parts to the main engine. It is submitted by the respondent that this non-disclosure by the appellant would tantamount to misrepresentation and breach of good faith. Reliance in this regard is placed on ***Sea Lark Fisheries vs. United India Insurance Company and Anr.***, *2008 (4) SCC 131*; ***Contship Container Lines Limited vs. D.K. Lall & Ors.,*** *2010 (4) SCC 256.*

10. The rival contentions noted above were essentially the case put forth by the parties before the NCDRC since the facts referred to by the NCDRC in the impugned order would refer to the same. In that background, at the outset, it would be apposite to note the conclusion reached by the NCDRC. The relevant portions read as hereunder;

"Despite knowing the stand taken by the insurance company viz. the damage which took place during the term of the first policy had not been reported to ABS, no effort was made by the complainant to produce any evidence from ABS before this Commission to prove that the aforesaid damage, including the fact that the crankshaft and connecting rods had not been replaced, was duly reported to them by the complainant. In these circumstances, it would be difficult for us to reject the report of the surveyor, who specifically stated that he had met the Principal Surveyor Mr. Ashok and Country Manager, Mr. R.C. Bhavnani of ABS to enquire whether they were informed of the damage to the port main engine of the vessel, which had occurred on 22.02.2006 and the temporary repairs carried out as per their recommendations and they were quite surprised to learn about such serious damage to the port main engine of the vessel. According to Mr. Basheer they clearly told him that they were not aware of the aforesaid damage nor had the owner of the vessel intimated any such incident to them. They also told the surveyor that when they had inspected the vessel, no damage to the port main engine had been reported to them. Mr. R.C. Bhavnani told the surveyor that if a vessel sustains any damage to either HULL or machinery and the same is not reported to them, then the Class was deemed to be automatically suspended. Reliance in this regard was placed on the rules of the ABS and relevant rule has been extracted in the report of the surveyor and reproduced hereinabove."

"There is no dispute that the vessel was actually classed with ABS for the period from 30.03.2006 to 03.12.2006; the issue before us is that the aforesaid Classification was obtained by concealing vital information with respect to the damage to the vessel, from the Classification Society. We are therefore, satisfied that had the complainant disclosed to ABS that the vessel had met with a serious accident on 22.02.2006 and only temporary repairs to the port main engine had been carried out whereas the crankshaft and connecting rods were yet to be replaced, the requisite Class Certificate would not have been issued by the ABS in respect of the vessel in question. The Class Certificate obtained by the complainant, therefore, has to be excluded from consideration, the same having been obtained by concealment of material facts from the Classification Society. Consequently, the vessel shall be deemed

to be without class on the date it was hit by ship Seaways-9. The insurance company therefore is under no contractual or legal obligation to reimburse the complainant company for the loss suffered by it on account of sinking of the vessel."

"The case of the insurance company is based on the Class Certificate having been obtained by concealment of material fact from the Classification Society and not on the actual unseaworthiness or otherwise of the vessel."

11. The question, therefore, is as to whether the consideration made and conclusion reached by the NCDRC as extracted above would admit of any perversity or error in its reasoning. In the instant case, the fact that an ABS classification certificate was obtained by the appellant and was produced to the respondent, based on which a Marine Hull Insurance Policy valid for the period 09.11.2006 to 08.11.2007 was issued in favour of the appellant by the respondent is the accepted position. The fact that the vessel had a collision with a Tug boat 'Sea Ways 9' on 03.12.2006 during the subsistence of the policy is also the accepted factual position. The policy vide Clause 6 thereto, inter alia provides for covering loss or damage suffered due to 'perils of the seas' is also evident.

12. In a normal circumstance noted above, it would be sufficient to admit the claim and determine the quantum of loss suffered. However, in the instant case, there is a prelude which provides a different dimension to the claim. Prior to the instant policy, the vessel was covered under a policy for the period 09.11.2005 to 08.11.2006. During the subsistence of the earlier insurance policy, a claim was lodged by the appellant claiming the reimbursement of the insurance amount towards damage to the engine crank shaft and the related parts of the vessel. Dhiraj Offshore Pvt. Ltd. was appointed as a surveyor to assess the loss for which the insurance amount was claimed by the appellant. The Surveyor on inspection found that the chief component of the port main engine of the vessel was beyond repairs. However, the appellant had indicated that they had carried out temporary repairs to the port main engine due to their urgent commitments for delivery of cargo and as there was a waiting period of six months for delivery of the engine crank shaft and connecting rods from the manufacturers, the replacement was not immediately possible. The insurance company based

on the recommendations of the surveyor made a payment of Rs.1,00,00,000/- to the appellant, on account, towards the said damage to the engine crank shaft and connecting rods which required replacement. However, the said replacement was not made and the status continued to be the same which came to be known only on 19.02.2007 when Dhiraj Offshore Pvt. Ltd. submitted the final report by which time the present accident had occurred. It is in that light, the question would arise as to whether the obtainment of the Class Certificate from ABS based on which the present policy covering the period between 09.11.2006 to 08.11.2007 was issued would be valid to be invoked by the appellant in respect of the damage suffered in the accident which occurred on 03.12.2006.

13. The respondent insurance company declined to honour the claim under the said policy on the basis that the non-disclosure of the fact that the engine crank shaft and connecting rodshad suffered damage requiring the replacement, had not been informed by the appellant to the Classification Society for the issue of the Class Certificate and therefore, the Class Certificate would not remain valid for the reason of non-compliance of the warranty requirement. The appellant would however contend that the insurance company having issued the policy for the earlier period and having made the payment on account for the replacement, being aware of the repairs carried out and having gone on a voyage to deliver the booked cargo cannot now decline and it was for the respondent insurance company to make appropriate inquiries before issuing the policy. It is in that background a consideration was made by the NCDRC.

14. To put the matter in perspective by keeping in view the rival contentions and the provisions as also the regulations guiding the parties under the Marine Insurance Act, 1963, and the Rules for Building and Classing, the relevant provisions are required to be noted. In this regard, Sections 35, 37, 41(5) and 55 of Act, 1963 which are relevant have been brought to the notice of this Court which read as hereunder:

> "35. **Nature of warranty.**—(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence

of a particular state of facts. (2) A warranty may be express or implied. (3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

37. **Express warranties.**—(1) An express warranty may be in any form of words from which the intention to warrant is to be inferred. (2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy. (3) An express warranty does not exclude implied warranty, unless it be inconsistent therewith.

41. **Warranty of seaworthiness of ship.—**

(1) ×××××

(2) ×××××

(3) ×××××

(4) ×××××

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

55. **Included and excluded losses**.—(1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against. (2) In particular—(a) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened

but for the misconduct or negligence of the master or crew; (b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against; (c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils."

15. The relevant Classing Rules to be noted are as follows:

"The continuance of the classification of any vessel is conditional upon the Rule requirements for periodical, damage and other surveys being duly carried out. The Committee reserves the right to reconsider, withhold, suspend, or cancel the class of any vessel or any part of the machinery for noncompliance with the Rules, for defects or damages which are not reported to ABS, for defects reported by the Surveyors which have not been rectified in accordance with their recommendations, or for nonpayment of fees which are due on account of Classification, Statutory or Cargo Gear Surveys. Suspension or cancellation of class may take effect immediately or after a specified period of time.

Class will be suspended and the Certificate of Classification will become invalid in any of the following circumstances:

i) If recommendations issued by the Surveyor are not carried out by their due dates and no extension has been granted.

ii) If Continuous Survey items which are due or overdue at the time of Annual Survey are not completed and no extension has been granted.

iii) If the other surveys required for maintenance of class, other than Annual, Intermediate or Special Surveys, are not carried out by the due date and no Rule allowed extension has been granted, or

iv) If any damage, failure or deterioration repair has not been completed as recommended.

(10 August 2004)

> Classification may be suspended, in which case the Certificate of Classification will become invalid, upon failure to submit any damage, failure, deterioration or repairs for examination upon the first opportunity or, if proposed repairs, as referred to in 7-1-1/7, have not been submitted to the Bureau and agreed upon prior to commencement, as referred to in 7-1-1/7."

16. From a perusal of the provisions as contained in the Marine Insurance Act 1963 relating to warranties, if the requirement is not complied with, then the insurer is discharged from liability as from the date of breach of warranty but without prejudice to any liability incurred before that date. In that background, in a time policy, there is no implied warranty that the ship shall be seaworthy at any stage but where with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness. It is in that light, the Classification Certificate assumes relevance with reference to the manner in which it was obtained. In view of the warranty requirement, the assured is expected to bring to the notice of the Classification Society the shortcomings or the defects if any, before the issue of such Class Certificate since the insurance coverage to be provided by the insurer is based on such Class Certificate which is assumed to have been issued by the Classification Society after keeping in view all aspects including the defects if any brought to their notice. It is in that light the provisions extracted above becomes relevant as to the circumstance under which the Class will be suspended and the Certificate of Classification will become invalid in the circumstances stated therein, which also refers to such suspension and invalidation, if any damage, failure or deterioration repair has not been completed as recommended.

17. Hence if these aspects are kept in perspective, the entire issue in the instant case would hinge on the aspect as to whether the appellant had brought any material on record, either when the claim was lodged or before the NCDRC to indicate that the damage to the engine crank shaft which was required to be replaced and on account of which payment had been obtained, had been factually replaced, or if it had not been replaced, whether it was reported to ABS so that the Classification Society would have thereafter assessed as to whether even in that circumstance where the replacement had

not been made, whether the repairs carried out were sufficient to certify the seaworthiness of the vessel. On being aware, an informed decision was to be taken to issue the Class Certificate. In the instant case, no such material was brought on record.

18. The learned senior counsel for the appellant would however seek to rely at the outset on a decision rendered by the NCDRC in the case of ***Ceyaki Shipping Pvt. Ltd. vs. New India Assurance Pvt. Co. Ltd.*** in Consumer Case No.278 of 2011 dated 21.03.2017 to persuade us to adopt the view taken therein. In the said case the facts reveal that the incident had been brought to the notice of the insurer and the policy was issued only thereafter. In that circumstance, it was held that it was not open for the insurance company to repudiate the claim inasmuch as the insurer had an opportunity to ask the proposer whether the said defects/deficiencies in the vessel had been reported to the Classification Society or not. Having noted the same we are of the opinion that the said decision would not be of assistance inasmuch as the defects which were existent was known to the insurance company. However, in the instant case though, there was an earlier damage to the engine crank shaft and on the recommendation for replacement, the insurer had reimbursed the amount for that purpose. Though the immediate voyage with repairs had been brought to the knowledge of the insurer, the replacement was to be made in due course. The entire onus cannot be on the insurer to check as to whether subsequently the engine had been replaced by utilising the amount received. In such situation when the replacement, in fact was not made, the onus was entirely on the appellant to bring it to the notice of the Classification Society and in that circumstance when the Class Certificate was issued, the warranty class had in fact been violated by the appellant and the exclusion as indicated would apply and make it invalid.

19. The decision relied on by the learned Senior Counsel for appellant in the case of ***Marine Offshore Pvt. Ltd. vs. China Insurance Company (Singapore) Pvt. Ltd. & Anr.,*** (2006) 4 SLR 689 is also not of assistance to the appellant since the consideration therein was entirely in a different circumstance where the clause relating to the perils of the sea was the issue and, in that circumstance, whether the unseaworthiness could be considered. In the instant facts as noted the unseaworthiness alone is not the issue but the non-reporting of the damage/defects to the Classification Society

before issue of the certificate and the same rendering the Class Certificate invalid though issued earlier is the issue and in that circumstance whether the owner is to inform this aspect or as to whether the verification by the insurer is warranted.

20. Further, the decision in the case of ***New India Assurance Company Ltd. vs. Pradeep Kumar***, (2009) 7 SCC 787 relied on by the learned senior counsel for the appellant to contend that the word of the surveyor is not final would not assist the appellant. In the instant case, the surveyor has recommended rejection of the claim mainly on the reason that the earlier defect with reference to seaworthiness had not been brought to the notice of the Classification Society. It is in that regard the surveyor has referred to the inquiries made by him from the Classification Society and has indicated that the persons representing the Classification Society had stated that the said deficiencies had not been brought to their knowledge. Though the learned senior counsel would contend that such indication in the surveyor's report being hearsay cannot be relied upon, we are of the opinion that in the absence of any material on behalf of the appellant to indicate that they had intimated the Classification Society, there was no obligation in terms of the legal position for the insurance company to make such inquiry. Therefore, the inquiry made by the surveyor was an additional factor which has not been rebutted or controverted with any other evidence by the appellant. In that circumstance the decision in ***New India Assurance Company Limited vs. Protection Manufacturers Private Limited***, (2010) 7 SSC 386 relied on by the learned Senior Counsel to comment on the conduct of the Surveyor is also of no relevance.

21. Insofar as the provisions relating to warranty, the manner in which the representation is required to be made has been considered in detail by this Court in the case of ***Rajankumar & Brothers (IMPEX) vs. Oriental Insurance Company Ltd.***, (2020) 4 SCC 364 relied upon by the learned senior counsel for the respondent insurance company. The referred paragraphs read as hereunder:

> "19. Subsequent common-law decisions, however, have held that the obligation of the assured to inform the correct details in respect of the vessel's classification extends even where a policy is issued after the particulars of the vessel have been provided.

32. A warranty imposes certain obligations on the insured, and Section 35(3) makes it amply clear that a warranty needs to be complied with, regardless of whether or not its non-compliance materially affects the risk involved in carrying the shipment. As a corollary, when a warranty is not complied with i.e. there is a breach of warranty, the insurer is discharged from liability from the date of such breach, by virtue of Section 35(3). At the outset, therefore, it is important to note that the scheme of the 1963 Act is clear inasmuch as the automatic consequence of a breach of warranty is discharge of the insurer's liability. Such discharge of liability does not require any express conduct or representation from the insurer.

35. It is not the appellant's case that the respondent had chosen to issue the marine insurance policy despite being informed by the appellant that the vessel was non-classed. Rather the appellant had represented that the subject vessel was "IRS" classed. That being the case, as noted in Everbright Commercial Enterprises [Everbright Commercial Enterprises Pte Ltd. v. Axa Insurance Singapore Pte Ltd., 2001 SGCA 24] and Kam Hing Trading [Kam Hing Trading (Hong Kong) Ltd. v. The People's Insurance Co. of China (Hong Kong) Ltd., (2010) 4 HKLRD 630] , it was not the respondent's burden to have investigated the appellant's claim and informed the appellant that the subject vessel was non-classed. Hence, at the outset it is important to note that the mere formal issuance of the marine insurance policy by the respondent does not indicate "acceptance"/waiver of the vessel's classification or lack thereof.

40. For instance, after the occurrence of loss, even if the insurer makes an express representation that it would affirm the contract and indemnify the loss, if the insurer can prove that such a representation was made without the knowledge that there was a breach of warranty on the part of the insured, the liability of the insurer would stand discharged from the date on which the warranty was breached. Similarly, mere knowledge on the part of the insurer that there was a breach of warranty would not amount to a waiver, in the absence of an express representation to that effect."

From a perusal of the above judgment, it is clear that the mere knowledge on the part of the insurer that there was a breach of warranty would not amount to a waiver in the absence of an express representation to that effect. As noted in the instant case, though during the subsistence of the insurance policy for the earlier term there was a claim lodged towards damage to the main engine of the port and crank shaft, based on the recommendation of the surveyor substantial amount had been paid, on account, to the appellant since such advancement of the amount was towards the replacement of the engine crank shaft. Except for the knowledge of the insurer that in view of the waiting period prescribed by the manufacturers for supply of the engine crank shaft for replacement, repairs were carried out and a voyage would be undertaken for urgent delivery of the cargo during the subsistence of the earlier policy period, there is nothing on record to indicate that prior to the issue of the instant insurance policy for the period 09.11.2006 to 08.11.2007 or during subsistence the replacement of the engine had been waived. In that circumstance, when the respondent insurance company relied upon the Class Certification to issue the policy there was no express or implied waiver. The appellant has not established that the defects were brought to the notice of the Classification Society and thereafter the certificate had been obtained. In such a situation when it is subsequently noticed that these defects were not intimated and the warranty class had not been complied, the Classification Certificate would automatically become invalid. In fact, in the instant case, the fact that the replacement of the engine crank shaft had not been made had come to the knowledge of the insurer only when the final surveyor report was submitted on 19.02.2007 after the policy had already been issued on 09.11.2006 and the accident had occurred on 03.12.2006. As such there is no waiver on the part of the respondent insurer in this case.

22. The learned senior counsel for the appellant, during the course of his argument has repeatedly contended that at best the sum of Rs.1,00,000/- advanced towards replacement of the engine crank shaft can be recovered and not deny the claim when the policy was in force. In our view, such contention is not acceptable at a point after the accident. When we have noted that the issue of policy is based on trust, the natural conduct of the appellant ought to have been to come clean on this aspect before the issuance of subsequent policy by informing the respondent of non-utilisation of the

advance receipt, offer to return the sum or with consent retain it to be utilised when the engine crank shaft was available. Only if such course was adopted, the appellant could have been heard to put forth such a plea, not otherwise.

23. The learned senior counsel for the respondent has on this aspect relied on the decision in the case of ***Sea Lark Fisheries vs. United India Insurance Company & Anr.***, (2008) 4 SCC 131 wherein the requirements of Marine Insurance Policy and the implied warranty of seaworthiness was considered and it was also held that as per Section 19 of the Act, insurance is Uberrimae Fidei, which means that the issuance of the policy is based on trust. To the same effect, the learned senior counsel for the respondent has also relied on the decision in the case of C***ontship Container Lines Ltd. vs. D.K. Lall & Ors.,*** (2010) 4 SCC 256.

24. Therefore, keeping in view the consideration made by us hereinabove and also taking note of the provisions relating to warranty and the manner in which the Classification Certificate is issued, in the instant facts the appellant had failed to establish that the warranty class had not been breached by them and in that context the seaworthiness or otherwise at the point of accident is not of relevance. In that circumstance, we are of the opinion that the NCDRC having considered the relevant aspects of the matter in its correct perspective has arrived at its conclusion, which would not call for interference.

25. Accordingly, the appeal being devoid of merit is dismissed with no order as to costs.

26. Pending application, if any, shall stand disposed of.

Headnotes prepared by:
Divya Pandey

Appeal dismissed.