NATIONAL INSURANCE COMPANY LTD. A

v.

VEDIC RESORTS AND HOTELS PVT. LTD.

(Civil Appeal No. 4979 of 2019)

MAY 17, 2023 B

[AJAY RASTOGI AND BELA M. TRIVEDI, JJ.]

Insurance – Repudiation of claim under exclusionary clause in a policy – Respondent-complainant running a resort obtained two insurance policies in respect of buildings of the Resort with plant and machine accessories and furniture etc. – As per respondent, a mob of about 200-250 persons entered the resort and damaged the property – Surveyor assessed the loss to the tune of Rs.202.216 lakhs – Appellant-insurance company had repudiated the claim of the respondent on the ground that the loss caused to the respondent was an outcome of the malicious act/acts on the part of the respondent management and it fell within the exclusions provided under Clause V(d) of the Insurance Policy – Appellant-Insurance Company had relied upon the incident which had taken place at the football match ground, where a accused person and his associates had fired and caused death of one person and injured others, and thereafter they had taken shelter at the resort of the respondent – National Commission allowed the complaint filed by the respondent herein, and directed the appellant to pay a sum of Rs. 202.216 lakhs to the complainant along with interest – On appeal, held: There is hardly any material to show that the entire incident and the resultant damage to the insured property was caused as a result of the malicious act of the respondent-complainant – In the instant case, the appellant-Insurance Company had failed to discharge its burden of bringing the case within the exclusionary clause V(d) of the policies in question – Appellant-Insurance Company has failed to make out any such cogent reason for not accepting the surveyor's Report – Consumer Protection Act, 1986. C D E F G

Insurance – Exclusionary clause in a policy – Held: It is trite to say that wherever there is an exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview of such clause – In case of ambiguity, the contract of insurance has to be construed in favour of the insured. H

A *General Assurance Society Ltd. v. Chandumull Jain and Anr.* **AIR 1966 SC 1644 : [1966] SCR 500 – followed.**

National Insurance Company Limited v. Ishar Das Madan Lal **(2007) 4 SCC 105 : [2007] 2 SCR 1014 – relied on.**

B

Case Law Reference

[2007] 2 SCR 1014	**relied on**	**Para 15**
[1966] SCR 500	**followed**	**Para 16**

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4979 of 2019.

From the Judgment and Order dated 07.01.2019 of the National Consumers Disputes Redressal Commission, New Delhi in CCN No. 227 of 2012.

D Vishnu Mehra, Ms. Manjeet Chawla, Kunal Malhotra, Mrs. Usha Pant Kukreti Advs. for the Appellant.

Sukumar Pattjoshi, Sr. Adv., Susmit Pushkar, Gaurav Sharma, Raj Mohan Gupta, Naina Agarwal, Advs. for the Respondent.

The Judgment of the Court was delivered by

E **BELA M. TRIVEDI, J.**

1. The aggrieved appellant-Insurance Company has filed the present appeal under Section 23 of the Consumer Protection Act, 1986 (hereinafter referred to as the said Act) challenging the judgment and order dated 07.01.2019 passed by the National Consumer Disputes F Redressal Commission, New Delhi (hereinafter referred to as the "National Commission") in Consumer Complaint No. 227 of 2012, whereby the Commission has allowed the complaint filed by the complainant (respondent herein), and directed the appellant to pay a sum of Rs. 202.216 lakhs to the complainant along with interest @ 9% per annum from six months from the date of lodgment of the claim till G the date on which the said payment is made.

2. The respondent-complainant, running a Resort at Village Shikharkpur, P.S. Rajarhat, District 24- Paraganas, (South) of West Bengal had obtained two insurance policies from the appellant-Insurance Company, one being Policy No. 100900/11 / 08/3300000420 for the period H

from 16th September, 2008 to 15th September, 2009 in respect of the buildings of the said Resort with plant and machineries accessories and furniture etc. and the other being Policy No. 100900/11/09/3100000270 for the period from 13th July, 2009 to 12th July, 2010 in respect of two hotel buildings at the said resort with stock.

3. As per the case of the respondent-complainant on 23rd August, 2009 at about 5.00 p.m., a mob of about 200-250 persons entered the resort and damaged/destroyed the insured property resulting in loss to the complainant. The incident was reported to the police and the FIR being No. 144 of 2009 was registered on the written complaint given by one Santanu Bhattacharjya, General Manager of Vedic Village Resort, P.S. Rajarhat.

4. Another FIR being No. 143 of 2009 was registered at P.S. Rajarhat on 23rd August, 2009 for the offence under Sections 302/34, 120B, 506, 212 IPC and Section 25 and 27 of the Arms Act against one Gaffar Molla and his associates, at the instance of a written complaint given by one Monirul Sardar to the effect that when the said complainant and his brother were returning home, they saw a football match going on at Sekharpur Adarsha Sangha Ground. When the said football match was going on, suddenly one Gaffar Molla and his associates started firing and hurling bombs to postpone the match. As a result, thereof, the brother of the complainant, namely, Alam @ Amirul Sardar received gunshot injury on his person causing his instant death. Several other spectators also received injuries due to bomb explosion.

5. During the course of investigation, it was revealed that the accused- Gaffar Molla and his associates after the firing and throwing bombs at the football match venue, and upon being chased by the crowd, took shelter in Vedic Resorts and Hotels Pvt. Ltd. of the respondent-complainant. Since the said Gaffar Molla and his associates were given shelter in the said Vedic Resort, the crowd chased them and damaged the insured property of the respondent-complainant. During the course of investigation, the police conducted a search of Vedic village on 24th August, 2009 and found that there were pipe guns, live bombs in gunny bags and explosive substances found and recovered from the housing material-cum-electrical store room situated within the compound of the Vedic village of the respondent.

6. On the surveyor being appointed, as per the Final Survey Report dated 16.06.2011, the Surveyor assessed the loss to the buildings and

A contents to the extent of Rs. 197.842 lakhs in Policy No. 420 and the loss to the crockery and cutlery to the extent of Rs. 4.274 lakhs in Policy No. 270, in aggregate assessed the loss to the tune of Rs. 202.216 lakhs under both the policies.

7. The appellant-Insurance company repudiated the claim of the B respondent vide letter 06.07.2012 *inter alia* stating that loss in respect of which the subject claim was made, was an outcome of the malicious act and therefore fell within the exclusions under Clause V(d) of the Subject policies; and that there had been a breach of warranty on the part of the assured in respect of the class of constructions covered under C the subject policies.

8. The respondent therefore filed the Consumer Complaint being No. 227 of 2012 challenging the said repudiation of claim under Section 21 of the said Act before the National Commission, which by the impugned order dated 07.01.2019 partly allowed the same as stated hereinabove.

D 9. The learned counsel Mr. Vishnu Mehra, appearing for the appellant-Insurance Company vehemently submitted that the respondent had harboured the hard-core criminal Gaffar Molla and his associates who had killed one person and injured many others at the football match venue, using illegal fire-arms and explosives stored at his own compound of Vedic village and had invited public grudge which had caused damage E to his insured property. Hence, according to him, the loss suffered by the respondent was an outcome of the malicious act on the part of the management of Vedic village, which fell within the exclusions provided under Clause V(d) of the Insurance Policy. He further submitted that the words "or any omission or any kind or any person" occurring in F Clause V(d) of the Policy would cover the damage to the property caused on account of omission of the management of the respondent-complainant to abide by the law, and the respondent had engaged Gaffar Molla and his associates for carrying out illegal activities and terrorising the people having their lands adjacent to the resort, to extend the area of his resort. He also submitted that the Survey Report of the Surveyor opining that G the loss had occurred due to the insured peril and the claim was admissible was highly erroneous and could not be treated as final.

10. However, the learned counsel Mr. Sukumar Pattjoshi, appearing for the respondent supporting the findings recorded by the National Commission submitted that the repudiation of his claim by the H

appellant-Insurance Company was erroneous and the Commission had rightly granted the same.

11. The appellant having relied upon the Clause V of the subject policies, the relevant extract thereof is reproduced as under:

> **"V. <u>Riot, Strike and Malicious Damage:</u>**
>
> Loss of or visible physical damage or destruction by external violent means directly caused to the property insured but **excluding those caused by:**
>
> (a) to (c)……
>
> (d) burglary, housebreaking, theft, larceny or any such attempt or any omission of any kind of any person of any person (whether or not such act is committed in the course of a disturbance of public peace) **in any malicious act.**
>
> **<u>If the Company alleges that the loss/damage is</u> <u>not caused by any malicious act, the burden of</u> <u>proving the contrary shall be upon the insured</u>."**

12. From the bare reading of the said clause, it is discernible that the loss of or visible physical damage or destruction by external violent means directly caused to the property insured was covered, but the loss, damage or destruction to the property caused by burglary, housebreaking, theft, larceny or any such attempt or any omission of any kind of any person in any malicious act was not covered. It further states that if the Insurance company alleges that the loss/damage was not caused by any malicious act, the burden of proving the contrary would be upon the insured. In the instant case, the appellant-Insurance company had repudiated the claim of the respondent taking recourse to the said Clause V(d) of the subject policy on the ground that the loss caused to the respondent was an outcome of the malicious act/acts on the part of the respondent Vedic Village management and it fell within the exclusions provided under Clause V(d) of the Insurance Policy. For the purpose of coming to the said conclusion, the appellant- Insurance Company in its letter dated 02/05/2011 while repudiating the claim of the respondent, had relied upon the incident which had taken place at the football match ground, where the accused Gaffar Molla and his associates had fired and caused death of one person and injured others, and thereafter they had taken shelter at the Vedic Village of the respondent.

13. Though, it is true that the said Gaffar Molla and his associates had taken shelter at the Vedic Village when the mob became frenzied and chased them, and though it is also true that during the course of investigation the pipe guns and other explosive materials were found lying in the compound of Vedic Village, nonetheless the alleged incident of firing and causing death of a person appears to have taken place on the spot during the football match being played at the football ground. There is hardly any material to show that the entire incident and the resultant damage to the insured property was caused as a result of the malicious act of the respondent-complainant. Even if, the allegations against the said Gaffar Molla and his associates are taken at their face value, it is difficult to accept the contention raised by the learned counsel for the appellant that the damage caused by the frenzied mob which had chased said Gaffar Molla and his associates, was caused due to the malicious act on the part of the respondent and therefore was excluded from the coverage in view of Clause V(d) of the subject Policy.

14. It is trite to say that wherever such an exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview of such clause. In case of ambiguity, the contract of insurance has to be construed in favour of the insured.

15. Beneficial reference of the decision in ***National Insurance Company Limited vs. Ishar Das Madan Lal***[1] be made in this regard, in which it has been held that: -

> **"8.** However, there may be an express clause excluding the applicability of insurance cover. Wherever such exclusionary clause is contained in a policy, it would be for the insurer to show that the case falls within the purview thereof. In a case of ambiguity, it is trite, the contract of insurance shall be construed in favour of the insured. "

16. The Constitution Bench in case of ***General Assurance Society Ltd. Vs. Chandumull Jain and Another***[2] had also observed as back as in 1966 that: -

> **"11.……**there is no difference between a contract of insurance and any other contract except that in a contract of insurance there

[1] (2007) 4 SCC 105
[2] AIR 1966 SC 1644

is a requirement of *uberrima fides* i.e. good faith on the part of the assured and the contract is likely to be construed *contra proferentem* that is against the company in case of ambiguity or doubt".

17. In the instant case, the appellant-Insurance Company had failed to discharge its burden of bringing the case within the exclusionary clause V(d) of the policies in question. The surveyor in the Final Survey Report dated 16.06.2011 had also opined that the loss had occurred due to the insured peril and the claim was admissible. Though it is true that the Surveyor's Report is not the last and final one nor is so sacrosanct as to the incapable of being departed from, however, there has to be some cogent and satisfactory reasons or grounds made out by the insurer for not accepting the Report. We are afraid in the instant case, the appellant-Insurance Company has failed to make out any such cogent reason for not accepting the surveyor's Report.

18. In that view of the matter, we do not find any merit in the present appeal and the same is accordingly dismissed.

Ankit Gyan Appeal dismissed.