

REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO.7315 OF 2016

MAHAVIR ROAD AND INFRASTRUCTURE PVT LTD.

APPELLANT(s)

VERSUS

IFFCO TOKIO GENERAL INSURANCE CO LTD

RESPONDENT(s)

J U D G M E N TDR DHANANJAYA Y CHANDRACHUD, J

Delay condoned.

Admit.

This appeal arises from a judgment and order dated 23 February 2016 of the National Consumer Disputes Redressal Commission¹. The NCDRC rejected the complaint of the appellant alleging a deficiency of service in the rejection of a claim under an insurance policy.

The appellant was undertaking the resurfacing, metalling and asphaltting of roads in Nashik. An insurance policy was obtained by the appellant. The insurance cover encompassed 'material damage'. Section 1 of the insurance policy was in the following terms:

"SECTION-1 MATERIAL DAMAGE

The Company hereby agrees with the insured (subject to the exclusions and conditions contained herein or endorsed hereon) that if, at any time during the period of insurance stated in the said Schedule, or during any further period of extension thereof the property (except packing

¹ "NCDRC"

materials of any kind) or any part thereof described in the said Schedule be lost, damaged or destroyed by any cause, other than those specifically excluded hereunder, in a manner necessitating replacement or repair the Company will pay or make good all such loss or damage upto an amount not exceeding in respect of each of the items specified in the Schedule the sum set opposite thereto and not exceeding in the whole the total sum insured hereby.

The Company will also reimburse the insured for the cost of clearance and removal of debris following upon any event giving rise to an admissible claim under this Policy but not exceeding in all the sum (if any) set opposite thereto in the Schedule."

However, the exclusions to Section 1, *inter alia*, were to the following effect:

"EXCLUSIONS TO SECTION - 1

The Company shall not, however, be liable for:

c) normal wear and tear, gradual deterioration due to atmospheric conditions or lack of use or obsolescence or otherwise, rust scratching of painted or polished surfaces or breakage of glass;"

There were specific conditions applicable to Section 1. Among the 'major perils/Act of God perils' described in Memo 8 was "Flood/Inundation".

The appellant submitted a claim on the ground that between 25 June 2007 and 5 July 2007, it had suffered a loss and damage to the roads which had been worked upon due to "abnormal rainfall and water logging". By its letter dated 14 September 2007, the appellant stated that due to heavy rains on 29 June 2007, the roads were inundated and the top layer had been washed out.

By a communication dated 28 March 2008, the insurer rejected the claim, *inter alia*, on the ground that the damage had been caused by defective workmanship and materials and due to the failure to provide an alternative route for traffic. Subsequently, after further correspondence, the insurer informed the appellant on 13 May 2008 that the loss or damage to the roads had been caused due to (i) monsoon rains; and (ii) damage/peeling off of the top surface of the asphalt due to the plying of vehicular traffic on wet roads, resulting in wear and tear. The exclusion in the insurance policy of damage due to normal wear and tear or due to gradual deterioration as a result of atmospheric conditions was relied upon.

The report of the Surveyor, B.P. Shah & Associates, dated 21 March 2008, was in the following terms, insofar as is material:

"PROBABLE CAUSE:

According to the insured loss was caused due to heavy abnormal rains etc. Copy of their letter dated 28th July 2007 is enclosed herewith (Encl.4).

What was observed was surface damages & neither any rain cuts nor erosion of base soil of the roads by flowing floodwater were seen. Top surface of the asphalt had peeled off/got damaged due to movement of traffic over a period of time on wet roads and normal wear & tear which also created few pot holes. Policy excludes normal wear & tear, gradual deterioration due to atmospheric conditions (Exclusion C under Section 1) & also damage due to movement of traffic, which is by no means fortuitous."

The NCDRC rejected the consumer complaint on several grounds. It held that:

(i) The appellant had initially stated in its claim form that the loss had occurred between 25 June 2007 and 5 July 2007. In its letter dated 14 September 2007, the appellant claimed that due to heavy rains on 29 June 2007, the roads were inundated and the top layers were washed out. The report of the Surveyor indicated that the stand taken before it was that the damage had occurred on 2/3 July 2007. Thus, the appellant had not been consistent in the date of the alleged damage;

(ii) In breach of the obligation contained in the insurance policy which required that the damage should be immediately notified, intimation was furnished only on 9 July 2007 and there was no explanation for the delay in reporting the damage to the insurer;

(iii) According to the Surveyor, there was no evidence of any damage on account of flood water and only surface damage was found. The data of the Meteorological Department indicated minimal rains on the alleged dates of damage;

(iv) No expert had been examined by the appellant in support of its claim that rainfall, to the extent that had occurred, would have resulted in severe damage to the road.

Mr. Anirudha Joshi, learned counsel appearing on behalf of the appellant, submits that the insurance

policy covered damage due to 'any cause whatsoever'. Hence, it was urged that whether or not the damage had been caused by excessive rainfall was really not material at all since the appellant was entitled to be indemnified for the damage which was sustained to the roads. In this regard, Section 1 of the insurance policy was relied upon, which has been extracted earlier.

On the alleged failure of the appellant to intimate the insurer of the cause of the loss or damage, learned counsel submitted that Clause 5 of the General Conditions stipulated that the insurer shall not be liable, in any case, when no notice has been received within fourteen days of the occurrence. In the present case, it was submitted that the notice on 9 July 2007 was within a period of fourteen days. On these grounds, it has been submitted that the reasons which have weighed with the NCDRC in dismissing the complaint are unsustainable.

On the other hand, it was urged on behalf of the insurer by Mr. Abhishek Mishra, learned counsel that the specific ground on which the claim was filed under the terms of the insurance policy was that there was abnormal rainfall and water logging. This was evidently in pursuance of the provisions of the insurance policy under which flood/inundation constituted the major perils which were within the purview of the insurance cover. Learned counsel has adverted to the claim form, the letter dated 14 September 2007 and the Surveyor's report dated 21

March 2008. The basis of the claim was found to be false.

While analyzing the rival submissions, it must, at the outset, be noted that the basis of the claim which was submitted by the appellant was that there was abnormal rainfall and water logging between 25 June 2007 and 5 July 2007. Subsequently, in its letter dated 14 September 2007, the appellant claimed that it was due to heavy rains on 29 June 2007 that the roads were inundated and the top layer had been washed out.

While dealing with this submission, the NCDRC has made the following findings:

"As per the data quoted from the Meteorological Department, the rainfall was 15.2 mm on 25.6.2007, 9.2 mm on 26.6.2007, 0 mm on 27.6.2007, 5mm on 28.06.2007, 0 mm on 29.6.2007, 0 mm on 30.6.2007, 10.6 mm on 01.7.2007, 49.2 mm on 02.7.2007 and 116.6 mm on 30.7.2007."

Upon analysing the data which was placed before it, the NCDRC observed:

"In fact, there was no rain at all on 29.6.2007 or even on 30.6.2007. In fact, the rainfall from 25.6.2007 to 01.7.2007 was nil or nominal. The rainfall on 02.7.2007 was 49.2 mm, whereas the rainfall on 03.7.2007 was 111.6 mm."

But, it has been urged on behalf of the appellant that, whether or not, there was abnormal rain and water logging is irrelevant because the appellant was entitled to claim in terms of Section 1 of the insurance policy where damage had been caused by any cause other than what was specifically excluded. In this background, it is

necessary to note that among the exclusions provided in the insurance policy was normal wear and tear and gradual deterioration due to atmospheric conditions. The case of the appellant was that it was due to excess rainfall that the roads were damaged. By necessary implication, the submission was that this would not constitute normal wear and tear in terms of the exclusions contained in the policy.

We have adverted to the report of the Surveyor, which found that there was only surface damage and no evidence of the road having been washed out as a result of excessive monsoon rain or inundation.

That apart, as we have noted from the findings of the NCDRC, the dates on which the alleged damage is stated to have occurred had not witnessed excessive rainfall and the rain was within normal parameters. The failure of the appellant to examine any expert in regard to the cause of the damage is a significant omission which has been correctly relied upon by the NCDRC. The insurance policy specifically excluded normal wear and tear. In order to establish that this was not a case involving normal wear and tear, the appellant sought to rely upon what it described as abnormal rainfall and water logging. The evidence on the record did not sustain the basis of such a claim.

In this view of the matter and for the reasons we have indicated, we are unable to come to the conclusion

that the order passed by the NCDRC suffered from any error. We accordingly do not find any reason to entertain the appeal. The appeal is dismissed.

Pending application, if any, stands disposed of.

.....J.
(DR DHANANJAYA Y CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
MARCH 25, 2019

ITEM NO.38

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 No(s).7315/2016

MAHAVIR ROAD AND INFRASTRUCTURE PVT LTD.

Appellant(s)

VERSUS

IFFCO TOKIO GENERAL INSURANCE CO LTD

Respondent(s)

(WITH APPLN.(S) FOR CONDONATION OF DELAY IN FILING APPEAL)

Date : 25-03-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Mr. Anirudha Joshi, Adv.
 Mr. Abhishek Singh, Adv.
 Mr. Onkar Singh, Adv.
 Mr. Saurabh Mishra, AOR

For Respondent(s) Mr. Abhishek Mishra, Adv.
 Mr. Rajat Khattry, Adv.
 Mr. Vivek Kishore, AOR

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

Delay condoned.

Admit.

The appeal is dismissed in terms of the signed
reportable judgment.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)

AR-CUM-PS

(Signed reportable judgment is placed on the file)

(SAROJ KUMARI GAUR)

COURT MASTER