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MURALIDHAR SARANGI

v.

THE NEW INDIA ASSURANCE CO. LTD.

FEBRUARY 28, 2000

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[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

C

Insurance—Trucks—Destruction in terrorists attack—Liability of Insurance Company—Held insurance company not liable to indemnify such destruction—Clause 1(c) of Policy—Expression ‘Malicious Act’—Scope of—Insured held not entitled to claim in view of the provision (b) of Endorsement I.M.T. 21.

Terrorist and Disruptive Activities (Prevention) Act, 1987 : Applicability of.

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Armed Force (Special Powers) Act, 1958—Applicability of.

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While carrying goods to the State of Assam on a National Highway two trucks belonging to the Appellant were completely destroyed in an attack by Bodo extremists. The appellant's claim for indemnification in terms of the Insurance Policies was rejected by the Respondent-Insurance Company on the ground that the claim was not payable as terrorist risk was not covered by the Insurance Policies. The State Consumer Disputes Redressal Commission, Cuttack held that Insurance Company was liable to make good the loss in terms of the Insurance Policies because the destruction of the two trucks by Bodo terrorists was covered by Clause (c) of Condition No. 1 of the Policies which provided that the Insurance Company will indemnify the insured against loss of damage to the Motor vehicle and/or its accessories whilst thereon by malicious act. On appeal the National Consumer Disputes Redressal Commission held that the loss caused to the trucks in question by the act of Bodo terrorists was not covered by the terms of the Insurance Policies and as such the appellant was not entitled to claim indemnification of the loss sustained by him. It gave a finding that the case was covered by Provision (b) of Endorsement No. I.M.T. 21 which provides "mutiny assuming the proportion of or amounting to popular rising, military rising, rebellion, revolution, insurrection, military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed

towards the overthrow by force of the Government *de jure* or *de facto* or to the influence of it by terrorism or violence or by the direct or indirect consequence of the said occurrences." Hence this appeal by the insured. A

Dismissing the appeal, this Court

HELD : 1. The National Commission was fully justified in its conclusion that the respondent was not liable for the loss suffered by the appellant at the hands of Bodo activists who completely destroyed the trucks of the appellant by setting them on fire and killed one of the drivers. B
[1227-F-G]

2. A 'malicious act', according to State Commission, would be an act prohibited by law, which is done with intention to cause loss to another. C
The act which resulted in the destruction of the trucks belonging to the appellant could have been treated to be a "malicious act" but having regard to the circumstances of this case, specially that the incident took place in an area which had already been declared to be a "disturbed area" within D
the meaning of the Armed Forces (Special Powers) Act, 1958 and where the provisions of TADA Act were enforced, such activity cannot be considered in isolation. [1226-A-B]

3. Endorsement IMT 21 consists of two distinct parts. The first part speaks of mutiny assuming the proportion of popular rising, military rising, rebellion, revolution, insurrection etc. The second part contemplates any act of any persons acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the Government *de jure* or *de facto* or to the influence of it by terrorism or violence or by the direct or indirect consequence of the said occurrences. E
Whether these acts of terrorism by Bodo activists are intended to overthrow the Government, *de facto* or *de jure*, by force, have not been established by direct evidence, but the series of acts resulting in the loss of life and property so as to compel the authorities to declare the whole area as "disturbed area" for the purpose of the Armed Forces (Special Powers) Act, 1958, as also to enforce the Terrorist and Disruptive Activities (Prevention) Act, 1987, definitely point out that not only the common people but also the Government, established by law, is intended to be overawed by acts of terrorism in an organised manner for and on behalf of a group which is basically responsible for such activities. The second part also speaks of the acts of "terrorism or violence". Such acts are made F
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- A** punishable under sub-section (2) with death or imprisonment for life etc. The terrorist acts may be done with intent to "overawe" the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people and other acts specified therein. When read in the light of the statutory provisions as also the attending circumstances of this case, it becomes clear that Provision (b) of Endorsement IMT 21 of the Insurance Policies did not cover the risk complained of. [1226-C-G; 1227-D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9946 of 1996.

- C** From the Judgment and Order 16.11.1993 of the National Consumer Disputes Redressal Commission, New Delhi in F.A. No. 188 of 1992.

P.N. Misra, Ms. Kumud Lata Das and S. Misra for the Appellant.

- D** S.K. Paul, Salil Paul and Ms. Indra Sawhney for the Respondent.

The Judgment of the Court was delivered by

- E** **S. SAGHIR AHMAD, J.** The appellant was the owner of two trucks No. AMA 8761 and OAC 7123 in respect of which he had obtained two Policies, namely, (i) Policy No.3521504 00591 for the period from 11.8.1988 to 10.8.1989 and (ii) Policy No.31521504 00984 for the period from 5.2.1989 to 4.2.1990.

- F** On 23rd of March, 1989, while the aforesaid trucks were carrying goods to the State of Assam on National Highway No.31A, they were attacked at a place at Thaplaijhara in Kokrajhar District by Bodo terrorists with the result that both the trucks were completely destroyed by fire and the driver of one of the trucks was shot dead. The matter was reported to the police and the Officer-in-charge of the Police Station Gossaigaon, District Kokrajhar also issued a Certificate on 13.6.1989 that the incident, as reported, was found to be correct on investigation. It was also certified that the accused could not be traced nor could any clue be found.

- H** The appellant informed the respondent about the loss sustained by him and claimed indemnification in terms of the Insurance Policies in respect of the two trucks which were destroyed by the fire caused to them by the Bodo extremists. The respondent appointed Surveyors who sub-

mitted the reports dated 29.5.1989 and 30.5.1989 in respect of the trucks in question and gave their own assessment of the loss sustained by the appellant. It is stated that the respondent, through a letter dated 2.3.1990, issued by the Divisional Manager, New India Assurance Co. Ltd., offered an amount of Rs. 1,43,000 for settlement of the claim in respect of truck No. AMA 8761. It appears that it was not acceptable to the appellant who consequently issued a notice to the respondent on 22.3.1991. It was in reply to this notice that the respondent, by their letter dated 30.7.1991, repudiated the claim of the appellant on the ground that the Policy did not cover the terrorist action and, consequently, nothing was payable to the appellant under both the Policies. The appellant filed a complaint before the State Consumer Disputes Redressal Commission, Cuttack, Orissa (for short, 'the State Commission') which, by its judgment dated 9.4.1992, allowed the claim together with Rs.5000 as damages in respect of the vehicles in question for delaying the settlement of the claim without any justification. It was directed that the amount assessed by the Surveyors in respect of both the trucks would be paid to the appellant. The State Commission recorded a finding that the action of the Bodo terrorists in damaging and completely destroying the trucks in question by fire would amount to a "MALICIOUS ACT", contemplated by the Policies of Insurance and, therefore, the respondent was liable to make good the loss in terms of the Insurance Policies taken by the appellant for the two trucks. The respondent challenged the order of the State Commission before the National Consumer Disputes Redressal Commission, New Delhi, (for short, 'the National Commission') which, by its judgment dated 16.11.1993, allowed their appeal and held that the loss caused to the trucks in question by the act of Bodo terrorists was not covered by the terms of the Insurance Policies and as such the appellant was not entitled to claim indemnification of the loss sustained by him. It is in these circumstances that the present appeal has been filed.

In order to understand the respective claims of the parties, it will be useful to look to the case of the respondent and consider the facts on the basis of which they are trying to avoid their liability under the Insurance Policies. In their written statement, filed before the State Consumer Disputes Redressal Commission, Cuttack, Orissa, the respondent, *inter alia*, stated as under:-

"11. That as a matter of fact the damage to the two vehicles were

A caused by Bodo Militants (Extremists) by bomb blast who burnt
down sixteen loaded trucks and made a bomb attack on passenger
there (as come out in the Daily News paper "The Telegraph" on
25.03.89. Xerox copies of news paper annexed as Annexures F &
G. This opp. party though received the survey report about the
B total loss of the two vehicles yet has some confusion crept up as
to the admissibility of the claim (since the policy was not extended
to cover terrorist activity), the matter was referred to the Regional
Office at Calcutta. In Calcutta, the Regional Office discussed the
matter at length and obtained opinion from their legal experts as
to whether the claim was payable or not. Even the Additional
C District Magistrate of Kokrajhar was contacted to apprise the opp.
party as to whether the area or place where the incident took place
was declared as disturbed area within the meaning of Armed
Forces (Special Powers) Act, 1958. The office of the Deputy
Commissioner through the A.D.M., certified that the whole of the
D District - Kokrajhar was declared to be disturbed area. Xerox copy
of the certificate is annexed as Annexure-H.

Being informed by the A.D.M., the Regional Office, Calcutta
forwarded the file to their head office, Bombay on 9.3.90 seeking
their further advice in the matter. This opp. party also collected a
E letter issued by the Govt. of Assam to the A.G.M., Oriental
Insurance Company in which it was clearly mentioned that in the
whole of the State of Assam, the Terrorist and Disruptive Activities
(Prevention) Act, 1987 had been promulgated with effect from
5.5.88. Xerox copy annexed as Annexure-J.

F 12. That the Head Office sent a letter on 30.3.90 to the Calcutta
Regional Office as the claim was to be repudiated since no
coverage of terrorist risk was given in the policy and no premium
was accepted from the complainant. Xerox copy annexed as An-
nexure-K.

G 13. That after receiving the said letter the Regional Office sent
instruction to the Divisional Office, Jajpur Road to inform the
complainant about such repudiation. Xerox copy is annexed as
Annexure-I.

H 14. That the Divisional Office accordingly on 5.6.90 sent a

registered letter to the complainant stating therein that the claim is not payable as the terrorist risk was not covered in the policy and as such both the claims are closed as no claim. Xerox copy is annexed as Annexure-M."

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From the above, it will be seen that not only the Terrorist and Disruptive Activities (Prevention) Act, 1987 (for short, 'the TADA Act') was promulgated in the State of Assam, the Armed Forces (Special Powers) Act, 1958 was also enforced there. The Terrorist and Disruptive Activities (Prevention) Act was enforced in the State of Assam with effect from 5.5.1988. It also appears that whole of the District Kokrajhar was declared as "disturbed area" within the meaning of the Armed Forces (Special Powers) Act, 1958. It is in this background that the other contentions of the learned counsel for the parties may be examined on merits. It is contended by the learned counsel for the appellant that the claim was covered by Section 1 of the Policy which provides, *inter alia*, as under:-

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"1. The Company will indemnify the Insured against loss or damage to the Motor Vehicle and/or its accessories whilst thereon....."

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(c) by malicious act....."

Learned counsel for the respondent, on the contrary, contended that the claim made by the appellant was not enforceable under the Policies in question on account of Provision (b) of Endorsement No. IMT 21 which provides as under:-

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"(b) mutiny assuming the proportion of or amounting to popular rising, military rising, rebellion, revolution, insurrection, military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the Government *de jure* or *de facto* or to the influence of it by terrorism or violence or by the direct or indirect consequence of the said occurrences."

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While the State Commission held that the destruction of the two trucks at the hands of the Bodo terrorists would be covered by Clause (c) of Condition No.1 of the Policy as it was a "malicious act", the National Commission recorded the finding that the case would be governed by the Provision (b) of Endorsement No.IMT 21. A 'malicious act', according to

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- A State Commission, would be an act prohibited by law, which is done with intention to cause loss to another. The act which resulted in the destruction of the trucks belonging to the appellant could have been treated to be a "malicious act" but having regard to the circumstances of this case, specially that the incident took place in an area which had already been declared to be a "disturbed area" within the meaning of the Armed Forces (Special Powers) Act, 1958 and where the provisions of TADA Act were enforced, such activity cannot be considered in isolation.
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- Endorsement IMT 21, which has been reproduced above, consists of two distinct parts. The first part speaks of mutiny assuming the proportion of popular rising, military rising, rebellion, revolution, insurrection etc. The second part consists of :
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- "Any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the Government *de jure* or *de facto* or to the influence of it by terrorism or violence or by the direct or indirect consequence of the said occurrences."
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- The second part thus contemplates individual acts, though, the acts may have been done on behalf of or in connection with any organisation or under the influence of it. Whether these acts of terrorism by Bodo activists are intended to overthrow the Government, *de facto* or *de jure*, by force, have not been established by direct evidence, but the series of acts resulting in the loss of life and property so as to compel the authorities to declare the whole area as "disturbed area" for the purpose of the Armed Forces (Special Powers) Act, 1958, as also to enforce the Terrorist and Disruptive Activities (Prevention) Act, 1987, definitely point out that not only the common people but also the Government, established by law, is intended to be overawed by acts of terrorism in an organised manner for and on behalf of a group which is basically responsible for such activities.
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- The second part also speaks of the acts of "terrorism or violence". Terrorism, as ordinarily understood, means the act of terrorising. In Webster's Comprehensive Dictionary, one of the meaning assigned to the word "terrorism" is that it means "unlawful acts of violence committed in an organised attempt to overthrow a Government." Sub-section (1) of Section 3 of TADA Act, 1987 provides as under:-
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"3. Punishment for terrorist acts.- (1) Whoever with intent to overawe the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire- arms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act."

The above are acts which are treated as terrorist acts and such acts are made punishable under Sub-section (2) with death or imprisonment for life etc. etc. The terrorist acts may be done with intent to "overawe" the Government as by law established or to strike terror in people or any section of the people or to alienate any section of the people and other acts specified therein.

Disruptive activities have been set out in Section 4 of the Act which may not be enumerated here.

When read in the light of the above statutory provisions as also the attending circumstances of this case, it becomes clear that Provision (b) of Endorsement IMT 21 of the Insurance Policies did not cover the risk complained of. The trucks were destroyed by acts of terrorism and a driver of the truck was also shot dead. The National Commission was, therefore, fully justified in its conclusion that the respondent was not liable for the loss suffered by the appellant at the hands of Bodo activists who completely destroyed the trucks of the appellant by setting them on fire and killed one of the drivers.

For the reasons stated above, we find no merit in this appeal which is dismissed but without any order as to costs.

T.N.A.

Appeal dismissed.