

UNITED INDIA INSURANCE CO. LTD.

v.

LEISURE WEAR EXPORTS LTD.

(Civil Appeal No. 1004 of 2006)

JUNE 29, 2016

[ABHAY MANOHAR SAPRE AND ASHOK BHUSHAN, JJ.]

Marine Insurance Act, 1963 – ss. 17 and 52 – Issuance of Open Marine Policy (Cargo) – To the consignor – Loss occurred to the consignee during subsistence of the policy – Consignee authorised the consignor to file claim for the loss – Complaints filed by the consignor-insured before State Consumer Commission making claims for the loss, in terms of the Policy – Insurer challenged maintainability of the complaint on the ground that the insured lost its locus to file the complaint having assigned the policy in favour of the consignee – State Commission as well as the National Consumer Commission in appeal, held that the complaint was maintainable and hence the insured was entitled to compensation – On appeal, held: There is nothing to show that the consignor-insured assigned the contract of insurance policy in favour of the consignee – Even if it is assumed that the rights under the Policy were assigned to the consignee yet in the light of authorisation by the consignee in favour of the consignor-insured to raise claim for the loss, the insured had locus to file the complaint – Also in view of the provisions u/ss.17 and 52, rights of the insured under the Policy continued to remain with it – Thus, the complaint was maintainable – Consumer Protection Act, 1986.

Dismissing the appeals, the Court

HELD:1. Section 17 of Marine Insurance Act, 1963 deals with “assignment of interest”. It provides that where the assured assigns or otherwise parts with his interest in the subject-matter insured, he (insured) does not thereby transfer to the assignee his rights under the contract of insurance unless there is an express or implied agreement with the assignee to that effect. This Section, however, does not affect transmission of interest by operation of law. Thus, in terms of Section 17, even after

A making an assignment by the insured of their contract of insurance policy, the rights of insured under the contract of insurance policy are not assigned in favour of assignee by the deed of assignment but they are continued to remain with the insured. [Paras 23 and 26] [806-C, G-H]

B 2. Sub-Section (2) of Section 52 of the Insurance Act provides that once the assignment is made then the assignee is entitled to sue in his name whereas the insurer/defendant is also entitled to raise all such defences against the assignee, which are available to him against the original insured i.e. assigner. [Para 22] [806-A-B]

C 3. In the present case, there is no express agreement between the respondent (insured) and the consignee agreeing to transfer insured's rights under the contract of insurance in favour of the consignee. Under these circumstances, by virtue of Section 17, the respondent is legally entitled to retain, enjoy and exercise all those rights, which are available to them under the contract of insurance, which they have entered into with the appellant-Insurance Company despite making the assignment of their policy in favour of the assignee. There is nothing to show that the respondent (insured) assigned the contract of insurance policy in favour of their consignee. Even assuming that the respondent (insured) assigned the contract of insurance policy in favour of their consignee, yet the assignment so made did not have any adverse effect on the rights of the insured under the contract of insurance policy as the rights continued to remain with them by virtue of Section 17 of the Insurance Act. [Paras 25, 27] [806-E, H; 807-A-B]

G 4. Even if it is accepted that the respondent had assigned their rights under the contract of Insurance policy in favour of their consignee by way of endorsement as contended by the appellant, yet in the light of authorization letter dated 04.07.1997 duly issued by the consignee in favour of the respondent authorizing the respondent to file a complaint petition before the Consumer forum for recovery of the compensation, the respondent was entitled and had the *locus* to file a complaint against the appellant. [Para 30] [807-F]

H 5. The respondent was, therefore, legally entitled and had

the *locus* to file a complaint against the appellant on the strength of contract of insurance policy for enforcement of their all contractual rights available to them under the insurance policy for claiming compensation for the loss caused from the appellant and the complaint so filed by the respondent could not be dismissed as not maintainable on the ground of *locus*. It was saved by Section 17 of the Act and by the authorization letter dated 04.07.1997, issued by the consignee in respondent's favour. [Para 28, 31] [807-B-C, H; 808-A]

New India Assurance Co. Ltd. v. G.N. Sainani 1997 (1) Suppl. SCR 750 : 1997 (6) SCC 383 and *Oberai Forwarding Agency v. New India Assurance Co. Ltd. & Anr.* 2000 (1) SCR 554 : 2000 (2) SCC 407 – distinguished.

Case Law Reference

1997 (1) Suppl. SCR 750 distinguished Para 34

2000 (1) SCR 554 distinguished Para 34

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1004 of 2006.

From the Judgment and Order dated 05.07.2004 in FA No. 30 of 2000 and FA No. 31 of 2000 passed by the Ld. National Consumer Disputes Commission, New Delhi

WITH

C.A. No. 1016 of 2006.

Vishnu Mehra, Ms. Sakshi Mittal, B. K. Satija, Advs. for the Appellant.

Ashwani Kumar, Ms. Iti Sharma, Puneet Sharma, Rahul Bhatia, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. These appeals are filed by the United India Insurance Company Ltd. against the common final judgment dated 05.07.2004 of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal Nos. 30-33 of 2000 by which the National Consumer Disputes Redressal Commission dismissed their

A appeals and upheld the order of the State Consumer Commission.

2. These appeals involve a short point. However, to appreciate the point, few facts need mention infra.

B 3. The appellant - United India Insurance Company Ltd. is the non-applicant whereas the respondent - Leisure Wear Exports Ltd. is the complainant in the complaint filed before the State Consumer Commission, Punjab out of which these appeals arise.

C 4. The respondent/complainant is engaged in the business of sale of various kinds of hosiery goods and ready-made garments at Ludhiana. They also import and export the goods in which they trade. On 13.06.1996, the respondent obtained from the appellant one Open Marine Policy (Cargo) bearing No. 201002-21-99-042-96. The respondent also paid necessary premium. The policy covered the risk of all kinds of hosiery goods and ready-made garments kept in wooden and cardboard cases sent from any part of India to any friendly country in the world. The policy covered the risk under Institute Cargo Clause 'A', Inland Transit Clause 'A' and risk of war, SRCC, Riots, Strike valid for "Warehouse to warehouse at final destination". The insurance covered the risk of the insured goods to the extent of Rs. 2 crores. It was subject to terms and conditions as were mutually agreed upon. The policy was for the period from 13.06.1996 to 12.06.1997.

E 5. The respondent received one order from one party-M/s Magna Overseas, Moscow for supply of hosiery goods and ready-made garments to them at Moscow. The respondent accordingly dispatched 320 cardboard cartons in two separate consignments - one was under cover note No. LDRO/26948 dated 20.06.1996 worth Rs.49,63,200/- and another was under cover note No. LDRO/28051 dated 28.06.1996 worth Rs.31,68,000/-. The respondent duly notified these transactions to the appellant(insurer). The export was to be made from Ex. Ludhiana to Moscow.

G 6. The consignments reached Mumbai Port and from there, it was loaded in the ship for its final destination-Moscow. The consignments landed at port Odessa in Ukraine and from there, the consignment was moved by road to Moscow. When the delivery was taken at Moscow, it was found short of 142 and 139 cartons respectively.

H 7. The matter was then reported to the Insurance Company who,

in turn, appointed M/s Ingostarkh Insurance Company Ltd., Moscow as the surveyors to investigate into the matter and assess the loss. The surveyors confirmed the short delivery of the cartons. In terms of policy, the claim for the loss sustained by the consignee was lodged with M/s Ingostrakh Insurance Company in the first instance. They did not settle it and hence the consignee authorized the respondent to file the claim against the appellant for recovery of the loss sustained by them due to loss of their goods.

8. The respondent then filed two separate complaint petitions under the Consumer Protection Act before the State Consumer Commission, Punjab against the appellant (Insurance Company) on the strength of the policy issued by the appellant in their favour claiming compensation for the loss of their goods while in transit and which were duly insured by the respondent under the policy dated 13.06.1996. In substance, the case of the respondent in their complaint was that since the goods, which were lost, were admittedly got insured by the respondent with the appellant and, therefore, the respondent are entitled to claim compensation for the loss sustained by them from the appellant on the strength of the policy which covered such loss. It was alleged that the policy was admittedly in force when the loss occurred and hence the appellant cannot deny their liability to compensate the respondent for the loss caused to the goods of the respondent.

9. The appellant filed their written statement and admitted the factum of issuance of policy in respondent's favour so also the factum of the loss of goods sustained by the respondent while the goods were in transit. Their main objection was that the respondent had no right to file the complaint and claim compensation from the appellant on the strength of policy in question. It was alleged that since the respondent had already assigned the policy in question in favour of their consignee, i.e., M/s Magna Overseas to whom the goods were sent by them and, therefore, it was for the consignee/assignee to file the complaint for realization of the loss amount from the appellant (insurer) on the strength of the assignment of the policy. It was, therefore, alleged that once the respondent made the assignment of the policy in favour of the consignee then in such event, they lost all their rights and interest in the policy *qua* the insurer and hence had no locus to file the complaint against the appellant. The complaint was, therefore, liable to be dismissed on this ground alone. Parties filed their evidence.

A 10. The State Consumer forum vide order dated 31.12.1999 allowed both the complaints and awarded Rs.19,90,000/- in all to the complainant/respondent by way of compensation in each complaint. The compensation awarded to the respondent comprises of the reported value of the loss of the goods, 10% towards moral loss, 15% towards loss of earning and interest at the rate of 12% payable from 07.11.1996 till realization.

B 11. Felt aggrieved, the appellant filed the appeals before the National Consumer Disputes Redressal Commission, New Delhi out of which this appeal arises.

C 12. By impugned order, the National Consumer Disputes Redressal Commission dismissed the appeals and upheld the order of the State Consumer Commission.

13. Felt aggrieved, the Insurance Company has filed these appeals by way of special leave before this Court.

D 14. Heard Mr. Vishnu Mehra, learned counsel for the appellant and Mr. Ashwani Kumar, learned counsel for the respondent.

15. Learned counsel for the appellant reiterated the submissions here, which they had urged before the two forums unsuccessfully. The submission was that both the forums erred in entertaining the complaint filed by the respondent, which deserved dismissal at the threshold.

E 16. According to learned counsel, since the respondent assigned the policy in question in favour of consignee (M/S Magna Overseas), they (respondent) ceased to have any subsisting interest in the policy, which they could enforce against the appellant. Learned counsel urged that in these circumstances, a right to file the complaint on the strength of policy and to seek its enforcement against the appellant was with the consignee and not with the respondent. It was, therefore, urged that the respondent had no locus to file the complaint against the appellant and seek enforcement of the terms of the policy for realization of any claim arising out of the policy.

F 17. In reply, learned counsel for the respondent supported the reasoning and the conclusion arrived at by the National Consumer Redressal Commission and contended that it does not call for any interference and deserves to be upheld.

G 18. Having heard the learned counsel for the parties and on perusal
H

of the record of the case, we find no merit in the appeal.

A

19. The short question which arises for consideration in this appeal is whether the complaint petition filed by the respondent under the Consumer Protection Act against the appellant (Insurer) was maintainable or not or in other words whether the respondent had the locus to file the complaint on the strength of contract of Insurance Policy in question for claiming compensation for the loss sustained in the transaction?

B

20. Sections 17 and 52 of the Marine Insurance Act, 1963 (hereinafter referred to as "the Act") are relevant for deciding the abovesaid question. They read as under :

"Section 17. Assignment of interest.—Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

C

But the provisions of this section do not affect transmission of interest by operation of law.

D

"Section 52. When and how policy is assignable.—

(1) A marine policy may be transferred by assignment unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

E

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was effected.

F

(3) A marine policy may be assigned by endorsement thereon or in other customary manner."

G

21. Section 52 provides as to when and how the marine policy may be transferred. It says that a marine policy may be transferred by assignment unless it contains express terms, which prohibits any assignment of the policy. It also provides that such assignment can be

H

A made before or after the loss has occasioned.

22. Sub-Section(2) of Section 52 provides that once the assignment is made then the assignee is entitled to sue in his name whereas the insurer/defendant is also entitled to raise all such defences against the assignee, which are available to him against the original insured i.e.

B assigner.

23. Section 17 deals with "*assignment of interest*". It provides that where the assured assigns or otherwise parts with his interest in the subject-matter insured, he (insured) does not thereby transfer to the assignee his rights under the contract of insurance unless there is an express or implied agreement with the assignee to that effect. This Section, however, does not affect transmission of interest by operation of law.

C

24. When we examine the undisputed facts of the case in the light of aforementioned two provisions, then in our considered opinion, Section 17 has full application to the facts of the case. In fact, it is a complete answer to the submission urged by the learned counsel for the appellant.

D

25. It is not in dispute that there is no express agreement between the respondent (insured) and M/s Magna Overseas (consignee) agreeing to transfer insured's rights under the contract of insurance in favour of M/S Magna Overseas (consignee). Under these circumstances, by virtue of Section 17, the respondent is legally entitled to retain, enjoy and exercise all those rights, which are available to them under the contract of insurance, which they have entered into with the appellant despite making the assignment of their policy in favour of the assignee.

E

26. Section 17, in terms, recognizes and permits the insured to make assignment of their contract of insurance policy in favour of an assignee and at the same time allows the insured even after making an assignment to retain all those rights which are available to them under the contract of insurance with the Insurer (appellant). In other words, in terms of Section 17, even after making an assignment by the insured of their contract of insurance policy, the rights of insured under the contract of insurance policy are not assigned in favour of assignee by the deed of assignment but they are continued to remain with the insured.

F

G

27. We are, therefore, of the considered view that firstly, we do not find that the respondent (insured) assigned the contract of insurance

H

policy in favour of their consignee as contended by the appellant. Secondly, even assuming that the respondent (insured) assigned the contract of insurance policy in favour of their consignee, yet the assignment so made did not have any adverse effect on the rights of the insured under the contract of insurance policy as the rights continued to remain with them by virtue of Section 17 of the Act. A

28. The respondent was, therefore, legally entitled and had the locus to file a complaint against the appellant on the strength of contract of insurance policy for enforcement of their all contractual rights available to them under the insurance policy for claiming compensation for the loss caused from the appellant and the complaint so filed by the respondent could not be dismissed as not maintainable on the ground of locus. It was thus rightly held as maintainable. B C

29. This takes us to the next argument of learned counsel for the appellant. It was his submission that there was implied agreement between the respondent and the consignee whereby the respondent had transferred all their rights in favour of the consignee and, therefore, the respondent had no locus to file a complaint for enforcement of those rights, which were no longer with them. In support of his submission, learned counsel referred to letters dated 30.06.1997, 08.07.1997, 04.07.1997 and some Paras from the pleadings. We find no merit in this submission. D E

30. In our considered opinion, even if we accept, for the sake of argument, that the respondent had assigned their rights under the contract of Insurance policy in favour of their consignee by way of endorsement as contended by the appellant, yet in the light of authorization letter dated 04.07.1997 duly issued by the consignee in favour of the respondent authorizing the respondent to file a complaint petition before the Consumer forum for recovery of the compensation, the respondent was entitled and had the locus to file a complaint against the appellant for realization of compensation amount towards the loss sustained due to short delivery of the goods on the strength of the authorization letter for enforcement of contract of insurance policy. F G

31. In view of foregoing discussion, we are of the considered opinion that in any event, the complaint filed by the respondent (insured) was maintainable and that the respondent had the locus to file the complaint against the appellant. It was, in our view, saved by Section 17 of the Act H

- A and by the authorization letter dated 04.07.1997, issued by the consignee in respondent's favour.

- B 32. Both the Authorities, i.e., State forum and National forum (as the first appellate authority) were, therefore, justified in overruling the objection of the appellant and were justified in holding that the complaint filed by the respondent was maintainable and the respondent was legally competent to file such complaint.

- C 33. Learned counsel for the appellant then by referring to Section 79 of the Act contended that the complaint filed by the respondent was not maintainable. We find absolutely no merit in this submission. In our view, Section 79 which deals with sabrogation does not apply to the case at hand but it is Section 17 read with Section 52 which governs the case in question.

- D 34. Learned counsel for the appellant then placed reliance on the decisions reported in **New India Assurance Co. Ltd. vs. G.N. Sainani**, 1997 (6) SCC 383 and **Oberai Forwarding Agency vs. New India Assurance Co. Ltd. & Anr.** [2000(2) SCC 407]. We have perused these decisions and find that these are distinguishable on facts. In the latter decision, the question of locus was not expressly examined in the context of Section 17 but was examined in the context of Section 79 of the Act on different set of facts. Likewise, in the former case, the facts were different and again Section 17 of the Act did not fall for consideration. In any event, in the light of findings which we have recorded on the facts of this case against the appellant, the case law relied upon by the appellant is of no help to them.

- F 35. So far as the findings relating to the merits of the case are concerned, learned counsel for the appellant did not challenge any of the findings in this appeal and in our opinion rightly. We, therefore, need not go into any of them.

- G 36. In the light of aforesaid discussion, we find no merit in these appeals which fail and are hereby dismissed.

Kalpana K. Tripathy

Appeals dismissed.