NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 204 OF 2022

(Against the Order dated 30/04/2021 in Complaint No. 230/2014 of the State Commission Andhra Pradesh)

1. BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
7TH FLOOR, BLOCK NO.4, DLF TOWER 15, SHIVAJI MARG, NEW DELHI-110015 .....Appellant(s)

Versus

1. P. SANTHA KUMARI & 5 ORS.
W/O SRI VENKATA NARASIMHA RAO, PROPRIETOR OF M/S SANTHA LAKSHMI TRADERS, KURASALAVARI STREET, AMALAPURAM, EAST GODAVARI DISTRICT.
2. PABOLU VENKATA NARASIMHA RAO
S/O LATE NARASIMHA RAO, R/O D. NO.4-3-36/2B, KURASALAVARI STREET, AMALAPURAM, EAST GODAVARI DISTRICT.
3. MATHAMSHETTY PRAMEELA
W/O NARESH KUMAR, FLAT NO.301, 3RD FLOOR, BHANU APARTMENTS, DUGGIRALAVARI STREET, KAKINADA, EAST GODAVARI DISTRICT.
4. PEDAMALU CHANDRAKALA
W/O RAMPRASAD, D.NO.3-243, PASARLAPUDI LANKA, EAST GODAVARI DISTRICT.
5. PABOLU NARASIMHA RAO
S/O VENKATA NARASIMHA RAO, R/O D.NO.4-3-36/2B, KURASALAVARI STREET, AMALAPURAM, EAST GODAVARI DISTRICT.
6. KARUR VYASA BANK
BRANCH MANAGER, COLLEGE ROAD, AMALAPURAM-533201 EAST GODAVARI DISTRICT. .....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE APPELLANT :	FOR APPELLANT : MS.SUMAN BAGGA, ADVOCATE
FOR THE RESPONDENT :	FOR RESPONDENTS NO.2 TO 5 : MR. RAJA GOPALA RAO AND MR. DULLI GOPI KRISHNA, ADVOCATES.
	FOR THE RESPONDENT NO.6 : NOT APPEARED

Dated : 21 June 2024

ORDER

1. The present First Appeal has been filed under Section 51 of the Consumer Protection Act, 2019 (“the Act”) against the Order dated 30.04.2021 passed by the learned A.P. State Consumer Disputes Redressal Commission at Vijayawada (“the State Commission”), in

Consumer Complaint No. 230 of 2014, wherein the Complaint filed by the Complainant (Respondents No.2 to 5 herein) was allowed in part.

2. For Convenience, the parties in the present Appeal are being referred as mentioned in the Complaint before the State Commission. "P. Santha Kumari (Deceased through LR's i.e. Respondents No.2 to 5)" are referred to Complainants/Respondents No.2 to 5. Karur Vysya Bank is referred Respondent No.6/OP-2. Bajaj Allianz General Insurance Co. Ltd. is denoted as Appellant/OP-1.

3. Brief facts of the case, as per the Complainant, are that she filed a Consumer Complaint under Section 17(1)(a)(i) of the Act, 1986 before the State Commission for directions to the Appellant/OP-1 to: (i) Pay a sum of Rs. 24,51,153/- towards the insurance claim with interest @ 18% per annum; (ii) Pay Rs.2,00,000/- as compensation for mental agony and anxiety; and (iii) Pay Rs. 2,500/- as costs. The Respondent No.1/ deceased Complainant, a resident of Amalapuram was engaged in coconut business. She obtained loan of Rs. 30,00,000/- from OP-2, secured by hypothecation of stock. OP-2 insured the stock with the Appellant/OP-1 under policy No. OG-14-1814-4001-00000120 for Rs.30,00,000/- from 13.06.2013 to 12.06.2014. On 21.02.2014, a fire broke out at her premises destroying 2,88,371 coconuts. She reported the incident to the fire department and the OPs. The Appellant/ OP-1 surveyor, Mr. DS Prasad Babu, assessed the loss but the claim was repudiated on 04.03.2014, citing that the policy covered stock stored only in closed premises. The Complainant contended that the stock was kept in a covered space with four walls and was unaware of the policy's specific terms until after the incident.

4. In reply, filed before the State Commission the OP-1 denied her status as a 'consumer' under the Act and confirmed the insurance policy details but contended that the policy only covered stock in godowns, not in open spaces and asserted that only Rs.16,42,612/- worth of stock was damaged, and repudiated the claim as per policy terms. In reply, before the State Commission the OP-2/Bank contented that obtaining an insurance policy was not a condition for the loan and that the deceased complainant was free to choose any insurer, denied any deficiency in service and claimed no responsibility for insurance.

5. The State Commission partly allowed the complaint vide Order dated 30.04.2021 with following observation:-

> ***"25) In the result, the complaint is allowed in part, directing the 1st opposite party to pay Rs. 16,42,617/- (Rupees sixteen lakhs forty two thousand six hundred and seventeen only) towards loss of coconuts with interest @ 9% per annum from the date of complaint, i.e., 21.08.2014 till the date of realization;Rs.50,000/- towards compensation and Rs.10,000/- towards costs to the complainant. The 2nd opposite party is directed to pay Rs.1,50,000/- towards compensation and Rs.10,000/- towards costs to the complainants. If the opposite parties fail to comply the order of this Commission within two months from the date of receipt of the order, the above***

referred amounts carry interest @ 12% per annum from the date of order till the date of realization."

6. Being aggrieved by the impugned order, the Appellant filed this present Appeal no. 204 of 2022 with the following prayer:

"(a) Call for the records of complaint case no. 230/2014 titled as "P. Santha Kumari & Ors. Vs Bajaj Allianz General Insurance Company Limited & Anr." Decided by Andhra Pradesh State Consumer Disputes Redressal Commission, Vijayawada and after perusing the same, may further be pleased to set aside the impugned order dated 30.04.2021 and accept the First Appeal with costs throughout;

(b) Grant such other and further relief as this Hon'ble Commission may deem fit and proper in the facts and circumstances ofthe case."

7. In the Appeal, the Appellant raised the following key issues:

(a) The impugned Order dated 30.04.2021 is contrary to law and facts of the case and is liable to be set aside.

(b) The State Commission failed to note that in the proposal form 'Stock of coconuts in Godown' only to be covered and thus 'Open Stock Warranty' policy covering 'stock stored in closed premises only' was issued. Whereas, the coconuts in open were damaged in fire, hence the claim for loss does not fall under the policy.

(c) The State Commission grossly erred in ignoring the terms and coverage allowed by the policy which covers 'Stock Stored in Closed Premises only' and stock stored outside and stored in open shall be out of policy scope. Hence, the claim is untenable.

(d) The State Commission erred in holding that 'the risk location as mentioned in the policy covers the stock stored in the premises as well as in Godown'.

(e) The State Commission failed to note that the insurer rightly repudiated the claim being outside the scope of the policy. Thus, there is no deficiency in service on the part of the insurer.

(f) The State Commission erred in ignoring that as there was no deficiency in service, the complaint should have been dismissed.

(g) The Hon'ble Supreme Court in 'Ravneet Singh Bagga vs. KLM Royal Dutch Airlines' (2000) 1 SCC 66, has held that "deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be performed by a person in pursuance of a

contract or otherwise in relation to any service. The burden of proving deficiency is on the person who alleges it." In the present case, no deficiency is established against the appellant / insurance company by the complainants / respondents no.1 to 5 and the complaint ought to have been dismissed.

(h) The State Commission illegally exercised the jurisdiction not vested in it by law and has thus acted with material irregularity in allowing the complaint without application of mind.

(i) The State Commission erred in applying case laws wherein issue of 'premises' as to use was involved. In the present case, however, as per the policy schedule, the Godown means a Godown and not any open premises surrounded by a boundary wall. The interpretation of word relied upon by the Ld. State Commission is not applicable to the facts of the present case.

(j) It is a settled legal proposition that the contract of insurance is governed by the terms and conditions of the policy, which constitutes the pith and substance of the contract and are to be strictly construed. The impugned order is contrary to the said well settled legal proposition of law and is liable to be set aside.

8. In his arguments, the learned Counsel for the Appellant/OP-1 asserted that on scrutiny of documents and surveyor's report, vide letter dated 04.03.2014 OP-1 repudiated the claim as under the policy open stock warranty covers "Stock stored in closed premises" only and stock stored outside the closed premises and stock in open shall be out of scope of policy coverage. The process of purchasing coconuts from the farmers, shifting them through tractors to the premises of the insured, the coconuts are then dumped into the open yard for drying up, grading them according to their size with the help of labourers, the graded coconuts are then packed into the gunnies and the packed gunnies are then stored in the godown. Thus, if careful consideration is given to the "Proposal Form" the proposer himself opted to cover the stock in godown which clearly goes on to transpire that the process, from purchasing of coconut from farmers till packaging of coconuts in gunnies, does form an integral part of open storage and process of storage inside the godown begins only when packed gunnies are stored in it. Thus, cover is provided to stocks of coconut stored in Godown as proposed by the insured. He further averred that Godown i.e. closed premises only is covered under the policy wordings and stock kept in open premises does not fall under the purview of the insurance policy in question. Hence, the claim is not admissible under the policy. She sought setting aside of the State Commission order. She relied upon Hon'ble Supreme Court order in the case of ***"Ravneet Singh Bagga Vs. KLM Royal Dutch Airlines (2000) 1 SCC 66***.

9. On the other hand, the learned Counsel for the Complainant reiterated the facts of the case and the Affidavit of evidence before the State Commission. He argued that the insured premises is D. No.6-86, Illaveri Street, Bodasakkuru is covered by building and open area

closed by walls on all sides. He argued in favour of the order of the State Commission. He relied upon the following judgments:

(i) B.M. Lakshmanamurthy Vs. The Employees' State Insurance Corporation, Bangalore, (1974) 4 SCC 365;

(ii) New India Assurance Co. Ltd. and Ors. Vs. Mudit Roadways, 2023 SCC OnLine SC 1532;

(iii) D. Vamshi Krishna Reddy Vs. United India Insurance Co. Ltd. and Anr. 2023 SCC OnLine NCDRC 300.

10. None has appeared on behalf of the Respondent No.6/OP-2 before this Commission.

11. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for the Parties.

12. The main question arises in the present case is whether the subject stock of coconuts stored in premises i.e. D. No.6-86, Ilavari Street, Boadaskurru Village, Andhra Pradesh, Amalapuram-533201 is covered under the insurance policy in question?

13. It is an admitted position that the Appellant/OP-1/Insurer admitted the insurance of the premises i.e. D. No.6-86, Ilavari Street, Boadaskurru Village, Amalapuram AP-533201. It is also undisputed that loss of the stock occurred due to fire in the premises. The Appellant contended that the subject open stock warranty covers "Stock stored in closed premises" only and stock stored outside the closed premises and stock in open shall be out of policy coverage. On the other hand, the Complainant claimed that the insured premises in question include building and open area closed by walls on all sides.

14. Towards determining the scope of the insurance cover, the terms of the Insurance Policy as per Annexure III under the heading of **Open Stock Warranty** are as under: ***"It is hereby warranted that this policy covers stock stored in closed premises only and stock stored outside the closed premises and in open shall be out of the scope of the policy coverage.***"

15. In the present case there is a premises closed by walls on all four sides as well as a godown within. Coconut stocks were secured in the said premises as per process stated above. It is undisputed that the Complainant obtained loan of Rs. 30,00,000/- from OP-2 Bank, secured by hypothecation of stock of coconuts. OP-2 insured the stock with the Appellant/OP-1 under policy No. OG-14-1814-4001-00000120 for Rs.30,00,000/- from 13.06.2013 to 12.06.2014. Therefore, clearly, it is the stocks worth 30,00,000 that were insured by the Insurer in coordination with OP-2 bank. A fire broke out at the premises destroying 2,88,371 coconuts on 21.02.2014. She reported the incident to fire department and OP-1. The Appellant/OP-1 surveyor, Mr. Prasad Babu, assessed the net loss as Rs.16,42,617/-. But the claim was repudiated on 04.03.2014, citing that the policy covered stock stored only in closed premises, while main contention is the coverage of the stock kept within four walls of he premises. There is thus some ambiguity in the terms of insurance

contract. In this regard, Hon'ble Supreme Court in ***Haris Marine Products versus export credit guarantee corporation (ECGC) Limited, 2022 SCC OnLine SC 509*** has held that when there is any ambiguity in the terms and conditions of the contract then the court has the discretion to interpret it in favour of the Insured by applying the principle of 'Contra Proferentem'. The relevant portion reads as under:-

> ***"22.*** *Reconciliation of ambiguous terms in commercial contracts has been a contentious issue across jurisdictions. A 2011 decision by the Supreme Court of the United Kingdom (hereafter, "UK Supreme Court") in Rainy Sky SA v. Kookmin Bank was concerned with the interpretation of refund guarantees given by a ship builder to the buyers, and whether the same was triggered when the ship builder started facing financial difficulties and was subjected to a debt workout procedure. Allowing the appeal, the UK Supreme Court provided the guiding principle for resolution of such ambiguity, keeping the 'business common sense' as central:*
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> > *"The language used by the parties will often have more than one potential meaning. I would accept the submission made on behalf of the appellants that the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other." (emphasis supplied)*
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> ***23.*** *This principle was further developed by the UK Supreme Court in Arnold v. Britton. The facts were that a 99-year lease specified that service charge of £90 levied every year was subject to 10% increase annually. The lessees submitted that by the end of the lease agreement, the service charge payable would be very high, exceeding the cost of providing the services. The UK Supreme Court refused to depart from the natural meaning of the clause, holding that:*
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> > *"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd. v. Persimmon Homes Ltd. [2009] UKHL 38, [2009] 1 A.C. 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context.* ***That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions****. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989 (2), 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in*

liquidation) v. Ali [2002] 1 A.C. 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30". (emphasis supplied)

24. *Thus, a decisive method was suggested to construe the ambiguity of a term used in a commercial contract. This was applied by the UK Supreme Court in Woods v. Capita Insurance.*[17] *The facts in brief are that the buyer of an insurance company relied on an indemnity clause to recover losses paid in the form of compensation to the customers of the insurance company to which the company has mis-sold products. According to the indemnity clause, any complaint to the Financial Services Authority (hereinafter "FSA") would be indemnified by the buyer. However, the contract did not clearly specify what would happen if the company itself raised a complaint before the FSA. The UK Supreme Court held that a literalist approach to resolving ambiguity in a commercial contract term would yield incorrect results, and a holistic reading was imperative to ascertain meaning of terms agreed to by parties. Dismissing the appeal, the UK Supreme Court finally held that the indemnity clause was in addition to the wide-ranging warranties specified elsewhere in the contract, which was not contrary to business common sense. The agreement might have become a poor bargain for the buyer, but it was not the Court's function to improve that bargain:*

> *"The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.*
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> *Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. The*

iterative process, of which Lord Mance spoke in Sigma Finance Corpn (above), assists the lawyer or judge to ascertain the objective meaning of disputed provisions.

On the approach to contractual interpretation, Rainy Sky and Arnold were saying the same thing." *(emphasis supplied)*

***25.** On application of the above principle to this Policy, and taking into consideration all relevant documents, this Court is of the opinion that the date of loading goods onto the vessel, which commenced one day prior to the effective date of the policy, is not as significant as the date on which the foreign buyer failed to pay for the goods exported, which was well within the coverage period of the Policy. Thus, the claim could not be dismissed simply on such basis, especially given that the date of loading the goods onto the vessel was immaterial to the purpose for which the policy was taken by the appellant.*

B. Rule of contra proferentem

***26.** It is entrenched in our jurisprudence that an ambiguous term in an insurance contract is to be construed harmoniously by reading the contract in its entirety. **If after that, no clarity emerges, then the term must be interpreted in favour of the insured**, i.e., against the drafter of the policy. In deciding the applicability of a cover note on houses swept away by floods, a Constitution Bench of this Court in General Assurance Society Ltd. v. Chandumull Jain[18] held as follows:*

"In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there 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… (I)n interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves". (emphasis supplied)

16. In view of the foregoing deliberations and facts and circumstances of the case, including the undisputed fire damage of the stocks, location of the stocks within the declared premises of the Complainant, report of the surveyor and ambiguity in the terms of the policy as brought out above, I am of the considered view that the detailed and well reasoned Order of the State Commission dated 30.04.2021 does not suffer from any illegality and thus no intervention is warranted with respect to the liability of the Appellant/OP-1.

17. However, the Hon'ble Supreme Court in ***DLF Homes Panchkula Pvt. Ltd. Vs. D.S. Dhanda,*** in CA Nos. 4910-4941 of 2019 decided on 10.05.2019 has held that multiple compensations for single deficiency is not justifiable. Therefore, a sum of Rs.50,000/- as compensation to be paid by the Appellant/OP-1 and Rs.1,50,000/- as compensation to be paid by Respondent No.6/OP-2 as awarded by the learned State Commission is untenable. Therefore, the order of the learned State Commission is modified as under:

ORDER

I. The Appellant/OP-1 is directed to pay the Complainant Rs.16,42,617/- towards loss of coconuts along with simple interest @ 9% per annum from the date of complaint i.e. 21.08.2014 till the date of complete realization; and

II. The Appellant/OP-1 and OP-2 are directed to pay the Complainant Rs.20,000/- each towards costs of litigations;

III. The above payments shall be made to the Legal Representatives of the Complainant in equal shares, within a period of one month from the date of this order. In the event of delay beyond the period of four weeks, the interest applicable for such extended period shall be 12%.

18. With above directions, FA No. 204 of 2022 stands disposed of.

19. There shall be no order as to costs and all pending Applications, if any, also stand disposed of accordingly.

20. The Registry may release the Statutory Deposit amount, if any due, in favour of the Appellant, after compliance of the order of this Commission, as per law.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER