

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.7573 OF 2021

M/s THE NEW INDIA ASSURANCE CO. LTD.
& ANR.

...Appellant(s)

Versus

SHASHIKALA J. AYACHI

...Respondent(s)

J U D G M E N T

V. RAMASUBRAMANIAN, J.

1. Aggrieved by an Order passed by the National Consumer Disputes Redressal Commission directing them to make payment of the sum assured under a Marine Insurance Policy, the Insurer has come up with the above appeal under Section 23 of the Consumer Protection Act, 1986.

2. We have heard Shri Gaurav Agrawal, learned counsel for the appellant-Insurance Company and Shri Siddhartha Dave, learned senior counsel for the respondent-Insured.

3. The respondent took a policy of insurance for a sum of Rs.1,62,70,000/- from appellant No.2 herein, covering risks to the Mechanical Sailing Vessel MSV Sea Queen. The period of validity of the policy was from 4.10.2010 to 3.10.2011. Contending that on 30.05.2011, the vessel MSV Sea queen, which was the subject matter of insurance, sank in the high sea between Oman and Pakistan, due to bad weather and rough tides, which damaged the lower portion of the vessel, the respondent lodged a claim with the appellant-insurer. Since the claim was neither admitted nor repudiated, the respondent filed a consumer complaint on the file of the National Consumer Disputes Redressal Commission. Thereafter, the appellants repudiated the claim by a letter dated 4.09.2013 on the ground that the subject vessel was engaged in illegal activities and was

hijacked by Somali pirates and that in any case the Meteorological reports of Oman and India showed absolutely fair weather conditions on May 29-30, 2011 and that, therefore, the claim was false.

4. But the National Consumer Disputes Redressal Commission allowed the claim after recording the following findings:

- (i)** that though the incident took place on 30.05.2011, the surveyor was appointed on 3.06.2011 and a Final Survey Report was sent on 25.03.2013, the claim was repudiated by the appellant only on 4.09.2013, which was after more than two years of the incident and that therefore the inordinate delay violating Regulation 9 of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2000, constituted deficiency in service;
- (ii)** that though the insurer raised a dispute with regard to the place and nature of the incident, the claim of the respondent-complainant in this regard was supported by the statement of the crew members of the subject vessel which was recorded by the Superintendent of

Customs and the Immigration Officer, while the plea of the insurer was not supported by any evidence;

(iii) that the Report of the Meteorological Departments relied upon by the insurer had nothing to do with the place of the accident;

(iv) the plea of the respondent-complainant that SOS/ distress calls were made from the sinking vessel, was corroborated by the statement of the crew members; and

(v) that it was too late for the insurer to raise a dispute with regard to the value of the vessel.

5. On the basis of the above findings, the National Consumer Disputes Redressal Commission directed the appellant-Insurance Company to pay the respondent, the sum assured of Rs.1,62,70,000/- together with interest @ 9% per annum. It is against the said order that the appellants have come up with the above statutory appeal.

6. The dispute between the parties revolves only around facts especially with respect to the place of occurrence of the event and

the manner in which the same happened. According to the respondent-complainant, the subject vessel commenced its voyage from Dubai to Mombasa on 10.03.2011. The vessel reached Mombasa on 28.03.2011. On 21.04.2011, the vessel started from Mombasa and reached Djibouti on 5.05.2011. The vessel left Djibouti on 21.05.2011 on its return journey back to India. But on 30.05.2011 the vessel encountered bad weather and rough tides when it was between Oman and Pakistan. The rough tides damaged the lower portion of the vessel resulting in water entering the vessel and submerging it. According to the respondent-complainant, the crew of the vessel made a distress call, which was received by the crew of another vessel by name MSV Chetak and they came to the rescue of the crew of the sinking vessel. The crew of MSV Sea Queen left the sinking vessel and boarded MSV Chetak which brought them to Mandvi on 3.06.2011. The crew gave statements to the Superintendent of

Customs, Mandvi on 3.06.2011 and to the Immigration Officer on 4.06.2011. Thereafter the respondent lodged the claim.

7. But the version of the appellant-Insurance Company was that the vessel was plying in Somalia waters, in violation of the policy condition and that the vessel could not have sunk at Latitude 24.40° N and Longitude 61.43° E, as it was 200 nautical miles North of the position where vessel was supposed to be, keeping in mind her course. The place where the vessel supposedly sank was not falling in the line of track from Oman to India. Moreover the Meteorological Departments of Oman and India confirmed to the Surveyors, on the basis of the weather reports for Persian Gulf that the weather was absolutely fair on May 29-30, 2011. Therefore, it was contended by the appellant that the vessel could not have sunk in the manner projected by the respondent, especially at the place indicated by them.

8. Thus, there were two versions, both about the place of the incident and about the manner in which the incident had taken

place. The National Consumer Disputes Redressal Commission accepted the version of the respondent-complainant solely on the basis of the statements of the 10 crew members, made to the Customs and the Immigration Authorities. Since the statement of the crew members of the subject vessel was also corroborated by the *Nakhuda*¹ of the rescuing vessel MSV Chetak, the National Commission found the version of the respondent-Complainant to have been proved.

9. But what the National Consumer Commission failed to see was that there were more questions that remained unanswered in the version of the respondent-complainant and that there were more missing links. First of all the respondent-complainant did not state anywhere in the complaint as to where exactly the mishap had happened. In paragraph 9 of the complaint, the respondent stated only broadly that the vessel encountered bad weather and rough tides, when it was between Oman and Pakistan. As per the statement of Shri Osman Suleman

1 Nakhuda is a Persian word meaning Captain/Master of a vessel

Sumbhania who claimed to be the *Tandel* (*Head of the ship or boat*) of the subject vessel MSV Sea Queen, the vessel started its voyage from Djibouti on 21.05.2011 towards India, but it encountered bad weather on N 23=40 and E 61 =43°, between Oman and Pakistan. In the statement Shri Harun Abdreman Ruknani, the Tandel of the rescuing vessel MSV Chetak, he claimed that on 30.05.2011 at about 10 o' clock in the morning, they were at N 23=40 and E 61 =43° and that they received a call for help on their Wireless Radio.

10. Interestingly, the exact place of the occurrence of the incident was mentioned by both the above named persons, only in the statements given to the Superintendent of Customs on 3.06.2011. In the statements made by both the aforesaid persons on 4.06.2011 to the Immigration Officer Mandvi Sea Check Post, the exact place with Longitude and Latitude were not mentioned.

11. The Marine Casualty Report dated 16.07.2012, issued by the Marine Mercantile Department, Kandla, of the Government of

India, contains a column in Column No.47 relating to weather conditions. The respondent places reliance upon the said report to show that the vessel sank due to bad weather. But interestingly, column 47 of the report does not contain any detail except stating broadly that there was rough weather. Column No.47 of the Report reads as follows:

“CASUALTY DATE : 30.05.2011
47. Weather conditions : ROUGH WEATHER
1. Wind direction: force:
ii. Tide/current direction: NORTH REST Rate:
iii. Swell direction: Right:-
iv. Precipitation: Visibility: POOR”

12. It may be seen from the above that none of the sub-columns relating to weather direction, force, swell direction, precipitation etc. in Column No.47 has been filled up in the Marine Casualty Report.

13. More interestingly Column Nos.50 to 53 expose the falsity of the statements made by the Captains of both the ships to the Customs Authorities on 3.06.2011. Column Nos. 50 to 53 of the Marine Casualty Report reads as follows:-

- “50. Date- 30.05.2011
- 51. Local time: 4.00 AM
- 52. Place-BETWEEN OMAN AND PAKISTAN.
- 52. Coordinates: - 23.04 N 61.43 E
- 53. Extent of damage to Ship: TOTAL LOSS”

14. According to Column Nos.50 and 51, the incident happened at 4:00 a.m. local time on 30.05.2011. But according to the statement of Shri Osman Suleman Sumbhania, *Tandel* of the sunk vessel, the entire crew was saved at approximately 10 o’ clock in the morning. The relevant portion of the statement of Shri Osman Suleman Sumbhania made to the Customs Authorities on 3.06.2011 reads as follows:-

“I also submit that due to the sinking of our vessel we abandoned it and to save our souls we lowered and boarded the small boat of our vessel in which there were 09 crewman of the vessel besides me and at approx 10 o clock in the morning the *Tandel* of the vessel MSV Chetak saved us and safely boarded us on their vessel.”

15. It is common knowledge that the time of receipt of the SOS message by the rescuing vessel and the actual time of rescue of the crew of the sinking vessel cannot be the same. Even

according to the respondent, the subject vessel MSV Sea Queen could travel only at a speed of 6-7 knots. Unless the rescuing vessel is in close proximity, the time of the SOS call and the time of rescue cannot be the same. Keeping this in mind if we have a look at the statement made by Shri Harun Abdreman Ruknani, *Tandel* of the rescuing vessel it makes interesting reading. The relevant portion of his statement reads as follows:-

“On date 30.05.2011 during morning time approx. 10 o’ clock, N. 23=40 E 61=43 degree passing between Oman and Pakistan, the weather was rough hence our course was slow, and during this time period we heard the call for help on our Wireless Raio (VHF) of Shri Osman Suleman Sumbhania, *Tandel* (Nakhuda) of MSV Sea Queen MNV1423, that the lower portion of their vessel was damaged due to the bad weather and rough tides and there was a breach of water in their vessel and it had started to sink and they called for help to save their souls.”

16. According to the above statement, the *Tandel* of the rescuing vessel heard the call for help on his wireless radio at 10 o’ clock in the morning. But according to the statement of the *Tandel* of the subject vessel, they were rescued at 10 o’ clock in

the morning. However, the Marine Casualty Report indicates the time to be 4:00 a.m. on 30.05.2011. This crucial contradiction has been completely overlooked by the National Consumer Disputes Redressal Commission.

17. The enquiry by the Surveyors with Muscat Radio revealed that no SOS calls were made from the Nakhuda of MSV Sea Queen nor was any response from the rescuing vessel reported. The Meteorological Departments of both countries namely Oman and India confirmed that the weather for the specific area coordinates, Latitude 23=40° N and Longitude 61 =43° E, was fair. In contrast to the absence of details in the sub-columns of Column No.47 of the Marine Casualty Report, the Final Survey Report gives minute details. The relevant portion of the Final Survey Report reads as follows:-

“We contacted Meteorological Dept of Oman who confirmed no adverse weather report all along the coast of Oman or in the vicinity – Normal weather reported for the alleged incident date and also a day before and after.

We Contacted Meteorological Dept of India and enquired for weather report for Persian Gulf on May 29th and 30th , 2011 for the specific area co-ordinates Latitude 23.40 North and Longitude 61.43 East and requested them for details on wind speed, wave height, current and swell, We were provided weather report from India which says good weather prevailed in the Persian Gulf in and around the location where the vessel was reportedly sunk as under:

29.05.2011

Synoptic situation – Weather seasonal over Persian Gulf
Weather – Fair
Wind – Mainly southwesterly 10 to 15 knots gusting 230 knots
Visibility – Good
Sea – Smooth to Slight

30.05.2011

Synoptic situation – Weather seasonal over Persian Gulf
Weather – Fair
Wind – Mainly southwesterly 10 to 15 knots gusting 230 knots
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18. Another important feature noted by the Surveyor is that the normal practice for the Indian Dhows trading from Indian West Coast to the Arabian Gulf Ports and Yemen/Africa, in the month of May is to sail along the coast of Southern Oman and after crossing Kuria Muria Islands and Ras Madraka and set course

North easterly to Gujarat. The skipper of Sea Queen confirmed to the Surveyors that they also followed the same route. But the coordinates provided by the rescuing vessel showed that the rescuing vessel was positioned at 200 miles North. Therefore, the Surveyor was compelled to draw the inference that MSV Sea Queen could not have been in the area where she reportedly sank.

19. All the above aspects were not taken note of by the National Consumer Disputes Redressal Commission.

20. Admittedly the Directorate General of Shipping had issued a Circular dated 31.03.2010 prohibiting the operations/trading in waters South or West of the line joining Salalah and Male. The Certificate of Inspection of the vessel dated 26.08.2010 reiterates that sailing vessels are prohibited to ply South or West of the line joining Salalah and Male as per the Circular dated 31.03.2010 issued by the DG Shipping. The Circulars issued by the DG Shipping, especially with regard to the safety and security of the

vessels and the crew are to be read as part and parcel of the policy conditions.

21. The reason why the aforesaid condition assumes significance in the case on hand is that there was a query on 25.10.2010 both from the coast guard and DG Shipping about a piracy attack on the subject vessel MSV Sea Queen. The query was made at about 16:50 hrs. on 25.10.2010 and a reply was sent by the respondent through her representative at about 18:12 p.m. on the same day. The reply mail reads as follows:-

“Respected sir

In reference to telephonic discussion with you, I most humbly say that my sailing vessel MSV sea queen is safe and there is no piracy attack on my vessel.

I have already inform the coast guard (indsan@vsnl.net) and D.G.Shipping (dgcommcentre@satyammal.net) via email that my vessel sea queen is safe, on dated 24-10-10.

That other information regarding vessel's registration, ownership, address, mmsi no etc are true and correct. There are fourteen Indian crew on sea queen and she is on the way to Yemen loaded with general cargo. Last year my vessel sea queen was under repair at Mandvi

for 9 month and then for rest of the 4 month she was plying between gulf and Somalia. I again confirm that my vessel sea queen is safe and there is no piracy attack on her.”

22. Again on 27.10.2010 a query was made through e-mail at about 4:57 p.m, about **(i)** the position of the vessel on 23.10.2010; **(ii)** the current position of the Dhow; and **(iii)** crew list. A reply was sent on behalf of the respondent at about 5:51p.m. on the same day stating that the vessel was near Madarka Yemen on 25.10.2010 and that the exact position as on 23.10.2010 was not known.

23. To show that the suspected piracy attack on the vessel on 25.10.2010 could not have been true, the respondent relied upon a Ship Security Certificate purportedly issued by the Mediterranean Naval Security Bureau. Though it was contended by the learned counsel for the appellant that it was a forged and fabricated document, we do not think that we need to go so far as to discredit the said certificate. The exchange of e-mail about the

suspected piracy attack demonstrated at least that the vessel was plying in the prohibited location.

24. Therefore, we are of the view that the Consumer Forum which has a limited jurisdiction to find out if there was any deficiency in service, could not have allowed the complaint on the basis of sketchy pleadings supported by doubtful evidence. The delay on the part of the Insurance Company in securing the Final Survey Report and the further delay in issuing the letter of repudiation, cannot *per se* lead to the complaint being allowed. The delay in processing the claim and delay in repudiation could be one of the several factors for holding an insurer guilty of deficiency in service. But it cannot be the only factor.

25. Therefore, we are of the considered view that the National Consumer Disputes Redressal Commission was in error in allowing the complaint. There was no categorical evidence of any deficiency in service on the part of the appellant-Insurance Company. Hence the appeal is allowed and the impugned order

of the National Commission is set aside. However, there will be no order as to costs.

.....**J.**
(Hemant Gupta)

.....**J.**
(V. Ramasubramanian)

NEW DELHI
JULY 13, 2022.