

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 68/2018**

% **22nd January, 2018**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. Azmat H. Amanullah and Mr.
Ankit Chaturvedi, Advocates.

versus

SAMSUNG C & T PVT. LTD.

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 2709/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 2708/2018 (seeking extension of time to file court-fees)

As prayed on behalf of the appellant, the appellant will ensure that court-fee in this appeal is positively deposited within three weeks and in this regard counsel for the appellant will give a personal

undertaking to ensure that the court-fee will be deposited as required in this appeal.

C.M. stands disposed of.

RFA No. 68/2018

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant impugning the judgment of the trial court dated 7.10.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for recovery of an amount of Rs.49,32,074/- along with interest being the amount of loss caused to the respondent/plaintiff on account of theft of two cable drums and which were insured under the all risks insurance policy issued by the appellant/defendant.

2. The facts of the case are that Delhi Metro Rail Corporation was awarded a Letter of Award dated 11.3.2013 for ECS and TVS work. Respondent/plaintiff was one sub-contractor of Delhi Metro Rail Corporation. Erection All Risk Insurance policy was got issued by the respondent/plaintiff from the appellant/defendant for the period from 26.1.2013 to 10.8.2015 after paying a premium of Rs.35,59,410/-. Respondent/plaintiff was executing the work at

Janpath Metro Station where cable drums were kept in front of Kidwai Bhawan Pedestrian way and which were purchased in terms of invoices dated 12.12.2013. The cable drums pertained to copper cables. On 17.2.2014 two cable drums were found missing from the site. On inquiry it transpired that security guard of M/s Pratibha CRFG-JV informed the appellant/defendant that on the midnight of 14.2.2014 one Mr. Shani (of the sub-contractor M/s Jazzcon) had taken the above cable drums claiming that they have to be shifted to other site. Actually the cable drums were stolen and therefore a complaint was lodged on 11.3.2014 with the Police Station Barakhamba Road, New Delhi resulting in registration of FIR No. 46/2014 under Sections 379/34 IPC. Two accused were arrested by the police who confessed the crime. Respondent/plaintiff, therefore, filed the subject suit for recovery of Rs.49,32,074/- being the value of the cables on the date of theft of the two cable drums which were stolen.

3. Appellant/defendant contested the claim of the respondent/plaintiff and pleaded that the goods were stolen on account of willful act of the respondent/plaintiff or its responsible

representative and therefore the case was covered under part 'c' of the General Exclusion Clause of the insurance policy. Additionally, it is also argued before this Court that suit could not have been decreed because the respondent/plaintiff did not purchase fresh cables for carrying out the work for its main contractor being Delhi Metro Rail Corporation.

4. After pleadings were complete, the trial court framed issue, and parties after admission/denial of the documents, requested the court to dispose of the suit without leading of oral evidence as parties stated that court can decide the case as per pleadings and documents on record. These aspects are stated in paras 11 to 13 of the impugned judgment and which paras read as under:-

“Issues

11. Accordingly, following issues were framed vide order dated 01.05.2017:-

- 1. Whether the claim of the Plaintiff is not payable to the Defendant as per terms and conditions of the Insurance Policy bearing No. OG-14-113-0401-00000286? OPD*
- 2. Whether the Plaintiff is entitled to recover the suit amount from the Defendant? OPP*
- 3. Whether the Plaintiff is entitled to interest? If so, at what rate and for what period? OPP*
- 4. Relief.*

Documents relied upon by Plaintiff

12. The following documents are relied upon by Plaintiff in support of its case:-

- i) Annexure P-1 (colly): True copies of the certificate of incorporation and Company Board Resolution dated 10.03.2014.
- ii) Annexure P-2 (colly): Original Ear Insurance Policy Line 6 along with copy of payment receipts of insurance premium of INR 35,59,410/-[**Admitted by Defendant**]
- iii) Annexure P-3 (colly): True copies of the invoices dated 12.12.2013 and goods consignment notes. [**Admitted by Defendant**]
- iv) Annexure P-4: True copy of the complaint letter dated 11.03.2014 given to SHO, B. K. Road. [**Admitted by Defendant**]
- v) Annexure P-5: FIR No. 46/2014 dated 11.03.2014
- vi) Annexure P-6 (colly): Copy of letter dated 20.05.2014 sent by Plaintiff raising their insurance claim along with claim form and acknowledgment of receipt. [**Admitted by Defendant**]
- vii) Annexure P-7: Copy of letter dated 24.07.2014 sent by Plaintiff with acknowledgement of receipt. [**Admitted by Defendant**]
- viii) Annexure P-8: Copy of request letter dated 09.09.2014 issued by Plaintiff for adhoc payment along with postal receipt and acknowledgement of receipt. [**Admitted by Defendant**]
- ix) Annexure P-9 (colly): Copy of letter dated 10.03.2015 sent by Plaintiff along with status report of FIR No. 46/2014 with acknowledgement of receipt. [**Admitted by Defendant**]
- x) Annexure P-10: Copy of letter dated 30.03.2015, received from Defendant. [**Admitted by Defendant**]
- xi) Annexure P-11: Copy of reply dated 31.03.2015 sent by Plaintiff. [**Admitted by Defendant**]
- xii) Annexure P-12: Copy of letter dated 23.04.2015, received from Defendant. [**Admitted by Defendant**]
- xiii) Annexure P-13: Email dated 05.05.2015 from Tarun Arora/Surveyor [**Admitted by Defendant**]
- xiv) Annexure P-14: Copy of the reply letter dated 11.06.2015 issued by Plaintiff along with copy of postal receipt. [**Admitted by Defendant**]
- xv) Annexure P-15: Email dated 18.06.2015 issued by Plaintiff and reply to email dated 01.07.2015. [**Admitted by Defendant**]
- xvi) Annexure P-16 (colly): Copy of the legal notice dated 03.11.2015 along with original postal receipt dated 05.11.2015 and original acknowledgement/AD card dated 07.11.2015. [**Admitted by Defendant**]

Documents relied upon by Defendant

13. The following documents are relied upon by Defendant:-

- i) Copy of Power of Attorney executed by the Defendant insurance company in favour of Ms Yogita Sharma.
- ii) Attested copy of insurance copy with terms and conditions. **[Denied by Plaintiff]**
- iii) Original preliminary survey report dated 22.02.2014. **[Denied by Plaintiff]**
- iv) Original final survey report dated 27.03.2015. **[Denied by Plaintiff]**
- v) Office copy of letter dated 30.03.2015 of Defendant. **[Admit by Plaintiff]**
- vi) Office copy of letter dated 23.04.2015 of Defendant. **[Admit by Plaintiff]**

5. By the impugned judgment trial court has held that the benefit of the exclusion clause cannot be given to the appellant/defendant inasmuch as the exclusion clause applies if an employee or responsible representative of the respondent/plaintiff is found guilty of willful negligence and that in the present case the willful negligence alleged is not of the respondent/plaintiff or its responsible representative but of one Mr. Shani who was the employee of M/s Jazzcon, sub-contractor of the respondent/plaintiff and that an employee of a sub-contractor cannot be taken as the responsible representative of the respondent/plaintiff/company. In this regard, the

following relevant observations have been made by the trial court in paras 16 to 19 of the impugned judgment which read as under:-

“16. On the other hand, Ld. Counsel for Plaintiff contended that Defendant has wrongly interpreted the insurance policy by wrongly terming accused persons as responsible representative of the insured. It is submitted that employee or workman of the Sub-Contractor M/s Jazzcon working for the Sub-Contractor at a different site altogether and not having been deputed by the Plaintiff cannot does entitle the Plaintiff of the insurance claim. It is submitted that Plaintiff had no direct link with the accused persons, who were working from one site to the other of the Sub-Contractor appointed by the Plaintiff and thereby not “responsible representative” of the Plaintiff. In support of his contentions, Ld. Counsel for Plaintiff relied upon rulings of Hon'ble Supreme Court reported as **Oriental Insurance Company Ltd. Vs Ozma Shipping Company and Anr. (2009) 9SCC 159** wherein it has been observed as under:-

“Insurance Companies in genuine and bonafide claims of insured should not adopt the attitude of avoiding payments on one pretext or the other. This attitude puts a serious question mark on their credibility and trustworthiness. By adopting honest approach and attitude the insurance companies would save enormous litigation costs.”

17. On the other hand, Ld. Counsel for Defendant submitted that Plaintiff's claim was rightly repudiated inasmuch as the employee of the Sub-Contractor was very much a "responsible representative" of the Plaintiff and thus suit of the Plaintiff is liable to be dismissed. Defendant relied upon the following judgments in support of his submissions that terms of the insurance policy have to be strictly followed and the insured cannot stretch its claim beyond the terms of the insurance policy.

- i) **M/s Bajaj Allianz General Insurance Co. Ltd. Vs M/s Associated Auto Service Pvt. DOD 23th April, 2013**
- ii) **Oriental Insurance Co. Ltd. Vs Sony Cheriyan DOD 19th August, 1999.**

18. Having considered the rival submissions made and on going through the relevant case law, there can be no doubt that the parties are certainly bound by the terms of the insurance policy which was admittedly in place at the time of the theft of the material in question. However, at the same time, it must be taken into consideration that the only exception relied above by the Defendant Company for repudiated the Plaintiff claim is that theft of the cable was committed by the employee of the Sub-Contractor is not covered under the insurance policy as

said employee of the Sub-Contractor was responsible representative of the Plaintiff Company.

19. I am, however, unable to subscribe to this view of the Defendant Company, inasmuch as Plaintiff by no means can be held responsible for the act of employee appointed by his Sub-Contractor. It is also not in dispute that Sh. Shani, employee of M/s Jazzcon was not even working at site in question and in fact had been deputed at some other place by the Sub-Contractor. The fact that he came to the site in question and committed theft of material in question in connivance with other persons can certainly not be a ground to repudiate Plaintiff for the reason that said person was a “responsible representative” of Plaintiff Company. Accordingly, in the light of the above observations, Issue No. 1 is hereby decided against the Defendant and in favour of the Plaintiff.”

6. I completely agree with the aforesaid reasoning and conclusion of the trial court because reference to the exclusion clause shows that appellant/insurance company is exempted on account of ‘willful act or willful negligence of the insured or his responsible representative’ i.e the loss must not have occurred on account of the negligence of the insured or its responsible representative and that surely a person who is not an employee of the respondent/plaintiff, being one Mr. Shani employee of the sub-contractor M/s Jazzcon, cannot be said to be a responsible representative of the respondent/plaintiff. In my opinion, the appellant/insurance company is very happily accepting huge premium which ran to the amount of Rs.35,59,410/- in this case but when claims are filed it chose to create hurdles for the insured to recover amounts under the insurance policy.

7. I do not find any illegality in the trial court arriving at a conclusion that a person who is an employee or representative of the contractor, is not and cannot be taken as an employee or responsible representative of the respondent/plaintiff. There is no illegality or perversity in such finding and therefore I reject the argument urged on behalf of the appellant/defendant for holding that Mr. Shani is to be taken as responsible representative of the respondent/plaintiff.

8. Counsel for the appellant/defendant next argued before this Court that the trial court could not have decreed in its favour the amount of Rs.49,32,074/- inasmuch as the purchase price of the cable drums was only Rs.43,68,828/-. Once again this argument, in my opinion, is completely baseless because in terms of the agreed clause being Memo 3 under the heading of 'basis of loss settlement' it is clearly provided under sub-para (b) that the amount which is payable by the insurance company is actual value of item immediately before the occurrence of the loss. Putting it in other words it is not the purchase price of the items lost which have to be reimbursed but actual value of the items immediately before the loss. Admittedly, the value of the two cable drums on the date of loss is Rs.49,32,074/- and

therefore I do not find any merit in the second argument urged on behalf of the appellant/defendant and which is therefore rejected.

9. Dismissed.

JANUARY 22, 2018

VALMIKI J. MEHTA, J

