



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

% Judgement delivered on: 30.05.2025

+ **RFA(COMM)119/2022**

**OM PRAKASH SUNIL KUMAR THR. ITS AUTHORIZED
PERSON** Appellant

versus

THE ORIENTAL INSURANCE CO. LTD. Respondent

Advocates who appeared in this case

For the Appellant : Mr. Dhruv Chawla, Ms. Renu Verma and
Mr. Satybhan Singh, Advocates.

For the Respondent : Mr. Apoorv Sarvaria, Yamika Sarvaria and
Ms. Simran Chadha, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J.

1. The Appellant has filed the present appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC'), aggrieved by the judgment dated 31.08.2022, passed by the learned District Judge (Commercial Court)-02, Patiala House Courts, New Delhi ("Commercial Court"), in CS (Comm) No. 204 of 2019, captioned *Om Prakash Sunil Kumar v. The Oriental*



Insurance Company Ltd. (**‘Impugned Judgment’**) filed by the Appellant for recovery of Rs. 25,42,444/- being the principal amount along with interest at the rate of 12% per annum for the pre-suit period, *pendente lite* and future interest, from the insurance provider for a consignment lost in transit (**‘Suit’**).

2. *Vide* the Impugned Judgment, the Suit for recovery filed by the Appellant was dismissed on the grounds that the Appellant did not have an insurable interest in the consignment, after it was sold and the Appellant had not declared any sales invoice in the requisite monthly declaration. It was further held that the goods were in a different transit and, therefore, were required to be declared separately. Being aggrieved by the Impugned Judgment, the Appellant has preferred the present Appeal.

FACTUAL BACKGROUND:

3. The present dispute arises out of the rejection of the recovery claim filed by the Appellant in furtherance of the Marine Cargo Open Policy (**‘Policy’**) obtained by the Appellant from the Respondent. The Appellant is a trader of edible oils and purchases the same from Delhi and its neighbouring states such as Haryana, Rajasthan and Uttar Pradesh for the purpose of selling it to various buyers throughout India. The Appellant trades the goods in bulk and typically transports the goods through large tankers.

4. To protect itself against losses occurring due to accident, theft, fire and riots, the Appellant had purchased the Policy for Financial Year 2018-19 on 04.04.2018 covering the period of 05.04.2018 to 04.04.2019 from the Respondent with an coverage upto the sum of ₹100 crores. The Respondent



issued the Policy to the Appellant that covered the transport of edible oils from anywhere in India to anywhere in India.

5. During the regular course of business, the Appellant, while transporting a cargo from Khairthal in Rajasthan to Ahmedgarh in Punjab, suffered an accident at Narwana in Haryana and lost the entire consignment carrying 29,350 kilograms of mustard oil as the truck carrying the tanker fell into a gorge resulting in the spillage of the entire consignment of mustard oil. The Appellant calculated the resulting loss at ₹25,42,444.00. The Appellant submitted its claim before the Respondent. The Respondent appointed surveyors to verify the claims of the Appellant and surveyors prepared a report for the Respondent.

6. The Respondent denied the claim of the Appellant for indemnification of loss under the Policy *vide* letter dated 27.09.2018 citing that the transit in which the accident occurred was not declared by the Appellant. The Respondent alleged that the transit in question was declared to originate from M/s Ravi Industries in Khairthal, Alwar, Rajasthan to the office of the Appellant in Fatehpuri, Delhi. However, a mid transit sale invoice was invoiced in respect of the consignment and the consignment was dispatched towards Ahmedgarh, Punjab, while the consignment never reached Delhi. Further, the Appellant had not issued a fresh Goods Receipt ('GR') while issuing the fresh invoice for the route diversion and, therefore, the Appellant was not entitled to be indemnified as the Appellant was in breach of the Policy. The respondent further stated that the Appellant should have declared the sale invoices separately and hence the loss was not covered under the Policy and was treated as a non-disclosure of material facts and as per Policy Condition-1, the Appellant was not entitled to be indemnified in



cases of material non-disclosures. Policy Condition-1 which is reproduced as under-

“The policy shall be voidable in the event of misrepresentation, misdescription or non-disclosure in any material particular. A breach of this condition makes the whole policy voidable at the option of the insurer, if there is material misrepresentation, misdescription or non- disclosure.”

7. Vide letter dated 30.11.2018, the Respondent once again rejected the claim of the Appellant and added that the Appellant no longer had an insurable interest in the consignment being transported to Ahmedgarh. The Respondent stated that the Appellant only had the insurable interest in the consignment before the sale of the consignment. The accident occurred after the sale of the consignment and at this point the Appellant did not have an insurable interest in the subject matter and consequently the Respondent claimed that the Appellant was not entitled to recovery as per Policy Condition 6.1, which is reproduced as under-

“In order to recover under this insurance the Assured must have an insurable interest in the subject matter insured at the time of loss.”

8. As the loss of the Appellant was not indemnified by the Respondent, the Appellant filed a recovery suit before the learned Commercial Court. Vide the Impugned Judgment dated 31.08.2022, the learned Commercial Court dismissed the Suit of the Appellant, holding that the Appellant had only declared the purchase transit and the sale invoice was not duly declared by the Appellant to the Respondent. Further, the Impugned Judgment held that the Appellant had not taken the shortest route for transit and the accidents that occur due to route diversions are not covered under Clause 16 of the Terms and Condition of the Policy, which provide that:



“The insured has to ensure that the transit takes place only by the shortest route, as losses taken place due to route diversion are not covered in the policy.”

9. Further, the Impugned Judgment held that the Appellant had lost insurable interest in the consignment after the sale and Policy Condition 6.1 stipulates that once the insured had lost insurable interest in the subject matter, they are no longer entitled to recovery under the Policy. It was further held that the Appellant had failed to declare the sale invoices in the monthly declaration pertaining to the sale of the consignment and this amounted to material non-disclosure on the part of the Appellant.

10. Aggrieved by the Impugned Judgment, the Appellant has preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

11. Mr. Dhruv Chawla, the learned counsel for the Appellant submits that the Policy procured on 04.04.2018 under the ‘Risk Details’ section of the Policy covered all risks involving transit from anywhere in India to anywhere in India for all dispatches and transits. Even before the commencement of the transit, the Appellant had received an offer for purchase of the consignment from Shakti Industries located in Ahmedgarh, Punjab. The consignment neither departed for Delhi from Khairthal, Rajasthan and nor did it leave from Delhi to Ahmedgarh, Punjab. There was only one transit from Khairthal, Rajasthan to Ahmedgarh, Punjab, which was duly declared by the Appellant in the monthly declaration submitted to the Respondent on 30.04.2018 as per the terms of the Policy. The delivery of the consignment from Khairthal, Rajasthan to Ahmedgarh, Punjab



constituted one transit and had to be declared only once and not as two separate transits.

12. The learned counsel for the Appellant further submitted that the Appellant had declared the disputed dispatch at serial no. 21 with all the particulars including Vehicle Number, GR Number, dates and final destination of the consignment and, hence, the Appellant had met the obligation to declare under the Declaration Clause 1 of the Policy. Accordingly, there was no misrepresentation or non-disclosure on behalf of the Appellant.

13. The learned counsel for the Appellant further submitted that there was no route diversion as alleged by the Respondent. The consignment was never in transit for Delhi as it departed for Ahmedgarh, Punjab directly from Khairthal, Rajasthan and the accident occurred in Narwana, Haryana, which lies on the shortest route between the origin and the destination. The Respondent has not produced any evidence proving that there was a change in the route during the course of transit. The Appellant was not in violation of Clause 16 of the Terms and Conditions of the Policy and any assertion to the contrary is not supported by any material on the record.

14. The learned counsel for the Appellant further submitted that the allegation of the Respondent that the claim is not covered under the Policy as per Policy Condition 6.1 is without any basis. There is no such clause in the Policy which states that once the consignment is sold the Appellant does not have insurable interest in the subject matter. The Appellant suffered losses on account of the accident. No cross examination on this point was done nor was the loss of mustard oil in the transit disputed by the Respondent. The loss has been duly proved and there has been no violation



of any terms of the Policy by the Appellant. The Policy covered the loss of mustard oil till its delivery to its buyer and, thus, covered the loss suffered by the Appellant. Hence, the Suit has been erroneously dismissed, and the Impugned Judgment deserves to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

15. Mr. Apoorv Savaria, the learned counsel for the Respondent submitted that the invoices submitted by the Appellant clearly indicate that first a purchase invoice was presented to the Respondent which indicated that the consignment will be going from Khairthal, Rajasthan to Fatehpuri, Delhi and, thereafter, there is another invoice which indicated that the consignment was supposed to go from Fatehpuri, Delhi to Ahmedgarh, Punjab. The Monthly Declaration dated 30.04.2018, submitted by the Appellant to the Respondent, fails to furnish details pertaining to each individual journey. Instead, it reflects a single transit from Khairthal to Ahmedgarh dated 26.04.2018, declaring an amount of Rs. 25,42,444/-, corresponding to GR No. 5029.

16. The learned counsel for the Respondent submitted that the Appellant had amalgamated separate purchase and sale transits into a single entry, thereby altering the true nature of the transactions. This act amounts to a misrepresentation by way of concealment and submission of a false declaration, constituting a clear breach of the Terms and Conditions of the Policy. Furthermore, there exists a material discrepancy between the contents of the said declaration and the declared Invoice No. 21 as submitted by the Appellant. The date and the amount specified in these documents are materially inconsistent with one another.



17. The learned counsel for the Respondent strongly objected to the contents of Invoice No. 21. He submitted that the fourth column at the top right-hand corner of Invoice No. 21 specifies the 'Buyer's Order No.' dated 23.04.2018. The Appellant, however, claims to have secured a buyer, M/s Shakti Industries, only on 27.04.2018. The invoice dated 27.04.2018 clearly reflects that the sale order was made on 23.04.2018, revealing a contradiction that suggests a knowingly false declaration.

18. The learned counsel for the Respondent submitted that the accident occurred in Narwana, Haryana, during transit to Ahmedgarh, Punjab. GR No. 5029, along with the corresponding Invoice No. 48, was issued in respect of goods designated for delivery at Fatehpuri, Delhi. Narwana, Haryana, does not fall on the shortest route between Khairthal, Rajasthan and Fatehpuri, Delhi. Therefore, as per Clause 16 of the Policy, the Appellant is not entitled to indemnification since the accident had occurred outside the shortest possible route.

19. The learned counsel for the Respondent further submitted that the Appellant did not have an insurable interest in the subject matter as the transit to Ahmedgarh, Punjab, pertains to a sale transit rather than a purchase transit. As per Policy Condition 6.1 of the Policy, the insured must have an insurable interest in the consignment to be eligible for recovery.

20. The learned counsel for the Respondent has sought reliance on the decision of **BHS Industries v. Export Credit Guarantee Corpn. Ltd.**, (2015) 9 SCC 414 to further submit that mere payment of the premium does not, by itself, impose liability on the corporation to indemnify a loss. It is incumbent upon the insured to demonstrate compliance with the declaration



requirement in order to substantiate any claim. Any interpretation that suggests the insured has the discretion to selectively declare certain shipments while omitting others would be contrary to the express terms and object of the Policy. These provisions impose specific and mandatory obligations upon the insured, and any attempt by the appellant to conflate the payment of premium with the extent of risk coverage under such circumstances is untenable.

21. The learned counsel for the Respondent has also sought to place reliance on the decision of ***Bajaj Allianz General Insurance Co. Ltd. v. State of M.P.***, (2020) 18 SCC 376, to further submit that the provisions of an insurance contract must be interpreted in a manner that is reasonable and consistent with commercial efficacy, keeping in view the intent clearly expressed through the language employed in the Policy document. Insurance contracts are to be construed in accordance with the general principles governing commercial and consumer agreements. The Court's role is to interpret the language chosen by the parties, not to create a new agreement for them. Each clause must be reasonably construed so as to effectuate the clear and manifest intention of the parties, as discernible from a reading of the Policy as a whole. The insurer's liability cannot exceed the scope of coverage as expressly stipulated in the Policy. To ascertain whether a claim falls within the parameters set forth in the Policy, it is essential to precisely define the scope of coverage and confirm the occurrence of the insured event or accident prior to the expiration of the Policy. Accordingly, in evaluating the competing contentions, it is imperative to begin with an examination of the relevant Policy provisions. In interpreting an insurance contract, it is impermissible for the court to substitute or alter the terms



agreed upon by the parties. The court must confine itself to construing the language employed in the contract in a manner that most accurately reflects the mutual intention of the parties.

22. The learned counsel for the Respondent has sought reliance on the decision of *Contship Container Lines Ltd. v. D.K. Lall* (2010) 4 SCC 256, to further submit that a contract of insurance is based on the principle of good faith and cannot withstand deception on the part of either party. The principle that an insurance contract is founded upon utmost good faith is a time-honoured and well-established doctrine.

23. The Appellant has willfully not declared all of the transits and such an approach to selectively declare transits amounts to a violation of Clause 1 and Clause 16 of the Policy. Accordingly, the Impugned Judgment has rightly dismissed the Suit of the Appellant and the present Appeal is unmerited.

ANALYSIS AND CONCLUSION:

24. The main issues for consideration are whether the Appellant was entitled to recover from the Respondent the amount of consignment lost in the accident by virtue of the Policy and whether the Appellant had insurable interest in the consignment after the sale of the mustard oil to M/s Shakti Industries.

25. The Impugned Judgment has, after examining the documentary and oral evidence, concluded that the Appellants had not declared the sale transit to the Respondent and the Appellant had no insurable interest in the consignment once the consignment had been sold and in view of that, the



Appellant was not entitled to be indemnified by the Respondent under the Policy.

26. Admittedly, the Appellant had purchased the Policy from the Respondent under which the Appellant was insured against losses of up to ₹100 Crores arising from fire, theft, accident, burglary etc. during the transit of the Consignment for the relevant period i.e. 05.04.2018 to 04.04.2019. The Policy gave the Appellant coverage for losses incurred during transit from anywhere in India to anywhere in India.

27. The accident which caused the loss sought to be indemnified occurred on 28.04.2018 and it is not disputed that during that period, the Appellant was insured under the Policy. A perusal of the monthly declaration dated 30.04.2018 shows that the Appellant had declared the consignment involved in the accident, which was in transit from Khairthal, Rajasthan to Ahmedgarh, Punjab. Hence, the condition of the Policy to declare the consignment, was fulfilled by the Appellant.

28. As regards the objection of the Respondent that the Appellant had to issue different GR before directly dispatching the consignment to the final consignee, GR 5029 dated 26.04.2018 indicates that the consignment traveled directly from Khairthal, Rajasthan to Ahmedgarh, Punjab. Therefore, there was no change in destination mid-transit. Additionally, the accident site, Narwana, Haryana, lies on the shortest route between Khairthal and Ahmedgarh rendering Clause 16 of the Terms and Conditions applicable.

29. The Appellant retained an insurable interest in the consignment even after the sale as the title of the goods had not transferred in transit. The Appellant remained responsible for any loss to the consignment even during



transit. The Appellant was obligated to ensure its safe delivery to the buyer. The loss arising from the spillage during transit directly impacted the Appellant alone. Accordingly, the losses suffered by the Appellant were covered under the Policy. Hence, the Policy Condition 6.1 is inapplicable in the facts of the present case as the Appellant had a valid insurable interest in the subject matter.

30. The decision in **BHS Industries** (*supra*) relied upon by the Respondent would not be helpful to the Respondent in the present facts and circumstances since the Appellant has fulfilled the requirement of declaration under the Policy in the monthly declaration with GR 5029 showing only one transit from Khairthal, Rajasthan to Ahmedgarh, Punjab. There has been no material non-disclosure from the Appellant to disentitle the Appellant from indemnification under the Policy. Policy Conditions 1 and 8 cannot be relied upon by the Respondent to disentitle the Appellant from recovering the amount of loss as the same are not applicable in the facts of this case.

31. The decision in **Bajaj Allianz General Insurance** (*supra*) relied upon by the Respondent is not applicable as the harmonious construction of the Policy Conditions, supports the case of the Appellant that the declaration obligations set out under the contract were met by the Appellant.

32. The decision in **Contship Container Lines** (*supra*) relied upon by the Respondent is not applicable as it is a trite law that insurance contracts are governed by the principle of *uberrima fides* i.e. Utmost Good Faith. However, the Appellant did not act in bad faith, while procuring the Policy from the Respondent, and derived no unfair advantage from the same. There is no material non-disclosure by the Appellant, nor has there been any



violation of the Policy conditions. There is no cavil about the quantity of mustard oil spilled and quantification of the actual loss suffered by the Appellant.

33. Accordingly, the Appellant is entitled to the indemnification of Rs. 25,42,444/- from the Respondent and the Appellant will also be entitled to a simple interest @ 8% per annum from the date of the accident i.e. 28.04.2018 till the date of actual payment.

34. In view of the above, the present Appeal is allowed. The Impugned Judgment is quashed and set aside, it is directed that the Respondent shall indemnify the sum of Rs. 25,42,444/- to the Appellant along with simple interest @8% per annum from the date of accident 28.04.2018 till the date of actual realisation of the payment of the amount by the Appellant. There shall be no order as to the cost.

35. In view of the same the Suit is decreed in the aforementioned terms and let the decree sheet be drawn up accordingly.

36. Pending application(s), if any, are also disposed of.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 30, 2025

'AK'/'SMS'