INFOLEX
CONSULTANTS

LEGAL INSIGHTS:
INSURANCE

RECENT IMPORTANT LEGAL DEVELOPMENT

1. **WHERE THE SURVEYOR'S REPORT IS POSITIVE FOR RELEASE OF CLAIM, IS FLAWLESS AND ERRORLESS, IN SUCH CASE, INSURER WILL BE LIABLE TO PAY THE CLAIM WITH INTEREST FOR SETTLING THE CLAIM ON DELAYED BASIS.**

   In the case titled as ***MK Aggarwal Hosiery Private Limited v. New India Assurance Company Limited*** *[CC/269/2012]*, the Ld. NCDRC, New Delhi it was noted that the Complainant was a Ludhiana based manufacturer of synthetic knittes printed fabrics and blankets. In a fire accident, the Complainant had incurred an alleged loss of INR 10 Crore and had also availed a insurance policy with coverage of INR 4.5 Crore from the Respondent. Upon reporting of the accident and its assessment, Insurer had paid INR assessed loss of INR 5.49 Crore.

   Despite submission of all documents, the Complainant alleged that the Respondent made delay in settling his claim, due to which, his Bank Account was declared as a Non-Performing Account, with imposition of heavy interest.

   It was found that the delay in settling the claim of the Complainant was without any justification, hence interest and cost was allowed.

2. **MATTERS INVOLVING COMPLEX QUESTIONS OF FACT AND FRAUD ARE BEST ADJUDICATED BY CIVIL OR CRIMINAL COURTS AND NOT BY CONSUMER FORA.**

   In the case titled as ***Paramjeet Singh v. National Insurance Co. Ltd.*** *[2019 7 SCC 224]*, the Ld. Supreme Court of India had noted that the matters involving complex questions of fact and fraud are best adjudicated by civil or criminal courts and not by consumer fora, which are summary in nature. Likewise, in ***Chetan Arvind Mehta v. Inspector***

General of Police, [2020 SCC OnLine NCDRC 325], it was reiterated that consumer fora cannot adjudicate disputes rooted in allegations of criminal fraud and breach of trust.

3. DOCUMENTS LIKE THE PROPOSAL, COVER NOTE AND THE POLICY ARE COMMERCIAL DOCUMENTS AND TO INTERPRET THEM, COMMERCIAL HABITS AND PRACTICE CANNOT ALTOGETHER BE IGNORED.

In the case titled as ***General Assurance Society Limited v. Chandumall Jain & Anr.*** *[(1966) 3 SCR 500] [AIR 1966 SC 1644]*, the Ld. Supreme Court of India had noted:

11. A contract of insurance is a species of commercial transaction and there is well established commercial practice to send cover notes even prior to completion of a proper proposal or while the proposal is being considered or a policy is in preparation for delivery. A cover note is a temporary and limited agreement. It may be self-contained or it may incorporate by reference the terms and conditions of the future policy. When the cover note incorporates policy in this manner, it does not have to recite the terms and conditions, but merely to refer to a particular standard policy. If the proposal is for a standard policy and the cover note refers to it, the assured is taken to have accepted the terms of that policy. The reference to the policy and its terms and conditions may be expressed in the proposal or the cover note or even in the letter of acceptance including the cover note. The incorporation of the terms and conditions of the policy may also arise from a combination of references in two or more documents passing between the parties. Documents like the proposal, cover note and the policy are commercial documents and to interpret them commercial habits and practice cannot altogether be ignored. During the time the cover note operates, the relations of the parties are governed by its terms and conditions, if any, but more usually by the terms and conditions of the policy bargained for and to be issued. When this happens the terms of the policy are incipient but after the period of temporary cover, the relations are governed only by the terms and conditions of the policy unless insurance is declined in the meantime. Delay in issuing the policy makes no difference. The relations even then are governed by the future policy if the cover notes give sufficient indication that it would be so. 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.

4. **IT IS DUTY OF COURT TOWARDS AN AGREEMENT IS TO ENSURE THAT THE PARTIES ABIDE BY THE TERMS AND CONDITIONS OF CONTRACT BETWEEN THEM.**

In the case titled as ***Harish Kumar Chadha v. The Manager, M/s Bajaj Allianz Life Insurance Co. Ltd. & Ors.*** *[2013 SCC OnLine NCDRC 910] [2014 1 CPJ 188 (NC)]*, the Ld. NCDRC, New Delhi had noted:

[...] In the case of United India Insurance Company Limited vs. Harchand Rai Chandan Lal, the Hon'ble Supreme Court has held that the terms and conditions of the contract entered into between the parties have to be strictly construed and no deviation can be made there from. [...]

[...] the duty of the courts towards an agreement is to ensure that the parties to an agreement abide by the terms and conditions of the contract between them. A perusal of the terms and conditions of each policy unravels that the OP strictly adhered to, and acted in accordance with the terms and conditions of the policies as held by the trial forum above. The OP cannot be faulted on this court. [...]

5. **INSURED CANNOT CLAIM ANYTHING MORE THAN WHAT IS COVERED BY THE INSURANCE POLICY.**

In the case titled as **National Insurance Company Limited v. The Chief Electoral Officer & Ors.** *[MANU / SC / 0101 / 2023]*, the Ld. Supreme Court of India had noted:

"29. This court in Vikram Greentech India Ltd. vs. New India Assurance Co. Ltd. [MANU/SC/0519/2009] [(2009) 5 SCC 599] had reiterated that the insured cannot claim anything more than what is covered by the insurance policy. The terms of the contact have to be construed strictly, without altering the nature of the contract as the same may affect the interest of parties adversely. The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the insurance company must also be read strictly."

"30. In several other judgments, this Court has held that the insurance contract must be read as a whole and every attempt should be made to harmonize the terms thereof, keeping in mind that the Rule of contra proferentem does not apply in case of commercial contract, for reason that ta Clause in a commercial contract is bilateral and has been mutually agreed upon."

6. **THE INSURANCE POLICY HAS TO BE CONSTRUED HAVING REFERENCE ONLY TO THE STIPULATIONS CONTAINED IN IT AND NO ARTIFICIAL FAR-FETCHED MEANING COULD BE GIVEN TO THE WORDS APPEARING IN IT.**

In the case titled as ***Oriental Insurance Company Ltd. v. Samayanallur Primary Agriculture Cooperation Bank*** *[(1999) 8 SCC 543] [(1999) SCC OnLine SC 1152]*, the Ld. Supreme Court of India had noted:

"[...] The Insurance policy has to be construed having reference only to the stipulations contained in it and no artificial far-fetched meaning could be given to the words appearing in it."

7. **AFTER THE COMPLETION OF THE CONTRACT, NO MATERIAL ALTERATION CAN BE MADE IN ITS TERMS EXCEPT BY MUTUAL CONSENT.**

8. **IN A CONTRACT OF INSURANCE, THERE IS REQUIREMENT OF UBERRIMA FIDES I.E. GOOD FAITH ON THE PART OF THE INSURED. EXCEPT THAT, IN OTHER RESPECT, THERE IS NO DIFFERENCE BETWEEN A CONTRACT OF INSURANCE AND ANY OTHER CONTRACT.**

In the case titled as ***Vikram Greentech India Limited & Anr. v. New India Assurance Company Limited*** *[(2009) 5 SCC 599]*, the Ld. Supreme Court of India had noted:

"16. An insurance contract, is a species of commercial transaction and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberrima fides i.e. good faith on the part of the insured. Except that, in other respect, there is no difference between a contract of insurance and any other contract."

"18. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result."

9. **THE TERMS OF THE POLICY HAVE TO BE CONSTRUED AS IT IS AND WE CANNOT ADD OR SUBTRACT SOMETHING.**

In the case titled as ***United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal*** *[(2004) 8 SCC 644]*, the Ld. Supreme Court of India had noted:

"[...] The terms of the policy have to be construed as it is and we cannot add or subtract something. Howsoever, liberally we may construe the policy, but we cannot take liberalism to the extent of substituting the words which are not intended."

10. **IN CONSTRUING THE TERMS OF A CONTRACT OF INSURANCE, THE WORDS USED THEREIN MUST BE GIVEN PARAMOUNT IMPORTANCE,**

AND IT IS NOT OPEN FOR THE COURT TO ADD, DELETE OR SUBSTITUTE ANY WORDS.

In the case titled as ***Suraj Mal Ram Niwas Oil Mills Pvt. Ltd. v. United India Insurance Co. Ltd.*** *[(2010) 10 SCC 567] [(2010) 4 SCC (Civ) 267] [2010 SCC OnLine SC 1148],* the Ld. Supreme Court of India had noted:

"26. This, it needs little emphasis that in construing the terms of a contract of Insurance, the words used therein must be given paramount importance, and it is not open for the court to add, delete or substitute any words. It is also well settled that loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed to determine the extent of liability of the insurer. Therefore, the endeavour of the court should always be to interpret the words in which the contract is expressed by the parties."

11. THE LIBERAL ATTITUDE ADOPTED BY THE COURT, BY WAY OF WHICH IT INTERFERES IN THE TERMS OF AN INSURANCE AGREEMENT, IS NOT PERMITTED.

In the case titled as ***Export Credit Guarantee Corporation of India Limited vs. Garg Sons International*** *[(2014) 1 SCC 686] [(2014 1 SCC (Civ) 648],* the Ld. Supreme Court of India had noted:

"13. Thus, it is not permissible for the court to substitute the terms of the contract itself, under the grab of construing terms incorporated in the agreement of insurance. No exception can be made on the ground of equity. The liberal attitude adopted by the court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement."

12. THE INSURANCE AGENT IS A FACILITATOR BETWEEN THE INSURANCE CO. AND THE PROSPECTIVE POLICY PURCHASER. HE IS AN AGENT OF CONSUMER AS WELL AS OF INSURANCE CO. HE IS NOT EXCLUSIVE AGENT OF INSURANCE CO.

In the case titled as ***Shrikant Murlidhar Apte vs. Life Insurance Corporation of India***", *[(2013) SCC OnLine NCDRC 450] [(2013) NCDRC 450] [(2013) 3 CPJ 536 (NC)] [(2013) 2 CPR 546 (NC)],* the Ld. NCDRC, New Delhi had noted:

"The Insurance Agent is a Facilitator between the Insurance Co. and the prospective policy purchaser. He is an agent of consumer as well as of Insurance Co. He is not exclusive agent of Insurance Co. […]

There was 15 days 'cooling off' period and during this period respondent Shri Shrikant Apte could have cancelled those policies since not agreeable to him on account higher premium mentioned in the policy then quoted by the Insurance Agent and should have been refunded back his premium amounts paid on those 7 policies. This is permissible under IRDA Regulations. Shri Apte did not avail of the said facility available but continued to enjoy the policy and took up issue with LIC authorities and also the Insurance Ombudsman. Both of them rightly turned down his request. In our view, in the circumstances, LIC cannot be blamed for issuing 11 policies with monthly or yearly premium mentioned therein because once 15 days 'cooling off' period is over, the document becomes binding on both the parties […]

13. ANY INACCURATE ANSWER FROM THE PROPOSER (POLICY BUYER) WILL ENTITLE THE INSURER TO REPUDIATE HIS LIABILITY.

In the case titled as ***PC Chacko vs. Chairman, Life Insurance Corporation of India*** *[CITATION] and* ***Satwant Kaur Sandhu vs. New India Assurance Company*** *[CITATION]",* the Ld. Supreme Court of India had noted:

"25. The upshot of the entire discussion is that in a contract of insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance.

14. POLICY HAVING BEEN TAKEN FOR INVESTMENT OF THE PREMIUM AMOUNT IN THE SHARE MARKET, WHICH IS FOR SPECULATIVE GAIN, THE COMPLAINT DID NOT COME WITHIN THE PURVIEW OF THE CPA.

In the case titled as ***Ram Lal Aggarwalla v. Bajaj Allianz Life Insurance Co. Ltd. & Ors.*** *[MANU/CF/0263/2013]*„ the Ld. NCDRC, New Delhi had noted:

"The Forum also observed that the policy having been taken for investment of the premium amount in the share market, which is for speculative gain, the complaint did not come within the purview of the Consumer Protection Act, 1986."

KEY CONTRIBUTORS

Deepak Panwar
Managing Partner
Infolex Consultants
M.: 8890238352
E.: deepak@infolexconsultants.com
W.: www.infolexconsultants.com