

Brief Note on the judgment dated 24th April, 2020 of the Supreme Court of India in

Bajaj Allianz General Insurance Co. Ltd. & Anr. v. The State of Madhya Pradesh

Civil Appeal No. 2366-67 of 2020

Respondent State of Madhya Pradesh purchased a “Transit Marine Insurance Policy” from the appellant Bajaj Allianz General Insurance on 21st July, 2005 for covering the transportation of a Bell-430 Helicopter from Langley, Canada to Bhopal India where the total amount insured was Rs. 20,00,00,000 and transit route was agreed “*as byroad/by air*”. Various standard clauses were applicable to the policy, notably the Institute Cargo Clauses (Air Cargo). On 5th October 2005, the Helicopter was transported in a knocked down state by air to New Delhi and was cleared by customs and thereafter the helicopter was shifted to a hangar at New Delhi. The helicopter was initially inspected on 21st October 2005, when damage to the window of crew door was reported, thereafter on 20th November, 2005 additional damage was detected in the tail boom, on both the occasions appellants deputed a surveyor. On 10.04.2006, appellants informed the respondents about the inadmissibility of both the claims of the respondent on the grounds that claim for damage to window was within the policy deductible of 0.5% and; claim for tail boom of the aircraft was caused long after delivery of cargo at the desired destination. Further vide a letter dated 11th July, 2006, the claim of the respondent was repudiated by the appellant. Aggrieved, the respondent filed a complaint before Madhya Pradesh State Consumer Disputes Redressal Commission seeking compensation in the sum of Rs. 64,89,205. The complaint was allowed by the State Commission holding that the halt in New Delhi was only a transit halt and did not change the nature of cargo. Before the National Commission, both the appellant and the respondent had filed appeals. National Commission vide its judgment dated 10th August, 2018, allowed the appeal filed by the respondents and while upholding the judgment passed by the state commission, awarded “interest compensation by way of damages”.

Appellant challenged the judgment passed by the National Commission before the Supreme Court. Appellant amongst other things contended that by taking the delivery of the helicopter prior to the final destination and storing in New Delhi for its convenience, the respondent acted beyond the scope of the ordinary course of transit, thereby terminating the cover under the policy and; by causing deviation and delay respondent failed to act with reasonable dispatch and; respondent changed the nature of cargo by assembling it and created a new product which was incapable of being insured under the existing policy and NCDRC in its interpretation has given a meaning contrary to what the parties had intended. On the other hand, respondent contended that retaining the helicopter at New Delhi was justified, as the respondent decided to procure a new window in order to prevent the possibility of further damage and due to availability of skilled manpower for replacing the window and; helicopter was to be assembled and prepared for transportation by road to Bhopal and the damage was caused to the helicopter during transit as given the nature it could not have been caused to a stationary helicopter.

Setting aside the concurrent findings of the State and National Commission, the Supreme Court held that;

- a. The court must interpret the words in which the contract is expressed by the parties and not embark upon making a new contract for the parties. The liability of insurer cannot extend to more than what is covered by the insurance policy.
- b. After referring to various judgments passed by the courts of Australia, USA & UK, the court interpreted the words “in transit” as used in policy. It was observed that the words “in transit” do not require transportation of the consignment in a single trip from the commencement to the final destination, but includes those interruptions that are incidental to or in furtherance of the transportation of consignment. It was also observed that an action that is wholly unrelated to the usual or ordinary method of pursuing the transportation of goods would prevent the goods from being covered under the definition of the expression “in transit” under the policy. On the intended coverage of the policy, the court observed that it would be unreasonable to suggest that the transit policy intended to cover indefinite storage of the helicopter at the hangar in New Delhi. The court went on to hold that storage of the helicopter in the hangar at New Delhi awaiting replacement of the spare window cannot be said to be incidental or in furtherance of the carriage of the goods to the ultimate destination.
- c. The court referred to a letter dated 22nd October, 2005 wherein the respondents while informing about the damage had also stated about assembling the helicopter for the purposes of flying it to Bhopal. It was held that the specific act of unpacking the cargo at New Delhi in furtherance of the purposes of assembling it for the flight to Bhopal, indicated that the transportation of the cargo in a knocked down state had come to an end and the act of unpacking and assembling for the purposes of flying was unrelated to the usual or ordinary method of pursuing the transportation of the cargo insured. Besides this, it was also observed that change in the character of the helicopter from a knocked down state to a ready to fly state exposed the appellant to risks not contemplated by the parties under the policy. The court took into consideration the additional risks associated with the flight which substantially and unnecessarily added to the risks of the journey that were not covered by the policy. Rejecting the contention of the respondents that the helicopter remained in transit while at hangar in New Delhi, it was held

- that once the respondent intended to alter the subject-matter it becomes irrelevant to determine whether the hangar at New Delhi was a transit store or the final destination of the delivery.
- d. Dealing with the question of whether the damage occurred during the transit from Langley to Delhi, the court observed that the burden of proof to show that the loss had occurred during transit, was on the respondent but no evidence was adduced by the respondent in support. It was also observed that the respondent did not challenge the report of the surveyor and it was held that the respondent had accepted the report of the surveyor.

Practical insight on the subject

Court has interpreted and laid down law on the term “in-transit” which is commonly used in commercial laws and particularly Insurance laws. Besides this, the judgment also deals with the issue of scope of policy, alteration of the nature of risk covered and nature of goods insured, delivery of goods etc. and the consequences which may follow including termination of cover. One of the issues involved in the present case was damage to goods, it is here the need for timely and proper inspection of goods by the buyer or his agent assumes significance. If it is a high value cargo, as in the present case, then the need be appointment of independent surveyors should also be considered. Similarly the cargo should be properly marked and packaging and handling of cargo should be done professionally including usage of correct dunnage materials so as to mitigate the chances of damage during journey. In so far as the other issue of changing the nature of goods and scope of policy is concerned, it is always advisable to seek appropriate and /or additional cover from the beginning and in the event of any change(s) the underwriters must be promptly informed and/or consulted so as to not compromise the cover. Invoices, Inspection reports and any communications with the underwriters or carriers etc. and any responses must be properly documented. Lastly any damage and/or claims must be promptly reported to the underwriters and the carrier, as the case may be.

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