VIKRAM GREENTECH (I) LTD. & ANR. A

v.

NEW INDIA ASSURANCE CO. LTD.

(Civil Appeal No. 2080 of 2002)

APRIL 1, 2009 B

[D.K. JAIN AND R.M. LODHA, JJ.]

Contract – Contract of insurance – Essentials of – Discussed – Terms of insurance policy to be strictly construed – Insured cannot claim anything more than what is covered C *by the insurance policy – Strict construction.*

Insurance – Insurance policy – Construction of – Reference to proposal form may not only be appropriate but rather essential – However, the surveyors' report cannot be D *taken aid of nor can it furnish the basis for construction of a policy – Such outside aid for construction of insurance policy is impermissible – On facts, the two documents i.e. the insurance policy and the proposal form made it clear that the comprehensive floriculture insurance policy in question* E *covered poly-houses 1-6 which were in existence on the date of issuance of the policy and not poly-houses 7, 8A and 8B which though in existence at the time of the calamity were not in existence on the date of issuance of the policy – Deeds and Documents – Commercial document.*

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Appellant No.1-company, incorporated with the object of setting up a floriculture project in the State of Maharashtra, took a comprehensive floriculture insurance policy from respondent-insurance company in respect of poly-houses, irrigation system, cost of G **cultivation of flowers and input cost from first flowering to the harvest. Severe storms/cyclones caused extensive damage to the poly-houses. For the loss suffered, appellant no.1 submitted claim with respondent-**

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A insurance company and thereafter approached the National Consumer Commission alleging deficiency of service by respondent-insurance company in not settling the claim.

B Respondent-insurance company admitted that the policy covered poly-houses nos. 1 to 6 but pleaded that the claim on account of damages to poly-houses 7, 8A and 8B was not admissible as these poly-houses were not covered under the policy.

C The National Commission arrived at a finding that at the time of taking policy only six poly-houses were in existence and that there was no evidence or proof to substantiate that the insurance was also covered for poly- houses 7, 8A and 8B and consequently held that D appellant no.1 was entitled to claim on account of damages to poly-houses nos.1-6 only.

In appeal to this Court, the question which arose for consideration was whether the comprehensive E floriculture insurance policy issued by respondent-insurance company covered poly-houses 7, 8A and 8B.

Dismissing the appeal, the Court

HELD:1. An insurance contract, is a species of F commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of *uberimma* fides i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of G insurance and any other contract. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss H suffered by the insured on account of risks covered by

the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. 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 in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. [Para 15] [444-D-G]

General Assurance Society Ltd. v. Chandumull Jain and another **AIR 1966 SC 1644;** *Oriental Insurance Co. Ltd. v. Sony Cheriyan* **(1999) 6 SCC 451 and** *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal* **(2004) 8 SCC 644, relied on.**

2. Document like proposal form is a commercial document and being an integral part of policy, reference to proposal form may not only be appropriate but rather essential. However, the surveyors' report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible. [Para 16] [445-A-B]

3. The submission of the insured that the Proposal Form did not specify the number of poly-houses and, therefore, all poly-houses including 7, 8A and 8B were covered under the policy as they were in existence at the time of calamity, has no merit. Admittedly, at the time, the policy was taken, poly-houses 1 to 6 were in existence and poly-houses 7, 8A and 8B were not in existence. The poly-houses 7, 8A and 8B were completed later on. Moreover it is not correct to say that the Proposal Form does not specify the number of poly-houses. It does. It clearly mentions six poly-houses. It is true that six poly-houses are mentioned in Clause(C) of the Proposal Form which is with regard to green house cultivation but what

is mentioned in respect of poly-houses in Clause(C) is necessarily referable to the number of poly-houses in Clause (A) of the Proposal Form as well. [Para 20] [449-B-E]

4. A careful consideration of the Proposal Form that sets out the particulars of the components which were to be covered and the inventory of the property insured (Sections I and II), mentioned in the policy leaves no manner of doubt that what was insured was existing poly-houses on the date of the issuance of policy. It is clear from the proposal and the policy. The two documents admit of no ambiguity and it is clear that six poly-houses covering an area of 2.8 hectares were only covered by the policy. [Para 22] [449-H; 450-A-C]

Case Law Reference:

AIR 1966 SC 1644	**relied on**	**Para 15**
(1999) 6 SCC 451	**relied on**	**Para 15**
(2004) 8 SCC 644	**relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2080 of 2002.

From the Judgment & Order dated 30.10.2001 of the National Consumer Disputes Redressal Commission in Original Petition No.66 of 1998.

Vijay Hansaria, Sneha Kalita and Sunil Kumar for the Appellant.

P.K. Seth and Sudhir Kumar Gupta for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. This appeal under Section 23 of the Consumer Protection Act, 1996 (for short, 'The Act') is directed against the judgment and order dated October 30, 2001

passed by National Consumer Disputes Redressal Commission, New Delhi (for short, ' National Commission') whereby the complaint filed by the appellant for direction to the respondent to settle the insurance claim alongwith interest @ 18% per annum and compensation of Rs.25 lakh on account of mental agony, harassment and monetary loss came to be dismissed.

2. The sequence of facts may be noticed first. Vikram Greentech (I) Ltd. came to be incorporated in 1993 with an object of setting up a floriculture project in the State of Maharashtra. In 1995, the company started negotiations with the respondent (hereinafter referred to as 'Insurance Company') for a comprehensive floriculture insurance policy. On January 18,1996, the company (hereinafter referred to as 'insured') submitted a proposal to the Insurance Company for a comprehensive floriculture insurance of poly-house (Rs.1.25 crore), irrigation system (Rs.25 lakh), cost of cultivation of flowers (Rs.25 lakh) and input cost from first flowering to the harvest (Rs.25 lakh). The Insurance Company issued a comprehensive Floriculture Insurance Policy ('Policy', in short) on January 23,1996, period of insurance being from January 18,1996 to January 17,1997 and charged premium of Rs. 2,31,000/-. On May 23,1996, according to the insured there was a severe storm/cyclone, which damaged the floriculture extensively and substantial damage was caused to the roofs and walls of the poly-houses. On June 18/19,1996, there was another storm/cyclone. As a result of which the floriculture project of the insured and the poly clothes and the roofs as well as walls of the poly-houses were extensively damaged; certain poly-houses even collapsed completely. For the loss suffered in the first storm/cyclone, a claim for Rs.31,17,140/- was submitted by the insured with the Insurance Company. The insured submitted another claim for Rs.38,97,906/- in respect of loss suffered due to second storm/cyclone that occurred on June 18/19,1996.

A 3. The Insurance Company appointed M/s Standard Surveyors Private Limited as their Surveyors for assessing the loss claimed by the insured. The Surveyors submitted their report on October 24,1996 and assessed the loss suffered by the insured at Rs. 28,85,243/- in respect of the first storm. On
B October 28,1996, the Surveyors submitted its second report in respect of the second storm/cyclone and assessed the loss at Rs.34,81,214/-.

4. On November 28,1996, the Insurance Company informed the Surveyors that their report included loss to poly-
C houses Nos. 7, 8A and 8B whereas the policy covered only poly-houses 1 to 6. The Surveyors were, accordingly, asked to reassess the loss.

5. On December 19,1996, the Surveyors gave their
D clarification to the Insurance Company that all the poly-houses were covered under the policy and their assessment was correct and fair.

6. The Insurance Company, then, appointed M/s Jupiter Claim Consultants as investigators for verification of the claim.
E The insured was also asked to furnish necessary documents to the said investigators. The investigators are said to have submitted their report on September 12,1997 stating therein that they were not able to submit their certification as regard the cost of poly-houses Nos. 1 to 6 and other related matters
F categorically for sum insured and claim thereof.

7. On November 6,1997, the Surveyors submitted their addendum to the earlier report dated October 24,1996 with regard to the first storm and reduced the assessment of loss
G to Rs.4,77,355/-. The Surveyors submitted another addendum on February 16,1998 to the report dated October 28,1996 with regard to the second storm and reduced the assessment of loss to Rs.95,443/-.

H 8. The insured then approached the National Commission

alleging therein deficiency of service by the Insurance Company in not settling the claim and sought direction to the Insurance Company to settle the claim of the insured in full and pay interest on due amount.

9. The Insurance Company contested the claim and set up the plea that the claim on account of damages to poly-houses 7, 8A and 8B was not admissible as these poly-houses were not covered under the policy. As regards the poly-houses nos. 1 to 6, the Insurance Company admitted that the policy covered those poly-houses. They stated before the National Commission that insured has already been informed that the loss finally assessed by the Surveyors is to the tune of Rs.4,77,355/- in respect of first storm and Rs.95,443/- on account of loss caused by second storm.

10. A rejoinder came to be filed by the insured and it was stated therein that at the relevant point of time, the size of the farm was 6.3 hectares and the entire area was covered by the Insurance Company and it was not limited to the area to 2.8 hectares as contended by the Insurance Company.

11. The National Commission heard the arguments of both the parties and held that at the time of taking policy only six poly-houses were in existence and there was no evidence or proof to substantiate that the insurance was covered for poly- houses 7, 8A and 8B. The National Commission recorded the admitted position that poly-houses 7, 8A and 8B were not in existence at the time of taking insurance policy. The National Commission held that the policy clearly mentioned the number of poly-houses as "six" and in view thereof the complainant is entitled to an amount of Rs.5,72,798/- on account of damages to these poly-houses (nos.1-6) during the storm/cyclone that hit on May 23,1996 and June 18/19,1996 alongwith interest @ 12% from the date of the first Surveyors report i.e. November 6,1997 upto the date of payment, failing which the rate of interest shall be @ 18% per annum.

A 12. Aggrieved by the dismissal of the complaint with regard to the claim for loss to poly-houses 7, 8A and 8B, the insured, as stated, is in appeal.

13. We have heard Mr. Vijay Hansaria, learned senior B counsel for the appellant and Mr. P.K. Seth, learned counsel for the Insurance Company.

14. The question that arises for our consideration is: whether comprehensive floriculture insurance policy issued by the Insurance Company to the insured covered poly-houses 7, C 8A and 8B?

15. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is D requirement of uberimma fides i.e. good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract. The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) E the amount of insurance. Since upon issuance of insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer. The endeavour of the court must always be to interpret the words in which the contract is expressed by F the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in re-writing the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. [*General* G *Assurance Society Ltd. Vs. Chandumull Jain and another*[1], *Oriental Insurance Co. Ltd. Vs. Sony Cheriyan*[2] and *United India Insurance Co. Ltd. Vs. Harchand Rai Chandan Lal*[3]]

1. AIR 1966 SC 1644.

2. (1999) 6 SCC 451.

H 3. (2004) 8 SCC 644.

16. Document like proposal form is a commercial document and being an integral part of policy, reference to proposal form may not only be appropriate but rather essential. However, the surveyors' report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible.

17. That the insured submitted proposal to the Insurance Company for comprehensive floriculture insurance on January 18,1996 is not in dispute. The insured furnished particulars for the following components which were to be covered:

"A)

Polyhouse	1	2	3	4	Total
Value of					(Rs. in Crores)
(1) Steel structure					0.25
(2) Fabrication					0.15
(3) Plastic Grippers					0.10
(4) Plastic & Fittings charges					0.50
(5) Cost of constr. For polyhouses,Gutters & other accessories					0.25
					1.25
B) Irrigation System (Capacities value and specifications for the following)					In lakhs
(1) Plasto make system					15.00
(2) Agricon Associates (Valves & Pipes)					00.50
(3) Fitting charges					00.50
(4) Reservoir					04.00
ELECTRIC MOTOR					
(1) Electric Motor, 15 HP 3 nos., 2 HP 20 nos., 20 HP 1no. with pumps, pipes & valves.					01.00

A	(2) D.G. set, 2 nos., POWERICA (Kirloskar), 140 KVA & 1.25 KVA Transformer, Starters MCL –CTCL & others access	04.00
B		25.00
	(C) Details of flowers planted in Green house or Open Cultivation :	Green House Cultivation
C	(i) No. of Green Houses	: 6 Polyhouses
	(ii) Area under Green Houses	: 2.8 hectares
	(iii) Area under Open Cultivation	: No
D	(D) Details of Flowers plants under cultivation	
	(i) Total area under Floriculture	: 2.8 hectares
	(ii) Survey/Gat/Hissa No.	: 163, 158, 157, 156 148, 149, 147, 164
E	(iii) Name of the flower plants under cultivation	: Dutch Roses
	(iv) Variety	: Vivaldi,Texas, Konfetti, First Red, Vanilla, Kiss, Tiamo, Lambada
F	(v) No. of flowers	: 195500
	(vi) Distance between flower plants	: 14 cm.
G	(vii) Expected date of harvest	: September 1995
	Input cost (From planting to to first flowering i.e. 4 months)	: Rs. 25 lacs
H	(ix) Cost of saplings	: Rs. 70 per plant

(E) Cost of cultivation for flowers	:	25 lacs.
(i) No. of flowers	:	19,55,500.00
(ii) Input cost from first flowering to harvest	:	25 lacs.
(iii) Area under Open Cultivation	:	No"

18. Based on the said proposal, the Insurance Company issued comprehensive floriculture insurance policy on January 23, 1996 The schedule attached to the said insurance policy is thus:

'SCHEDULE'

Insured (Name and address)	:	M/s VIKRAM GREENTECH (i) Ltd. Plot No. 99, Sector 24, Rigdi-Pradhikaran PUNE- 411 044
Policy No.	:	47/221200/00940
Insured at	:	Surat
Proposal Date	:	18th January, 1996
Name of the Crop offered for insurance	:	Floriculture
Period of Insurance	:	18/01/96 to 17/01/97
Address of the Site of the proposal to be Insured	:	Village : Sanghise, Near Kamshet Railway Station Tal.: Maval, District: PUNE
Total sum Insured	:	Rs. 2 crore
Total Premium	:	Rs. 2,20,000/- + 11,000/(s.o.)

INVENTORY OF THE PROPERTY INSURED

(Sections I & II)

Description of the item with sum Insured Details	Rs.	Excess Rs.	Rate Rs.	Premium Rs.
I POLYHOUSE:				
(a) Steel Structure	25,00,000/-			
(b) Fabrication	15,00,000/-			
(c) Gripper	10,00,000/-			
(d) Plastic Fitting Charges	50,00,000/-			
(e) Cutter |				
(f) Plastic |	25,00,000/-			
	1,25,00,000/-			
I IRRIGATION :				
A				
(a) Plasto Make System	15,00,000/-			
(b) Agricon Associates (Valves & Pipes)	50,000/-			
(c) Fitting Charges	50,000/-			
(d) Reservoir	4,00,000/-			
III ELECTRIC MOTOR				
(a) Electric Motor HP	1,00,000/-			
(b) Starter-MCL-CICL }				
(c) Other Assessories, }				
DG set 2 nos.,and }				
Transformers }	4,00,000/-			

19. That the aforesaid policy covered the insured for the loss and and/or damage caused by storm/hailstorm/cyclone over the insured area is not in dispute. The Insurance Company under the policy also agreed that the sum insured would be equal to the costs of placement of the insured property by new property of the same kind and same capacity; in other words

replacement cost.

20. Although, Mr.Vijay Hansaria, learned senior counsel for the insured strenuously submitted that the Proposal Form did not specify the number of poly-houses and, therefore, all poly-houses including 7, 8A and 8B were covered under the policy as they were in existence at the time of calamity that occurred on May 23,1996 and June 18/19,1996, we are afraid, the submission of the senior counsel does not merit acceptance. Admittedly, at the time, the policy was taken (i.e. proposal made on January 18,1996 and insurance policy issued on January 23,1996), poly-houses 1 to 6 were in existence and poly-houses 7, 8A and 8B were not in existence. These poly-houses (7, 8A and 8B) were completed in March 1996. Moreover it is not correct to say that the Proposal Form does not specify the number of poly-houses. It does. It clearly mentions six poly-houses. It is true that six poly-houses are mentioned in Clause(C) of the Proposal Form which is with regard to green house cultivation but what is mentioned in respect of poly-houses in Clause(C) is necessarily referable to the number of poly-houses in Clause(A) of the Proposal Form as well.

21. The learned senior counsel for the insured submitted that the entire material for poly-houses 7, 8A and 8B had already been received at the time of making proposal and issuance of insurance policy and the intention was also to cover the material lying at the site for erection of poly-houses. In this regard, the learned senior counsel sought to refer to the correspondence between the parties and the Surveyors' reports dated October 24,1996 and October 28,1996. He would submit that cost of six constructed poly-houses on the date of making proposal was around Rs.65-70 lakhs and for the insurance cover of these six poly-houses, the insured would not have valued their cost at Rs.1.25 crores and paid premium of Rs.2,31,000/-.

22. A careful consideration of the Proposal Form that sets

A out the particulars of the components which were to be covered and the inventory of the property insured (Sections I and II), mentioned in the policy leaves no manner of doubt that what was insured was existing poly-houses on the date of the issuance of policy. It is clear from the proposal and the policy. B The two documents admit of no ambiguity and it is clear that six poly-houses covering an area of 2.8 hectares was covered by the policy. It may be mentioned that Clauses (C)(ii), (D)(i) and (ii) of the Proposal Form mentions Survey/Gat/Hissa no.163, 158,157,156,148,149,147 and 164 and total area 2.6 C hectares. It is on this area that six poly-houses were existing on the date the proposal was made and policy issued. These six poly-houses were only covered by the policy.

23. The National Commission concluded thus:

D " ..... we are unable to accept the contention of the complainant that only houses 7,8A or 8B were covered under the Insurance Policy in question especially when admittedly, they were non-existent on the date, the policy was taken and policy clearly mentioned the number of poly E houses as "Six". In our view the complainant has failed to prove a case based on the material on record....."

We do not find any error in the conclusion of the National Commission.

F 24. In what we have discussed above, the appeal is liable to be dismissed and is dismissed with no order as to costs.

B.B.B. Appeal dismissed.

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