

A M/S. MODERN INSULATORS LTD.  
v.  
THE ORIENTAL INSURANCE CO. LTD.

FEBRUARY 22, 2000

B [S. SAGHIR AHMAD AND S.N. PHUKAN, JJ.]

*Consumers Protection Act, 1986—Section 2(1)(g)—Insurance—  
Deficiency in—Terms and conditions of the policy not forwarded to the in-  
sured—Held, the said terms and conditions are not binding.*

C *Consumers Protection Act, 1986—Section 19—Appeals—Scope  
of—Held, no new facts can be urged.*

D The appellant manufactured high tension insulators for transmis-  
sion lines. The appellant had taken out an "All Risk Insurance Policy" from  
the respondent for Rs. 50 lakhs for the installation of 25 M3 kiln with  
furniture. The policy covered risks against loss during storage-cum-erec-  
tion including trial and testing of the insulators.

E The appellant erected the kiln and loaded it with insulators for trial  
and testing. In the process of trial, the complete kiln furniture with  
insulators collapsed on the kiln car and the furniture got damaged. The  
appellant lodged a claim with the respondent and the surveyors assessed  
the damage of the appellant at Rs. 4,66,873.

F When the respondent failed to settle the claim of the appellant, the  
appellant filed a complaint before the State Consumer Disputes Redressal  
Commission. In its reply to the complaint, the respondent claimed that the  
damaged property was not covered by insurance policy. The State Com-  
mission allowed the complaint of the appellant.

G Against the order of the State Commission, the respondent filed an  
appeal before the National Consumer Disputes Redressal Commission  
taking a plea that the policy of insurance contained an exclusion clause  
that in the case of second hand/used property, the insurance shall cease  
immediately on the commencement of the test and that the appellant had  
violated the terms and conditions of the policy by using kiln furniture. The  
H appellant denied this and contended that he was supplied only with the

cover note and the schedule of insurance policy and the other terms and conditions including the above mentioned exclusion clause were never supplied to him. A letter written by the Branch Manager of the respondent, confirmed the claim of the appellant.

The National Commission allowed the appeal on the ground that it was the equal responsibility of the respondent to call for the terms and conditions of the policy to understand the extent of the risk covered under the policy.

Allowing the appeal, this Court

**HELD : 1.1.** The finding of the National Commission is untenable in law. As the terms and conditions of the standard policy wherein the exclusion clause was included, were neither a part of the contract of insurance nor disclosed to the appellant, the respondent cannot claim the benefit of the said exclusion clause. [1079-G]

**1.2.** It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agent to disclose all material facts in their knowledge since the obligation of good faith applies to both equally. [1079-F]

**2.** It is a settled position of law that in an appeal the parties cannot urge new facts. From the pleadings of the respondent before the State Commission it is found that the respondent pleaded that the property damaged was not covered under the insurance policy. This plea was given a go-by before the National Commission and a new plea was taken up in the grounds of appeal that the terms and conditions of the insurance policy were violated by the appellant by using used kiln furniture. Allowing the appeal on the basis of this new ground is not sustainable in law. [1080-A-B]

**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 6895 of 1997.

From the Judgment and Order dated 8.1.97 of the National Consumers Disputes Redressal Commission, New Delhi in F.A. No. 595 of 1993.

A Arun Jaitley, M.L. Verma, Rajeev Sharma, Ms. Urmil Narang and D.K. Sinha for the Appellant.

A.K. Raina, G.G. Upadhyay, R.D. Upadhyay and Kr. A.M. Singh for the Respondent.

B The Judgment of the Court was delivered by

PHUKAN, J. This appeal is directed against the order dated 08.01.97 passed by the National Consumer Disputes Redressal Commission whereby the Commission set aside the order passed by the State Commission of Rajasthan in the appeal filed by the respondent.

C The appellant has a factory wherein it manufactures high tension insulators for transmission lines. The appellant had taken out an insurance policy known as 'All Risk Insurance Policy' for Rs. 50 lakhs for installation of 25 M3 kiln with furniture. The policy covered risks against loss during storage-cum-erection including trial and testing. After completion of the erection of 25 M3 kiln, the same was loaded with insulators on 12.7.88 for trial and testing and when it was opened on 16.7.88 it was found that complete structure of kiln furniture with insulators had collapsed on kiln car and various items of kiln furniture were damaged. A claim of Rs. 5,73,397.43 was lodged with the respondent and the surveyors assessed the damage at Rs. 4,66,873. As the claim was not settled a complaint was filed before the State Commission alleging negligence on the part of the respondent and claiming the amount assessed by the surveyor with interest.

F The respondent - Insurance Company in the reply to the complaint filed before the State Commission pleaded that damaged property was not covered by the insurance policy. The State Commission after considering the materials on record rejected the plea of the respondent and directed the respondent to indemnify the loss by making payment of Rs. 4,66,873 with interest @. 18% per annum.

G An appeal was filed before the National Consumer Disputes Redressal Commission and in the grounds of appeal it was stated that the appellant violated the terms and conditions of the policy by using used kiln furniture. This was denied by the appellant.

H The appellant also urged before the National Commission that only the cover note and the schedule of insurance policy were supplied and

other terms and conditions including the exclusion clause were not communicated. According to the appellant the above document supplied did not contain the exclusion clause. The said exclusion clause runs as follows: A

"In the case of second hand/used property the insurance hereunder shall, however, cease immediately on the commencement of the test" B

The National Commission asked the parties to file affidavits to prove that the exclusion clause was duly communicated to the appellant. We have been taken through the affidavits filed and we find in the affidavit of the appellant the letter received by the appellant from the Branch Manager of the respondent was referred to wherein it was confirmed that appellant was supplied only with a cover note and the schedule of the policy. So the other terms and conditions containing the above exclusion clause were not communicated. In the reply affidavit filed by the respondent it was not specifically mentioned that the exclusion clause was also communicated to the appellant. C D

The National Commission was of the view that "it is equally responsibility of the respondent to call for these terms and conditions even if they were not sent by the appellant as alleged, to understand the extent of risks covered under the policy and the associated aspects." E

It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from non-disclosure of the facts which the parties know. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose all material facts in their knowledge since obligation of good faith applies to both equally. F

In view of the above settled position of law, we are of the opinion that the view expressed by the National Commission is not correct. As the above terms and conditions of the standard policy wherein the exclusion clause was included, were neither a part of the contract of insurance nor disclosed to the appellant, respondent cannot claim the benefit of the said exclusion clause. Therefore, the finding of the National Commission is untenable in law. G

We may refer to the next ground on which appeal has to be allowed. H

- A It is settled position of law that in an appeal the parties cannot urge new facts. From the pleadings of the respondent before the State Commission, it is found that respondent pleaded that the property damaged was not covered under the insurance policy. This plea was given a go by before the National Commission and a new plea was taken up in the grounds of appeal that the terms and conditions of the insurance policy were violated by the appellant by using used kiln furniture. The National Commission accepted this new ground and allowed the appeal, which in our opinion is not sustainable in law.
- B

- C For the reasons stated above, we hold that the present appeal has merits.

In the result, appeal is allowed. The judgment of the National Commission is set aside and the judgment of the State Commission is restored.

- D Considering the facts and circumstances of the case, we direct the parties to bear their own cost.

B.K.M.

Appeal allowed.