

ORIENTAL INSURANCE COMPANY LTD. A

v.

M/S OZMA SHIPPING COMPANY & ANOTHER  
(Civil Appeal No. 6289 of 2001)

AUGUST 25, 2009 B

**[DALVEER BHANDARI AND HARJIT SINGH BEDI, JJ.]**

*Marine Insurance Act, 1963: ss.29, 69 – Entire vessel with cargo insured for a sum, after due valuation by surveyor of insurance company – Premium demanded paid by insured – Vessel sank with the cargo – Liability of insurance company – Held: Insurance company has to pay entire insured sum – Attitude of insurance company of avoiding bona fide claim needs to be curbed – Insurance.* C

**Respondent no.1 was the owner of a sailing vessel. The surveyor appointed by appellant-Insurance Company inspected the vessel and certified that market value of vessel was Rs.21.50 lacs. The premium amount was accordingly fixed by insurance company and paid by the respondent 1. The vessel sailed loaded with goods on 23.4.1988 and sank with entire cargo.** D

**Respondent 1 lodged insurance claim. Insurance company agreed to settle the claim for Rs.15 lacs. Respondent 1 filed complaint before the National Commission. National Commission directed the insurance company to pay value of entire vessel Rs.21.50 lacs with @ 12% p.a. from 4th April, 1991. Hence appeal by insurance company.** E

**Disposing of the appeal, the Court** F

**HELD: 1. When the valuation of the vessel was carried out by the Surveyor of the insurance company** G

A who came to the conclusion that the value of the vessel would be Rs.21.50 lacs then the Insurance Company should not hesitate to pay the amount which was legitimately due to the complainant particularly when there was no dispute that the entire vessel with cargo  
B insured with the appellant sank while the vessel was sailing. [Paras 15] [578-E]

2. The insurance companies in genuine and bona fide claims of the insured should not adopt the attitude of avoiding payments on one pretext or the other. This  
C attitude puts a serious question mark on credibility and trustworthiness of the insurance companies. Incidentally by adopting honest approach and attitude the insurance companies would be able to save enormous litigation costs and the interest liability. The tendency of  
D approaching the Apex Court in every such case also needs to be effectively curbed. [Paras 17 and 18] [579-B-C]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6289 of 2001.

From the Judgment & Order dated 25.4.2001 of the National Consumer Disputes Redressal Commission in Original Petition No. 79 of 1995.

F P. Seth, Manjeet Chawla (for Sudhir Kumar Gupta) for the Appellant.

Girish Ananthamoorthy (for P.P. Singh), Praveen Gautam (for Pramod B. Agarwala) for the Respondents.

G The Judgment of the Court was delivered by

H DALVEER BHANDARI, J. 1. This appeal is directed from the judgment dated 25th April, 2001 passed by the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No.79 of 1995.

2. The brief uncontroverted facts in nutshell are as under:- A

Respondent No.1, M/s Ozma Shipping Co. is the owner of a sailing vessel. The same was insured on 14.12.1987 for a sum of Rs.21,50,000/-. A total premium of Rs.40,832.50 was paid for the period covering 14.12.1987 to 13.3.1988. The insurance was extended from 14.3.1988 to 13.6.1988 by paying a premium of Rs.30,383/-. B

3. It may be pertinent to mention that before issuing the policy the Surveyor appointed by the appellant Insurance Company thoroughly inspected the vessel and issued a valuation certificate. The Surveyor after inspecting the vessel certified that the market value of the vessel was Rs. 21,50,000/-. The Surveyor gave a very comprehensive report and took note of the fact that a major over-hauling of the engine and accessories and reconditioning and painting of the Hull had been carried out during 1987. It may be pertinent to mention that the Surveyor had considered all relevant factors in its report. C D

4. Sections 29 and 68 of the Marine Insurance Act, 1963 are relevant in connection with the present controversy involved in this case. It would be appropriate to set out both these sections:- E

"29. *Valued Policy*:- (1) A policy may be either valued or unvalued. F

(2) A valued policy is a policy which specifies the agreed value of the subject matter insured.

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial. G

(4) Unless the policy otherwise provides, the value fixed H

A by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss."

Section 68 reads as under:-

B "*Total Loss* – Subject to the provisions of this Act, and to any express provision in the policy, where there is a total loss of the subject matter insured-

C (1) if the policy be a valued policy, the measure of indemnity is the sum fixed by the policy;

(2) if the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject- matter insured."

D 5. It is clear from the section 29(3) that the value fixed by the policy between the insurer and the assured is conclusive of the insurance value.

E 6. The vessel sailed from Beypore to Kavarati loaded with goods at around 3 p.m. on 23.4.1988. The said vessel sank with the entire cargo.

F 7. Respondent no.1 lodged the insurance claim with the appellant insurance company on 6.5.1989. The appellant insurance company immediately deputed the Surveyor and carried out the spot survey. The Surveyor submitted the report advising carrying out proper investigation. The appellant insurance company agreed to settle the claim of respondent at Rs.15 lacs.

G 8. Respondent no.1 filed a complaint before the National Consumer Disputes Redressal Commission (For short, the 'National Commission'). The complainant prayed that the insurance company be directed to pay the entire insured amount of Rs.21,50,000/- with 18% rate of interest from the date of calamity i.e. from 23rd April, 1988 along with the  
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compensation and costs.

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9. The appellant insurance company submitted before the National Commission that the valuation report of the Surveyor of M/s Ozma Shipping Company was not correct because the value of the said vessel was not more than Rs.15 lacs, therefore, respondent No.1 is not entitled to an amount more than Rs.15 lacs.

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10. It was stated by the appellant company that in the proposal form it was nowhere stated that it had remodeled and reconditioned the vessel by spending a sum of over Rs.5 lacs in the year 1989 and it was alleged for the first time vide order dated 28th February, 1990.

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11. According to the appellant insurance company the market value of the vessel would decrease year after year and it could not enhance to such an exorbitant figure by mere reconditioning, painting and remodeling. The insurance coverage was obtained for a higher sum insured than the actual cost by deliberately concealing the material facts. These pleas of the appellant company are totally devoid of any merit when the Surveyor appointed by the insurance company found the value of the vessel as Rs.21,50,000/- and the appellant company accepted the insurance premium on Rs.21,50,000/-. According to the National Commission, as the Surveyor took note of the fact that a major overhauling of the engine and accessories and reconditioning and painting of the Hull had been carried out during 1987, there seems to be no justification from deviating from that figure.

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12. There are following undisputed and uncontroverted facts in this case:-

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- (I) vessel sailed form Beypore to Kavarati loaded with goods on 23.4.1988 and according to the Surveyor after inspecting the vessel he certified the market value of the vessel as Rs.21,50,000/-.

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A (II) The premium was admittedly paid on that amount.

(III) The said vessel sank with the entire cargo.

B 13. The National Commission held that on consideration of the relevant factors the valuation of the vessel was valued as Rs.21,50,000/-. On the basis of the valuation, the insurance premium was paid on the amount of Rs.21,50,000/-. The National Commission also came to the definite finding that the complainant was not guilty of any concealment of facts.

C 14. On consideration of the totality of the facts and circumstances, the impugned judgment of the National Commission is absolutely correct and the National Commission was fully justified in directing the insurance company to pay the value of the entire vessel Rs.21,50,000/- with interest at the rate of 12% per annum from 4th April, 1991.

D 15. It may be pertinent to mention that when the valuation of the vessel had been carried out by the Surveyour of the insurance company who came to the conclusion that the value of the vessel would be Rs.21,50,000/- then the Insurance Company should not hesitate to pay the amount which is legitimately due to the complainant particularly when there is no dispute that the entire vessel with cargo insured with the appellants sank while the vessel was sailing from Beypore to Kavarati.

F 16. We have heard the learned counsel for the parties and carefully perused the impugned judgment. In our considered view no interference is called for. We make it clear that in case the entire amount in the sum of Rs.21,50,000/- has not been paid to the respondent company, the same would be paid as expeditiously as possible and in any event within six weeks from the date of communication of this judgment. If some amount has been paid by the appellants insurance company to respondent No.1 in that event they would ensure that the adjustment of that amount is done and the remaining amount be paid to

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respondent No.1 within six weeks from the date of this judgment along with interest. A

17. Before parting with this case we would like to observe that the insurance companies in genuine and bona fide claims of the insured should not adopt the attitude of avoiding payments on one pretext or the other. This attitude puts a serious question mark on their credibility and trustworthiness of the insurance companies. Incidentally by adopting honest approach and attitude the insurance companies would be able to save enormous litigation costs and the interest liability. B

18. The tendency of approaching the Apex Court in every such case also needs to be effectively curbed. C

19. The appeal being devoid of any merit is accordingly dismissed with costs which is quantified at Rs.25,000/- to be also paid by the appellant Insurance Company to respondent No. 1 within six weeks from today. The appeal is accordingly disposed of. D

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Appeal disposed of.

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