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NATIONAL INSURANCE CO. LTD.

v.

HINDUSTAN SAFETY GLASS WORKS LTD.

(Civil Appeal No. 3883 of 2007)

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APRIL 07, 2017

**[MADAN B. LOKUR AND PRAFULLA C. PANT, JJ.]**

*Consumer Protection Act, 1986:*

C *Damages – Policy taken out by respondent covering damage or loss due to flood and inundation – Damage caused by heavy rain – Claim for Rs.52 lakhs – Two survey reports quantifying loss of Rs.24 lakhs – Nothing paid by appellant-insurer – Complaint under CP Act – Repudiation of claim 5 years after the complaint – Award of Rs.21 lakhs by National Commission – Challenged by insurer – Held: The appellant-insurer itself took more than two*  
D *years in surveying or causing a survey of the loss or damage suffered by the insured – Thus, entire delay was attributable to insurer and cannot prejudice the claim of the insured, more particularly when the insured had lodged a claim well within time – It is well established that the provision of limitation in the Act cannot be strictly construed*  
E *to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim – That being so, the National Commission was quite right in rejecting the contention of insurer in this regard – No reason to interfere with the order of National Commission.*

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*Actionable claim – Claim made by insured – As per policy, insurer was not liable for any loss 12 months after the event that caused loss to the insured unless claim is subject matter of pending action or arbitration – Contention of insurer that expression 'pending action' relate to action instituted in a court of law – Held: Not sustainable – When a claim is made by the insured that itself is*  
G *actionable – There is no question of requiring the insured to approach a court of law for adjudication of the claim – This would amount to encouraging avoidable litigation which certainly cannot be the intention of the insurance policies and is in any case not in public interest – Insurance.*

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Dismissing the appeals, the Court

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**HELD:** 1.1. A plain reading of condition no. 6 (ii) of the insurance policies showed that the appellant-insurer would not be liable for any loss or damage 12 months after the event that caused the loss or damage to the insured unless the claim is the subject matter of a pending action or arbitration. The contention of the appellant-insurer that the expression 'pending action' must relate to action instituted in a court of law is not acceptable. Moreover, the disclaimer by the appellant-insurer was only in May 2001 and the period of 'limitation' under the policies could not have started before that time. [Paras 12, 13][525-B, D]

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1.2. The appellant-insurer itself took more than two years in surveying or causing a survey of the loss or damage suffered by the insured. Thus, the entire delay is attributable to appellant-insurer and cannot prejudice the claim of the insured, more particularly when the insured had lodged a claim well within time. To make matters worse, the insurer actually repudiated the claim of the insured only on 22<sup>nd</sup> May, 2001 which is well after the complaint was filed with the National Commission. [Para 17][526-D-E]

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2. In a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim. That being so, the National Commission was quite right in rejecting the contention of National Insurance in this regard. The National Commission accepted the second survey report as well as the addendum to it and there was no reason to disagree with the findings arrived at in the absence of any material to discredit the surveyor or the report of the surveyor. No case is made out by National Insurance to interfere with the order passed by the National Commission. [Paras 18, 20 and 21][526-F-G; 527-C-D, E]

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- A *State Bank of India v. B.S. Agriculture Industries (I)* [2009] 4 SCR 762; *Kandimalla Raghavaiah & Co. v. National Insurance Co.* [2009] 10 SCR 870 – distinguished.

Case Law Reference

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|---|-------------------|---------------|---------|
| B | [2009] 4 SCR 762  | distinguished | Para 15 |
|   | [2009] 10 SCR 870 | distinguished | Para 16 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3883 of 2007.

- C From the Judgment and Order dated 23.04.2007 of the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 161 of 1996

WITH

- D C. A. No. 1156 of 2008.  
Vishnu Mehra, Pramod Dayal, Advs., for the Appellant.

Jayant Bhushan, Sr. Adv., S.M. Suri, Ms. Manjeet Chawla, Ramesh Singh Suman Jyoti Khaitan, Ms. Anne Mathew, Vikas Kumar, Advs. for the Respondent.

- E The Judgment of the Court was delivered by

F **MADAN B. LOKUR, J. 1.** The question arising in the first appeal directed against the judgment and order dated 23<sup>rd</sup> April, 2007 passed by the National Consumer Disputes Redressal Commission (for short 'the National Commission') in Original Petition No. 161 of 1996 is whether the claim of the respondent for goods insured, was rightly accepted (though in part) by the National Commission. Our answer to this question is in the affirmative and we find no reason to interfere with the decision of the National Commission.

G 2. The respondent Hindustan Safety Glass Works Ltd. (for short 'the insured') had taken out two policies with the appellant National Insurance Company, both dated 29<sup>th</sup> August, 1990 for a period of one year which were subsequently renewed for another year. The first policy was for an amount of Rs. 4.9 lakhs to cover the risks on office building, residential quarters and canteen etc. in Calcutta. The second  
H policy was for an amount of about Rs. 5.7 crores to cover the risks on

building, machinery, finished and semi finished stocks, store, furniture, wiring and fittings etc. in its factory/works in Calcutta. The policies included damage or loss due to flood and inundation. A

3. There is no dispute that on 6<sup>th</sup> August, 1992 there was heavy incessant rain in Calcutta resulting in heavy accumulation of rain water inside and around the factory/works of the insured. According to the insured, there was considerable damage to raw materials, stocks and goods, furniture etc. As a result of the damage suffered by the insured and in terms of the two policies taken out with National Insurance, claims were filed by the insured on 7<sup>th</sup> and 8<sup>th</sup> August, 1992 claiming a total amount of about Rs. 52 lakhs. B

4. Pursuant to the claims having been made, National Insurance appointed N.T. Kothari & Co. as its surveyor on 24<sup>th</sup> September, 1992. The requisite survey was carried out and N.T. Kothari & Co. submitted its report on 11<sup>th</sup> November, 1993 indicating a loss of about Rs. 24 lakhs having been suffered by the insured. C

5. For reasons that are not very clear, National Insurance did not accept the report and instead appointed Seascan Services (WB) Pvt. Ltd. as a surveyor to report on the loss or damage suffered by the insured. The second surveyor gave its report on 23<sup>rd</sup> November, 1994 assessing the loss or damage suffered by the insured at about Rs. 26 lakhs. By an addendum issued on 10<sup>th</sup> February, 1995 the damage or loss incurred by the insured was reduced to about Rs. 24 lakhs. D E

6. In spite of two survey reports quantifying the loss or damage suffered at about Rs. 24 lakhs, nothing was paid to the insured by National Insurance. Consequently, on 22<sup>nd</sup> April, 1996 the insured sent in notice to National Insurance to the effect that its claim had not been settled and that the loss or damage claimed was to the extent of about Rs. 52 lakhs and that this should be paid. F

7. National Insurance did not reply to this notice and consequently, the insured filed a complaint with the National Commission under the provisions of the Consumer Protection Act, 1986 (for short 'the Act') claiming an amount of Rs. 52.32 lakhs along with an amount of about Rs.1.81 lakhs being the expenses incurred for the purpose of loss minimisation. Interest at 18% per annum was also claimed by the insured with effect from 6<sup>th</sup> December, 1992 that is four months after the occurrence of the flood or inundation. G H

A           8. At this stage, it may be noted that the claims made by the insured in terms of its letters dated 7<sup>th</sup> and 8<sup>th</sup> August, 1992 as well as the notice dated 22<sup>nd</sup> April, 1996 were repudiated by National Insurance much later on 22<sup>nd</sup> May, 2001 which is about five years after the complaint was filed with the National Commission.

B           9. Be that as it may, in response to the complaint and during the course of submissions, National Insurance raised four objections. These have been summarised by the National Commission as follows:

(i) Complaint was barred by condition No. 6(ii) of the policies;

C           (ii) Complaint was barred by limitation as it was filed on 13.08.1996 while the loss/damage to the insured properties had taken place in August, 1992.

(iii) Alleged loss had been caused due to accumulation of dust and moisture on the stocks lying unattended because of lock out in the factory from 03.05.1991 and not as a result inundation/flood.

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(iv) None of the two survey reports can form the basis for payment of the amount claimed.

E           10. The National Commission rejected all the contentions urged by National Insurance and by the impugned judgment and order the insured was awarded an amount of Rs. 21,05,803.89 with interest at 9% per annum from 11<sup>th</sup> May, 1995 that is three months after the addendum issued by Seascan Services (WB) Pvt. Ltd. (the second surveyor). Costs of Rs. 20,000/- were also awarded to the insured. In our opinion there is no error in the decision appealed against.

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11. In so far as the first objection is concerned, namely, reliance on condition number 6(ii) of the insurance policies it is necessary to first understand the scope of this condition which reads as follows:

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“In no case whatsoever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration: it being expressly agreed and declared that if the company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a

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court of law and the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.” A

12. A plain reading of the aforesaid condition leads to the conclusion that National Insurance would not be liable for any loss or damage 12 months after the event that caused the loss or damage to the insured unless the claim is the subject matter of a pending action or arbitration. It was submitted by learned counsel for National Insurance that the expression ‘pending action’ must relate to action instituted in a court of law. B

13. We are not at all impressed by this submission. When a claim is made by the insured that itself is actionable. There is no question of requiring the insured to approach a court of law for adjudication of the claim. This would amount to the encouraging avoidable litigation which certainly cannot be the intention of the insurance policies and is in any case not in public interest. Moreover, the disclaimer by National Insurance was only in May 2001 and the period of ‘limitation’ under the policies could not have started before that time. We leave the matter at that, more particularly since the learned counsel for National Insurance strictly did not press this submission. C D

14. However, learned counsel vehemently argued that in terms of Section 24-A of the Act, the claim made by the insured was barred by limitation since the complaint was filed with the National Commission on 13<sup>th</sup> August, 1996 while the loss or damage had occurred on 6<sup>th</sup> August, 1992. Therefore, the National Commission could not have admitted the complaint since it was filed beyond the stipulated period of two years from the date on which the cause of action had arisen. E F

15. Learned counsel placed reliance on *State Bank of India v. B.S. Agriculture Industries (I)*<sup>1</sup> but we do not see the relevance of this decision. On facts, it was found in this case that the cause of action had accrued to the appellant therein on 7<sup>th</sup> June, 1994 but a complaint was filed with the National Commission on 5<sup>th</sup> May, 1997. Clearly the complaint was barred by limitation. G

16. Similarly, reliance on *Kandimalla Raghavaiah & Co. v. National Insurance Co.*<sup>2</sup> is misplaced. In this case, a fire broke out in

<sup>1</sup> (2009) 5 SCC 121

<sup>2</sup> (2009) 7 SCC 768

A the premises of the insured on 23<sup>rd</sup> March, 1988 and the appellant therein sought a claim from the insurance company on 6<sup>th</sup> November, 1992 while the complaint was filed with the National Commission on 24<sup>th</sup> October, 1997. Under these circumstances, it was held that the complaint was barred by limitation.

B 17. Strictly speaking, the event that caused the loss or damage to  
the insured occurred on 6<sup>th</sup> August, 1992 when due to heavy incessant  
rain in Calcutta, the raw materials, stocks and goods, furniture etc. of  
the insured were damaged. On the very next day, the insured lodged a  
claim with National Insurance. In response, National Insurance first  
C appointed N.T. Kothari & Co. to assess the loss suffered by the insured  
and a report was given by this surveyor after more than one year.  
Thereafter, for reasons that are not at all clear, National Insurance  
appointed a second surveyor which also took about one year to submit  
its report and eventually gave an addendum to that report thereby crossing  
D one year in completion of its report along with the addendum. In other  
words, National Insurance itself took more than two years in surveying  
or causing a survey of the loss or damage suffered by the insured. Surely,  
this entire delay is attributable to National Insurance and cannot prejudice  
the claim of the insured, more particularly when the insured had lodged  
a claim well within time. To make matters worse, National Insurance  
actually repudiated the claim of the insured only on 22<sup>nd</sup> May, 2001 which  
E is well after the complaint was filed with the National Commission.

18. In our opinion, in a dispute concerning a consumer, it is  
necessary for the courts to take a pragmatic view of the rights of the  
consumer principally since it is the consumer who is placed at a  
disadvantage vis-à-vis the supplier of services or goods. It is to overcome  
F this disadvantage that a beneficent legislation in the form of the Consumer  
Protection Act, 1986 was enacted by Parliament. The provision of  
limitation in the Act cannot be strictly construed to disadvantage a  
consumer in a case where a supplier of goods or services itself is  
instrumental in causing a delay in the settlement of the consumer's claim.  
G That being so, we have no hesitation in coming to the conclusion that the  
National Commission was quite right in rejecting the contention of National  
Insurance in this regard.

19. In so far as the third contention urged by National Insurance  
is concerned this is itself contradicted by the reports of the two surveyors  
appointed by it. It is possibly to get over this difficulty that National  
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Insurance advanced the fourth contention namely that none of the two survey reports could form the basis for payment of the amount claimed. A

20. In this context, the contention urged was that the first survey report given by N.T. Kothari & Co. was not a *bona fide* report inasmuch as the Central Glass and Ceramic Research Institute, Calcutta had not authorised that specific officer to give any report with regard to the damage or loss suffered by the insured. Without going into this aspect of the matter since the National Commission itself did not rely upon the first survey report, we may notice that the second survey report was prepared in consultation with that very institute namely the Central Glass and Ceramic Research Institute, Calcutta but on this occasion, another officer had been consulted. The Insurance Company failed to provide any reason before the National Commission or even before us to remotely suggest that the second report was also tainted either because the officer consulted was not authorised to give a report or for any other justifiable reason. The National Commission accepted the second survey report which was provided by Seascan Services (WB) Pvt. Ltd. as well as the addendum to it and we do not see any reason to disagree with the findings arrived at in the absence of any material to discredit the surveyor or the report of the surveyor. B  
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21. Accordingly, in our opinion no case is made out by National Insurance to interfere with the order passed by the National Commission. E

**CIVIL APPEAL NO. 1156 OF 2008**

22. This appeal also concerns the interpretation, in the context of limitation, of condition number 6(ii) of the insurance policy taken out by the insured. In this appeal, the insured suffered a loss or damage to its goods in an incident that occurred on 6<sup>th</sup> September, 1993. A claim was lodged by the insured on the next day. The claim was repudiated by National Insurance on 27<sup>th</sup> December, 1999 while a compliant filed by the insured in the National Commission was pending since 6<sup>th</sup> March, 1998. In view of these facts and in view of the discussion in the connected appeal, there is no merit in the objection raised by learned counsel that the complaint was barred by limitation in view of condition number 6(ii) of the insurance policy or Section 24-A of the Act. In any event, this contention was not strictly pressed by learned counsel on the facts of this appeal. F  
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23. On the merits of the case, the only issue is whether the loss or H

A damage to the insured machine was caused by an explosion or by a short circuit. According to National Insurance, a short circuit in the machine disentitled the insured from making a claim. The National Commission held, on a consideration of the evidence that an explosion had occurred in the machine and that resulted in a short circuit and consequent loss or damage to the machine.

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24. Having gone through the evidence on record, we find that the view taken by the National Commission is not only based on the evidence on record, but is in any event a possible view. In the absence of any material error in appreciation of the evidence, we do not think it proper to substitute the view taken by the National Commission with our view.

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25. Therefore even in this appeal, National Insurance has not been able to make out a case for interference with the order passed by the National Commission.

### **Result**

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26. Both the appeals are without any merit and are accordingly dismissed.

Devika Gujral

Appeals dismissed.