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SC ON INTERPRETATION OF INSURANCE EXCLUSION CLAUSES

The Supreme Court (“**SC**”), in *United India Insurance Co. Ltd.* case,¹ reiterated that exclusion clauses in insurance contracts must be interpreted strictly and against the insurer as they have the effect of completely exempting the insurer of its liabilities.

Brief Facts

The National Highways Authority of India (“**NHAI**”), one of the respondents awarded a contract for the design, construction and maintenance of a bridge to a joint venture between Hyundai Engineering & Construction and Gammon India (“**JV**”). The works were to be completed on terms and conditions specified in the contract.

The contract for design, construction and maintenance of the bridge was awarded to another joint venture (“**Design Consultants**”).

United India Insurance Co. Ltd. (“**UI**”) issued insurance policy covering the interests of NHAI as the principal, and JV extending coverage for a pre-specified amount (“**Insurance Policy**”).

The Insurance Policy excluded the UI’s liability for events of loss caused by damage due to faulty design; cost of replacement, repair or rectification of defective material; and workmanship.

A structure of an under-construction bridge collapsed resulting in the death of some workmen. A Committee was constituted by the Government of India to investigate the cause of the collapse (“**Committee**”).

UI, at NHAI’s request appointed a surveyor to assess the damage and sought indemnification of the loss. JV concurrently filed a claim with UI.

The Committee submitted its report *inter alia* finding design changes were made to the construction at variance to specifications and without consultation with or approval of the Design Consultants. The Surveyor, basis field assessment, recommended UI to repudiate the claim.

¹ *United India Insurance Co. Ltd. v. M/s Hyundai Engineering & Construction Co. Ltd. & Ors.*, (2024) 6 Supreme Court Cases 310) (“**Judgement**”).

On its rejection, JV approached the National Consumer Disputes Redressal Commission (“NCDRC”) alleging deficiency in UI’s service and unfair trade practice adopted by it.

NCDRC decided in favour of JV primarily relying on the reports of certain foreign experts. UI appealed to the SC against it.

UI’s Contentions

The repudiation was based on cogent evidence i.e., Surveyor’s and Committee’s reports.

JV relied on reports of independent foreign experts not introduced in evidence. Nor were the reports put to test by cross-examination.

Committee experts were independent and well qualified. The variations in design were not verified and approved.

The workmanship was at variance with approved specifications. The Surveyor’s report concluded that the construction was faulty.

JV’s Contentions

The exclusionary clauses place extraordinary burden on an insurance company. Foreign experts’ reports establish that JV were not at fault.

NHAI continued the contract with JV and the construction was completed.

SC’s Judgement and Reasoning

It relied on *National Insurance Company Ltd.* case² where it had held that it is the duty of the insurer to plead and lead cogent evidence to establish the application of an exclusionary clause.

Here, it held that UI sufficiently discharged that burden.

SC relied on its decisions in *Hareshwar Enterprises (P) Ltd.* case³ and *National Insurance Company Ltd.* case⁴ where it was held “*that the surveyor’s report is a credible evidence and the court may rely on it until a more reliable evidence is brought on record ...*”

The SC allowed the appeal and set aside NCDRC’s order.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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² *National Insurance Company Ltd. v. Vedic Resorts and Hotels Pvt. Ltd.*, (2023 SCC OnLine SC 648)

³ *National Insurance Company Ltd. v. Hareshwar Enterprises (P) Ltd.* ((2021) SCC Online SC 628.)

⁴ *National Insurance Company Ltd. v. Vedic Resorts and Hotels Pvt. Ltd.*, (2023 SCC OnLine SC 648)