

DELAY CANNOT BE RAISED AS A GROUND FOR REPUDIATION FOR THE FIRST TIME BEFORE CONSUMER FORUM

*The Supreme Court of India in its decision in **Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd.**, [Civil Appeal No. 2059 of 2015] held that if the insurer has not taken delay in intimation on the part of the insured as a specific ground for refusal of claim in its letter of repudiation, then it cannot take the said ground in the proceedings before Consumer Forum.*

FACTS:

The Appellant – Insured had availed a standard fire and special perils policy from the Respondent insurance company insuring the stock of coal and lignite stored in its factory compound against the risk of loss/ damage to the same. An additional premium was also paid by the Appellant in order to cover the risk of loss to the aforesaid stock on account of spontaneous combustion. The Appellant was declared a Sick unit under Sick Industrial Companies Act and the factory remained closed from 17th February 2006 to 9th August 2006.

The factory reopened on 10th August 2006 and between 11th August 2006 to 20th August 2006, it was noticed that some amount of coal and lignite has been diminished/ destroyed on account of spontaneous combustion causing loss and damage. An intimation in respect of the spontaneous combustion was sent to the Respondent – Insurer on 12th September 2006.

Thereafter, a Surveyor was appointed who submitted his report on 11th April 2007 after assessing the total loss to the tune of Rs. 63,43,679/-.

The Appellant's claim was however repudiated

by the Respondent vide a communication dated 27th July 2007 on the ground that since spontaneous combustion did not result into fire, thus, loss had not been caused by fire as stipulated in the relevant endorsement with respect to spontaneous combustion of the insurance policy. It was stated that unless spontaneous combustion results into fire, there is no liability under the policy.

On denial of the claim by the Respondent, the Appellant filed a Consumer Complaint before the National Consumer Disputes Redressal Commission ("**NCDRC**") which was resisted by the Respondent on three main grounds:

- (i) No claim was payable under the insurance policy in as much as loss caused to the property on account of natural heating or spontaneous combustion is not covered.
- (ii) Since the factory remained closed for almost 6 months, the insurance cover ceased to operate as per the insurance policy which stated that the insurance would cease to operate as regards the property affected if the building insured or containing the insured property becomes unoccupied and so remains for a period of more than 30 days.

- (iii) There was a considerable delay of over one month in sending the intimation of claim thereby violating condition no. 6(i) of the general conditions of policy.

The grounds (i) and (ii) stated above were not accepted by the NCDRC and were decided against the Respondent. However, ground no. (iii) found favour with the NCDRC and the complaint was dismissed on the premise that there was breach of condition No. 6(i) of the general conditions of policy. As per condition no. 6(i), the intimation of loss was required to be given in writing within a period of 15 days from the date of the occurrence of the incident.

An appeal was then filed before the apex court by the Appellant challenging the decision of the NCDRC rejecting its claim against the Respondent insurance company.

SUBMISSIONS:

It was submitted by the Counsel for the Appellant that NCDRC had erred in rejecting the claim because of delayed intimation since the Respondent company's right to oppose the Appellant's claim stood waived since it appointed a surveyor. It was further contended that the ground of delayed intimation cannot be taken as a defence since the letter of repudiation does not even remotely refer to delayed intimation as postulated in condition no. 6(i) of the policy.

On the other hand, Counsel for the Respondent submitted that by mere appointment of a Surveyor, the insurer is not estopped from raising a plea of violation of a condition warranting repudiation.

ISSUES:

1. Whether the Respondent – Insurer had waived the condition relating to delay in intimation and lodging of the claim, by appointing a surveyor?
2. Whether in the absence of any mention of aspect of delay in intimation and violation of conditions of Clause 6(i) of General Conditions of Policy in the repudiation letter, the same could be taken as defence before the NCDRC?

JUDGMENT:

The apex court noted that the repudiation letter issued by the Respondent – Insurer does not make any reference to clause/condition no. 6(i) of the general conditions of policy in relation to delay in intimation.

On the first issue, the apex court considered the division bench judgment in ***Galada Power and Telecommunication Ltd. v. United India Insurance Co. Ltd. & Anr., (2016) 14 SCC 161*** where despite violation of duration clause, the insurance company had appointed a surveyor. In *Galada case (supra)*, it was noted that the insurer appointed a surveyor despite the duration clause in the insurance policy, the letter of repudiation did not make reference to the duration clause, thus, by positive action, the insurer had waived its right to advance the plea that the claim was not entertainable because conditions enumerated in the duration clause were not satisfied.

However, the dictum in *Galada case (supra)* came up for consideration before a three judge

bench of the apex court in the case of ***Sonell Clocks and Gifts Ltd. v. New India Assurance Co. Ltd., (2018) 9 SCC 784*** and the ***Galada case (supra)*** was distinguished on the ground that the dictum in *Galada case* was in the context of peculiar facts and circumstances and does not lay down that on appointment of the surveyor, the insurer is estopped from raising the plea of violation of condition stipulated in the insurance policy. The *Sonell case (supra)* stated as follows:

"23. We, therefore, agree with the Respondent that the dictum in Galada case is in the context of the facts of that case and does not lay down that on the appointment of a surveyor, per se, the insurer is estopped from raising a plea of violation of the condition warranting a repudiation of the claim. The factum of waiver has to be gathered from the totality of the obtaining circumstances."

In the present case, the Supreme Court relied on the decision in *Sonell case (supra)* while answering the first issue and held that the appointment of Surveyor does not lead to waiving the terms and conditions of the policy.

On the second issue, it was held that the letter of repudiation does not even remotely mention anything about violation of the duration clause stipulated in clause 6(i) of the general

conditions of policy. The issue of delayed intimation was raised by the Respondent for the first time in its reply before the NCDRC.

The court distinguished the facts in the *Galada case (supra)* and *Sonell case (supra)* in as much as in *Sonell case (supra)*, the insurer had taken a specific plea of delay in intimation in its repudiation letter. The apex court in *Sonell case* did not have the occasion to consider whether the insurance company could have raised delay as a ground for repudiation for the first time before consumer forum.

Whilst relying on the decision in *Galada case (supra)* on the second issue, the Supreme Court held that if the insurer has not taken delay in intimation as a specific ground in its letter of repudiation, then it cannot take the said ground in the proceedings before NCDRC.

Accordingly, the appeal was allowed and the impugned judgment and the order of the NCDRC was set aside.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.