

INSURANCE INSIGHT

Timely intimation of loss critical in commercial risk policy

Court not to go beyond the terms of the insurance policy

Can personal accident cover include persons other than owner?



Timely intimation of loss critical in commercial risk policy

Hon'ble National Consumer Disputes Redressal Commission ("NCDRC") in Ratna Giri Gas & Power Pvt. Ltd. v. ICICI Lombard General Insurance & Ors., CC/256/2011, judgment dated 01/02/2023 has held that disclosure of material information is important to make an assessment of the risk being undertaken by the insurer and if any information given at the time of purchase of insurance was untrue, incorrect or undisclosed, the insurer had every right to cancel the contract.

This is a case where contract work was given to a joint venture for revival activity of LNG storage and regasification of the plant. To cover the risk, the complainant obtained an All-Risk Policy for erection of LNG Storage and regasification for a sum of Rs.2000 crores for a premium of over 8 crores. Upon loss, the insurance company repudiated the claim on the grounds that the insured had failed to establish the date of occurrence and the specific event which caused the damages. It was further stated that the damage was in all probability pre-existing i.e. prior to commencement of policy period and that the insurance company was not liable for any loss, damage or liability, of which no notice was received by the company within 14 days of its occurrence.

Hon'ble NCDRC upheld the repudiation and observed that there the survey was carried out 11 months after the damage was first noticed by the contractors because of the delayed intimation of

the same by the complainant.

This case highlights the relevance of delay in intimation of loss where time is a determining & critical factor such as in cases of commercial risk policies since where delay has a deteriorating effect.

Court not to go beyond the terms of the insurance policy

Hon'ble National Consumer Disputes Redressal Commission ("NCDRC") in Gora Chand Chatterjee v. Karan Kumhare, Senior Manager, ICICI Prudent Life Insurance & Anr., RP/1253/2019 through its judgment dated 01/02/2023 has held that the insurance company cannot be faulted for having followed the conditions of the policy which is a contract between the insured and the insurer and binds them to the terms of that contract.

This is a case where insured had taken a Unit Linked Pension Policy and paid the 1st premium. It was the insured's case that since the IRDA Circular dated 21.12.2005 discontinued the above policy, he was entitled for refund of the NAV of the amount paid as premium. The insurance company contended that the circular did not apply to existing policies and therefore, the insured was entitled only to the surrender value. i.e. 25% of the fund value under the policy.

The Hon'ble District Forum and State Commission held in favour of insurance company. Hon'ble NCDRC while confirming their orders held that

the insured cannot treat the insurance policy as an investment which is linked to the Sensex and seek refund on the basis of NAV since the contract of insurance is bound by the terms which may be related to the fluctuations of the Sensex but cannot be considered to be a deposit to reap the gains of investment.

Hon'ble NCDRC observed that the plain reading of the circular indicates that it only sets out guidelines to provide a fair insurance coverage and disclosure to facilitate an informed decision by the policy holder as to the investment risk and the guiding factors in the policy which is linked to investment. The policy had not been discontinued as interpreted / understood by the insured. Therefore, the insured's case that he discontinued the payment of the premium on account of deficiency in service by the insurance company is not sustainable.

Hon'ble NCDRC further held that the payment of surrender amount as per agreed terms and conditions cannot tantamount to deficiency in service since the terms incorporated in the policy are agreement between the parties for intents and purposes and the parties are bound by them. Thus, once agreement is entered into, none of the parties can go behind the terms of such agreement or allege that the conditions were not fair.

Can personal accident cover include persons other than owner?

Hon'ble Supreme Court of India in *Sujata Singh & Anr. v. Divisional Manager National Insurance Company Limited & Anr.* (Civil Appeal Nos. 7198-7199 of 2022) has directed Insurance Regulatory Development Authority of India to consider whether claims by family members, friends, or such persons other than the registered owner driving or riding borrowed vehicles, could be the beneficiaries of personal accident cover, where the accidents could not be attributed to other offending vehicle or the driver's own negligence but only to other intervening circumstances.



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