

2025 LiveLaw (SC) 1100

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

PAMIDIGHANTAM SRI NARASIMHA; J., MANOJ MISRA; J.

SLP (C) Nos. 1377-1378/2022; November 13, 2025

**KOPARGAON SAHAKARI SAKHAR KARKHANA LTD (NOW KNOWN AS KARMAVEER
SHANKARRAO KALE SHAHKARI SHAKHAR KARKHANA LTD.)**

versus

NATIONAL INSURANCE CO. LTD. & ANR.

Insurance Law - Exclusion Clause - Boiler & Pressure Plant Insurance Policy - Burden of Proof – Held, a subsequent discovery of damage or corrosion cannot be used to repudiate the claim as it would defeat the main purpose of the insurance contract - In the absence of a stand that the boiler and its parts had a prescribed life and had outlived it, or that there was a failure on the part of the insured in making full and complete disclosure, making the contract voidable, exclusion clause 5 could not have been pressed into service to repudiate the claim of the insured - The burden of proof to bring the case within the exclusionary clause lies on the insurance company - When an insurer accepts the risk, it can repudiate the claim on limited grounds such as: (a) by pleading and proving that there was a failure on the part of the insured in making disclosure of a material fact which renders the contract voidable at the instance of the insurer; and (b) by demonstrating that the terms and conditions of the contract of insurance exclude such claims. [Paras 20-25, 33-39]

Contract of Insurance is a contract of uberrima fides (utmost good faith) – Held, the proposer is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to know at the material time - An exclusion clause in the policy is to be construed in a manner that it does not defeat the main purpose of the contract and could even be read down to serve the main purpose of the policy that is to indemnify the policy holder - Appeal allowed. [Relied on *Canara Bank vs. United India Insurance Company Limited and Ors.* (2020) 3 SCC 455; Para 24, 25-30]

For Petitioner(s) Mr. Shekhar G. Devasa, Sr. Adv. Ms. Rajshri A. Dubey, Adv. Mr. Abhishek Chauhan, Adv. Mr. Amit P. Shahi, Adv. Mr. H.B. Dubey, Adv. Mr. Amit Kumar, Adv. Mr. Shashi Bhushan Nagar, Adv. Ms. Jashmita, Adv. Mr. Prashant, Adv. Mr. Gaurav sharma, Adv. Mr. Yogesh Malhotra, Adv. Mr. Ashutosh Dubey, AOR.

For Respondent(s) Mr. Gaurav Sharma, AOR Mr. Sushant Kishore, Adv. Mr. Adarsh Dubey, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya Aniruddha Pande, AOR.

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.
2. These two appeals arise from a Consumer Complaint No. 7 of 2007 filed by the appellant against the respondents before the Maharashtra State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at Aurangabad¹. The State Commission *vide* order dated 24.07.2012 partly allowed the complaint and, *inter alia*, awarded Rs.49 lacs as compensation to the complainant-appellant with interest @ 6% p.a. w.e.f. 03.07.2006 till realization of the awarded amount.

¹ State Commission

3. Against the order of State Commission two appeals were filed before the National Consumer Disputes Redressal Commission, New Delhi². Appeal No.166 of 2013 was by the appellant for enhancement of compensation whereas Appeal No.580 of 2012 was by the insurance company (i.e., the first respondent) against award of compensation.

4. NCDRC allowed the appeal of the first respondent and dismissed the appeal of the appellant by a common judgment and order dated 09.11.2020, which is impugned in these appeals filed by the complainant-appellant.

Facts

5. Relevant facts are as under:

(i) The appellant obtained an insurance policy from the first respondent (i.e., insurance company). The policy provided insurance cover, *inter alia*, to Boiler no.GT-23 for the period starting from 01.02.2005 up to 31.01.2006. The risk covered loss /damage up to Rs.1.60 crores.

(ii) On 12.05.2005, a blast/ explosion took place in that boiler. Intimation of the blast was provided to the boiler inspector as also to the first respondent.

(iii) The first respondent appointed a surveyor to inspect the boiler and assess the loss.

(iv) Based on surveyor's report, appellant's claim for compensation was repudiated by the first respondent *vide* letter dated 22.06.2005, which reads thus:

"NATIONAL INSURANCE COMPANY LTD.

(Subsidiary of General Insurance Corporation of India)

Branch Near Kanya Vidyalaya KOPARGAON-423601

Our ref.no.270708 22.06.2005

To,

The Managing Director,

The Kopargaon Sahakari Sakhar Karkhana Ltd., Gautamnagar, Kolpewadi, Kopargaon.

Dear Sir,

Re: Claim for accident damaged Boiler No.2 GT-23 on 14.05.2005 at night- Our Policy No.271901/ 44/04/51/16. Claim No.271901/ 44/ 05/ 51/ 001

We refer to your claim intimation letter dt. 20.05.2005 & subsequent letter dt.21.06.2005 on the captioned claim & would inform you as under:

Our Regional Office had appointed Shri Pradeep Tambe, Surveyor to ascertain the exact cause of loss who carried out the inspections about reported loss on 27.05.2005 at site & submitted his report. According to the report

1. Two number of boiler tubes had slipped off from the connection with the drum. This connection was made by expanding of tubes in boiler shell holes made for the purpose of connection.
2. Other many tubes had become loose in expanded portion, which were marked by chalk.
3. The tubes were seen bulged for rest of the portion of length of tubes.
4. In the region of expansion of tube heavy corrosion was observed.
5. Majority of those tubes were fitted in 1986 and had served their useful life.

² NCDRC

Based on the above observations and photographs the loss was occasioned by wasting of tube material in way of expansion joint due to corrosion which is a slow deterioration over a period of about 20 years resulted into failure of expanded joint of tubes with steam drum. Further bulging of tubes in general is also in one direction only indicating that it has happened due to long usage.

All above reasons are detailed in exclusion no.5 of our BPP policy issued to you and we quote the same here for your reference.

Defects due to the wearing away or wasting of the materials of a boiler or a pressure plant whether by leakage, corrosion or by the action of fuel or otherwise the grooving or the fracturing of any of the parts of a boiler or pressure plant or for deterioration generally or for the development of cracks, blisters, limitation and other flaws or fractures failures of joint within the range of steam or feed pipes or for bulging and deformation due to overheating of tubes (unless such defect, fractures, failure or bulging result in explosion or collapse) or for the cracking of section of cast iron heating boilers or other vessels constructed of cast iron.

In view of the above referred reasons which are falling under exclusion no.5 of our B.P.P. Policy, we are absolved from the liability under the policy and hence we repudiate your claim.

We regret the inconvenience caused to you.

Kindly acknowledge receipt.

Sd/-

BR. MANAGER"

(i) On receipt of the repudiation letter, the appellant made a fresh representation to the first respondent. In the meantime, Maharashtra State Insurance Fund also appointed a joint surveyor who submitted a report on 16.01.2006. In their opinion, there was no explosion in the boiler. Rather, leakage was from boiler tubes which had slipped off from the expanded portion in the drum.

(ii) Consequently, *vide* letter dated 03.07.2006, the claim was again rejected.

(iii) Aggrieved by rejection of its claim, the appellant filed Consumer Complaint Case No. 7/2007 before the State Commission.

Issues framed by State Commission

6. Based on pleadings of the parties, the State Commission framed the following issues:

- (1) Whether the insurance claim is barred by limitation?
- (2) Whether the complainant proved deficiency in service on part of the insurance company?
- (3) Whether the complainant is entitled to receive compensation as claimed?
- (4) What relief to be granted? **State Commission's Finding(s)**

7. On Issue no.1 (supra), the State Commission held that as per the provisions of Section 24A of the Consumer Protection Act, 1986³, the complaint must be filed within two years from the date the cause of action has arisen, since the cause of action first arose on repudiation of the claim, that is, on 22.06.2005, and thereafter, on rejection of the revised claim, that is, on 03.07.2006, both being within two years of the date of filing of the complaint, the complaint was not barred by limitation.

³ 1986 Act

8. On Issue no.2 (supra), the State Commission held that there was deficiency in service on part of the first respondent because Boiler Inspector had examined and tested the boiler before its explosion and had issued a certificate of fitness on 17.11.2004; and the explosion took place during currency of the fitness certificate. Otherwise also, it is expected that the insurance company would inspect and satisfy itself about the fitness of the boiler before issuing an insurance cover. Thus, repudiation of the claim by taking aid of clause 5 of the terms and conditions of the policy was not sustainable.

9. On issues 3 and 4 (supra), the State Commission opined that against the compensation claim of Rs.87,49,141 only Rs.48,91,596.75 is payable as certain bills were doubtful and 10% deduction was permissible towards salvage amount. Besides that, as per norms 75 per cent of the balance amount is to be awarded on non-standard basis.

Appeal(s) before NCDRC

10. Two appeals were filed before NCDRC against the order of the State Commission. The appellant challenged the deductions from the compensation claimed by him. Whereas, the first respondent questioned the award of compensation in view of the exclusion clause 5.

NCDRC Finding(s)

11. During proceedings before NCDRC, survey reports relied by the first respondent (i.e., the insurance company) were taken on record. Based on those survey reports including joint survey report dated 16.01.2006, NCDRC concluded that accident occurred due to slipping out of tubes from the boiler as survey reports indicated that two boiler tubes had slipped off from the drum of the boiler because they were expanded to fit in the boiler holes, and many tubes had gotten loose. Besides, some tubes were fitted in 1986 and had outlived their useful life. Moreover, there was no damage to the boiler. Therefore, the accident occurred on account of tubes slipping off from the main body/drum which risk was excluded from boiler and pressure plant insurance policy though, as per report, it may fall under machinery insurance policy. NCDRC thus found the claim excluded under exclusion clause 5 incorporated in the insurance policy. Consequently, the order of the State Commission was set aside and the complaint dismissed.

12. Aggrieved by the decision of NCDRC, these appeals have been filed.

13. We have heard Shri Shekhar G. Devasa for the appellant and Shri Gaurav Sharma for the respondents.

Submissions on behalf of the Appellant

14. The learned counsel for the appellant submitted:

(i) Insurance policy was issued on 01.02.2005 after being satisfied with boiler's condition, based on inspection report dated 17.11.2004 of the Boiler Inspector prepared under the Indian Boilers Act, 1923⁴.

(ii) Under the Boilers Act unless a boiler is registered thereunder, it cannot be used or permitted to be used⁵.

(iii) Section 7 of the Boilers Act mandates that the owner of any boiler, which is not registered under the provisions of the Act, may apply to the inspector to have the boiler registered. Upon receipt of such application, the inspector is required to proceed to

⁴ Boilers Act.

⁵ Section 6 of the Boilers Act.

examine the boiler to determine, in a prescribed manner, the maximum pressure, if any, at which such boiler may be used; and the result of such examination is to be reported to the Chief Inspector in the prescribed form. The Chief Inspector, thereafter, may register the boiler and assign a registration number. Otherwise, the Chief Inspector has power to refuse registration of the boiler.

(iv) Section 8 of Boilers Act governs renewal of the certificate. Section 19 provides for an appeal if any person is aggrieved by an order made, or purported to be made by an Inspector, in exercise of any power conferred by or under the Boilers Act, or by refusal to make an order or to issue any certificate which the Inspector is required or enabled by or under the Act to make or issue. Further, Section 21 attaches finality to the orders passed under the Act.

(v) Admittedly, the boiler which met with an accident was registered under the provisions of the Boilers Act and its fitness certificate was valid on the date when the accident occurred. Moreover, insurance policy was issued by the first respondent after being fully satisfied with the state of the boiler and the plant and machinery, therefore, repudiation of the claim, by taking recourse to clause 5, based on subsequent reports, after the accident had occurred, was not justified at all.

(vi) The view of NCDRC that there was no explosion, only tubes got detached is perverse because repudiation letter itself does not deny explosion. Moreover, tubes can slip off due to explosion also. And where tubes slip off due to explosion, clause 5 would not apply to exclude a claim based thereupon.

15. To buttress his submissions, learned counsel for the appellant placed reliance on a decision of this Court in **Canara Bank vs. United India Insurance Company Limited and Ors.**⁶, wherein it was observed that a prudent insurance company before issuing a policy of a heavy amount must or at least should have ascertained the value and the nature of the goods insured. In case it chooses not to verify the stock, it cannot take advantage of its own negligence. Based on the aforesaid judgment, it was argued that if the insurance company had conducted its own investigation/ inspection before the accident, it cannot come up with a case that the accident occurred on account of lack of maintenance of the boiler parts and, if it had not conducted the requisite inspection before issuing the insurance policy, it cannot take advantage of its own negligence.

16. It was also argued on behalf of the appellant that the insurance policy was issued on 01.02.2005 after the requisite team constituted under the Boilers Act conducted its inspection therefore, the repudiation was completely unjustified.

17. Besides above, it was argued that when the matter was argued before the State Commission, the survey report on which reliance has been placed by the first respondent was not on record. In fact, it was placed before NCDRC after more than a decade. In such circumstances, survey report should not have been accepted on record as was done *vide* order dated 17.08.2020. More so, when burden to bring the case within the exclusionary clause lies on the insurance company. Consequently, the State Commission was justified in drawing adverse inference against the insurance company for not having placed the surveyor's report on record.

⁶ (2020) 3 SCC 455

Submissions on behalf of the Respondent(s)

18. Per contra, learned counsel for the insurance company submitted that this appeal, by special leave, should not be entertained in view of the decision of this court in ***Universal Sompo General Insurance Company Limited vs. Suresh Chand Jain and Anr.***⁷, as the appropriate course for the appellant is to invoke the writ jurisdiction of the High Court.

19. It was next contended that a survey report should never be overlooked as it is prepared by experts. Therefore, due regard must be given to survey reports. Since State Commission had not given due weightage to the survey report(s), NCDRC's order which gave due weightage to them requires no interference. To buttress his submission, reliance was placed on decisions of this Court in ***Sikka Papers Limited vs. National Insurance Company Limited and Ors.***⁸; and ***Sri Venkateswara Syndicate vs. Oriental Insurance Company Limited and Anr.***⁹

DISCUSSION/ANALYSIS

20. Before we address the rival submissions, it would be useful to cull out those facts as regards which there exist no dispute. These are:

- (i) The appellant had its Boiler no.GT-23¹⁰ (i.e., in respect of which claim was made) insured with the first respondent for Rs.1.60 crores with effect from 01.02.2005 up to 31.01.2006.
- (ii) Boiler in question was registered under the Boilers Act and certified for use vide certificate dated 17.11.2004.
- (iii) On 12.05.2005, the accident occurred due to which two tubes attached to the Boiler got snapped/ detached.
- (iv) The accident was reported to the Boiler Inspector who carried out inspection on 14.05.2005 and suggested repairs.
- (v) Information of the accident was sent to the insurance company on 16.05.2005. Initial claim was of Rs.39.60 lacs, based on estimated cost of repairs, later, claim of Rs.87,49,141 was submitted on 23.11.2005 based on actual cost of the repairs.
- (vi) Claim was repudiated on 22.06.2005.

Repudiation letter dated 22.06.2005 cited that two boiler tubes had slipped off from the drum of the Boiler as they were placed on holes by expanding the tubes.

Besides those, other tubes had loosened at the joints. Moreover, around the region of expansion, heavy corrosion was observed. Repudiation letter also remarked that majority of those tubes were fitted in 1986 and had outlived its serviceable period.

21. The main issue which arises for our consideration is whether the first respondent was justified in repudiating appellant's claim based on exclusion clause 5.

Exclusion clause 5

22. Exclusion clause 5 relied by NCDRC is reproduced below:

"The defects due to the wearing away or wasting of the material of a boiler or a pressure plant whether by leakage, corrosion or by the action of fuel or otherwise the grooving or the fracturing

⁷ 2023 SCC OnLine SC 877 = (2024) 9 SCC 148

⁸ (2009) 7 SCC 777

⁹ (2009) 8 SCC 507

¹⁰ Boiler in question

of any of the parts of a boiler or pressure plant or for deterioration generally or for the development of cracks, blisters, lamination and other flaws or fractures, failures of joint within the range of steam or feed pipes or for bulging and deformation due to overheating of tubes (unless such defects, fractures, failure or bulging result in explosion or collapse) or for the cracking of section of cast iron heating boilers or other vessels constructed of cast iron.”

No serious challenge to the factum of explosion

23. Before considering whether under clause 5 the insurer was justified in repudiating the claim, we must put on record that in the complaint the appellant had taken a specific plea that there was a loud explosion on account of which two boiler tubes had slipped off. The plea regarding there being an explosion was not traversed by the first respondent in its written statement though it raised various pleas regarding corrosion, improper fitting of tubes etc. In such circumstances, in our view, there is no serious challenge to the factum of an explosion in the boiler resulting in damage including tubes slipping off.

General principles governing repudiation of an insurance claim

24. Now we shall examine the general principles governing repudiation of a claim under an insurance contract. A contract of insurance is a contract based on utmost good faith, and if utmost good faith is not observed by either party the contract may be avoided by the other party. This principle is of universal application to all types of insurance contracts. The principle of utmost good faith imposes positive obligations of disclosure. In its practical application the principle permits either party to avoid the contract altogether if it is established against the other party either that: (1) there has been a failure by the other party to disclose a material fact; or (2) the other party has made an innocent misrepresentation of a material fact, since statements made in a contract must be true in fact. Further, the onus of proving that the insured has failed to perform the duty of disclosure or has broken a condition relating to disclosure lies on the insurer¹¹.

25. A proposer is under a duty to disclose to the insurer all material facts as they are within its knowledge. The proposer is presumed to know all the facts and circumstances concerning the proposed insurance. Whilst the proposer can only disclose what is known to him the proposer’s duty of disclosure is not confined to his actual knowledge. Rather, it also extends to those material facts which, in the ordinary course of business, he ought to know. However, the proposer is not under a duty to disclose facts which he did not know and which he could not reasonably be expected to know at the material time¹².

26. A fact is material if it would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take risk. Whether a fact is material will depend on the circumstances, as proved in evidence, of the case. If a fact, although material, is one which the proposer did not and could not in the circumstances have been expected to know, or if its materiality would not have been apparent to a reasonable man, his failure to disclose it is not a breach of his duty. The proposer need not disclose matters already known to the insurer or matters as to which the insurer has waived information. An insurer is deemed to know of matters of common knowledge and matters of which he ought to be aware as an insurer in that line of business.¹³

¹¹ See: Halsbury’s Laws of England, Fourth Edition, Reissued 2003, Volume 25, Pages 36 and 37, Paras 36 and 37

¹² Halsbury’s Laws of England, Fourth Edition, Reissued 2003, Volume 25, Page 41, Para 44.

¹³ Halsbury’s Laws of England, Fourth Edition, Reissued 2003, Volume 25, Page 39, paragraph 41.

27. Further, if the insurer while accepting the proposal form does not ask the insured to clarify any ambiguities then the insurer after accepting the premium cannot urge that there was a wrong declaration made by the insured¹⁴.

28. An exclusion clause in the policy is to be construed in a manner that it does not defeat the main purpose of the contract¹⁵ and could even be read down to serve the main purpose of the policy that is to indemnify the policy holder¹⁶.

There is no failure in observing duty to disclose

29. In the light of the above general principles, we would examine whether there was any failure on part of the insured in making disclosure of those facts which the surveyor discovered and mentioned in its report; and also, whether the survey report discovers any breach of the terms and conditions of insurance as to enable the insurer to repudiate the claim.

30. First, we shall consider whether the survey report in categorical terms highlights a breach by the appellant of the terms and conditions of the contract of insurance. In our view, there is no indication in the survey report that the appellant had been guilty of breaching the terms and conditions of the contract. Reason is simple. Though the report speaks of two boiler tubes slipping off from its joint on the drum of the boiler, it does not rule out boiler tubes slipping off due to an explosion as had been the claim of the appellant. Mere mention in the report that majority of tubes were fitted in 1986 and had outlived their lives, is of no help to the insurance company because, (a) there is nothing on record that tubes have a specified life; and (b) there is nothing on record that tubes' age disclosure was sought, or was required, and such disclosure was either not made or incorrectly made. Besides above, it is expected that an insurer would accept a proposal of insurance on being satisfied with the condition of the subject matter of insurance. Otherwise, the purpose of an insurance, which is to tide over financial implications of an unforeseen event such as an accident, would stand frustrated. Moreover, an accident may occur on account of latent or nondetectable defects. Duty to disclose is dependent on knowledge of the proposer as also on the nature of disclosure sought. If the law does not specify a boiler's life, or life of its parts, and disclosure is not sought regarding the age of the boiler or its parts, there may be no corresponding duty to disclose. Further, a latent or non-detectable defect may not be in the knowledge of the proposer.

31. Besides above, mere discovery of corrosion on underlying parts while making a survey is not conclusive to hold that there was infraction of duty to make a fair disclosure for the simple reason that those underlying parts got noticed only because tubes slipped off on account of the explosion. Whether those defects were noticeable even before the explosion, is a question which cannot be determined in absence of proper pleading and evidence. Here, as we have observed, there was no denial of an explosion. Appellant's specific case was that an explosion took place resulting in tubes slipping off from boiler's main body. This plea of appellant was not traversed. Even survey report was placed on record at the appellate stage and not before. There is no plea that insured played fraud upon the insurer either by not allowing an inspection or by submitting a false data. All of this shows that the first respondent was interested in somehow defeating the claim of the appellant not on facts but on pleas taken as an after-thought.

¹⁴ See: Paragraph 44 of *Canara Bank v. United India Insurance Co. Ltd.* (supra), Footnote 6

¹⁵ See: *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan*, (1987) 2 SCC 654, paragraph 14.

¹⁶ See: *B.V. Nagaraju v. Oriental Insurance Co. Ltd.*, (1996) 4 SCC 647, paragraphs 7 and 8; followed in *Mata Ram v. National Insurance Company Limited and others*, (2018) 18 SCC 289, paragraph 6

32. Furthermore, the boiler in question was registered under the Boilers Act and its usage was permitted for crushing season 2004-05 during which the accident occurred. The Boilers Act not only ensures that a boiler cannot be used without registration but provides for registration of boilers¹⁷. It also confers power to refuse such registration¹⁸. Orders passed thereunder are appealable to the appellate authority specified therein. Therefore, once a certificate of registration for use of such boiler is issued, during currency of that certificate, the boiler concerned would be considered, *prima facie*, fit for usage. In such circumstances, to substantiate that the insured suppressed information of boiler being unworthy of use, burden would be very heavy on the insurer, particularly, when the accident occurs during currency of its registration.

33. No doubt, despite a certificate of registration, an insurer may refuse insurance based on its own inputs about the condition of the boiler. This is because whether an insurer should take the risk or not is best left to its wisdom. However, when an insurer accepts the risk, it can repudiate the claim on limited grounds such as, (a) by pleading and proving that there was a failure on part of the insured in making disclosure of a material fact which renders the contract voidable at the instance of the insurer¹⁹; and (b) by demonstrating that the terms and conditions of the contract of insurance exclude such claims.

34. Now, we shall consider whether there was non-disclosure of material facts, or misrepresentation, or suppression of material facts, by the insured justifying repudiation of contractual obligations by the insurer. Admittedly, it is not the case of the insurer that any specific information was sought from the proposer which the proposer either failed to provide or provided incorrectly. Therefore, once a proposal is accepted by the insurer and formalities are complete, in absence of plea and evidence of fraud or misrepresentation making the contract voidable at the instance of the insurer, the insurer cannot be permitted to wriggle out of its liability under the contract.

35. In the case on hand, no material has been placed to demonstrate fraudulent suppression or misrepresentation or non-disclosure on part of the insured, and there is no violation of any statutory rule /provision regarding disclosure alleged. In such circumstances, the first respondent could not have repudiated the claim under the contract of insurance.

36. As regards age of the boiler in question, or of its tubes/ parts, there is no material on record to indicate that information regarding age of the boiler or its parts was sought for but not provided, or that beyond a specified age a boiler is not usable. In these circumstances, merely by saying that some of the tubes were of 1986 and, therefore, had outlived their life, in our view, the insurer cannot escape from its liability. That apart, if consent was caused by misrepresentation or silence, fraudulent within the meaning of Section 17 of the Indian Contract Act, 1872, the contract is not rendered voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence²⁰. Here, there is nothing on record to indicate that insurer was deprived or denied an opportunity to inspect the boilers to enable it to take a decision whether it was worthy to take the risk. Had tubes been fitted in the boiler holes by expansion, an inspection could have revealed the truth. Therefore, the ground of non-disclosure to repudiate the contract, in our view, is completely unsustainable, particularly, in absence of pleading and evidence

¹⁷ See: Section 6 of Boilers Act, 1923

¹⁸ See: Section 7(4)(b) of Boilers Act, 1923

¹⁹ See: Section 19 of the Indian Contract Act, 1872

²⁰ See: Exception to Section 19 of the Indian Contract Act, 1972.

that by playing fraud the appellant prevented a meaningful inspection of the boiler in question.

Exclusion clause 5 not applicable

37. Exclusion clause 5 indicates that if defects appear because of explosion in the boiler, it may not exclude a claim. Reason is simple. A defect may not be visible unless the boiler is dismantled. Therefore, when a registered boiler explodes within its serviceable period, it is quite possible that its shortcomings may go unnoticed. Those shortcomings may get exposed only on explosion. The survey reports are not categorical that there was no explosion. Further, specific pleading of the claimant regarding explosion causing tubes slipping off is not traversed. In such circumstances, it would be extremely unjust to non-suit a claim on discovery of defects post the blast in absence of any specific material that such defects cannot be an outcome of the blast or explosion.

38. No doubt, due regard is to be given to the survey reports, particularly when they relate to technical aspects. But here they are not of much help to the first respondent as the survey reports are not categorical regarding noticeable defects being present in the boiler in question from before as could enable repudiation of a claim.

39. Notably, the boiler in question was certified and registered; the insurance policy was issued after the certificate of registration was provided; and the accident occurred while the certificate of registration was subsisting. In such circumstances, burden was heavy on the insurer to prove that the boiler was not worthy of insurance cover or that such cover was obtained by misrepresentation or suppression of material facts or by playing fraud. Nothing of the kind has been pleaded or proved by the insurer. A subsequent discovery of damage or corrosion cannot be used to repudiate the claim as it would defeat the main purpose of the insurance contract. In our view, therefore, in absence of a stand that the boiler and its parts had a prescribed life and that the boiler had outlived its prescribed life, or that there was a failure on part of the insured in making full and complete disclosure, making the contract voidable, exclusion clause 5 could not have been pressed into service to repudiate the claim of the insured.

40. Further, in the case on hand, the reports were not conclusive of any suppression/misrepresentation or fraud played by the insured upon the insurer, and facts stated therein were ambivalent in respect of applicability of exclusion clause 5 inasmuch as the reports do not rule out an explosion resulting in tubes slipping off, as was the specific case of the appellant. Therefore, based on the discussion above, in our considered view, the insurer was not justified in repudiating the claim by invoking the exclusion clause 5.

41. Accordingly, we are of the view that NCDRC was not justified in setting aside the order of the State Commission and discarding the claim of the appellant by relying on exclusion clause 5 (supra).

42. Insofar as the plea that this Court should not entertain the appeal, by special leave, is concerned, suffice it to say that there is no inherent lack of jurisdiction for this Court to exercise its power under Article 136 of the Constitution of India against an order of a tribunal or a court including NCDRC. However, ordinarily, when an alternative remedy is available before the High Court, this Court may, in its discretion, relegate the petitioner to avail such alternative remedy. But such discretion is to be exercised judiciously. Here, parties had exchanged their pleadings, and matter was ripe for hearing, therefore, relegating the appellant to the remedy under Articles 226 and 227 of the Constitution of India would only delay the decision by re-starting the proceeding that could culminate

here. In such circumstances, we decline the prayer to relegate the appellant to the remedy under Articles 226 and 227 of the Constitution.

43. For all the reasons above, these appeals are allowed. The impugned judgment and order of NCDRC is set aside. However, since NCDRC did not address the claim of either side on the quantum of compensation payable, we deem it appropriate to restore the appeals on the file of NCDRC for a consideration only on the quantum of compensation payable to the appellant. Rest of the issues stand closed.

44. The appeals are allowed in the aforesaid terms. First Appeal No.580/2012 and First Appeal No.166/2013 are restored on the file of NCDRC, New Delhi for considering the quantum of compensation payable to the appellant. All other issues stand closed. Pending application (s), if any, shall also stand disposed of.

45. Parties to bear their own costs.

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