Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Case Comment: United India Insurance Co. v M/s Aman Singh Munshi Lal

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Received 25 November 2023; *Accepted* 22 December 2023; *Published* 26 December 2023

INTRODUCTION

On 16.03.1994, in the case of *United India Insurance Co. v M/s Aman Singh Munshi Lal*,[1] the bench of the Punjab-Haryana High Court upheld the decisions of two lower courts by making an exception to the principle of no compensation for losses due to accidents or fires under an insurance contract' holding the insurance company obligated to provide insurance coverage for Aman Singh Munshi Lal. Hence setting a landmark precedent for Indemnity in the field of commercial transactions.

FACTS OF THE CASE

On 21.10.1976, M/s. Aman Singh Munshi Lal, a partnership firm, handed 50 bales of cotton to Hansi Public Carrier, which were unloaded at the Ghaziabad border and stored in the godown of Milap Transport Roadways as per the agreement. Meanwhile, a change occurred in the plaintiff firm's partnership—one of the partners, Smt. Kailashwati died, and a new minor

[1] *United India Insurance Co. v Aman Singh Munshi Lal* (1994) 107 PLR 293

partner, Ashok Kumar, joined the firm, due to which the deed and other terms of the partnerships were re-drafted. In accordance with the recent agreement, a provision has been included stating that the new partnership assumes all the rights and responsibilities of the previous partnership. Hence, the new partnership initiated the current legal action, which sought the recovery of Rs. 1,22,795.64 for the incurred losses.

On 22.10.1976, a fire broke out in the godown of M/s. Milap Transport Roadways, due to which the goods were gutted. However, the firm insured the goods from any loss due to fire or otherwise. With the help of the insurance company's surveyor, the plaintiff submitted a report asking for claims for which there was no reply for a period of 6 to 7 months despite continuous reminders. The initial proceedings started with M/s. Aman Singh Munshi Lal filing a suit in the Trial Court for the insurance claim, which was in their favour. The insurance company filed an appeal at the district court, which upheld the lower court's decision.

In this piece, the author examines the judgment pronounced by the High Court of Punjab and Haryana with the help of principles of indemnity and other relevant legal principles. Furthermore, the author has opined an analysis in contradiction to the judgment of the Court and endeavoured to assess the exception made under Section 31, which pertains to contingent contracts.

ARGUMENTS BY THE PARTIES

Plaintiff: This case in the High Court of Punjab and Haryana is a second appeal by the Insurance Company (defendant) after their contention failed both at the Trial Court and the District Court. Hence, the Insurance Company majorly contested the case rather than the firm, except for stating the case facts and allegations for the recovery of losses incurred. However, the plaintiff firm majorly emphasised their efforts to contact and intimate the insurance company about the losses, as a man of ordinary prudence would do. Moreover, they also followed the procedure laid by the defendants in their insurance contract for the shipment.

Defendant: In this case, the counsel for the Insurance Company put forth a few major contentions before the High Court, which are listed below:

- The insurance cover note (Exhibit P10) was initially issued in favour of the erstwhile partnership firm. Following the dissolution of the same, the newly constituted firm lacks the authority to initiate the current legal action.
- The presented Exhibit P10, a cover note, is a falsified document acquired through collusion between the plaintiff and their agent at that time, who is also one of the defendants here. This cover note was created after the goods had already been destroyed by fire.
- The Insurance Company would be liable for damages if the goods were destroyed or damaged by fire during transit. However, it was damaged in the warehouse of M/s. Milap Transport, so they would be liable.
- After the goods were loaded onto the truck, it signified a complete transfer of the goods to a common carrier for delivery to the consignee by M/s. Aman Singh. The plaintiff has relinquished ownership, and now the consignee has the right to claim damages. In support of this, the counsel referred to the judgement of the Madras High Court in *Messrs Konda Ram Eswara Iyer and Sons v Messrs Madras Bangalore Transport Co.*[2] and another judgement of Punjab and Haryana High Court in *Northern India Goods Transport Co. v M/s. Guru Hosiery Factory Ludhiana*.[3]

THE COURT'S JUDGMENT AND RATIONALE

The High Court here relied on the rationale and considerations made by the two lower courts where the same case was heard previously. However, the primary question before the Court was whether this particular insurance contract should be considered under Section 124[4] or Section 31[5] of the Indian Contract Act. The court's verdict, in brief, and primitive terms, was to hold in favour of the plaintiff, stating that in cases where loss is caused by a natural occurrence rather than human actions, the appropriate solution is not found within the indemnity clause

[2] *Konda Ram Eswara Iyer and Sons v Madras Bangalore Transport Co.* AIR 1964 Mad 516
[3] *Northern India Goods Transport Co. v Guru Hosiery Factory Ludhiana* AIR 1964 Punj 318
[4] Indian Contract Act 1872, s 124
[5] Indian Contract Act 1872, s 31

but within the terms outlined in the insurance contract. Hence, it added a new perspective to the existing concept.

The Court answered to almost all the contentions raised by the defendant, and it denied a majority of those. Specifically, the Insurance Company alleged they could not be liable because the goods caught fire in the warehouse of M/s. Milap Transport. The High Court failed the allegation by stating that the insurance cover note (Exhibit P10) explicitly specifies a route until Phulwari Sharif. The insurance cover note also outlines the details of the goods' movements. So, the Insurance Company cannot reasonably assert a plea to dismiss the plaintiff's case.

Similarly, there was another question before the Court if the Marine Insurance Act 1963 provisions would apply to this case. The court reasoned that, though the cover note is formatted as Marine insurance, it specifies the transportation of goods from Hansi to Ghaziabad would be by road and subsequently by road to Phulwari Sharif. Hence, the judges held that it is not permissible for the Insurance Company to argue that the cover note was issued under the 1963 Act.

Here, the court not only added a new perspective but also made an exception to a longstanding principle – In an insurance contract, compensation for losses due to fire or other accidents will not be covered under the purview of the law of Indemnity; instead, it would be considered a contingent contract per Section 31 of the Indian Contract Act. It reasoned that the goods were damaged while being transported, and the insurer was responsible according to the terms of the agreement. Therefore, upon reviewing the lower courts' decisions, the Punjab and Haryana High Court found no merit in this second appeal, leading to its dismissal. The appeal was thus rejected and costs were imposed.

ANALYSIS OF THE JUDGEMENT

In India, the judiciary has discussed an extensive aspect of the Indemnity Contract in *Gajanan Moreshwar Parlekar v Moreshwar Madan Mantri*.[6] Here, the Court noted that 'if the person seeking indemnity cannot enforce it until they have already suffered the loss, the amount of compensation they receive could be minimal. The court of equity has determined that if the liability has become definite and certain, the person is entitled to either have the person who promised indemnity pay the claim on their behalf or make a payment to the court.' Similarly, in the *Adamson v Jarvis*[7] and *Dugdale v Lowering*[8] cases, the Courts used the term or the idea of a Contract of Indemnity and set a path for it.

The author thinks that the High Court of Punjab-Haryana has partially erred in the verdict of the *United India Insurance Co. v M/s Aman Singh Munshilal*[9] case. The court here ruled in favour of the plaintiff firm by holding the insurance company liable to pay the claim asked for by the former.

The Erstwhile Partnership's Role: The insurance company consented and entered into an agreement/contract with the erstwhile partnership of the plaintiff firm, which included Smt. Kailashwati is one of the partners. However, the company never agreed with the current partnership of the firm with Ashok Kumar – a minor at the time of inception – as the replacing partner. Additionally, the insurance company was not aware or informed about the reconstitution of the partnership.

Section 13[10] of the Indian Contract Act of 1872 defines consent for an agreement by stating that 'it is when two or more persons agree upon the same thing and in the same sense'. Going by the above definition, the insurance company made an agreement/contract to insure the shipment of 50 bales of cotton when the erstwhile partnership persisted in the firm. Meanwhile, when the fire broke out at the warehouse in Ghaziabad, the firm was under a new partnership. Though

[6] *Gajanan Moreshwar Parlekar v Moreshwar Madan Mantri* (1942) 44 BOMLR 703
[7] *Adamson v Jarvis* 4 BING.66:29 R.R 503
[8] *Dugdale v Lowering* [1875] LR 10 CP 196
[9] *United India Insurance Co. v Aman Singh Munshi Lal* (1994) 107 PLR 293
[10] Indian Contract Act 1872, s 13

the new partners took over all the liabilities and exercises of the old partnership, it is still wrong to imply the consent between parties (insurance company and the new partner) and their approval of a thing in the same sense and meaning.

Voidability of a Contract: Attention should be paid to both Section 22[11] and Section 2(i)[12] of the Indian Contract Act because both these sections focus on the voidability of an agreement/contract and how a contract can be voidable at the option of one of the parties. In this case, there is a mistake regarding the vital part of the agreement. Though the Act does not define a mistake, it still gives an idea of what a mistake is under Sections 20, 21,[13] and 22. Going by the same, it can be inferred that if the parties make a mistake regarding a fundamental part of the contract/agreement, the contract is considered voidable. Here, the change in partnership is a vital part of an agreement between the parties, and the insurance company has the right to know the same. Since they were unaware of it, and the plaintiff firm did not take any initiative to inform the insurance company, the contract can be held voidable at the defendant's option.

The Warehouse's Liability: It must be noted that the goods were lost in a fire that broke out in the warehouse of Milap Transports. The insurance company could be held liable to insure the plaintiff firm if the goods were destroyed on their way to the godown. Since that was not the case here, the insurance company cannot be held liable to compensate for the losses suffered by the plaintiff firm.

CONCLUSION

The first case dealing with Contract of Indemnity was as early as 1728 in the case of *Osman Jamal & Sons Limited v Gopal Purushotham*[14], but now the understanding and legal recognition of contract of indemnity in India has progressively developed over time. Even though the Indian Contract Act of 1872 contains numerous provisions, it remains unclear when it comes to the rights of the indemnifier. Attention should also be given to the partnership in a contract because

[11] Indian Contract Act 1872, s 22
[12] Indian Contract Act 1872, s 2(i)
[13] Indian Contract Act 1872, s 20
[14] *Osman Jamal & Sons Limited v Gopal Purushotham* AIR 1929 Cal 208

a change in it, as noticed in this case, can lead to significant changes in the verdict. So, the interpretation of a partnership is also vital for an argument or judgment. Hence, in this case, there can be various contradicting perspectives from which the verdict can be given, but the author believes that the verdict could have been in favour of the Insurance Company.