

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

CONSUMER CASE NO. 61 OF 2004

1. SMT. KESHARBEN

Wd/o. Kanjibhai D. Cham Through her POA Holder Shri  
Premjibhai K. Cham, C/o. Cham Ice and Cold Storage,  
Porbandar, Dist. Junagadh,  
Gujarat

.....Complainant(s)

Versus

1. NATIONAL INSURANCE CO. LTD.

The Divisional Manager, Junagadh Divisional Office,  
Jashmin, Ramkrishna Nagar, Bus Stand Road,  
Junagadh  
(Gujarat)

2. National Insurance Co. Ltd.

The Regional Manager, Hasubhai Chambers, Ellisbridge,  
Ahmedabad - 380 006  
Gujarat

3. National Insurance Co. Ltd.

The Manager, Regd. Office -3, Middleton Street,  
P.B No. 9229, Kolkata

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE V.K. JAIN,PRESIDING MEMBER**

**For the Complainant :** Mr. Saurav Agrawal, Advocate  
Ms. Akanksha Sisodia, Advocate  
Ms. Vibha Anshuman, Advocate

**For the Opp.Party :** Mr. Kishore Rawat, Advocate  
Mr. L.K. Tyagi, Advocate

**Dated : 30 Aug 2019**

**ORDER**

**IA/585/2019 (Condonation of delay)**

Delay is condoned. IA stands disposed of.

OP/61/2004

1. The Complainant Smt. Kesharben, widow of Late Shri Kanji Bhai D. Chem owned a vessel, namely, M.S.V. Chamstar which she got insured with the Opposite Party National Insurance Company Limited, for the period from 12.02.1996 to 11.02.1997. The case of the Complainant is that the vessel met with an accident with the sea rock and sank at Khasab – Oman in the night of 10.04.1996, while returning from Dubai to Mumbai. This is also the case of the Complainant that at the time the vessel sank, it had 19 crew members on board and no cargo was being carried in the vessel.

2. According to the Complainant, the crew members included Tindel of the vessel, Mr. Suleman. On sinking of the vessel, all of them boarded a boat, they were arrested by Oman Navy and kept in jail till their release was arranged, and they were later repatriated to India.

3. On intimation of the incident of sinking having been given to the Insurer, M/s. Salvage Association, were appointed by the Insurer to investigate the loss. The aforesaid surveyor vide their report dated 21.07.96 reported interalia as under:

*“ whilst it has not been conclusively demonstrated that the dhow referred to by the Royal Omani Navy is the “Chamstar”, we note that there are strong similarities in both the location of the loss, and the date of the loss, of the two craft.*

*On the information made available at this time it would not appear unreasonable to consider that the craft reported lost by the Royal Omani Navy may be the “Chamstar”. ”*

4. Thereafter, the Insurer appointed ICIC International Maritime Bureau to carry-out further investigation into the matter and vide their report dated 10.06.1998, the second surveyor reported interalia as under:-

*“Whilst there is no conclusive independent proof that the dhow reported to be sunk by the Omani authorities was the Chamstar, taking the above factors into account, in our opinion MSV Chamstar sank by hitting Keshal island as indicated in position “B” on the chart.”*

5. Since no conclusive finding was given even by the second surveyor, the Insurer sought opinion from a renowned firm, namely, M/s. W.K. Webster & Co., who reviewed

the report issued by the second surveyor and also sought opinion through their local correspondence in Dubai, who conducted investigation in Dubai and Oman. One of the queries referred to by the Insurer to M/s. W.K. Webster & Co. was as to whether the vessel had sunk. The following was their report on the alleged sinking of the vessel :-

*“The only eyewitnesses to the actual sinking of the vessel are the crewmembers of the “CHAMSTAR” of which only the Master (Tindel) has been interviewed.*

*There are no other observations or information available about the sinking of the “CHAM STAR”. The only way to obtain verifications would be to locate the wreck, send divers down to identify the remains and verify the damage.*

*In light of the time elapsed since the incident, we doubt that it will be possible to locate and identify the wreck. We expect the wreck to have decayed to the extent that it would be difficult to first of all find the wreck and identify it as the “CHAM STAR” and furthermore to establish conclusively what actually caused the sinking.*

While giving its opinion on the first query M/s. W.K. Webster & Co. also examined as to whether the reported sinking was an attempt to collect unlawfully under the Policy. Their opinion in this regard reads as follows: :-

*“ With a crew of 19, we believe that rumours would have started to circulate about the incident not long after the return of the crew to India. If the vessel was deliberately scuttled, it would essentially only need the involvement of Tindel to execute the plan. We must say, however, that it takes a special character to be prepared to risk not only his own life by deliberately sinking the vessel but also that of his fellow crewmembers. We do not know if the Tindel was that type of person. If the rest of the crew was involved in the incident, we believe it would be very difficult to control information about the incident and we believe that someone would have confided in someone by now to either obtain more money or just to brag. Paying people to lie or not tell the truth is notoriously unreliable and we believe that it would have been very difficult to keep an entire crew silent for such a long time.*

*If the vessel was sold clandestinely it must have involved a transaction at sea. The transfer of the crew would have had to take place at sea to a vessel that could deliver them to a port where they could come ashore without being identified with the particular ship that brought them in to the port. Again, we believe that the above is an unlikely scenario since the entire crew would have had to be informed about the deal with the consequence that they would all have to be paid to be forever silent.*

*We rate the above scenario as very unlikely but have taken the liberty to speculate in order to hopefully illustrate the possibilities available to the owners and crew. ”*

6. While answering another query, namely, as to why the witnesses had reported seeing the vessel, out of water after abandoning the ship, M/s. W.K. Webster & Co. opined as under:-

*“If someone had planned to deliberately scuttle the vessel, we are quite certain that those who planned and executed the scuttling would not have made the mistake of leaving important documents on board. They would have packed the documents long before the scuttling was executed.”*

7. Yet another query put to M/s. W.K. Webster by the Insurer was as to why note of protest not lodged with an Indian Consulate, the following was the opinion given by them in this regard :-

*“The statement from the master and the interview by the IMB states that once the “CHAM STAR” was abandoned, the crew in the lifeboat headed for Musandam, an Oman naval port. The crew was detained by the police probably because of entering a military area without prior permission. The crew was held in the police station for four days whereafter the “MSV EVEREST” arrived at Musandam Naval Port to embark the shipwrecked crew and sail for Munda. We believe that these events explain why a note of protest was not lodged with the Indian Consular. The Master had no opportunity to lodge the protest while incarcerated in the police station at Oman and we are unaware of if there is an Indian Consul at Musandam.”*

8. As regards the query as to why the crew was detained at Oman, M/s. W.K. Webster opined as under:-

*“Nevertheless we have in the course of our investigation received a copy of a letter addressed to our correspondents in Dubai from the Royal Oman police dated 30 October 2000. The letter states that the Oman police records show that on 11 April 1996 the Royal Navy of Oman reported one Indian Dow with 19 crew bound for Bombay hit a semi-submerged rock at Mushkan. This letter seems to confirm that the authorities in Oman have indeed recorded the arrival of the crew from “CHAM STAR”. Again however, there are no indications from the Oman authorities on four eyewitness reports from independent sources concerning the actual sinking of the Dow.”*

9. The following was the conclusion drawn by M/s. W.K. Webster:-

*“Based on the information available, it is impossible to say with one hundred percent certainly that the vessel was lost in the way described by the Master. On the balance of probability however, we are inclined to believe that the vessel grounded as described by the Master. The reason for the grounding was the Master’s poor lookout and poorly planned navigation.”*

10. On receipt of the aforesaid reports, the Insurer repudiated the claim vide letter dated 09.08.2004, which to the extent it is relevant, reads as under:-

*“We would like to inform you that our competent authority has repudiated your above claim on following grounds: You have not been able to prove, with satisfactory evidence, the alleged sinking of the vessel in support of her claim in particulars:*

*(1) A note of Protest, which is an essential requirement in support of the vessel having actually sunk, was not lodged, at the material time, before the Indian Counsel at Oman.*

*(2) The relevant Port Clearance Certificate, a very important document evidencing compliance of all statutory requirements, was not obtained before the vessel left its last port of call, in ballast, and allegedly sunk in the Strait of Hormuz a prohibited area.*

*(3) The Succession Certificate was not as per the Merchant Shipping Act submitted to the Mercantile Marine Department, Jamnagar and the vessel “CHAM STAR” was not registered by the MMD in the name of Smt. Kesharben Kanji Cham in whose name the policy was issued.”*

11. Before referring the matter to M/s. W.K. Webster & Co. for their opinion, the Insurer had also taken opinion from the M/s. G.P. Dave & Sons. The said report to the extent it is relevant, reads as under:-

*“01) When any Indian flag vessel is involved in casualty in foreign water, leading to total loss the Tindel of the ill-fated vessel, upon arrival at foreign port will appear before the Port and/or Customs authorities and*

*subsequently to the nearest Indian Consulate's office where he will depose a statement related to the casualty. The repatriation arrangements will be made by the consulate.*

*02) When any vessel sails from a Port with cargo or in ballast conditions, a "PORT CLEARANCE" is issued by the Customs authorities. This certificate indicates that the vessel has observed all the formalities at particular port, paid all her dues and has rendered the account of cargo loaded and/or discharged.*

*03) Please note that the Government of India has not framed any rules for granting a "CERTIFICATE OF COMPETENCY" for the Master/Tinidel of a sailing vessel."*

12. Being aggrieved from the repudiation of the claim, the Complainant is before this Commission by way of this consumer complaint seeking payment to Rs.1,02,00,000/- alongwith interest and compensation etc.

13. The Complaint has been resisted by the Insurer primarily on the grounds that the Complainant has not been able to substantiate the claim, the surveyors could not conclusively establish the loss of the insured vessel and some documents sought by the Insurer were not provided.

14. It is not in dispute that the vessel in question was insured with the Opposite Party. It is also not in dispute that the Insurance Policy of vessel was issued in the name of the Complainant herself. She being the widow of late Shri Kanjibhai D. Cham was one of his class-I legal heirs. Other class-I legal heirs of late Sh. Kanjibhai D. Cham had given a letter to the Insurer requesting it to pay the claimed amount to the Complainant who was no other than their mother. Therefore, it cannot be disputed that the Complainant had an insurable interest in the vessel.

15. The primary question involved in this consumer complaint is as to whether the vessel had actually sunk near Oman in the intervening night of 10<sup>th</sup> / 11<sup>th</sup> April 1996. If the vessel had not sunk on that day, the claim preferred by the Complainant would obviously be fraudulent claim. On the other hand, if the vessel had actually sunk on that day, the claim would be bonafide and genuine.

16. The case of the complainant is that there were as many as 19 crew members on the vessel at the time it sank near Oman and one Suleman Adam Kara was the Tindal of the vessel at that time. Though, reports/opinions from as many as 3 agencies were taken by the Insurer, none of them has even claimed either that the vessel did not have 19 crew members on board or that Mr. Suleman Adam Kara was not its Tindal in the night of 10<sup>th</sup> / 11<sup>th</sup> April 1996. In his statement recorded by the first surveyor, Mr. Suleman Adam Kara clearly stated that when the vessel was about 3 miles from Oman shore, he felt it touching the bottom and immediately ordered the engine stopped and run astern in attempt to get back into the deep waters. While the vessel moved back into deep water he observed water engrossing into the cargo hold space and turned the vessel towards the closest shore for shelter and assistance. However, the entire space got flooded before the vessel could reach the shore. Feeling that the vessel would not be saved, he ordered its abandonment, lowered the small survival craft and headed towards the Omanese shores. They reached in the vicinity of the Naval Establishment and narrated the incident. They also informed the agent in Dubai, namely, United Trading Company. On 13.04.1996, the crew members including Mr. Suleman Adam Kara were shifted from the Naval Establishment and kept in jail. Ultimately, the Agent in Dubai made arrangement for their release from jail and repatriated them to India on board another vessel, namely, Everest. It would, thus be seen that the Tindal of the vessel had clearly and unequivocally told the surveyor of the manner in which the vessel had hit the rock and had sunk into the sea and how they had reached the waters of Oman from where they were arrested and kept in jail, till their release was arranged by their agent in Dubai and they were repatriated to India on board another vessel. No other crew member was examined by the surveyors appointed by the Insurer. Since the Tindal of the vessel had maintained before the Surveyor that the vessel had sunk in the manner stated by him, and had also told them that there were 19 crew members on board the vessel, nothing prevented the Surveyor from examining the other crew members if they doubted the veracity of the version given by Mr. Suleman. In the absence of the surveyor recording the statement of any other crew member, it would be difficult to disbelieve the version given by Mr. Suleman, Tindal of the vessel.

17. It was pointed out, during the course of hearing, that the second surveyor also interviewed the Tindal Mr. Suleman and he explained to them that after about 15 minutes of the leaving, he realised that their passport and documents were left in the cabin. He, therefore, went back to the vessel, went to his cabin and picked-up the crew identity documents. By that time, the main deck had submerged in water and water level in his own cabin was about 2 ft.

18. It appears that there was some discrepancy in the statement of Mr. Suleman as regards the position where the vessel had sunk. He pointed out to the second surveyor, after examining the map shown to him, that the place of stranding was at position B and the position A given by him in his original statement had been given without his having a chart to refer and the said position A, therefore, had been given by him only as an approximate position from memory. On analysing his statement and considering other facts and



circumstances, the second surveyor felt that the loss would be admissible under the hull policy.

19. A very material fact in this case is the report given by Oman Authorities. The Learned Counsel for the Insurer has placed on record the copy of the letter dated 30.10.2000 written by Assistant Officer Commanding, Coast Guard Police Division, of Oman to M/s. Handerson International (Oman), representative of M/s. Webster & Co. The said letter, to the extent, it is relevant, reads as under:

*“it has been found from the records that on 11 April 1996, Royal Navy of Oman reported one Indian Dhow (country craft) name “JUMSTAR” with 19 Indian crew bound for Bombay hit a semi-submerged rock (Mushkan ref BA 3956) on the night of 11 April 1996 and subsequently sunk later near the above location. All the crew were land safely and were under the custody of Navy at Musandan and later transferred to ROP Coast Guard Agent for the ill-fated dhow arranged another Indian Dhow and transfer the crew for repatriation to India.*

*It is further informed that above information is issued at your request and ROP coast guard vessel were not present at the location at the time of incident.”*

20. It is evident from the aforesaid letter filed by no other than the Insurer itself, that as per the record maintained by Oman Coast Guard Police Division, Royal Navy of Oman reported on 11.04.1996 that one dhow, namely, “JUMPSTAR” (name wrongly stated) with 19 Indian crew bound to Mumbai hit a sea-rock and subsequently sank near the location stated in the letter. It was further stated that all the crew were under the custody of Navy and were later transferred to the Coast Guard and eventually repatriated to India. A certificate on the same lines was issued by Capt. Nasir, the Commanding Officer on 14.04.2003 in which he stated that on 11.04.1996, 19 persons requesting for help had come after their vessel namely Chamstar had gone aground. It was further stated in the said letter that they appeared to be Indian national and were coming from Dubai and sailing to Mumbai, as was stated by them. During interrogation, the crew had explained how vessel hit a rock resulting in breaking their vessel into pieces and then aground. The above-referred documents from Sultanate of Oman in my view prove, even beyond preponderance of probabilities, that the vessel in question, namely, Chamstar had actually sunk near Oman when there were 19 crew members of Indian origin on board the said vessel and after the vessel had sunk these crew members were arrested by Oman authorities and were kept in jail till they were released and later repatriated to India.

21. The name of the vessel has been mentioned in the above-referred documents issued by the Sultanate of Oman. Even otherwise, there is no evidence or even allegation of any other dhow with 19 crew members on board having sunk near Oman in the night of 10<sup>th</sup> /



11<sup>th</sup> April 1996, the crew having been detained in jail and later repatriated to India. Therefore, it would be extremely difficult to dispute that the above-referred vessel had actually sunk near Oman in the night of 10<sup>th</sup> / 11<sup>th</sup> April 1996.

22. The learned Counsel for the Insurer has repeatedly emphasised that the “Port Clearance Certificate” and “Note of Protest” have not been submitted by the Complainant either to the surveyor or to the Insurer.

23. As far as the “Note of Protest” is concerned, the matter was considered by M/s. W.K. Webster & Co., who noted that the crew had been detained by Police probably because of entering into a military area without prior permission. They were in Police station for four days and thereafter they sailed for Mundra, on board another ship, namely, MSV Everest. They also noted that the Master had no opportunity to lodge the protest while in the police station. M/s. W.K. Webster & Co. were unaware if there was any Indian Consulate at Musandan. In my view, the failure of the Master to lodge a Note of Protest with the nearest Indian Consulate would not be material in the facts and circumstances noted by M/s. W.K. Webster & Co. and therefore, the claim cannot be denied only on account of such a Note having not been lodged. It would be pertinent to note here that the Master of the vessel was interviewed by Mercantile Marine Department at Jam Nagar, on 19.07.1996 as a part of the investigation into the incident and the version given. This was noted by M/s. W. K. Webster & Co. in their report submitted to the Insurer.

24. A perusal of the letter dated 08.09.1997 sent by Government of India, Ministry of Surface Transport, Mercantile Marine Department to the Director General of Shipping with respect to loss of the vessel in question to show that the registration of the vessel was closed on 08.09.1997 under section 425 of the Mercantile Shipping Act, 1958 since the vessel was reportedly lost in the Persian Gulf on 11.04.1996.

25. The Marine Casualty Report issued by Inquiry Officer would show that he had accepted the alleged sinking of the ship on 11.04.1996. The brief report of casualty noted in his report would show that the vessel had sunk on 11.04.1996, but the crew members had escaped in a naval boat and had been reached near naval base. After interrogation, they were taken to Qusab from where they were deported on board vessel Everest and they arrived at Mundra on 19.04.1996. The aforesaid report is stated to have been prepared in terms of section 358 of the Merchant Shipping Act, 1958. The report contains not only the name of the ship but also the name of its Master Mr. Suleman Adam Kara and the number of crew members is also recorded as 19. This official document, in my opinion, is a strong corroborative factor to prove the claim of the Complainant.

26. As far as the Port Clearance Certificate is concerned, the record shows that two documents were sent by the Complainant – one being the Port Clearance Certificate in respect of the vessel Everest and other being the Export Manifest of the vessel, in question, submitted at Dubai Port. As regards the Port Clearance Certificate issued by Dubai Port, the case of the Complainant is that the said certificate was in the vessel and was lost when the vessel sank. The Learned Counsel for the Insurer has pointed out that according to the Tindal of the vessel he had again visited the ship and taken out identity documents of the crew members and therefore, it was unlikely that he forgot to retrieve the Port Clearance Certificate. I, however, found myself unable to accept this contention. Considering the circumstances in which the Tindal was placed at the time this incident happened, it would be natural for him to look for the identity documents of the crew members who were escaping from their own boat. The retrieval of the Port Clearance Certificate is not something which would come to the mind of the Tindal at that point of time. Therefore, I am unable to accept the contention that such a certificate was not actually issued. It would also be pertinent to note here that the Complainant had specifically asked the Insurer to contact the Dubai Port Authorities and obtain a copy of the Port Clearance Certificate from them. No attempt even to contact the Dubai Port Authorities was made by the Insurer and as noted earlier M/s. W.K. Webster & Co. felt that the document was not likely to be available after lapse of such a time period.

27. It may also be noted that M/s. W.K. Webster & Co. had sought to know from the Insurer whether they wanted them to have correspondence in this regard with Dubai Port Authorities but no such instructions to M/s. W.K. Webster & Co. were given by the Insurer.

28. For the reasons stated hereinabove, I am satisfied that the sinking of the ship, namely, Chamstar in the intervening night of 10<sup>th</sup> / 11<sup>th</sup> April 1996 stands established beyond the preponderance of probabilities and, therefore, the Complainant is entitled to reimbursement in terms of the Insurance Policy taken by her.

29. There is no dispute as regards the principal amount payable to the Complainant for the loss of the vessel which was insured for Rs.1,02,00,000/- and this is not the case of the Insurer that the actual value of the ship was less than sum insured.

30. As far as the payment of interest is concerned it is submitted by the Learned Counsel for the Insurer that since no conclusive report was given by any of the agencies engaged by them and the Complainant was unable to file documents, namely, Port Clearance Certificate and the Note of Protest, no ground for payment of interest is made out. I, however, found myself unable to accept this contention. As far as Note of Protest is concerned, admittedly, such a Protest was never lodged and a valid explanation for not lodging the protest was given to the Insurer and accepted by M/s. W.K. Webster & Co. As far as Port Clearance Certificate is concerned, the Insurer had been informed on 19.01.1999

that the same had been kept in the vessel and, therefore, could not be made available. The Insurer did not instruct M/s. W.K. Webster & Co. to have correspondence with the Dubai Port Authorities in this regard despite instructions having been sought for this purpose, nor did the Insurer itself write to Dubai Port Authorities, at any point to time, asking them as to whether they had issued Port Clearance Certificate in respect of the vessel in question or not. At this stage, it would also be appropriate to take note of the Export Manifest which the Complainant has filed as a part of her documents. The said document purports to be a true copy of the Export Manifest, issued by Hamriya Port Custom Centre and it also purports to be signed in the box made for Custom stamp and signature. The aforesaid Export Manifest was made available to the Insurer and it contains not only the name of the ship but also the name of its Tindal Mr. Suleman. The Export Manifest is dated 09.04.1996. This document, in my opinion, was sufficient to satisfy the Insurer particularly in the light of the report given by the agencies appointed by it and the letter issued by Consulate of Oman, verifying the sinking of the ship, arrest of the crew members 19 and their deportation to India on board vessel Everest.

31. Another important aspect in this regard is that Insurer has been utilising for its own purposes the money which lawfully belonged to the Complainant. Had the claim been paid in time, the Complainant would have been able to use and enjoy the claimed amount. Having used and enjoyed the claimed amount, the Insurer cannot deny interest to the Complainant.

32. The next issue which arises for our consideration is as to from which date interest should be awarded to the Complainant. IRDA has framed regulations known as IRDA (Protection of Policyholders Interests) Regulations 2002, which came into force w.e.f. 13.04.2002. Regulation 9 of the aforesaid Regulation gives a maximum period of 9 months to an insurer to take a decision on the claim lodged by an insured. Though the loss in this case happened on 11.04.1996, considering the facts and circumstances of the case, I am of the view that interest should be awarded to the Complainant, w.e.f. 01.02.2003, when 9 months from the coming into force of the above-referred Regulations expired.

33. For the reasons stated hereinabove, the Complainant stands disposed of with following directions:

i. The Opposite Party shall pay a sum of Rs.1,02,00,000/- (Rupees One Crore Two Lakh only) to the Complainant alongwith simple interest @9% p.a. with effect from 01.02.2003 till the date of payment.

ii. The payment in terms of this order shall be made within three months from today.

- iii. There shall be no order as to costs.

.....J  
**V.K. JAIN**  
**PRESIDING MEMBER**