

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 849 OF 2021**

(Against the Order dated 22/09/2021 in Complaint No. 235/2016 of the State Commission  
Maharashtra)

1. RELIANCE GENERAL INSURANCE CO. LTD.

RELIANCE CENTRE, 19, WALCHAND HIRACHAND  
MARG,BALLARD ESTATE,MUMBAI-400001

.....Appellant(s)

Versus

1. SEVEN ISLANDS SHIPPING LTD & ANR.

SUIT 4, LEVEL 8, B WING, TIMES SQUARE, ANDHERI  
KURLA ROAD, ANDHERI-EAST, MUMBAI-400059,  
THROUGH AUTHORIZED OFFICER

2. ATHENA INSURANCE AND REINSURANCE BROKERS  
'P' LTD.

112,"C" MITTAL TOWER, VIDHAN BHAVAN MARG,  
NARIMAN POINT, MUMBAI-400021, THROUGH  
AUTHOLRIZED OFFICER

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING  
MEMBER**

**HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE,MEMBER**

FOR THE APPELLANT : MR. VISHNU MEHRA, ADVOCATE

FOR THE RESPONDENT : MR. AMITAVA MAJUMDAR, ADVOCATE  
MR. ARVIND KUMAR GUPTA, ADVOCATE

**Dated : 31 July 2023**

**ORDER**

1. Heard Mr. Vishnu Mehra, Advocate, for the appellant and Mr. Amitava Majumdar, Advocate, for the respondents.
2. Above appeal has been filed against the order of Maharashtra State Consumer Disputes Redressal Commission, Mumbai, dated 22.09.2021, passed in Complaint No.235 of 2016, allowing the complaint and directing the appellant (opposite party-1) to pay Rs.6860789/- with interest @12% per annum, from 03.07.2008 till the date of realization, as the insurance claim, on deposit of Rs.687316/- as premium by the complainant, Rs.100000/-, as compensation for mental agony and harassment and Rs.25000/- as litigation costs.
3. The office has reported delay of 3 days in filing the appeal. The appellant has filed IA/9379/2021, for condoning the delay. Cause shown is sufficient. Delay in filing the appeal is condoned.
4. Seven Islands Shipping Limited (respondent-1) filed CC/235/2016, for directing the opposite parties jointly and severally pay (i) Rs.9056894.12, as insurance claim, after taking

insurance premium of Rs.702284.11; (ii) Rs.500000/-, as compensation for mental agony; (iii) Rs.500000/-, as litigation costs; (iv) interest @15% per annum on above amount from the date of the claim till the date of payment; and (v) Any other relief, which is deemed fit and proper in the facts and circumstances of the case. The complainant stated that it was a shipping company operating its cargo and tanker ships for carriage of goods including oil, to and from shores of the country. Reliance General Insurance Company Limited (opposite party-1) was insurance company and used to provide different types of insurance to the general public. Athena Insurance and Reinsurance Brokers Private Limited (opposite party-2) was authorised insurance agent of opposite party-1. Opposite party-2 approached the complainant in November, 2006, for taking 'Marine Hull Insurance Policy' for all risk, from opposite party-1, of its tanker vessel, named as 'MT Crystal'. It was agreed between the parties that the annual insurance policy, covering all risk would be provided for premium of Rs.672528/, payable in quarterly instalments of Rs.168132/- and stamp duty of Rs.14788/-. Opposite party-2 supplied proposal form of 'Marine Hull Insurance Policy' issued by opposite party-1 to the complainant on 23.11.2006, which were filled up by the complainant and handed over to opposite party-2 along with first instalment of the premium and stamp charges. On encashment of the premium, opposite party-1 issued 'Marine Hull Insurance Policy' No.1101062511000011 of the vessel 'M.T. Crystal' for the period of 08.11.2006 to 07.11.2007, for a sum of Rs.147875000/- for hull and machinery. The complainant deposited remaining three instalments of the premium on time and last instalment was deposited in August, 2007. On 05.09.2007, when the vessel 'M.T. Crystal' was en-route to Kandla at about 190 NM off the coast of Okha, the bearing of the main engine was damaged and lube oil pressure had dropped. On inspection, it was found that some white metal had crept inside the crankcase and damaged the engine. In order to reduce further damage, engine was stopped. The complainant informed opposite party-2 about the damage in engine through email dated 06.09.2007 and also that the vessel had to tow to a nearest port of refuge, where workshop facility would be available, for its repair. Opposite party-2 informed opposite party-1 through email dated 07.09.2007, who through reply email dated 07.09.2007 confirmed and guaranteed towage charges. The complainant engaged AI Mubarak Overseas to tow the vessel, who tow the vessel to Mumbai, reaching there on 14.09.2007. AI Mubarak Overseas raised invoice of the towage charges of USD 252343.75 on 14.09.2007. After repair, the complainant submitted insurance claim on 21.09.2007. Opposite party-1 appointed Dhiraj Offshore Surveyors & Adjusters Pvt. Ltd. as the surveyor. Opposite party-1 wrote an email dated 21.09.2007, requiring the complainant to send details of claims preferred on other vessels of the complainant during last 5 years. Opposite party-1, through email dated 26.09.2007, repudiated the claim on the ground that during last two years, the complainant raised two insurance claims of the vessel 'M.T. Twinkle' a sister vessel of the fleet Seven Island Shipping Limited, which were concealed in the proposal form, which amount to violation of Warranty No.8. The complainant protested the repudiation and stated that in proposal form, query was made in respect of "accident during past three years to any vessel owned by the Insured". Which was correctly answered and there was no violation of the warranty. Then opposite party-1 wrote a letter dated 23.10.2007, informing that the policy was void *ab initio* and they refunded the premium amount. The complainant gave a legal notice dated 15.11.2007, for settlement of the claim, which was replied by opposite party-1, vide notice dated 11.01.2008. The complainant again through notice dated 19.02.2008, requested to review the claim. Dhiraj Offshore Surveyors & Adjusters Pvt. Ltd. submitted Final Survey Report dated 03.07.2008, assessing the loss payable to Rs.6860789/-.

The complainant sent Final Survey Report dated 03.07.2008 to M/s. Richard Hogg Lindley, a reputed averager for his report in respect of loss, who vide report dated 11.07.2008, assessed the loss to Rs.8759178.23. The complainant forwarded these reports to opposite party-1 through opposite party-2 vide letter dated 16.07.2008. But opposite party-1 did not respond. Thereafter the complainant filed a CC/153/2009 before National Consumer Disputes Redressal Commission on 24.09.2009, which was returned for presentation before State Commission on the ground of pecuniary jurisdiction on 06.11.2015. Then the complainant was filed before the State Commission on 22.03.2016.

5. The appellant filed its written version and contested the complaint. The appellant stated by that for issuance of "Hull and Machinery Policy" for vessel 'M.T. Crystal', opposite party-1 had given quote dated 19.10.2006 consisting nine warranties. The documents required for effecting insurance were also advised to fill up the proposal form correctly. In the Proposal Form, there was specific query i.e. "What accidents have happened during past three years to any vessel owned by you" which was answered as "Not Applicable", Proposal Form was filled up on 06.11.2006. The word 'accident' has wide connotation and includes all the incidents. The complainant deliberately concealed material facts. The complainant filled up proposal form and forwarded through opposite party-2 along with first instalment of premium of Rs.189920/-. Thereafter, 'Marine Hull Insurance Policy' No.1101062511000011 of the vessel 'M.T. Crystal' for the period of 08.11.2006 to 07.11.2007, for a sum of Rs.147875000/- for hull and machinery was issued and subsequent instalments of the premium were accepted. Warranty No.8 was "No claim has been made on Seven Island Fleet during last 5 years". Opposite party-2 was an Insurance Broker and not agent of opposite party-1. When the complainant set up insurance claim, then it was found that the complainant had taken Insurance Policy of its vessel 'M.T. Twinkle' from IFFCO Tokio General Insurance Company Limited and raised insurance claims for the incidents occurred on 09.05.2006 and 24.06.2007, which were concealed in the Proposal Form. Due to concealment of material facts, the policy had become void *ab initio* and insurance claim was repudiated, vide email dated 26.09.2007. Opposite party-1 cancelled the policy, vide endorsement dated 19.10.2007 and informed the complainant, vide letter dated 23.10.2007. Opposite party-1 returned the premium amount of Rs.702284/- through cheque dated 23.10.2007, which was en-cashed by the complainant without protest. The complaint was filed after expiry of about two years and not maintainable. Section 20 of Marine Insurance Act, 1963, requires for disclosure of every circumstances which is known to the assured. If assured fails to disclose material fact, the Insurer may avoid the contract. Breach of warranty is itself a ground for repudiation of the claim. The complaint has no merit and is liable to be dismissed.

6. State Commission, in impugned judgment dated 22.09.2021, held that proposal form was filled up on 06.11.2006, while the claims before IFFCO Tokio General Insurance Company Limited were submitted on 06.12.2006 and 13.08.2007 as such warranty-8 has not been violated nor there was non-disclosure of material fact. Dhiraj Offshore Surveyors & Adjusters Pvt. Ltd. submitted Final Survey Report dated 03.07.2008, assessing the loss payable to Rs.6860789/- as such the complainant was entitled for this amount under its insurance claim. On these findings the complaint was allowed and order as stated above was passed. Hence this appeal has been filed.

7. We have considered the arguments of the counsel for the parties and examined the record. Warranty No.8 was “No claim has been made on Seven Island Fleet during last 5 years”. A perusal of letter of IFFCO Tokio General Insurance Company Limited dated 06.02.2017 shows that the complainant lodged two claims one on 06.12.2006 and other on 13.08.2007. Both these claims were lodged subsequent to issue of ‘Marine Hull Insurance Policy’ No.1101062511000011 to the complainant. As such the finding of State Commission that Warranty No.8 has not been violated, does not suffer from any illegality.

8. So far as arguments of the counsel for the appellant, in respect of concealment of material fact, is concerned, specific query in the Proposal Form was “What accidents have happened during past three years to any vessel owned by you” which was answered as “Not Applicable”. The word ‘accident’ means unpleasant event that happens unexpectedly and causes damages or injury. A perusal of the letter of IFFCO Tokio General Insurance Company Limited dated 06.02.2017 shows two claims were raised by the complainant for damage to ‘main engine turbo charger’ one for the incident dated 09.05.2006, which was prior to filling up the Proposal Form in question and other for the incident occurred on 24.06.2007, i.e. subsequent to filling up the Proposal Form. There is nothing on record to show that damage to ‘main engine turbo charger’ was due to any accident, which necessarily connotes the happening due to external force and not a normal wear and tear, which is otherwise payable under insurance policy. As such concealment of material fact in proposal form has not been established. In any case of ambiguity, it will be interpreted against the appellant. Constitution Bench of Supreme Court in **General Assurance Society Ltd. Vs. Chandumull Jain, AIR 1966 SC 1644**, held that in case of any ambiguity in proposal form, it would be interpreted contra proferentem i.e. against the Insurer, who had drafted proposal form. This judgment has been followed in **United India Insurance Company Limited Vs. Pushpalaya Printer, (2004) 3 SCC 694**. The case law of **Contship Container Lines Limited Vs. D.K. Lall, (2010) 4 SCC 256** and **Oriental Insurance Company Limited Vs. Mahendra Construction, (2019) 18 SCC 209**, relied upon by the counsel for the appellant, have no application in the facts of the present case. Repudiation of vide email dated 26.09.2007 and cancellation of the policy, vide endorsement dated 19.10.2007 and letter dated 23.10.2007 were illegal. The impugned order of State Commission does not suffer from any illegality.

**ORDER**

In view of the aforesaid discussion, the appeal has no merit and is dismissed.

.....J  
**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**

.....J  
**KARUNA NAND BAJPAYEE**  
**MEMBER**