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2024 INSC 431

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1496 OF 2023

United India Insurance Co. Ltd. ...Appellant(s)

Versus

M/s Hyundai Engineering & Construction Co. Ltd. & Ors. ...Respondent(s)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. The appellant, United India Insurance Co. Ltd., an insurance company, challenges the decision by the National Consumer Disputes Redressal Commission (hereinafter 'the NCDRC'), which by its impugned order dated 16.01.2023 allowed the Consumer Complaint No.160 of 2019 and directed the appellant to release and pay an insurance claim of Rs. 39,09,92,828/-.

2. ***Facts***: The National Highway Authority of India ('NHAI'), respondent no. 3 herein, awarded a contract for the design, construction and maintenance of a cable-stayed bridge across the river Chambal on NH-76 at Kota, Rajasthan to a joint venture company comprising of respondent no. 1 and respondent no. 2.

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The value of the project under the contract was Rs. 213,58,76,000/-. The contract provided that the construction work was to be completed within 40 months and the joint venture was thereafter assigned the task of maintaining the said bridge for a period of 6 years, of which, 2 years was the 'defect-notification period'. NHAI also assigned consultancy services for design, construction and maintenance of the bridge to another joint venture of M/s Louis Berger Group Inc. (USA) and M/s COWI A/S (Denmark).

3. The appellant issued a Contractor's All Risk Insurance Policy covering the interest of NHAI as principal, and M/s Hyundai Engineering Infrastructure Co. Ltd. along with M/s Gammon India as JV Contractor under the policy bearing No. 011900/44/07/03/60000001 for the period from 05.12.2007 to 04.12.2011 for a total amount of Rs. 213,58,76,000/-. The relevant clauses of the policy are extracted as follows:

> "*SECTION I - MATERIAL DAMAGE:*
>
> *1. The Company hereby agrees with the Insured (subject to the exclusions and conditions contained herein or endorsed hereon) that if, at anytime during the period of insurance stated in the Schedule, or during any further period of extension thereof the property (except packing materials of any kind) or any part thereof described in the*

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Schedule be lost, damaged or destroyed by any cause, other than those specifically excluded hereunder, in a manner necessitating replacement or repair, the Company will pay or make good all such loss or damage upto an amount not exceeding in respect of each of the items specified in the Schedule the sum set opposite thereto and not exceeding in the whole the total Sum Insured hereby.
The Company will also reimburse the Insured for the cost of clearance and removal of debris following upon any event giving rise to an admissible claim under this Policy but not exceeding in all the sum (if any) set opposite thereto in the Schedule. The term debris only of the Insured property and the cost of clearance and removal of debris pertaining to property not Insured by the policy will not be payable."

"*EXCLUSIONS TO SECTION - I*
The Company, shall not, however, be liable for;
a) the first amount of the loss arising out of each and every occurrence shown as Excess in the Schedule;
b) loss discovered only at the time of taking an inventory;
c) normal wear and tear, gradual deterioration due to atmospheric conditions or lack of use or obsolescence or otherwise, rust, scratching of painted or polished surfaces or breakage of glass;
d) loss by damage due to faulty design;
e) the cost of replacement, repair or rectification of defective material and/or workmanship, but this exclusion shall be limited to the items immediately affected and shall not be deemed to exclude loss of or damage to correctly executed items resulting from an accident due to such defective material and/ or workmanship;
f) the cost necessary for rectification or correction of any error during construction unless resulting in physical loss or damage

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> *g) loss of or damage to files, drawings, accounts, bills, currency, stamps, deeds, evidence of debt, notes, securities, cheques, packing materials such as cases, boxes, crates;*
> *h) any damage or penalties on account of the Insured's non-fulfilment of the terms of delivery or completion under this Contract of construction or of any obligations assumed thereunder or lack of performance including consequential loss of any kind or description or for any aesthetic defects or operational deficiencies;*
> *i) loss of or damage to vehicles licensed for general road use or waterborne vessels or machinery/equipment mounted or operated or fixed on floating vessels/craft/barges or aircraft.”*

4. The construction project commenced in December, 2007. While the construction was in progress, a part of the constructed bridge collapsed on 24.12.2009, resulting in the death of 48 workmen. On 26.12.2009, the Ministry of Road Transport and Highways, Government of India constituted a Committee of Experts (hereinafter, ‘Expert Committee’) under the chairmanship of the Director General (Road Development) and Special Secretary, Ministry of Road Transport and Highways. The task of this committee was to investigate and report the cause of the collapse. An FIR was also lodged against the respondents for offences under Sections 304/308 of the Indian Penal Code, 1860. After investigation, a final report dated 19.03.2010 was filed wherein the officials of the respondent companies were charged under the said

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provisions. It was found that they were liable for the loss of 48 lives due to several defects at the stage of design, construction and supervision.

5. The NHAI intimated the appellant about the incident on 29.12.2009 and requested the deputation of a surveyor to assess the damage caused due to the accident and also sought indemnification of the loss. A surveyor was appointed. He commenced his work and by a letter dated 06.01.2010, he called for certain details and clarifications from the respondents. While furnishing the details, the respondents made a claim of Rs. 151,59,94,542/-.

6. The Committee of Experts constituted by the Government of India submitted its report on 07.08.2010. Relevant parts of some of the important findings of the Committee are as follows:

> "*8.2.2 Views of the Committee*
>
> *8.2.2.1 The majority of failures in structures occur during construction stages when they are most vulnerable. The Chambal Bridge Accident was a sudden and catastrophic structural failure. It may be pointed out that the bridge was at one of its critical stages at the time of the accident.* [...]
>
> *8.2.2.2* [...] *At this stage, as noted in para 5.8, the stabilizing moment would become less than the overturning moment. Uncontrolled rotation of the pylon about the base would take place which*

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would result in its gaining momentum as it fell. This is borne out by the fact that the catastrophic failure involved a catapult action wherein the span P3-P4 as a whole, (which was tied together by prestressing cables) was thrown some 100 m away.

8.2.2.3 The serious distress in span P3-P4 referred to para 8.2.2.2 could have been caused by shortfall in design, poor workmanship, unexpected load, sub-standard material or distress in foundation P4 or a combination of some of these. […]

8.2.2.4 It can be seen that had there been additional stability devices in place (such as those mentioned in para 8.2.2.1) the cycle involving progressive loss of rotational restrain at the base of the pylon and accentuation of distress in P3-P4 might not have been initiated and the collapse might not have occurred."

7. The final conclusions of the committee are relevant for this case, and are as follows:

"CONCLUSIONS

9.1 From all the information made available by the various agencies as also the analysis and evaluation made by the Committee, it is felt that a combination of factors such as lack of stability and robustness in the partially completed structure, shortfalls in design and lack of quality of workmanship in the construction of span P3-P4 have contributed to the collapse of this bridge. The trigger for initiation of the collapse appears to have been unpredictable and sudden additional loading due to failure of supporting arrangement of the form traveller."

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9.2 Since this is a design-build "Turnkey Contract" which covers planning, investigation, design, construction and maintenance of the cable stayed bridge, the primary responsibility for the collapse lies with the Contractor, M/s Hyundai — Gammon (JV). The Contractors are responsible for allowing the structure to reach a vulnerable stage without taking adequate precautions with respect to stability and robustness of the partially completed structure and the short fall in the design. They are also responsible for deficiency in workmanship in the construction of span P3-P4.

9.3 The design for this bridge was prepared by M/s SYSTRA, the Design Consultants of the Contractor M/s Hyundai-Gammon (JV). Since there have been shortfalls in design, the responsibility for the same also lies with M/s SYSTRA.

9.4 The Supervision Consultants for this Project are M/s LBG-COWI whose duties include construction supervision along with the proof-checking of the design through M/s COWI While carrying out the proof-checking work M/s COWI have not highlighted the shortfalls in the design which have been observed subsequently by the Committee. Further, the Supervision Consultants have not been sufficiently proactive in preventing lapses in workmanship. They have also given tacit approval for major changes during construction without insisting on a proper review of the design by the Contractors / Design Consultants. As such, the Supervision Consultants are responsible for these lapses.

9.5 M/s Freyssinet acted as specialist Agency to M/s Hyundai for supply, installation and operation of the form traveller equipment for cantilever construction, post - tensioning work and installation of stay cables. Since the trigger

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> *for the collapse appears to be the failure of the Freyssibar and / or the supporting arrangement for the form traveller, the extent of their responsibility may be examined keeping in view the Contract Agreement between the concerned agencies.*
>
> *9.6 Apportioning of extent of responsibility to the various agencies for the collapse of the structure could be examined further by the Employer (NHAI) keeping in view the contracts for this Project entered into between various agencies with each other and with NHAI.*"

8. On 06.12.2010, NHAI issued a show-cause notice to the respondent nos. 1 and 2 calling upon them to justify as to why they should not be debarred. The respondents replied to the show cause notice, and after perusing the reply, the NHAI took a decision to permit them to carry out the remaining part of the contract.

9. In the meanwhile, the surveyor appointed by the appellant submitted its final report on 28.02.2011. While assessing the net loss at Rs. 39,09,92,828/-, the surveyor recommended to the appellant that the insurance claim must be rejected as the respondents no. 1 and 2 had violated the conditions of the insurance policy. Based on the surveyor's report and also the findings and conclusions of the Expert Committee, the appellant repudiated the insurance claim in its letter dated 21.04.2011.

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10. By their letter dated 17.06.2011, respondents nos. 1 and 2 requested the appellants to reconsider the decision of repudiation. In support of their contentions, the respondents relied on certain independent reports submitted by i) Mr. Jacques Combault; ii) M/s SETRA/CETE (French Ministry of Transportation Technical Department); iii) M/s Halcrow Group Ltd. and iv) AECOM Asia Co. Ltd. Relying on these reports, the respondents urged stated that there is no fault in the design of the bridge, and this is clearly reiterated by technical experts, who are specialists in the field.

11. As the appellant agreed to reconsider the repudiation, respondents no. 1 and 2 submitted various documents in support of their claim. The appellant re-considered the claim, and by a letter dated 17.04.2017 informed the respondents that the original decision of repudiation is affirmed as they did not find any justifiable reason for accepting the claim. The relevant portion of the said communication dated 17.04.2017 is as follows:

> "*We refer to your letter Ref: 17011/27/2006-kota/CAR/RJ-05/3909, dt: 18.01.2017 and Contractor letter Ref: HZ-6718, dt: 04.02.2017 and also the subsequent meeting held at our office-Chennai. On perusal of the documents provided, we find that no further points have emerged in support of the claim.*
>
> *In view of the above we regret our inability to reconsider the claim which was repudiated.*"

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12. In the meanwhile, respondents no. 1 and 2 completed the work under the contract by 31.07.2017. The bridge was inaugurated and put to public use from 29.08.2017, and it is said to be operating since then.

13. Almost after 2 years of the rejection of the claim, on 24.01.2019, respondents no. 1 and 2 filed a Consumer Complaint No. 160 of 2019 before the NCDRC alleging deficiency in the appellant's service and unfair trade practice adopted by it.

14. ***Decision of the NCDRC***: At the outset, the NCDRC rejected the preliminary objection of the appellant that the summary jurisdiction under the Consumer Protection Act, 1986 (hereinafter, 'the CPA') is not appropriate for dealing with complicated questions of law and fact. The objection relating to limitation in filing the complaint was also dismissed by holding that the period for calculating the limitation would commence from 17.04.2017 and not from 21.04.2011.

14.1 On merits of the matter, the NCDRC held that the report of the Committee of Experts was inconclusive as it could not identify the precise reasons for the collapse of the bridge. On the other hand, the NCDRC placed reliance on the reports of i) Mr. Jacques

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Combault, ii) the Halcrow Group, iii) SETRA and iv) AECOM Asia Co. Ltd., and came to the conclusion that there is no defect in the design of the bridge and that the respondent nos. 1 and 2 are not at fault.

14.2 Finally, the NCDRC relied on the decision of the NHAI permitting the respondent nos. 1 and 2 to proceed with the construction of the remaining part of the bridge and held that if the NHAI found the respondents to be competent enough to continue with the contract, it can safely be concluded that they were not at fault.

14.3 In this view of the matter, the NCDRC directed the appellant to pay the respondents no. 1 and 2 a sum of Rs. 39,09,92,828/- with an interest at 9% p.a. from the first date of repudiation, i.e., 21.04.2011.

14.4 Strangely, while the judgment of the NCDRC was pronounced on 16.01.2023, an addendum came to be added to the judgment. This addendum is undated and seeks to amend paragraphs 28 and 29 and directs payment of Rs. 151,59,94,542/- instead of Rs. 39,09,92,828/-. The relevant portion of the addendum is extracted here for ready reference:

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> *"32. It will be relevant to mention here that though the Complainant No.1, vide letter dated 27.02.2010 had submitted a detailed Claim Statement of ₹93,67,17,876 to the Surveyor but it was revised vide e-mail dated 07.03.2010 to the tune of ₹149,87,44,914/-. It was again revised vide letter dated 24.06.2010 (Serial No.2 of the Claim Statement - ₹8,29,15,604 to ₹10,01,65,232) to a final Claim of ₹151,59,94,542/-. The Surveyor had, however, assessed the total loss at ₹39,09,92,828/- . Even though in the Written Submissions filed by the Learned Counsel for the Complainants they have claimed that at least a net loss of ₹39,09,92,828/- be payable towards the insurance claim but in my considered opinion the Complainants are entitled for the payment of entire loss of ₹151,59,94,542/- claimed by them.*
>
> *33. Consequently, the Complaint is partly allowed with a direction to the Insurance Company to pay a sum of ₹151,59,94,542/- to the Complainants along with interest @9% p.a. from the date of repudiation of the claim i.e. 21.04.2011 till the actual realization, within a period of 8 weeks from the date of passing of the order failing which the amount shall attract interest @12% p.a. for the said period. The Complainants shall also be entitled for a costs of ₹50,000/-."*

15. Mr. Dama Seshadri Naidu, learned senior counsel appearing for the respondents has submitted that he is not in a position to support the judgment amending the paragraphs 28 and 29 and directing the payment of the revised amount of Rs. 151,59,94,542/-. It is unimaginable as to how the NCDRC could unilaterally revise the claim from Rs. 39,09,92,828/- to Rs. 151,59,94,542/-, without hearing the parties and more

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surprisingly when respondent nos. 1 and 2 have themselves filed written submissions confining the claim to Rs. 39,09,92,828/-. Be that as it may, in view of the submission of the learned counsel for the respondent that he will confine the claim Rs. 39,09,92,828/-, this issue need not detain us any further.

16. ***Analysis***: Insurance is a contract of indemnification, being a contract for a specific purpose[1], which is to cover defined losses[2]. The courts have to read the insurance contract strictly. Essentially, the insurer cannot be asked to cover a loss that is not mentioned. Exclusion clauses in insurance contracts are interpreted strictly and against the insurer as they have the effect of completely exempting the insurer of its liabilities.[3]

17. In *Texco Marketing P. Ltd.* v. *TATA AIG General Insurance Company Ltd.*,[4] while dealing with an exclusion clause, this Court has held that the burden of proving the applicability of an exclusionary clause lies on the insurer. At the same time, it was stated that such a clause cannot be interpreted so that it conflicts

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[1] *Oriental Insurance Co. Ltd.* v. *Sony Cheriyan*, (1999) 6 SCC 451.
[2] *United India Insurance Co. Ltd.* v. *Levis Strauss (India) (P) Ltd.*, (2022) 6 SCC 1.
[3] *New India Assurance Co. Ltd.* v. *Rajeshwar Sharma*, (2019) 2 SCC 671; *Canara Bank* v. *United India Insurance Co. Ltd.*, (2020) 3 SCC 455; *Oriental Insurance Co. Ltd.* v. *Samayanallur Primary Agricultural Coop. Bank*, (1999) 8 SCC 543.
[4] (2023) 1 SCC 428.

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with the main intention of the insurance. It is, therefore, the duty of the insurer to plead and lead cogent evidence to establish the application of such a clause[5]. The evidence must unequivocally establish that the event sought to be excluded is specifically covered by the exclusionary clause.[6] The judicial positions on the nature of an insurance contract, and how an exclusion clause is to be proved, shall anchor our reasoning in the following paragraphs.

18. Seeking to justify their repudiation, the appellant relied on the affidavit of evidence by Mr. S. Anantha Padmanabhan, examined as RW 2. He produced the surveyor's report as well as the Expert Committee's report as Ex. RW 2/2. On the other hand, the reports of the *independent experts* relied upon by the respondents no. 1 and 2 were not marked as exhibits. They were not adduced in evidence as none of these experts was examined as a witness. Under these circumstances, we have no hesitation in coming to a conclusion that the appellants have discharged the burden as enunciated in *Texco* (supra).

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[5] *National Insurance Company Ltd.* v. *Vedic Resorts and Hotels Pvt. Ltd.*, 2023 SCC OnLine SC 648.

[6] *National Insurance Co. Ltd.* v. *Ishar Das Madan Lal*, 2007 (4) SCC 105.

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19. The Expert Committee was constituted by the Ministry of Road Transport and Highways ('MORTH'), Government of India. It was chaired by the Director General (Road Development) and Special Secretary, MORTH. The other members of the Committee were Mr. Ninan Koshi DG (RD) & AS (Retd.), Prof. Mahesh Tandon, Bridge Specialist, and Prof. A.K. Nagpal, Dept. of Civil Engineering, IIT Delhi. We have referred to the constitution as well as the expertise of the Committee only to assure ourselves that it comprised of experts in the field of civil engineering. It is also indicative of the fact that the members were independent and well-qualified to examine and submit a report. We would, therefore, be justified in relying on the findings of the Expert Committee. In fact, the NCDRC's opinion about the Expert Committee is not about lack of credibility, or lack of expertise, rather its opinion was only that the Committee was not conclusive in its findings.

20. The proof of the pudding is in its eating - we will straight away refer to the relevant portions of the Expert Committee's report. Referring to the variations introduced on-site without any approval by the design checker, the Committee held as follows:

> "*5.1.2 Since this is a Design Build Contract, the Contractors M/s Hyundai-Gammon (JV) had appointed M/s SYSTRA of France as their Design*

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> *Consultant. The designs prepared by M/s SYSTRA were proof checked by M/s COWI, the Proof Check Consultant. During the course of presentations and discussions with various agencies, there were some contradictions in the stand taken by M/s SYSTRA and M/s COWI as regards the extent of proof checking of designs by the Proof Check Consultant. In fact, M/s COWI in their submission dated 28th May, 2010 (Annexure L-21) have stated as follows: "The Design Checker verified the Final Design prior to start of construction. The variations introduced on site were introduced by the BOT Contractor. We expect that all variations were subject to verification and approval of the Designer. The Design Checker was not requested to review any design verification following variations on site from the Final Design.* […]"
>
> (**emphasis supplied**)

20.1 The Committee noted that each lateral span of the bridge was supposed to be a monolithic structure. A lateral span is the structure between two support pillars. However, the collapsed lateral span was cast in multiple parts, as noted in the following paragraph:

> "*5.3.3 M/s SYSTRA have expressed vide their submission dated 17th April, 2010 (Annexure H-11, page 3) that they have envisaged "one go" (i.e. monolithic construction) for each lateral span during the development of the design. However, during actual construction the lateral span P3-P4 was cast in seven parts. The lower part of the box girder (U-shaped section comprising bottom slab and webs upto about mid height) was concreted in four different stages with three vertical construction joints. The upper part of the box girder (comprising deck slab and top half of the*

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> *webs) was later concreted in three stages (with two vertical construction joints). It has been informed by M/s Hyundai-Gammon JV vide their letter HN-1656 dated 1st September, 2009 (Annexure L-18, page 3) that M/s SYSTRA, the designer of the main bridge including lateral spans, were aware of this. In fact, Mr. J. Mirailles of M/s SYSTRA had visited the site in the month of July 2009 and stayed there for a couple of weeks to inspect the ongoing construction. The construction of lateral span P3- P4 in parts was being carried out at that time…"*
>
> "*5.3.5 The query of the Committee regarding position of M/s LBG-COWI in respect of applicability of Clauses of AASHTO relating to "Segmentally Constructed Bridges" to the design of lateral span P3-P4, was discussed with Mr. Nielsen of M/s COWI on 23rd June, 2010. Mr. Nielsen mentioned that as per his understanding, it was a case of segmental construction*. […]"
>
> (**emphasis supplied**)

20.2 The Committee noted that the point at which the cable was going to be suspended with the pylon was crucial. It observed that the height at which the suspension took place was 77 metres, whereas, it was supposed to be 40 metres. The relevant paragraph is as follows:

> "*6.2 The drawing No.A104-DWG-MB-FD-1301 REV. 1 dated 28th May, 2009 [Annexure H-01(ii)] shows that the lateral spans P3-P4 as well as P2-P3, should have been completed and external tendons tensioned before the first stay cable was installed. The steel box for anchoring the first stay cable was to be placed in the pylon at the height of 33.30m. Also, the first cantilever segment towards the river side from P4 was to be*

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> *constructed only after the lateral spans P3-P4 and P2-P3 had been completed and fully prestressed. It is seen that this sequence was changed in the actual construction. Further, drawing No.A104-DWG-MB-FD-846 REV. 2(c) dated (??)/07/09 [Annexure H-01(ii)] specifically mentions that "tendons tensioning on span P2-P3 must be performed before pouring segment S10". This requirement was also changed during actual construction. [...]*
> *6.3 ...This implies that the height of the pylon should have been about 40 m at the time of tensioning of first stay cable at cantilever segment S10. However, it is seen that at the time of casting of segment S10, the free-standing pylon had already been constructed to a height of 77 m."*
> (**emphasis supplied**)

20.3 The other relevant portions cited to us from the Committee's Report include para 6.5, which speaks about the changes in the sequence of construction without consulting or informing the design consultants of the project. Para 6.8 was relied on to highlight further discrepancies between the approved drawing plans and the actual construction. Concrete batching plants involved were of a lower capacity, leading to delays in construction of the lateral spans. Para 8.1.2 (iii) was also brought to our notice, as it spoke about the changes which were brought about without a proper technical review. The conclusions of the committee have already been quoted by us in paragraph 7 above, and it was found that:

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a) a combination of factors such as lack of stability and robustness in the structure, shortfall in design, lack of quality workmanship have all contributed to the collapse;

b) the primary responsibility lies with the contractor, M/s Hyundai and Gammon (JV) who are responsible for allowing the structure to reach a vulnerable stage without taking adequate precautions and there is a shortfall in the design;

c) there were shortcomings in the design for the bridge prepared by M/s SYSTRA and the responsibility for the design lies with M/s SYSTRA;

d) M/S COWI, the supervision consultants have not highlighted the shortfall in the design. M/s COWI has not been sufficiently proactive in preventing lapses in workmanship. They have given tacit approvals for major changes without insisting on a proper review of the design;

e) The trigger for the collapse appears to be the failure of M/s Freyssinet. Their responsibility must be examined in detail.

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21. We are inclined to accept the appellant's submission that there is sufficient evidence to justify repudiation of the claim on the basis of the exclusion clause. On the other hand, there is absolutely no evidence on behalf of the respondents. His argument is only that the Surveyor/Committee report is not clinching, it is open ended and does not hold that the respondents no. 1 and 2 are responsible for the negligence.

22. We will now refer to the surveyor's report, the findings of which are as follows:

> "*C) After a detailed study of the Insured's submission vide their letter dt;27.02.2010 and several rounds of face to face interactions with the Insured's Engineers at site, we derived the following inferences;*
>
> *1). The junction at Pylon P4, was the most critical and vulnerable in the entire construction and had to be handled with due care and diligence.*
>
> *2). It was clear and obvious, that, an unstable equilibrium has been created at this junction, (where, the over turning moment was in excess of resisting moment), due to the shearing of the slab in lateral span P3 -P4 at about 15 mts from the P4 junction, which has caused the tilting of the Pylon, dragging with it, spans P3-P4, P3-P2 and Piers P4, P3. The shearing of the slab is purely a Design aspect.*
>
> *3). The restraints imposed on the movement of the Bearings at P4 were released by the Insured prior to completion of the main spans, which facilitated*

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movement of Pylon along with Lateral spans and this is one of the most significant factors, contributing to this massive failure.

4). The sequence of operations in the construction of the Bridge were changed in actual construction to make up for the time lost and this has adversely affected the stability of the P4 joint.

5). Raising Pylon P4 to an abnormal height of 77 mts (out of 80 mts) without any lateral anchorage in the form of stringers, had left the Pylon P4 exposed to heavy wind pressure and in a state of unstable equilibrium, ready to collapse at any time, with the application of a little external force in excess.

6). We were informed that, the concreting of Lateral span P3-P4 was done in 7 stages, whereas, it should have been done at ONE GO. This leaves vertical joints which are vulnerable. We also noted that, the Insured had to resort to concreting in stages, due to insufficient Batching Plants.

7). Change in allocation of works amongst the Joint Venture Partners also played a key role in the quality of workmanship. At several places, M/s.Gammon had to carryout the jobs, supposed to have been carried out by M.s,Hyundai. Even in the affected location of P4, the construction of Pier P4 was the responsibility of M/s. Hyundai, whereas, it was carried out by M/s Gammon.

8). Lack of co-ordination and planning between proof checking consultant and design consultants could have been streamlined.

[…]

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> *11). The sequence of concreting carried out on the date of failure, as informed to us, was different from the versions of the Insured*. [...]"

23. It is important to note that the surveyor was examined as RW-1 and his evidence remained unrebutted. In *National Insurance Company Ltd.* v. *Hareshwar Enterprises (P) Ltd.*[7] and *National Insurance Company Ltd.* v. *Vedic Resorts and Hotels Pvt. Ltd.*,[8] this court has held that the surveyor's report is a credible evidence and the court may rely on it until a more reliable evidence is brought on record. In the present case, the surveyor's report was the evidence tendered by the insurance company, and it has not been treated as unreliable by the NCDRC.

24. Mr. Naidu, appearing on behalf of the respondents, commenced his submission by referring to certain portions of the judgment of this court in *Texco* (supra) to emphasise that exclusionary clauses place extraordinary burden on the insurance company. We have already answered this question by referring to the evidence adduced by the appellant, which we consider to be a sufficient discharge of the burden. On the Expert Committee's

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[7] (2021) SCC Online SC 628.
[8] 2023 SCC OnLine SC 648.

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report, Mr. Naidu has re-iterated the finding of the NCDRC that it is inconclusive apart from being a mere opinion. Even this submission stands answered by extracting specific and categorical findings of the Committee as well as the surveyor's report.

25. Mr. Naidu sought to draw support from the reports of independent experts on the issue of design to establish that the respondents are not at fault. Mr. Naidu sought to rely on reports by (i) Mr. Jacques Combault; (ii) M/s SETRA/CETE (French Ministry of Transportation Technical Department); (iii) M/s Halcrow Group Ltd.; and (iv) AECOM Asia Co. Ltd.

26. At the outset, the concerned experts were never examined before the NCDRC. Further, these reports were not based on site-inspection. They are all theoretical in nature. For example, the report Mr. Jacques Combault is based on:

> "*The analysis reported in the following pages is based on:*
> - *The description of Bridge Concept as proposed by Systra*
> - *The Main characteristics of the Structural Concept as proposed by Systra*
> - *The State of the Art in the field of prestressed concrete cable stayed bridges*
> - *Examples of similar bridges successfully achieved in the past*"

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After a theoretical analysis, the following conclusion is drawn:

> "*The structural concept of the Chambal Bridge as proposed by Systra is: -*
> - *perfectly fitting the site-conditions*
> - *conforming to the state of the art in the field of cable stayed bridges*
>
> *The construction methods, as proposed by Systra, are simple and proven processes well adapted to the structural concept.*"

27. A similar approach was adopted by the other experts. On the other hand, the surveyor has examined himself and adduced documents. Further, there is sufficient evidence to indicate that the surveyor has made site-visits and the proof of that was part of the pleadings filed before us.

28. The submission that NHAI continuing the contract with respondent nos. 1 and 2 and they have, in fact, completed the contract does not impress us. The continuation of work by respondent nos. 1 and 2 could be due to various reasons. Even if the NHAI's decision to continue is taken to be a valid economic decision, that by itself cannot be a reason for not applying the applicable clause of the contract if such applicability is otherwise proved by cogent evidence.

29. For the reasons stated above, we are of the opinion that the NCDRC fell into a clear error of law and fact in allowing the

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consumer complaint for multiple reasons. As we have not agreed with the preliminary objection of the appellant to reject the complaint and relegate the respondents to civil court, we made extra efforts to examine the facts in detail. It is for this reason that the evidentiary value of the reports, their scope and ambit, and their contents were examined by us in some detail.

30. For the reasons stated above, we allow the appeal and set-aside the impugned order dated 16.01.2023 passed by the NCDRC in Consumer Complaint No. 160 of 2019.

31. Pending applications, if any, shall be disposed of.

32. There shall be no order as to costs.

....................................J.
[PAMIDIGHANTAM SRI NARASIMHA]

....................................J.
[ARAVIND KUMAR]

NEW DELHI;
May 16, 2024