Lam Seng Hang Co Pte Ltd v The Insurance Corporation of Singapore Ltd [2001] SGHC 31

Case Number : OS 7014/2000

Decision Date : 16 February 2001

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Lee Mun Hooi and Lew Chen Chen (Lee Mun Hooi & Co) for the insureds; Gan Seng Chee and Anna Quah (Ang & Partners) for the insurers

Parties : Lam Seng Hang Co Pte Ltd — The Insurance Corporation of Singapore Ltd

Civil Procedure – Appeals – Leave to appeal – Application for leave to appeal to High Court – Amount of damages claimed below statutory amount – Whether leave could be granted – s 21(1) Supreme Court of Judicature Act (Cap 322)

: In this case, the plaintiffs (hereinafter referred to as `LSH`), who shipped a cargo of mace from Belawan, Indonesia, to Singapore, sued the defendants (hereinafter referred to as `ICS`), their insurers, for failing to indemnify them for the loss of a part of the said cargo. Their claim, which was instituted in the district court, was dismissed by the trial judge. As the amount claimed was less than $50,000, LSH applied for leave to appeal to the High Court. I dismissed the application and now set out my reasons for having done so.

LSH, a Singapore company, are in the business of trading spices. They ship spices from overseas markets to Singapore and prepare them for sale.

To facilitate their trade, LSH applied for and received from ICS a Marine Open Cover, which commenced on 9 December 1998, and was intended to be in force until it was cancelled by either party. The limit of liability under the cover for any shipment under the arrangement was US$1.25m and LSH had to declare every consignment to ICS. Where this has been done, ICS was bound to accept the risk for up to the limit of liability.

In January 1999, LSH shipped 14 metric tons of mace from Belawan to Singapore. Mace is the outer covering of the nutmeg seed and is an aromatic spice used for cooking purposes. The cargo of mace was packed in lined gunnysacks. There were 434 bags of mace and they were loaded into two containers on board a vessel, the Penang Glory.

Without LSH`s knowledge, the carrier removed the two containers containing LSH`s cargo of mace and loaded them onto another vessel, the Seven Seas Beacon. The original bill of lading was not substituted with a new one.

On 2 February 1999, ICS, after having been informed by LSH about the cargo in question, issued LSH a policy, which noted that the cargo of mace was shipped on board the Penang Glory. It is pertinent to note that by then, the cargo had already arrived in Singapore on board the Seven Seas Beacon.

After the vessel arrived in Singapore, it was discovered that 117 bags of mace were wet. The damaged cargo was sold as salvage. LSH then made a claim against ICS for $41,050.08, the loss suffered as a result of the sale of the damaged cargo at a heavily discounted price.

In due course, ICS discovered that LSH`s cargo had not been carried on board the Penang Glory and that the Seven Seas Beacon, which carried the cargo to Singapore, took 17 days to sail from Belawan to Singapore, when a vessel usually completes this voyage in about two days. The reason for this

delay was not explained.

Although ICS invited LSH to submit a claim for their consideration, they did not settle the claim. As such, LSH instituted an action in the district court against ICS to recover their loss. ICS resisted LSH`s claim on several grounds, including lack of good faith, inherent vice, insufficiency or unsuitability of packing, failure to act with reasonable despatch and delay. As far as loss by delay was concerned, ICS relied on the Institute Cargo Clauses (A) (hereinafter referred to as `ICC(A)`), which were applicable to the policy. Clause 4 of the ICC(A) provides as follows:

> *4 In no case shall this insurance cover*
>
> *4.5 loss, damage or expense proximately caused by delay even though the delay be caused by a risk insured against ...*

In addition, ICS relied on s 55(2)(b) of the Marine Insurance Act (Cap 387), which provides that unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay although the delay be caused by a peril insured against.

The trial judge found that there were two proximate causes of the loss in question. The first was the prolonged exposure of the damaged mace to the sun, rain and cold. The second was delay. The trial judge explained as follows:

> *The plaintiffs submitted at trial that the proximate cause of damage was the prolonged exposure of the affected container to the external factors of sun, rain and the coolness of night ...*
>
> *In my findings, I accepted the plaintiffs` submission that prolonged exposure to external factors of sun, rain and the coolness of night was a proximate cause of damage. Ironically, it was the plaintiffs` own theory of causation that proved fatal to their claim. It was to me obvious that mere exposure to weather conditions cannot be the sole proximate cause of damage. An equally vital element is the prolonged exposure which occurred [because of] the delay to the voyage. I therefore found that delay and exposure to climatic conditions were the joint proximate causes of damage.*

It is trite law that where there are two or more concurrent causes of a loss, the insurer is entitled to avoid liability if one of the causes falls within the ambit of an exception in the policy. This principle has been applied in innumerable cases, including **Siang Hoa Goldsmith Pte Ltd v The Wing On Fire & Marine Insurance Co Ltd** [1998] 2 SLR 777 , a decision of the Court of Appeal. Having found that there were two proximate causes of the damage to the plaintiffs` cargo of mace, the trial judge held that as damage which is proximately caused by delay was an excluded peril in the policy, ICS was entitled to avoid liability for LSH`s loss.

On 22 September 2000, the trial judge heard LSH`s application for leave to appeal to the High Court against his judgment and dismissed the same. As a result, LSH filed an application in the High Court for leave to appeal against the decision of the trial judge.

For the purpose of determining whether or not leave to appeal against the judgment of the trial judge should be granted to LSH, it would be helpful if the following words of Lai Kew Chai J in **Anthony s/o**

Savarimiuthu v Soh Chuan Tin [1989] SLR 607 [1989] 3 MLJ 5 are borne in mind:

> *The High Court`s power is obviously discretionary and such discretionary power has to be exercised judicially and ought to be exercised if prima facie and generally it could be shown that justice would require an appellate investigation of the case.*
>
> *... To obtain leave to appeal when the amount involved is below the statutory amount, an applicant for leave must show that a serious and important issue of law is involved. That was held by Murray-Aynsley CJ in [* ***Wong Yin v Wong Mook*** *[1948] MLJ 164], on the basis that rights of appeal are purely creatures of statute and a court cannot entertain any which cannot be brought strictly within the statutory limit. The circumstances for granting leave would include (though obviously not limited to) cases where an applicant is able to demonstrate a prima facie case of error or if the question is one of general principle upon which further argument and a decision of a higher tribunal would be to public advantage. This was pronounced by Edgar Joseph Jr J in [* ***Pang Hon Chin v Nahar Singh*** *[1986] 2 MLJ 145]. These propositions have a common thread: that to deny leave may conceivably result in a miscarriage of justice.*

More recently, in **Lee Kuan Yew v Tang Liang Hong** [1997] 3 SLR 489 at p 496, Yong Pung How CJ summed up the position in the following succinct terms:

> *[F]rom the cases, it is apparent that there are at least three limbs which can be relied upon when leave to appeal is sought: (1) prima facie case of error; (2) question of general principle decided for the first time; and (3) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.*

LSH asserted that a denial of leave to appeal to the High Court would conceivably result in a miscarriage of justice. In the main, they disputed the trial judge`s finding that there was delay and that delay was one of the proximate causes of the loss. I saw no merit in allowing an appeal for the sake of determining whether or not the trial judge was right in concluding from the facts and after hearing witnesses that delay was one of the proximate causes of the loss.

As for LSH`s argument that ICS failed to plead that the claim was defeated by the defence of delay, this cannot be countenanced. Perhaps, the pleadings could have been clearer but it is obvious from the pleadings that this defence was relied upon by ICS. After all, reference was made to the relevant clauses of the ICC(A) and the Marine Insurance Act with respect to delay and paras 9 and 15 of the defence filed by ICS stated as follows:

> *9 The alleged bill of lading for this subject shipment was issued on 11 January 1999. According to the said bill of lading, the subject container was allegedly shipped on board the `Penang Glory` on 11 January 1999. The normal transit time from Belawan, Indonesia to Singapore is about two days at the maximum. In this case, the voyage took approximately 17 days.*
>
> *...*
>
> *15 Further and/or in the alternative, the defendants repeat the matters pleaded*

in para 9 hereof. In the premises, the damage was due to the aforesaid delay.

LSH also asserted that as the policy issued for the cargo in question referred to the date of the vessel`s arrival but not to the date of her departure from Belawan, it may be assumed that ICS was not interested in the duration of the voyage from Belawan to Singapore. LSH contended that, in view of this, ICS should not be allowed to complain that the delayed arrival of the vessel was a cause of the damage to part of their cargo of mace. This line of argument is erroneous. If it is correct, this would mean that by not stating the departure date in the policy, ICS would have lost the right to avoid liability for any loss caused by delay if the vessel carrying LSH`s cargo left Belawan eight months ago but was delayed in an intermediate port for several months for unexplained reasons. In such a situation, ICS would, without more, certainly be entitled to rely on the exception in the policy with respect to damage caused by delay.

LSH next pointed out that insufficient attention was paid to cl 8.3 of the ICC(A), which provides as follows:

> *The insurance shall remain in force ... during delay beyond the control of the Assured ...*

LSH contended that the effect of cl 8.3 of the ICC(A) is that where a voyage has been prolonged by circumstances beyond their control, ICS is not entitled to avoid liability by relying on an exception with respect to damage caused by delay. LSH submitted that there was an inconsistency between the terms of cl 8.3 of the ICC(A) and s 55 of the Marine Insurance Act and said that it would be in the public interest if these are `reconciled and clarified by a higher tribunal in view of the far reaching implications`.

LSH`s interpretation of cl 8.3 of the ICC(A) is incorrect. This clause merely makes it crystal clear that the policy shall remain in force during delay beyond the control of the assured. It does not have the effect of negating the other terms of the policy, including the exceptions to the insurer`s liability for loss. This clause does not say that if delay is an excepted cause of loss in the policy, an excusable prolongation of the voyage will render that exception inapplicable. It should also be noted that cl 4.5 of the ICC(A) specifically provides that the insurance cover provided does not cover loss, damage or expense proximately caused by delay even though the delay is caused by a risk insured against. If LSH`s construction of cl 8.3 of the ICC(A) is correct, cl 4.5 of the ICC(A) would have no room to operate.

It was very obvious that there was no reason for granting leave to LSH to appeal to the High Court against the judgment of the trial judge. In view of this, LSH`s application for leave to appeal was dismissed. As for the question of costs, LSH asserted that the trial judge erred when he awarded ICS full costs even though he rejected all but one of the many defences pleaded. LSH contended that it was inequitable that ICS should be awarded full costs in these circumstances. However, as the parties have since reached a settlement with respect to the question of costs, the matter need not be considered any further and I made no order with respect to costs.

Outcome:

Application dismissed.