

The exclusion provided under the Riots Strike, Malicious and Damage (RSMD) clause would not oust the insurer's liability when the loss or damage is attributable to the peril of fire, which has its own independent exclusions

The **Supreme Court** in the case of **Cement Corporation of India vs ICICI Lombard General Insurance Company** has ruled that if the damage is caused by fire, then the reason why the fire took place becomes irrelevant. When there was a fire, and something was on fire that ought not to be on fire, and the wilful act of the insured did not cause such a fire, then loss attributable to fire would be covered under the insurance policy.

The Court clarified that the exclusions in the insurance contract must be read strictly. Therefore, the exclusion provided under the Riots Strike, Malicious and Damage (RSMD) clause would not oust the insurer's liability when the loss or damage is attributable to the peril of fire, which has its own independent exclusions.

In the present case, the Court found that the fire took place in the factory of the Cement Corporation of India (appellant), which caused a huge loss, on account of the transformer being set ablaze, and the fire could not be controlled for about 6 hours. The Court also noted that on the intervening night, some miscreants entered the factory and committed burglary.

Since the FIR reported that the flames were coming out of the transformer, and at no stage was any defence taken that the insured caused the fire, the Court opined that the loss caused to the appellant was due to fire only, and the incident of theft/ burglary merely preceded the incident of fire.

The Court observed that the policy indemnifies the insured against damage by any of the specified perils. Under the specified peril of 'Fire', the exclusions are limited to damage caused by its own fermentation, natural heating, spontaneous combustion, or burning by order of a Public Authority. However, burglary and theft are not included in the exclusions under the specified peril 'Fire'.

The Court also observed that once it is established that the loss is caused by fire, the cause that ignited the fire becomes immaterial. The insurer cannot refuse to indemnify the damage caused by a specified peril (fire) on the ground that the proximate cause was an event excluded under a different clause (RSMD), especially when no such exclusion is provided in the specified peril 'Fire' itself.

The Court, therefore, concluded that there was no justification for ICICI Lombard to repudiate the claim and that the NCDRC had erred in rejecting it. Accordingly, the Court set aside the repudiation letter and the NCDRC judgment, and remanded the matter to the NCDRC for the assessment of the loss, to be decided within six months.