

losses suffered by a bank due to fraudulent ATM withdrawals using debit cards issued by other banks are not covered under a Banker's Indemnity Insurance Policy when the policy expressly excludes losses arising from the use of ATMs

While setting aside the Trial Court decree that had directed the insurance company (New India Assurance – Appellant) to indemnify the bank (Federal bank) for losses caused by ATM fraud, the **Kerala High Court** in the case of **New India Assurance vs Federal bank [RFA NO. 202 OF 2017] dated March 02, 2026**, has ruled that what is covered under the insurance policy is, a theft occurring in the premises of the ATM counter and malicious damage of the ATM; it does not extend to a fraudulent use of the ATM.

The High Court explained that under insurance law, repudiation of a claim is the rejection of claim by the insurer, which could be on various grounds including, lack of coverage under the policy, breach of policy conditions, exclusion clauses. An “excess”, which is the proportion of the loss that the insured has to bear, could not be strictly said to be a repudiation, under which, the very liability is disputed. It is essentially a limitation on the quantum payable and not a denial of the very liability.

The Court clarified that in a case where the excess clause is applicable, there is no repudiation of the liability as such, it only deals with the mode of computation of the quantum payable by the insurance company, and such a question would arise only when the insurance company is found liable. Therefore, generally, the Court pointed out that it may not be possible to say that the excess clause operates as repudiation of liability and hence, such ground ought to have been taken in the repudiation letter issued by the insurance company.

However, in the case at hand, the Court found that the insurance company relies upon the excess clause to contend that no amounts are payable to the plaintiff under the policy, the loss being within the limit of excess. Such a contention essentially amounts to denial of the claim in its entirety and practically amounts to repudiation. Such contention was available to the insurance company even at the time when they issued the repudiation letter, however, not taken.

Therefore, the reliance on the excess clause essentially amounts to repudiation. The defendants having not relied upon the same in their letter of repudiation, cannot be permitted to fall back upon it to deny the claim in its entirety, added the Court.

The Court observed that the instances in question are a form of ‘theft’ or ‘malicious damage’ under clause ‘A’ of the policy. But the exception clause specifically excludes losses arising out of the use of ATMs. Therefore, losses occurring due to any direct or indirect use of ATMs are excluded under the clause.

Also, the Court found that the incidents in question, upon which damage resulted to the respondent have arisen out of the fraudulent use of the ATMs, which is covered by the exclusion clause. The fact that fraudulent use of the plaintiff Bank’s debit cards are specifically included in the Add-on cover taken under the additional/extended policy, implies that, there is no coverage with regard to fraudulent use of other debit cards.

The Court noted that under the original policy, losses arising out of any use of ATMs, whether direct or indirect have been excluded. However, in the additional policy, protection is given to the debit card holders of the respondent bank alone, against fraudulent transactions. This is specifically included as an add-on cover under the head "ADD ON COVERS".

As far as the 'unities doctrine' is concerned, the Court observed that it does not apply to the facts at hand, since occurrences in the present case have happened at various parts of the country, in different ATMs, and spread over a span of one month. So, there is no case of unity of intent, and it cannot be held that the losses arose out of one event.