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CARGO CLAIM

A Merchant in Dubai contracted with a party in Nepal to deliver 35,000 Mt of urea. The Merchant had a Marine Insurance Open cover incorporating ICC (A). The Merchant procured the cargo from their supplier in China to be shipped to Calcutta and then by rail to Nepal. Initial and final draft surveys were carried out at Calcutta port which showed that the full quantity was discharged.

During discharge, many bags were found wet and dripping with water. The discharge was considerably delayed due to the poor condition of bags and refusal of stevedores to handle them. The discharge could be resumed only after protracted discussions with the Port and stevedores. Surveyors representing the vessel Owners, Charterers and cargo Underwriters were present throughout.

The cargo was discharged and temporarily stored in the port yard and sheds while waiting to load on railway wagons. The bags stored in open yard were covered with tarpaulin for protection. As per Calcutta Custom's documents, the entire cargo of 700,000 bags were discharged.

Further movement of the cargo from the port was slow due to a political blockade at Nepal border. This led to severe congestion in the port. As a result, the lack of space made it impossible to segregate the damaged bags in the port. Besides, the stevedores were also reluctant to handle the damaged cargoes. It was therefore decided to transport the entire cargo to Nepal and assess the loss / damage at the final destination.

The cargo was then loaded on railway wagons and the Railway Receipts showed that 700,000 bags were loaded. After arrival at ICD, Nepal, the cargo was transported by trucks to the different warehouses of the buyer.

The cargo could not be weighed upon arrival at the ICD as their weighing scales were non-functional. At the buyer's warehouses, the bags were counted and weighed manually by their labourers. Though the Underwriters were notified, their surveyors did not attend at the warehouses.

A number of bags were found torn resulting in spillage of cargo. The sound cargo from torn bags were recouped to minimize the loss. The sweepings collected from the torn bags were found to be unfit for

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"Success is not the key to Happiness; Happiness is the key to Success"



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use. As per the buyer's calculation, 2520.750 Mt were found short with the value of USD 967,942.79.

The cargo Underwriters initially refused to entertain the claim for the following reasons -

- The Insured did not segregate damaged bags in Calcutta port to minimise the loss.
- Insured did not take the steps for pursuing the recovery against the Carrier.
- The shortage claim is not supported by weighment certificates.

WWCS was appointed by the Insurance Brokers to advise on the merits of the claim. After reviewing the voluminous documentation, we prepared a report explaining the entire process of discharge and delivery and the prevailing conditions in Calcutta port and Nepal leading upto the final shortage. Regarding the Underwriter's objections, it was explained to them that -

- Due to congestion, there was no space in Calcutta port to carry out segregation of damaged bags. Besides, the stevedores were also reluctant to handle the damaged bags.
- Insured had issued protest letter to the ship owners.
- The fact that the weighing scales in ICD Nepal was non-functional was beyond Insured's control

Following this, the Underwriters reviewed the claim and after several discussions it was agreed to settle the claim at USD 600,000.

While handling this claim, we could see that there was lack of proper communication between the Insured, the Underwriters and their surveyor. As a result, no suggestions or recommendations were given to the Insured during the situations in Calcutta Port, ICD Nepal and buyer's warehouses. This led to difference of opinion between the Insurer and Insured regarding the merits of the claim. Further, the prospects of recovery from the Carrier was also lost as a result.

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MURDERER OR THE MURDERED ? - A LEGAL DILEMMA



Mr. Ronald Opus had jumped from the top of a 10 storey building after leaving a note that he is committing suicide. As he fell past the ninth floor, he received a bullet shot passing through the window which killed him instantly.

The Medical examiner viewed the dead body of Ronald Opus and concluded that he died from a shot-gun wound to the head.

Neither the shooter nor the deceased was aware that a safety net was installed below the eight floor level to protect some building workers and that Ronald Opus would not have been able to complete his suicide the way he planned.

According to the Medical examiner, ordinarily, a person who sets out to commit suicide and ultimately succeeds, even though the mechanism might not be what he intended, is still deemed as committing suicide.

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That Mr. Opus was shot on the way to certain death, but probably would not have been successful because of the safety net, caused the doctor to feel that he had a homicide on his hands.

The gun shot emanated from a room on ninth floor occupied by an elderly man and his wife. They were arguing vigorously and he was threatening her with the gun. When he pulled the trigger, he completely missed his wife and the bullet went through the window striking Mr. Opus.

When confronted with the murder charge, the old man and his wife pleaded that they thought the shot gun was not loaded. He said that he usually threatens his wife with the unloaded gun and without any intention to kill her.

Therefore, the killing of Mr. Opus appeared to be an accident, that is, if the gun had been accidentally loaded.

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“ Never let the Mind rule your Heart; Let the Heart rule your Mind”.

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The continuing investigations turned up a witness who had seen the old couple's son loading the shot gun a few weeks before the fatal accident. It transpired that the lady had cut off the son's allowance and he had deliberately loaded the gun knowing that his father will use it at some stage while quarrelling with his mother. Since the loader of the gun was aware of this, he was guilty of murder even though he didn't actually pull the trigger. So the case now becomes one of murder on the part of the son for the murder of Ronald Opus.

Now comes the exquisite twist.

Further, it was revealed that the son, in fact was Ronald Opus. He had become increasingly despondent over the failure of his attempt to engineer his mother's murder. This led him to jump off the 10 storey building , only to be killed by the shotgun blast passing through the ninth story window.

The son had actually murdered himself, so the medical examiner closed the case as suicide. ★★★



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