

**HYUNDAI ENGINEERING &
CONSTRUCTION CO. LTD. V.
UNITED INDIA INSURANCE CO.
LTD. & 2 ORS.**

1. HYUNDAI ENGINEERING & CONSTRUCTION CO. LTD.
& ANR.

Through its Chief Project Manager, Plot No. 5, Astitva Estate,
Kota Bundi Road, Near Gurudwara Ram Nagar,
Kota – 324008
Rajasthan

2. Gamon India Limited

Through Mr. J. L. Ashar, Vide President – Work Survey, Gammon
House, Veer Savarkar Road, Prabhadevi,
Mumbai – 400025
Maharashtra

.....Complainant(s)

Versus

1. UNITED INDIA INSURANCE CO. LTD. & 2 ORS.

Through its regional Manager, (Head Office) 24, Whites Road,
Chennai-600014
TAMIL NADU

2. UNITED INDIA INSURANCE CO.LTD.

through its Regional Manager, Divisional Office; 011900, 98-A,
Dr. Radha Krishnan Salai, Mylapore,
chennai-600004,
TAMIL NADU

3. NATIONAL HIGHWAY AUTHORITY OF INDIA

through its Project directors,(Ministry of Shipping Road
Transport
and Highways) 1C-10, SFS Colony Talwandi, kota,

District; Kota
RAJASTHAN

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 160 OF 2019

Date of Judgement: 16 Jan 2023

Judges:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

For the Complainant : For the Complainant : Mr. Joy Basu, Sr. Advocate with

Mr. Aneesh Mittal, Advocate
Ms. Anupama Kaul, Advocate
Mr. Naman Khatwani, Advocate
Ms. Kanak Bose, Advocate

For the Opp.Party : For the Opposite Parties : Mr. P.P. Malhotra, Sr. Advocate with

Mr. Vineet Malhotra, Advocate
Ms. Sonia Malhotra, Advocate
Ms. Kirti Sarin, Advocate
Mr. Vishal Gohri, Advocate

Facts:

Complainants (Hyundai Engineering & Construction Co. Ltd and Gammon India Ltd) were awarded contract for construction of a cable-stayed bridge across River Chambal in Kota by NHAI. Insurance policy was obtained from United India Insurance Co. Ltd (Opposite Parties) to cover risks. On 24.12.2009, part of the under construction bridge collapsed resulting in deaths and huge losses. Complainants filed insurance claim which was rejected by Insurer citing faulty design, defective workmanship etc., relying on expert committee report. After

providing more documents on design adequacy, claim was re-opened but finally rejected again on 17.4.2017. Hence complaint filed before NCDRC against rejection of valid claim.

Court's Opinions:

Rejected insurer's contention that issues require detailed evidence examination not possible in consumer fora. Rejected plea that complainants do not fall under 'consumer' definition under Act. Claim is within limitation as it was filed within 2 years of final rejection dated 17.4.2017. Though expert committee did not conclusively establish reasons, their quality of materials observation rules that out. Independent expert reports prove no design deficiencies but adequacy at time of accident. NHAI continued with complainants for completing work proves no major fault on their part. Bridge was opened for public in 2017 after testing further proves no fundamental design flaws. Hence repudiation of claim was not justified.

Arguments by Parties:

Complainants:

Surveyor wrongly relied on inconclusive expert committee report. Independent expert reports prove design adequacy. Same design was approved for completing remaining construction. Testing and inauguration of bridge in 2017 proves no design defects.

Insurer:

Repudiation was based on surveyor and expert committee reports. Huge claim amount cannot be verified to have actually incurred. Complainants have concealed another insurance policy from another insurer. Detailed technical evidence requires civil court adjudication. Complaint is time barred by limitation.

Sections & Cases Referred/Cited:

Section 2(1)(d), Consumer Protection Act 1986

Section 24A – Limitation under Consumer Protection Act

Dr. J.J. Merchant and Ors Vs. Shrinath Chaturvedi – 2002 (6) SCC 635

Harsolia Motors v. National Insurance Co. Ltd. I, (2005) CPJ 27 (NC)

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Court

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Full Text of Judgment:

1. The present Consumer Complaint has been filed by the Complainants, i.e. M/s Hyundai Engineering and Construction Co. Ltd. and M/s Gammon India Limited (hereinafter collectively to be referred to as the ‘‘Complainants’’) against the Opposite Parties, i.e. M/s United India Insurance Co. Ltd. (Head Office at Chennai), Opposite Party No.1, M/s United India Insurance Co. Ltd. (Divisional Office at Mylapore, Chennai), Opposite Party No.2 (hereinafter collectively to be referred to as ‘‘the Insurance Company’’) and National Highway Authority of India, Proforma Opposite Party (hereinafter to be referred to as the ‘‘NHAI’’), alleging deficiency of services and unfair trade practices on their part in repudiation of the claim lodged by the Complainants on account of loss occurred due to collapse of certain part of the bridge.

2. The brief facts of the case as culled out from the Complaint are that the Complainants Companies, a Joint Venture are engaged in the business of engineering and construction of various Projects awarded by different Authorities within India. The NHAI is a nodal agency responsible for management of network of highways in the Country.

3. On 26.09.2006, NHAI awarded a contract for the Design, Construction and Maintenance of a Cable Stayed Bridge across river Chambal on NH 76 at Kota, Rajasthan (hereinafter to be referred to as ‘‘the Project’’) to the Joint Venture of Complainant No. 1 & 2. The value of the entire Project Work was ₹213,58,76,000/-. Accordingly, a Contractor’s All Risk Insurance Policy (hereinafter to be referred as the CAR

Policy), bearing No. 011900/44/ 07/ 03/ 60000001 was obtained from the Opposite Parties Insurance Company on 05.12.2007 for a sum of ₹213,58,76,000/- covering the entire Contract and interest of both the Complainants i.e. wherein NHAI/ Respondent No.3 was the Principal and Claimant No. 1 & 2 were Contractors. The NHAI also awarded the work of consultancy services for design, construction and maintenance of the Cable Bridge to the Joint Venture of M/s. Louis Berger Group Inc. (USA) and M/s. COWI A/s (Denmark). The construction work of the Bridge was required to be completed within a period of 40 months and thereafter the Bridge was to be maintained by the Complainants for a period of six years including two years Defect Notification Period.

4. The construction work of the Bridge was started in December 2007 and till December, 2009, 57.9% of the work was completed. Unfortunately on 24.12.2009, an accident occurred on the Project Site when a part of the under construction Bridge suddenly collapsed which resulted in death of 48 workmen including 3 Engineers of the Complainants. The Insurance Company was informed about the accident by email dated 29.12.2009 by the Principal Insured NHAI. Upon intimation, the Insurance Company appointed the Surveyor, Mr. S. Anantha Padmanabhan as its Surveyor to assess the losses/damages. The Surveyor vide Letter dated 06.01.2010 sought certain details/facts from the Complainants. In response to the said Letter, Complainants furnished all the necessary details to the Surveyor along with copies of supporting documents and total Final Detailed Claim Statement for ₹151,59,94,542/- to him.

5. On 26.12.2009, a Committee of Experts was constituted by the Ministry of Road Transport and Highways, New Delhi to investigate the causes of collapse of the under-construction cable stayed Bridge across river Chambal, however, the Committee of Expert did not reach to a conclusive finding in its report dated 07.08.2010 with respect to exact cause of the collapse. They concluded as under:-

“CONCLUSION

“ 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 traveler.”

06. NHAI vide their letter dated 06.12.2010 issued a Show Cause Notice to the Complainants proposing to debar them for appropriate period which was replied by the Complainants vide letter dated February 2011. Satisfied with the reply and clarification furnished by the Complainants, the NHAI vide letter dated 15.02.2011 decided to continue with the Complainants and asked them to complete the remaining work.

07. On 28.2.2011, the Surveyor submitted its Final report to the Insurance Company holding that “the shearing of the slab is purely a design aspect” and finally assessed the gross loss to the tune of ₹50,83,80,107/- and net loss to the tune of ₹39,09,92,828/-. It is averred by the Complainants that the Surveyor had not carried out any independent investigation for ascertaining the exact cause of collapse or the applicability of the exceptions in the CAR Policy and rather he had selectively relied upon the report of the Committee of Experts. On 21.04.2011, the Insurance Company, based on the Final Report of the Surveyor repudiated the claim of the Complainants stating that:-

“On a careful study of the records it is found that the collapsed portion was affected entirely due to faulty design besides defective workmanship and materials in execution of the project...”

08. The Complainants vide letter dated 17.06.2011 again submitted a detailed technical clarifications to all the inferences drawn in the Final Survey Report by the Surveyor

along with copies of the Independent Survey Reports as conducted by world renowned Cable Stayed Bridge Design Experts such as Mr. Jacques Combault, M/s SETRA/CETE (French Ministry of Transportation Technical Department) and M/s. The Halcrow Group Limited all affirming with the adequacy of design of the bridge and the construction thereon. Subsequently, on Complainants furnishing detailed Technical presentation to the Insurer, the Insurance Company, vide letter dated 05.07.2011 decided to reconsider the claim lodged by the Complainants. During the period from 2011 to 2017, the Complainants provided various documents/information relating to the Project to the Insurance Company such as details of RFI and Approvals for the construction for casting concrete from S1 to S10 Cantilever Segments, Inspection Report of M/s Louis Berger Group (LBG), Independent Design Review Report issued by AECOM concluding that the design was strictly in accordance with specifications, Letter of Designer (SYSTRA) mentioning that the design of the Chambal Cable Stayed Bridge was adequate at the time of accident; etc. The Complainants and the NHAI vide various letters/mails requested the Insurance Company to relook into the matter and settle the same at the earliest, however, the Insurance Company on 17.04.2017 again repudiated the claim of the Complainants without referring to various presentations, independent design reports etc. The relevant contents of the final Repudiation Letter dated 17.04.2017 reads as under:-

" 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 point have emerged in support of the claim.

In view of the above we regret our inability to reconsider the claim which was repudiated."

09. Aggrieved by the Final Repudiation Letter dated 17.04.2017, the Complainants invoking the Arbitration Clause of the Insurance Policy appointed Dr. V. K. Aggarwal as their

Arbitrator and requested the Insurance Company to appoint their Arbitrator. However, the Insurance Company did not pay any heed to the request of the Complainants and consequently the matter went upto the Supreme Court. The Hon'ble Supreme Court of India vide its judgment and Order dated 21.08.2018 held that Arbitration Clause was not applicable and the matter could not be referred to the Arbitration. Finally, being aggrieved by the action of the Insurance Company, the Complainants have filed the present Consumer Complaint seeking following reliefs:-

a) Direct the Opposite Parties to pay to the Complainants an amount of ₹151,59,94,542/- with compensation and interest @18% p.a. compounded quarterly till the date of refund of the amount and pay damages of ₹20,00,000/- on account of mental agony, torture;

b) Direct the Opposite Parties to pay a sum of ₹5,00,000/- to the Complainants towards the cost of litigation;

c) Any other order(s) as may be deemed fit and appropriate may also kindly be passed.

10. Upon notice, the Insurance Company filed their Written Submission, inter alia, denying the contents of the Complaint and raising the Preliminary Objections that; (i) the Complaint filed by the Complainants is not maintainable as the Insurance in question was obtained for a Commercial Purpose (ii) the Complainants which are the Companies cannot be considered to have availed the services of the Insurance Company for earning its livelihood by means of self-employment (iii) the Complaint has not been signed, verified, instituted and/or filed by a person duly authorized to sign the same on behalf of the Complainants; (iv) the Complaint is hopelessly barred by limitation as claim filed by the Complainants was repudiated by letter dated 21.04.2011 and (v) the dispute involved in the present case would require a detailed examination and leading of evidence which is not possible in summary proceedings of the Consumer Fora and hence, the parties are required to be relegated to a Civil Court.

11. On merits, it is pleaded that the Complainant Companies

have issued a full and final discharge voucher and the claim has been fully settled. The Insurance Company is not aware of any Joint Venture Agreement entered into between the Complainants. The Surveyor in his Survey Report has held that the Insurance Company has no liability and that the collapse and damage to the Bridge was because of faulty designs, defective workmanship and defective material used in execution of the work. The Insurance Company after considering the reports of the Surveyor and the Committee of Experts appointed by the Ministry of Road, Transport and Highways, New Delhi, had repudiated the claim holding that the collapse and damage to the Bridge was due to faulty design, defective workmanship and material used in the execution of the work.

12. The Complainants filed their Rejoinder denying all the rival contentions raised by the Insurance Company in its Reply and reiterating the averments made in the Complaint.

13. I have heard the Learned Counsel for the parties at some length and also perused the material available on record as well as the evidence adduced by the parties.

14. Learned Counsel appearing for the Complainants fervidly submitted that in catena of judgments it has been held by the Hon'ble Supreme Court that the insurance policy is always being taken by the insured for coverage of envisaged risk and not for generating the profit. Policy is only for indemnification and actual loss. He further vehemently urged that Mr. Haeng Kwon Kang, Chief Project Officer was authorized by the Complainants vide Power of Attorney dated 24.02.2012 to sign all legal instruments. He also submitted that on request of the Complainants, the Insurance Company has re-opened the case, however, the claim was again repudiated vide letter dated 17.04.2017 and as such the Complaint filed on 24.01.2019 is within limitation of two years as prescribed under the Act. Learned Counsel further contended that the finding of the Surveyor that the collapse of a part of the Bridge was due to faulty designs, defective workmanship and defective material used in construction of the Bridge, is baseless and has no legs to stand. The Surveyor had not visited the site of the

accident and simply relied upon the report of Committee of Experts. It is submitted by him that the report of the Committee of Experts was a recommendatory report and it did not have any kind of binding nature. The Complainants had completed the construction work of the Bridge with the same design, workmanship and material. The Complainants had completed the reconstruction of the collapsed portion of the Bridge and the balance construction of the Project as on 31.07.2017 and after due testing of the Bridge, the Bridge had been inaugurated and opened for the use of the general Public by the Hon'ble Prime Minister of India on 29.08.2017 and after that the Bridge is operating in full swing and serving its very purpose of the Bridge. He also urged that the Independent Surveys had been conducted by the World renowned Cable Stayed Bridge Design Experts i.e. Jacques Combault, SETRA(French Ministry of Transportation Technical Department), Halcrow Group Ltd. etc. which affirmed with regard to the adequacy of design of the Bridge and construction. The Halcrow Report does not find any fault with the design and it is stated in the Report that the contractual agreements about the type of the bridge was absolutely in position was correct thing as far as design build was concerned which can be said to be faulty. It has undoubtedly been clarified by all the above mentioned Experts, in their reports that there was no shortfall in the design and stability of the Project and same were strictly in accordance with the specifications and the employer's requirements. Had there been any defect or fault in the design of the Bridge, the NHAI would not have allowed the Complainants to continue and complete the construction of the Bridge. The Insurance Company is trying to abstain from entertaining the claim of the Complainants though none of the Reports affirming the adequacy of design has been rebutted by them. The Committee of Experts in their report dated 07.08.2010 has observed that the quality of materials used in the construction and the integrity of the foundation P 4 have been found to be satisfactory and can be ruled out as having contributed to the distress in the structure. The Committee of

Experts with respect to workmanship has held that there were regular inspections done at each stage under the supervision of M/s Louis Berger Group (LBG) and the Bridge accident was a sudden and catastrophic structural failure.

15. Per contra, Learned Counsel appearing for the Insurance Company rigorously pleaded that the Committee of Experts in its Independent Reports had concluded that the loss had occurred on account of shortfalls in design, lack of quality of construction and lack of quality of material used and, therefore, the Insurance Company has no liability to indemnify the loss in the matter inasmuch as the damage due to faulty design, defective workmanship and defective material was specifically excluded in the terms of the Policy. He further vehemently urged that the Complainants in support of its submissions that there was no fault in the design of the Bridge has sought to rely upon the reports of M/s Louis Berger Group Inc. (USA), M/s. COWI A/S (Denmark), Mr. Jacques Combault, M/s. SETRA/CETE (French Ministry of Transportation Technical Department) and M/s The Halcrow Group Limited, but these reports of the Independent Experts have no bearing in the present case as none of the Experts has personally visited or examined the site and further no evidence by way of affidavit of any of the Experts has been filed by the Complainants. The Reports are of the interested parties and are not independent in nature. The Experts who have given their reports are required to be examined and cross-examined. It is submitted by him that the Complainants had failed to cooperate and provide all documents which had been sought by the Surveyor. The Surveyor has considered all relevant material for arriving at his findings which form the basis of Letter of Repudiation. The reasoning and conclusions arrived at by the Surveyor in his Survey Report and in the Repudiation Letter are absolutely correct. It is also stressed upon by him that the claim of the Complainants for ₹151,59,94,543/- is not maintainable inasmuch as it cannot be believed that such a huge amount has been incurred by the Complainants on account of loss of components, construction material at site,

temporary support materials etc. He further pleaded that a separate Insurance Policy was obtained by M/s. Gammon India Ltd. from the Oriental Insurance Company Ltd. for an amount of ₹80,00,00,000/-, however, this fact has deliberately and intentionally concealed by the Complainants since the fate of claim lodged under the said policy would be having a bearing on the present case. It is also contended that as the Claim Petition raises factual issues which would need detailed investigation, trial and cross-examination of the Experts, therefore, this Commission has no jurisdiction to entertain the present Complaint. Learned Counsel submitted that the claim of the Complainants was first rejected on 21.04.2011 and, therefore, in terms of the provisions of the Consumer Protection Act 1986 and the Insurance Policy, the Complaint ought to have been filed within one year from the date of cause of action. The Complaint filed in the year 2019 is barred by limitation. It is submitted by the Learned Counsel that Hyundai and Gammon are collectively responsible for any accident at site, no matter which source the accident took place. As a Senior Partner in the Joint Venture, it is the responsibility of Hyundai to monitor the works carried out by Gammon and ensure that the works under the scope of both Joint Venture Partners are carried out as per specifications. Placing reliance upon the decision of the Hon'ble Supreme Court in the case of Khatema Fibres Ltd. Vs. New India Assurance Co. Ltd. – 2021 SCC online SC

818, it is argued that the Surveyor has acted in a manner prescribed by Regulations as per Code and Conduct and the Survey Report was neither based on adhocism nor is it in any manner arbitrary.

16. Having bestowed my thoughtful consideration to the rival contentions of the parties, I am of the considered view that none of the submissions made by the Learned Counsel for the Insurance Company holds water.

17. In so far as, the preliminary objection raised by the Opposite Party Insurance Company that the Complainants are required to be relegated to the Civil Court to decide the

complicated questions of law involved in the present case, is concerned, the said objection has been rejected by the Hon'ble Supreme Court in the case of Dr. J.J. Merchant and Ors. Vs. Shrinath Chaturvedi – 2002 (6) SCC 635 wherein it has been held that the procedure prescribed under the Act for disposal of the Complaint is adequate to decide cases involving complicated questions of law and the facts.

18. The next contention of the Opposite Party Insurance Company that the present Complaint is not maintainable since the Complainants do not fall within the definition of 'Consumer' as defined u/s 2(1) (d) of the Act, is rejected in view of the Judgment passed by this Commission in Harsolia Motors v. National Insurance Co. Ltd. I, (2005) CPJ 27 (NC) wherein it has been held that since an insurance policy is taken for reimbursement or for indemnity of the loss which may be suffered on account of insured perils, the services of the insurer cannot be said to have been hired or availed for a commercial purpose. This Commission does possess the requisite jurisdiction to entertain a Consumer Complaint wherever a defect or deficiency in the services rendered by an insurer is made out.

19. The another preliminary objection taken by the Insurance Company is that the Complaint filed on 24.01.2019 is hopelessly barred by limitation as the Claim of the Complainant was repudiated on 21.04.2011. I do not find any merit in this submission of the Opposite Party Insurance Company. It is true that the claim of the Complainant was repudiated on 21.04.2011. Thereafter, on a request made by the Complainants as well as the NHAI, the Insurance Company agreed to re-consider its decision and accordingly, number of documents as also the survey reports of Independents Experts giving the exact reason of collapse of the Bridge was supplied to the Insurance Company during the period from 2011 to 2017. However, the Insurance Company again repudiated the claim vide letter dated 17.04.2017. As per section 24A of the Act, a claim is required to be filed within two years from the date of occurring of cause of action and hence, the Complaint filed

on 24.01.2019 is well within the limitation.

20. Now, advertent to the merits of the case, it is undisputed that the NHAI has awarded a contract of Design, Construction and Maintenance of a Cable Stayed Bridge across River Chambal in Kota, Rajasthan to the Complainants Joint Venture. A Contractor's All Risk Insurance Policy was obtained from the Opposite Party Insurance Company by the Complainants for a sum of ₹213,58,76,000 covering the entire Contract and the interest of both the Complainants. M/s. Louis Berger Group Inc. (USA) and M/s. COWI A/s (Denmark) were awarded the work of consultancy services for design, construction and maintenance of the Cable Bridge by the NHAI. During the validity of the CAR policy on 24.12.2009, an accident occurred on the Project site when a part of the under construction Bridge suddenly collapsed resulting a huge loss to the Complainant. The Complainants lodged a claim with the Opposite Party Insurance Company for indemnification of the loss suffered by them. However, vide letter dated 21.04.2011 the Insurance Company repudiated the claim holding that the accident had occurred due to faulty design besides defective workmanship and materials in execution of the Project which were not covered in the peril of the Insurance Policy in question. Based on the Reports of the Committee of Experts and Technical Input, the Complainants requested the Insurance Company to re-open the case. Vide letter dated 05.07.2011, the Insurance Company decided to re-consider its decision. During the period from 2011 to 2017, the Complainants provided all the necessary information with regard to collapse of Bridge to the Surveyor/Insurance Company including detailed clarification to all the queries raised by the Surveyor, details of RFI and approvals of the construction for casting concrete from S1 to S10 Cantilever Segments, copy of Inspection Report of LBG Engineer, Independent Design Review Report issued by AECOM, confirmation letter on the adequacy of design at the time of accident by the Designer SYSTRA, confirmation on the adequacy of design by the Employer's Representative (M/s LBG) and Proof Check Consultant M/s. COWI.

However, despite providing all the above information showing that there was no default in design of the Project, the Insurance Company repudiated the claim on the same ground.

21. The question which falls for my consideration is whether the Insurance Company was justified in repudiating the claim on the ground that the collapse of a part of the under-construction Bridge was due to faulty design besides defective workmanship and materials in execution of the Project.

22. With regard to the faulty design of the Project, the Learned Counsel for the Complainants has placed strong reliance upon the report of the Committee of Experts appointed by the NHAI and the Independent Survey Reports as conducted by world renowned Cable Stayed Bridge Design Experts, i.e. Mr. Jacques Combault, M/s. SETRA/CETE (French Ministry of Transportation Technical Department) and M/s. the Halcrow Group Limited wherein they have confirmed the adequacy of design at the time of accident.

22. It is submitted that the Committee of Experts appointed by the NHAI in their final report dated 07.08.2010 did not arrive at a conclusive decision with regard to collapse of a part of under construction Bridge. The Committee of Experts has simply observed as under:-

“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.

8.2.2.3 The serious distress in span P-3-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 progress loss of rotational restraint at the base of the pylon and accentuation of distress in P-3-P4 might not have been initiated and the collapse might not have occurred”

Conclusion:-

“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, shortfall in design and lack of quality of workmanship in the construction of span P3-P4 have contributed to the collapse of the 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. “

23. A bare perusal of the afore-extracted paragraphs of the Survey Report of the Committee of Experts would reveal that the Committee could not arrive at a specific conclusion and according to them the accident was a sudden and unpredictable collapse. However, the Committee has ruled out any possibility of material deficiency as they have observed in their report that “the quality of materials used in construction and integrity of the foundation P4 have been found to be satisfactory”. It appears that the finding of the Committee of Experts is based on their assumptions only and they finally said that to apportion the extent of responsibility to the various Agencies for the collapse of the structure, the Employer (NHAI) has to further inquire into the matter. The Complainants have strongly relied upon the Survey Reports of the Independent Experts wherein any design deficiency has been ruled out and the adequacy of the design of the Project has been affirmed at the time of accident. The relevant paragraphs on which reliance has been placed by the Complainants in support of their contention that there was no deficiency in design are reproduced as under:-

“(a) JACQUES COMBAULT REPORT DATED 15.01.2020

4.1 CONCLUSIONS

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

strayed bridges.

The construction methods as proposed by Systra are simple and proven processes well adapted to the structural concept.

4.3 Very Important Recommendations :

□ At the collapse of a part of the Bridge under construction has not been explained yet, it is absolutely necessary at this stage:-

- To collect all pieces of all fallen structural elements
- To classify them according to their initial location in the bridge”

(b) SETRA (FRENCH MINISTRY OF TRANSPORTATION TECHNICAL DEPARTMENT DATED 2010)

“Page 431 –

“ Following Systra’s request we, the SETRA/CETE du Sud-Quest (French Ministry Of Transportation Technical Department), have analyzed the various phases precedent to the collapse of the Chambal bridge. We have performed a fully independent calculation using the software PCP.

“ The independent analysis was performed considering that the construction was made according to the Project’s construction specifications and considering the actual construction phasing.”

AT PAGE 432:-

“considering the performed calculation, it appears that the structure is justified under all phases preceding the collapse including the pouring of segment S-10. The external equilibrium has been verified. Add strength limit state, the capacity always exceed the demand. At serviceability limit state, stress do not exceed the allowable limits.”

CONCLUSION

“ In view of the calculations we have performed, it appears that the structure remains justified in all the phases that preceded the collapse including the casting of the segment S-10.

The external equilibrium and strength of the sections were controlled and fully verified.

The complementary study of non-linear effects (geometrical and

material) also shows, predictably, that these effects remain within allowable limits. This is explained by the moderation of wind loads and the axial force in the pylon when the accident occurred.

Amplification of deformations appears in the corresponding calculation, however the weakness of the axial force in the pylon significantly limit the effects.

(C) REPORT OF HALCROW GROUP LTD DATED MARCH 2011

“2.4 Conclusion on the design process

“ A review of the rules and responsibilities of the firms employed indicates that the contractual arrangements were appropriate for a bridge of this type.”

In our opinion the responsibilities for design work conventional for the design and build from of contract selected by the employer.”

Para 3.1 – Conclusions on design standards

“ The standards to which the design has been prepared are appropriate for a bridge of this magnitude and complexity.”

24. Having carefully gone through the afore-extracted paragraphs of the Reports of three Independent Experts, I am of the considered view that as the finding of the Committee of Experts was inconclusive, the Jacques Combault recommended that as the collapse of the part of the Bridge under construction has not been explained yet, therefore, it was absolutely necessary to collect all pieces of fallen structural and to classify them according to their initial location in the bridge. Further, the perusal of the Report of SETRA would reveal that the accident has not occurred due to any design mistake or a misconception of the structure. The Halcrow Report also does not indicate fault with the design of the Project and it further states that the contractual agreements about the type of the bridge was absolutely in position was correct thing as far as design built was concerned which can be said to be faulty. The Independent Reports of AECOM Asia Co. Ltd. dated 16.09.2011 and 30.09.11 also affirms the contention of the Complainants that the design of the Project was not faulty. The concluding part of

the Reports is a under:-

"3. CONCLUSION:

" The COE Reports commented several issues that are based on their assumption of segmental construction for stress checking at lateral span P3-P4. As the actual construction sequence does not fulfill the general definition of segmental constructed bridge which is:-

"Bridges, that are typically concrete box structure types, constructed using repetitive elements that are progressively connected together to form a completed structure"

Therefore, it is not appropriate to check stresses at P3-P4 based on requirements specified for segmental construction bridge.

It is also worth to notice that current design satisfy the AASHTO LRFD requirements. However, this is based on the assumption that workmanship and material quality are both upto the requirement specified in the technical specification. In our opinion, the design of the bridge found to be satisfaction and the probability of the bridge failure due to design shortfall as proposed by the COE is very unlikely."

25. It would not be out of place to mention here that the NHAI vide letter dated 06.12.2010 issued a Show Cause Notice to the Complainants proposing to debar the Complainants for appropriate period. The Complainants vide letter dated February 2011 replied to the Show Cause Notice dated 06.12.2010 clarifying all the issues on which the said Show Cause Notice was issued. The NHAI being satisfied with the reply/clarification given by the Complainants, vide its letter dated 15.02.2011 instead of debarring the Complainants had decided to continue with the Complainants and asked them to complete the remaining work. Had there been any deficiency in service on the part of the Complainants, faulty design of the Project and defect in workmanship or the material used in construction, the NHAI would not have asked the Complainant to complete the Project. Moreover, the said Project was completed by the Complainants with the same design, workmanship and material on 31.07.2017 and after due testing of the Bridge, it

was inaugurated and opened for the use of general public on 29.08.2017. If there would have been any default in its design, it might not have been opened for the General Public. The three independent Surveys relied upon the Complainants had been conducted by the World renowned Cable Stayed Bridge Designs Experts which had held that there was not default with the design of the Bridge and construction, there was no deficiency in the material used in the construction and there was also no deficiency in workmanship as the inspection of the site was being done properly by the responsible Agencies.

26. For the reasons stated above, I am of the considered view that the Insurance Company was not justifiable in repudiating the valid claim of the Complainants and accordingly they are liable to indemnify the Complainants for the loss suffered by them.

27. Now, coming to the question of the quantum of the compensation to be awarded to the Complainants, the Surveyor in his report has assessed the net loss at ₹39,09,92,828/- as under:-

1	Design drawing			2,13,58,760
2	Construction:			
	Foundations- Well Shaft P4	451.05	1,19,438.30	5,38,72,663
	Well Cap P4	444.75	1,19,438.30	5,31,20,201
3	Sub structure:			
A	Pier P3 – 1st	24	98,571.61	23,66,103
	Pier P3 (2nd & 3rd)	96	98,571.61	94,64,411
	Pier P3 (4th lift)	48	98,571.61	47,32,205

	Pier P3 (5th lift)	48	98,571.61	47,32,205
		63.92	98,571.61	63,01,720
		279.92		
B	Pier P4 (1st lift)	132.08	98,571.61	1,30,21,452
	Pier P4 (2,3,4 lift)	416.05	98,571.61	4,10,17,377
	Pier P4 (5&6th lift)	274.06	98,571.61	2,70,18,921
	Pier P4 (7th lift)	95.27	98,571.61	93,92,442
C	Pier P4 Cap	156.00	98,571.61	1,53,79,668
D	Pier p4 bottom	15.87	98,571.61	15,64,585
		1089.33		
4	Super structure			
a	Pier segment 1st stage	101.70	94,672.11	96,28,153
	Pier segment 2nd & 3rd stage	211.82	94,672.11	2,00,53,446
		313.52		
b	Pylon P4			
	1,2,3, lifts	192.175	94,672.11	1,8193,612
	4,5,6th, lifts	191.79	94,672.11	1,81,57,163
	7,8th lift	126.72	94,672.11	1,19,96,849
	9 th lift	47.20	94,672.11	44,68,523

	10,11,12th, lifts	131.80	94,672.11	1,24,77,784
	13th, lifts	43.02	94,672.11	1,24,77,784
	14,15th lifts	79.80	94,672.11	75,54,834
	16,17,18th lifts	113.80	94,672.11	1,07,73,686
	19, 20th lift	73.68	94,672.11	69,75,441
		1000.165		
c	Main span segments			
	S1	74.90	94,672.11	70,90,941
	S2, S3,S4	209.53	94,672.11	1,98,36,647
	S5, S6.S7	189.60	94,672.11	1,79,49,832
	S8,S9,S10	172.46	94,672.11	1,63,27,152
		646.49		
d	Pier Segment P3			
	Soft/Web segment P3	41.36	38,455.30	15,90,511
	Deck slab segment P3	88.56	38,455.30	34,05,601
		129.92		
e	Lateral span P2-P3			
	Soft/Web 1 &2nd pour	143.24	38,455.30	55,08,337
	Deck slab 1s pour	68.59	38,455.30	26,37,649
		211.83		
f	Lateral span P3- P4			

	Soft web 1 pour	103.66	38,455.30	39,86,276
	Soft web 2 & 3rd pour	178.9	38,455.30	68,79,653
	Soft web 4th pour & deck slab 1st	220.7	38,455.30	84,87,084
	Deck slab 2nd	230.71	38,455.30	88,72,022
	Deck slab 3rd	223.29	38,455.30	85,86,683
		957.26		
4	P3 Foundation (suspected damages)	79.62	1,19,438.30	95,09,680
				50,83,80,107

i). Gross loss for the JV as per Annexure ₹.50,83,80,107/-

2). Less salvage ₹. 3,50,37,500/-

Loss net of salvage ₹.47,33,42,607/-

3). Less Under- insurance at 13.05% ₹. 6,17,71,210/-

Loss net of salvage and U.I ₹. 41,15,71,397/-

4). Less Policy Excess 5% ₹. 2,05,78,569/-

Net Loss ₹. 39,09,92,828/-

28. I fully agree with the assessment of the loss at ₹39,09,92,828/- made by the Surveyor after due considering all the relevant documents, facts of the case and terms of the Insurance policy and it does not call for any interference.

29. Consequently, the Complaint is partly allowed with a direction to the Insurance Company to pay a sum of

₹39,09,92,828/- 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/-.

30. The Complaint is disposed of in above terms. Pending application, if any, also stands disposed off.

31. Paragraphs 28 and 29 of the Order pronounced on 16.01.2023 are suo-moto corrected and modified with the following observations:

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/-.

33. The Complaint is disposed of in above terms.