Case laws

Recent case laws on the contract of indemnity

State Bank of India v. Mula Sahakari Sakhar Karkhana Ltd. (2007)

Facts of the case

The respondent, a cooperative society, entered into a contract with a company for the installation of a paper mill. The company gave a bank guarantee or indemnity for the release. 10% of the retention money from the invoices for materials to be used in the installation reached the location. However, some disputes arose between them, and the respondent terminated the contract and invoked a bank guarantee against the company.

Issues involved in the case

- Whether the company is liable for bank guarantee in this case?
- Whether such a claim be honoured by the bank?

Judgment

The Court in this case relied on the contract, which stated that the indemnity holder would be indemnified against all losses, damages, etc., and made the supplier liable to pay. The Hon'ble Supreme Court stated that the terms of the contract reveal that it is not a contract of guarantee but a contract of indemnity. The Court also ordered the Bank not to honour the claim made on the contract's termination without any proof or evidence.

Dodika Ltd. and Ors. v. United Luck Group Holdings Ltd. (2020)

Facts of the case

This is a case that was decided by the England and Wales High Court. In this case, there was a sale and purchase agreement between the parties that related to the disposal of the seller's share in a company. Dodika demanded final payment because the tax covenant indemnified the buyer for undisclosed tax liabilities. Under the agreement, in order to claim money and be indemnified, it was necessary to serve the notice containing all the necessary details on the other party. This notice was not served by the buyer, i.e., Dodika, to the seller, i.e., United Luck Group. After investigation, notice was served.

Issues involved in the case

Whether the notice served by Dodika to United Luck Group was sufficient to attract the claim according to the agreement?

Judgment of the Court

The Court observed that the notice served by the buyer contained a chronology of events but did not explain how investigations would be done or what the next steps were. The Court held the notice insufficient, and no claim could be made under the agreement. It further held that whether a notice is sufficient enough to claim indemnity under the agreement will be decided on the basis of the terms and words used therein and the details provided in it.

AXA SA v. Genworth Financial Holdings Inc. and Anor. (2019)

Facts of the case

In this case, a global insurer, i.e., AXA, agreed to take shares from Genworth in the two companies. The Sale and Purchase Agreement between the two companies had a reimbursement clause for certain compensation payments, which AXA sought based on mis-selling of payment protection insurance products by the company in case they were acquired.

Issues involved in the case

Whether the payment or reimbursement clause in the agreement was an indemnity or a covenant to pay?

Judgment of the court

The Court in this case had to deal with the question of whether the clause in the agreement was an indemnity clause or an absolute covenant. It was held that the clause was an absolute covenant. While deciding the case, the Court interpreted the ordinary meaning and nature of the clause stated in the agreement. It was observed that the clause did not provide any promise to protect the buyer from the loss suffered by him in the course of business or trade. Furthermore, if it had been indemnity, it would have given rise to a claim for damages rather than debts. Therefore, it is not an indemnity but an absolute covenant.

Landmark judgments on the contract of indemnity

Dugdale v. Lovering (1827)

Facts

In this case, the plaintiff was in possession of certain trucks, which were claimed both by the defendant and K.P. Colliery. The defendant demanded delivery of the trucks. As the plaintiff was aware that the ownership of the trucks was claimed by both the defendant and K.P. Colliery, the plaintiff, asked for an indemnity bond from the defendant. A reply was received by the plaintiff, which only demanded delivery and did not mention an indemnity bond. After which, the plaintiff delivered the trucks to the defendant. A suit of conversion was filed against the plaintiff by K.P. Colliery, as per the verdict, for which the plaintiff had to compensate K.P. Colliery. Another suit for indemnity was filed by the plaintiff against the defendant.

Judgment

It was held that, though there is no express contract of indemnity, there is an implied contract of indemnity. As per the facts of the case, by demanding the indemnity bond, the plaintiff showed his intention that he would not deliver the trucks without indemnity. Having knowledge of this fact, the defendant accepted the delivery of trucks. By accepting, the defendant impliedly promised the plaintiff indemnification. It was held that the defendant was liable to indemnify the plaintiff as the indemnity bond led to the creation of an implied promise.

Gajanan Moreshwar v. Moreshwar Madan (1942)

Facts

In this case, the municipal corporation of Bombay leased the plaintiff a piece of property in Bombay. In response to the defendant's request, the plaintiff granted him possession of the land and built a structure on it, thus rendering the plaintiff to mortgage the land twice for Rs. 5,000. In exchange for the plaintiff being released from all obligations related to the land, the lease of the plot was also transferred into the defendant's name. However, the defendant did not release the plaintiff from the

obligations for which the plaintiff had filed a suit. The plaintiff stated that the defendant shall indemnify him with respect to all liabilities under the mortgage deed.

Judgment

It was held that if the indemnity holder had to wait until he had paid the actual loss, the value of the indemnification clause would be lost. According to the court's application of the equity principle, the indemnifier might be required to pay the court a sufficient amount of money that is used to build a fund and pay the claim whenever it is made.

United India Insurance Co. v. Ms. Annan Singh Munshilal (1994)

Facts

In this case, the cover note had the consignee's address. Additionally, before being carried to the destination, the products had to be dropped off at a godown on the route there. When the products were in the godown, they were destroyed by fire. The items were seen as having been lost in transit, and the insurance policy's provisions held the insurer accountable.

Judgment

It was decided that an indemnification agreement would not apply in the event of a fire or other disaster. This case held that in cases of fires, etc., it is called a contingent contract and not a contract of indemnity.

Secretary of State v. Bank of India (1938)

Facts

In this case, a lady was the holder and endorsee of a 5000 rupee government promissory note. An agent in possession of such a promissory note forged the lady's signature on the note in his favour and endorsed it for value to the respondent. In accordance with the Indian Securities Act, 1920, the respondent applied to the public debt office in good faith. When the woman became aware of the deception, she filed a conversion lawsuit against the Secretary of State and was awarded damages. After this, a lawsuit was filed by the appellant against the bank, citing implied indemnity.

Judgment

It was held that the appropriate amount of the claim should be recovered by the appellant from the respondent. Additionally, an express indemnity clause is not required for the pre-existing implied right to indemnity provided by Indian law.

Lala Shanti Swarup v. Munshi Singh (1967)

Facts

In this case, the plaintiff-respondent mortgaged a piece of land to Bansidhar and Khub Chand for Rs.12,000/- The appellant purchased half of the land from the rightful owner for Rs.16,000/- Shanti Saran promised to pay the due money, i.e., 13500, to Bansidhar and Khub Chand. Shanti Saran did not pay, thus Bansidhar and Khub Chand filed a lawsuit. The issue was whether there existed an indemnity contract.

Judgment

It was held that Shanti Saran failed to discharge the encumbrance, which caused a loss to the vendor, and the plaintiff-respondent could sue under the contract of indemnity.

Osman Jamal & Sons v. Gopal (1928)

Facts

In this case, the plaintiff is a corporation that acts as a commission agent for the defendant. The plaintiff's company entered into an agreement with the defendant's firm in which the plaintiff's company agreed to operate as the defendant's commission agent for the purchase and sale of hessian and gunny, charging a commission on all such purchases. The defendant was involved in the purchasing and selling of hessian and gunnies, and the defendant firm guaranteed the plaintiff firm that if any loss occurred, the firm would be indemnified. Thereafter, the plaintiff purchased hessians from Maliram Ramjets; however, the defendant company was unable to pay and take delivery in certain installments, causing the plaintiff's company to suffer a loss. As a result, Maliram Ramjets sold the product to others at a cheaper price.

An order of the court instructed the plaintiff's company to wind up and appointed the official liquidator, who filed a suit of recovery claimed by Maliram Ramjets from the defendant firm under a contract of indemnity. Maliram Ramjets sued the plaintiff for the loss, but the plaintiff was in the process of winding up his corporation and requested the defendant to indemnify them. However, the defendant refused to pay the damages and claimed that because of the plaintiff, he was not able to make the payment. The defendant contended that because the plaintiff made no payment to Maliram in relation to the liability, they were not allowed to continue a claim under the contract of indemnity.

Judgment

It was held that the defendant is liable to indemnify the plaintiff because he promised to do the same. It further stated that indemnity requires that the party to be indemnified never be called upon to pay.

Chand Bibi v. Santosh Kumar Pal (1933)

Facts

In this case, the defendant's father, while acquiring specific property, promised to pay off the plaintiff's mortgage obligation and indemnify him if they were proven accountable for the debt. The plaintiff sued the defendant's father to enforce the agreement when the defendant's father failed to pay off the mortgage obligation. The Court took into consideration the fact that the plaintiff had not yet suffered any loss for which he should be compensated.

Judgment

It was held that the plaintiff had not suffered any losses and that the suit was premature so far as the cause of action on indemnity was concerned. Moreover, one of the essential conditions of a contract of indemnity is 'there must be a loss incurred.'

Conclusion

To summarise, indemnity is an obligation or duty imposed on an individual to bear the losses of another. An injured party has the right to shift the loss onto the party responsible for the loss. It is a release from any penalties or liabilities incurred as a result of any conduct. It can also be termed as security from damage, loss, or penalty. In its simplest terms, indemnity requires one party to indemnify the other if certain costs specified in the indemnity contract are incurred by another party.

Further, indemnity is a contract where the promisor is under an obligation to protect the promisee from losses incurred by him due to the promisor's default or that of any third party. This loss covers the loss due to humans or any agency and not any loss due to accidents like fire or those that are not in control of anyone. The parties are the indemnifier and the indemnity holder, or the indemnified, and a contract to fall under the ambit of indemnity has to fulfil certain essentials that are mentioned in the article. Sometimes, we get confused between indemnity and guarantee because both involve protecting a person from losses. But they both differ from each other in several aspects that are stated above.

In an indemnity deal, one party is responsible for any harm or loss incurred by the other party as a result of the promisor's or other party's actions. A simple indemnity provision in a contract does not necessarily resolve liability issues because the law discourages people from attempting to transfer their own liability onto others or attempting to escape liability. Liability problems will never be solved by a simple indemnity clause.

The law is not on the side of those who wish to avoid liability or seek a waiver of responsibility for their conduct. The fundamental reason is that a careless party should not be able to completely shift all claims and damages made against him to another, non-negligent party.