

(2024) 09 NCDRC CK 0026**National Consumer Disputes Redressal Commission****Case No:** Consumer Case No. 94 Of 2012

M/s. Rapier Machinery Mfg. Co. (I)
Pvt. Ltd

APPELLANT

Vs

Oriental Insurance Co. Ltd

RESPONDENT**Date of Decision:** Sept. 20, 2024**Acts Referred:**

- Consumer Protection Act, 1986 - Section 24A

Hon'ble Judges: Ram Surat Ram Maurya, Presiding Member; Bharatkumar Pandya, Member**Bench:** Division Bench**Advocate:** Anubhav Kumar, Gauri Swarup Bansal, Ajay Singh**Final Decision:** Dismissed**Judgement**

1. Heard Mr. Anubhav Kumar, Advocate, for the complainant and Mr. Ajay Singh, Advocate, for the opposite party.
2. M/s Rapier Machinery Mfg. Co.(India) Private Limited has filed above complaint for directing the opposite party to pay (a) Rs.54852265/- with interest @18% per annum from 30.05.2006 till the date of payment, as the insurance claim; (b) Rs.2000000/- compensation for mental agony and harassment; (c) Rs.100000/- as litigation cost; and (d) any other relief which is deemed fit and proper in facts and circumstance of the case.
3. The complainant has filed IA/1/2012, for condonation of 5 years 7 months 21 days delay in filing the complaint. The complainant has filed additional documentary evidence along with IA/964/2023 in support of delay condonation application. In the present case, loss, giving rise to insurance claim, occurred on 25.05.2006. The claim was repudiated vide letter dated 11.08.2006 and the present complainant was filed on

21.03.2012. Section 24-A of the Consumer Protection Act, 1986 provides 2 years limitation from the date of cause of action for filing the complaint.

The complainant stated that the OP had repudiated the claim on the ground that the location 212/1, near Check Post, Vapi Silvassa Road, Village Dadra, Silvassa, Dadra & Nagar Haveli, where fire had taken place causing loss to the machinery was not 'insured location' as such the claim was not payable. The complainant vide letters dated 22.08.2006, 28.08.2006 and 23.09.2006, clarified the 'insured location'. The complainant gave final clarification in respect of the 'insured location', with request to reconsider the matter, vide letter dated 27.10.2006. However, the OP declined reconsider the claim, vide letter dated 19.10.2006. The complainant was willing to file consumer complaint. However, one Tribhuvan Chaturdev Mishra, who was a labourer of the complainant, robbed the papers from the office of the company, which contained the papers relating to this insurance policy and other documents relating to the claim. The dispute relating to employment of Tribhuvan Chaturdev Mishra was initiated before Labour Court and thereafter in Bombay High Court. After the order of Bombay High Court, Tribhuvan Chaturdev Mishra handed over some papers in January, 2011. After receiving some papers relating to the present claim, the complainant found out other details and approached the advocate for filing the complaint, which was drafted and filed on 21.03.2012.

4. The complainant along with IA/964/2023, filed copy of award of Labour Court dated 06.04.2010, which shows that Tribhuvan Chaturdev Mishra had rendered service as 'security supervisor' in its company, w.e.f. 16.09.1988. He was transferred to M/s. Hari Textile Private Limited, (the sister concern of the complainant) w.e.f. 01.11.2006. As per the complainant, Tribhuvan Chaturdev Mishra voluntarily left the job and did not work at the transferred place. Labour Court found that the services of Tribhuvan Chaturdev Mishra was terminated w.e.f. 01.11.2006 as such, he was directed to be reinstated with back wages. Bombay High Court dismissed the writ petition of the complainant vide order dated 07.12.2010. Instead of accepting termination of service, the complainant contested on the ground that Tribhuvan Chaturdev Mishra had voluntarily left the service due to his transfer to M/s. Hari Textile Private Limited. Neither before Labour Court nor in the writ petition filed before Bombay High Court against the order of Labour Court, there is any allegation that Tribhuvan Chaturdev Mishra had robbed/stolen any paper from the office of the complainant.

5. The complainant stated that it was a private company incorporated under the Companies Act, 1956 and engaged in the business of manufacture of knitting fabric. The complainant's factory was located at Survey No.212/1, near Check Post, Vapi Silvassa Road, Village Dadra, Silvassa. In the year 2005-06, the complainant decided to expand its manufacturing capacity of knitted fabric by installing additional imported thirty knitting machines from Mayer & Cie, Germany. The complainant sought for

quotation of thirty knitting machines from Mayer & Cie, Germany, of make 'Circular Knitting Machine' through M/s. Batliboi Textile Engineering Group, the authorised Indian agent of the original equipment manufacturer. M/s. Batliboi Textile Engineering Group, Mumbai submitted its offer vide proforma Invoice dated 19.09.2005, which was accepted. Mayer & Cie, Germany effected partial shipment of 10 Circular Knitting Machines vide Invoice No.3000074222 dated 22.02.2006. The consignments were shipped through Bill of Lading dated 10.03.2006 from Hamburg Port to JNPT Port, Dadra & Nagar, and it were reached to India on 08.04.2006. After unloading from ship, it were taken to Gala No.259. After inspection by the Marine Surveyor, 8 Circular Knitting Machines were transported to the site of installation/erection at first floor of Survey No.212/1, near Check Post, Vapi Silvassa Road, Village Dadra, Silvassa on 19th, 20th and 21st, May, 2006. On 25.05.2006, fire broke out in factory premises at Survey No.212/1, near Check Post, Vapi Silvassa Road, Village Dadra, Silvassa, causing extensive damage to these 8 machineries, newly imported. The complainant intimated the loss, vide letter dated 02.06.2006 to the opposite party and submitted its Claim Form on 05.06.2006. The opposite party appointed M/s. Kaypsens, Surveyor and Loss Assessor, Delhi as the surveyor. The surveyor, vide letter dated 05.08.2006, informed the Insurer that fire occurred at Survey No.212/1, near Check Post, Vapi Silvassa Road, Village Dadra, Silvassa which was not an insured location. The opposite party repudiated the claim vide letter dated 11.08.2006. The complainant vide letters dated 22.08.2006, 28.08.2006 and 23.09.2006, clarified the 'insured location'. The complainant gave final clarification in respect of the 'insured location', with request to reconsider the matter, vide letter dated 27.10.2006. However, the OP declined reconsider the claim, vide letter dated 19.10.2006.

6. In Claim Form, the complainant claimed Rs.11153304, for Plant & Machinery under Policy No.1214002007197 for the period of 05.05.2006 to 04.05.2007 and Rs.4369896/- for stock under Policy No.121400200710 for the period of 11.08.2005 to 10.08.2006. The complainant, in letters dated 23.09.2006 and 27.10.2006 submitted that the claim was under Erection All Risks Policy No.121400/2006/00058. None of the original policies, mentioned above have been filed by the complainant either along with the complaint or rejoinder or Affidavit of Evidence. The complainant only filed two endorsements dated 05.04.2006 and 04.06.2006 in Policy No.121400/2006/00058. By endorsement dated 05.04.2006, sum insured was increased to Rs.24880000/- and period of policy was from 29.03.2006 to 28.06.2006. Endorsement dated 04.06.2006 is of subsequent to the date of fire, in which, location was changed as "259//1/1 Plot No.11, 12, 13, Navneet Shah, Industrial Estate, Village Dadra".

7. The opposite party has filed Erection All Risks Policy No.121400/2006/00058, along with Affidavit of Evidence of Mahendra Kumar Agarwal. In this Policy, the address of the Insured was mentioned as Plot No.11, 12, 13, Dadra Silvassa" Place of site in blank.

Admittedly fore occurred at Survey No.212/1, near Check Post, Vapi Silvassa Road, Village Dadra, Silvassa. Policy No.121400200710, under which, claim for stock was made, has not been produced by any of the party. The surveyor, in his letter dated 05.08.2006, examined 8 policies produced by the complainant and held that fire affected location is not covered any of the policy. Thus finding in repudiation letter that loss affected place was not 'insured location' in any of the policy, does not suffer from any illegality.

ORDER

For the foregoing discussion, the complaint is dismissed.

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