(2024) 11 NCDRC CK 0077

National Consumer Disputes Redressal Commission

Case No: First Appeal No. 214 Of 2017

M/s Hundi Lal Jain Cold Storage & Ice Factory Pvt. Ltd	APPELLANT
Vs	
United India Insurance Co. Ltd	RESPONDENT

Date of Decision: Nov. 22, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 19
- Insurance Act, 1938 - Section 64UM, 64UM(2), 64UM(3), 64UM(4)

Hon'ble Judges: Subhash Chandra, Presiding Member; Avm J. Rajendra, Avsm Vsm (Retd.), Member

Bench: Division Bench

Advocate: Rahul Shukla, Sayantani Basak, Rajesh K Gupta

Final Decision: Dismissed

Judgement

Subhash Chandra, Presiding Member

1. This appeal under Section 19 the Consumer Protection Act, 1986 (in short, the “Act”) is directed against the order dated 20.12.2016 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (in short, the “State Commission”) in Complaint no. 06 of 2006 allowing the complaint in part.

2. The relevant facts of the case, in brief, are that appellant which is cold storage and ice factory situated at Karhal Road, Mainpuri had obtained 3 insurance Policies from the respondent for the period 02.04.2003 to 01.04.2004 as under:

(a) Fire Policy covering fire and earthquake perils for Rs.80,00,000/-;

(b) MB Policy covering breakdown of plant and machinery for Rs.38,06,000/- and

(c) DOS Policy covering deterioration of potato stocks for Rs.64,40,000/- for the period 02.04.2003 to 01.10.2003.

On 09.01.2004 around 10.45 pm an ammonia gas cylinder in the machinery room of the cold storage had a gas leak as a result of which the cylinder hit the machinery room ceiling resulting in collapse of roof and walls. As a result, there was a short circuit resulting in fire. The Fire Brigade was summoned and it took 3 to 4 hours to douse the fire. Respondent insurance company was intimated on 10.10.2004 and an FIR lodged with Police Station Ghiror, Mainpuri district the same day. A surveyor was appointed and as per report dated 09.04.2005 recommending coverage of loss only for the building as damage to plant and machinery was not covered under the policy. The petitioner's claim is for Rs 27,52,265.80 under the Fire Policy, Rs 20,01,361.80 under the MB Policy (total Rs 47,53,627.60) with interest @ 18% from the date of complaint till realization with Rs 10,00,000/- as compensation and Rs 10,00,000/- for mental agony. Respondent allowed claim of Rs 1,20,168 on 09.12.2005 and applied deductions thereon. Earlier, a cheque for Rs.87,000/- had been issued by the respondent on 24.08.2005 which was not accepted by the appellant. This order is impugned before us.

3. We have heard the learned counsel for the parties and perused the records.

4. The State Commission has held that the contention of the petitioner that all the damages in the cold storage, including building and machinery, was due to the conflagration resulting from the gas cylinder incident in the machine room was not tenable. Damage to plant and machinery was not due to breakdown and hence could not be indemnified as loss. It was also held that as per the report of the Fire Brigade, the loss to generator, wiring switch board and oil container was due to a short circuit. It was therefore held that the damage to the building was due to an electrical short circuit which was a covered risk under the Policy. The report of the Surveyor was therefore concurred with in line with the judgment of this Commission in *New India Assurance Co. Ltd. Vs. Vinay Kumar Pandey*, 2014 (I) CPC which held that the report of the surveyor is an important document which cannot be brushed aside without any material to the contrary on record. The State Commission accordingly directed payment of Rs 1,20,168/- with interest @ 6% from the date of filing of complaint till realization, Rs 10,000/- for mental agony and Rs 5,000/- for litigation expenses.

5. On behalf of the appellant it was argued that the State Commission erred in holding that machinery was not an inherent part of the building since the cold storage was divided into chambers with embedded plant and machinery which was immovable in nature and as held by the Hon'ble Supreme Court in *Duncans Industries Ltd. Vs. State of UP & Ors*., MANU/SC/0757/1999 and *National Insurance Co. Ltd. Vs Arun Agarwal*, 2019 SCC OnLine NCDRC 923. It was also contended that the surveyor had incorrectly calculated the cost of the building as Rs 1,50,00,000/- whereas as per balance sheet for FY 2003-04 the cost of

building and machinery was Rs 97,85,900/- and hence the assessment of the surveyor was malafide and incorrect. It was submitted that as held by the Hon'ble Supreme Court in *New India Assurance Co. Ltd, Vs Pradeep Kumar*, (2009) CPJ 46 (SC) the surveyor's report was not so sacrosanct that it could not be departed from. The surveyor was alleged to have not considered the cost of reconstruction supported by vouchers available on record. The respondent was alleged to have not shared the original Policy documents to the petitioner and hence the State Commission failed to consider the liability of the respondent. Reliance was placed on judgment of the Supreme Court in *New India Assurance Co. Ltd. & Ors. Vs. Paresh Mohanlal Parmar*, CA No. 10398/2011 and *Park Leather Industries Ltd. Vs. United India Insurance Co. Ltd. & Ors*., MANU/CF/0489/2022. It was argued, per judgment of the Hon'ble Supreme Court in *Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd.,* MANU/SC/0117/2000 that it was the insurer's responsibility to disclose all material facts and this Commission's judgment *in ICICI Lombard General Insurance Co. Ltd. Vs. Neema Saini*, FA 746/2021 that held that since terms and conditions of the Policy had not been supplied, contention of insurer that maximum benefits could not be provided was not sustainable.

6. Per contra, the contention of the respondents is that the three Policies held by the appellant were for specific perils, i.e. fire and earthquake for building, machinery breakdown for plant and machinery and deterioration of stocks held. It was contended that the policies were specific in the item and risk thereto covered. According to the respondent only building was covered under the Fire Policy. As per the appellant, the Fire Brigade's report was specific in stating that the machine room caught fire due to short circuit. Delay in intimation to the Fire Brigade was alleged which contributed to the demolition of the machine room which could have been avoided. The Surveyor reported under-insurance of 46.667% in respect of the building. As machinery was not covered under the Fire Policy, no liability was established according to the surveyor. It was similarly held in respect of the potato stocks. Hence, the loss assessed by the surveyor of Rs 1,20,257.71 was stated to be reasonable.

7. From the foregoing it is manifest that the claim of the appellant has been considered on the basis of the Surveyor's report and the scope and coverage of the three insurance policies. The fire and the loss are not in dispute. The appellant has contended that the plant and machinery as well as stocks were excluded under the Policies which only applied to loss against building. It is contended that plant and machinery cannot be held to be part of the building as argued by the appellant since there was a separate Policy for it. The report of the surveyor which also held underinsurance of the building by 46.67% was contended to be in order.

8. It has been held by the Hon'ble Supreme Court in *Sri Venkateswara Syndicate vs Oriental Insurance Co. Ltd. & Anr.,* Civil Appeal No. 4487 of 2004 decided on 24 August, 2009, that any claim in excess of Rs.20,000/- under Section 64 UM of the Insurance Act, 1938 is to be surveyed and reported by an authorised surveyor. While the report of a surveyor has to be given due consideration, it has been held by the Hon'ble Supreme Court

as under:

22. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.

[Emphasis supplied]

The appellant has alleged malafide against the surveyor and his non-reliance on the balance sheet apart from his own reliance on the present day cost of reconstruction to claim the loss against damage to building to be Rs 97,85,900/- which admittedly includes cost of plant and machinery. In view of the fact that there was a separate Policy covering plant and machinery, albeit for breakdown only, it was mandated upon the appellant to have included plant and machinery comprehensively under the building Policy. This is not brought out by any documentary evidence by the appellant except the balance sheet and the cost of reconstruction post the incident. This cannot be considered. In fact, the surveyor has also reported underinsurance by a very high percentage. If the appellant desired to include machinery to be part of building under the insurance scheme, it was incumbent upon him to have ensured appropriate valuation. Its contentions cannot be considered at this stage and his reliance on Pradeep Kumar (supra) (2009) 7 SCC 787, is of no avail to him. The contention that Policy terms were not disclosed by the respondent and therefore he could not

refuse settlement of claim at the maximum amount cannot also be accepted. As per the order of the State Commission a reference to the Policy is made at page 19 which indicates that the Policy was in fact on record. The contention that the Policy was not shared is clearly an afterthought.

9. In view of the foregoing, it is apparent that the State Commission's order is reasoned and based on facts and analysis. This first appeal is therefore liable to fail. Accordingly, the appeal is dismissed as without merits and the order of the State Commission is affirmed with the modification/direction that the respondent shall comply with this order within 45 days of the order failing which the applicable rate of interest awarded shall be 9% p.a. till realization.

10. Pending IAs, if any, stand disposed of with this order.