

(2009) 01 NCDRC CK 0039

In the National Consumer Disputes Redressal Commission

Anderson Marine Private Ltd.

APPELLANT

Vs

Oriental Insurance Company Ltd. , Divisional Manager

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Citation : 2009 0 NCDRC 11

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Advocate : V.D.Costa , Vivek Singh , S.M.Tripathi , Deepa Chacko

Judgement

1. THE complainant is a company set up by Commodore R. A. J. Anderson, formerly of the Indian Navy, to build special types of high speed boats (made of fibre glass re-inforced plastic FRP) for the Indian Coast Guard and some other Government buyers. THE complainant took out a fire insurance policy for Rs. 1 crore, with the Oriental Insurance Company Ltd., the opposite party in this case (referred to hereafter as the OP), for the period 14.12.1994 13.12.1995. THE policy covered the following properties at the shipyard of the complainant: (i) building (sheds for FRP mouldings) Rs. 40 lakh, (ii) machinery and accessories Rs. 20 lakh and (iii) stocks (and stocks-in-process) Rs. 40 lakh.

2. ON 10.05.1995, a fire damaged an FRP vessel (the 8th of the 10 such boats ordered by the Coast Guard), which was then under construction at the complainants ship yard at Zorinto, Sancoale in Goa. The boat was in the stage of assembly and fitment of moulded components, etc., in the dry dock and the final coat of resin paint was being applied to its inside. The fire occurred because the electric bulb in a hand lamp held by a worker working inside the vessel burst and emitted sparks. The sparks ignited the resin paint, which was then wet and hence inflammable. After initial but unsuccessful efforts by the shipyard staff to put out the fire, fire tenders were called in from the INS Hansa, Zuari Agro Chemicals and the Government Fire Service, Goa. Seven fire tenders were deployed and the fire could be finally extinguished after about six hours. As a result, the entire vessel and its various moulded FRP components/fixtures, viz., the vessel hull itself, deck, superstructure, cabins, accommodation below deck,

air supply and handling unit, dehumidification plant and portable tools were seriously damaged. In its insurance claim lodged with the OP on 24.05.1995, the complainant estimated the damage at Rs. 66.50 lakh. The complainant claimed that though it furnished from time to time the information and documents sought by the surveyors appointed by the OP, the latter did not settle the insurance claim even after two years approximately of its filing. The second surveyors appointed by the OP kept on asking for what the complainant thought was irrelevant and unnecessary information. Because of the delay in settling the claim, the complainant had to issue a legal notice to the OP on 17.03.1997. This notice was also not replied to. Finally, the complainant filed this complaint with this Commission on 09.05.1997, alleging deficiency in service by the OP and seeking payment of Rs. 66.50 lakh towards the claimed loss due to the fire, interest @ 21 per cent on the said amount from the date of lodging the claim, a compensation of Rs. 20 lakh on account of mental agony, physical strain, etc., and costs of litigation. Based mainly on the reports of the second surveyors (viz., M/s Mehta and Padamsey Surveyors (Bombay) Private Ltd.), the OP, however, finally repudiated the complainants claim by its letter dated 21.08.1997.

The OP filed its written version contesting the complaint on all relevant counts. Both the parties filed their respective evidence by way of affidavits, produced documents and also examined/cross-examined witnesses. We have considered these pleadings, evidence and documents and also heard the learned counsel for the parties at length.

3. THE case of the complainant is that the damage caused by the accidental fire to the vessel under construction in the dry dock is covered fully under the insurance policy. This, according to the complainant, is based on the following: (i) THE machinery and accessories, stocks and stocks-in-process covered by the insurance policy included not only those stored, used or fabricated in the shed for the FRP mouldings (like the hull, deck, wheelhouse and superstructure) but also those stored and worked upon in the dry dock. In fact, the entire boat, till its delivery to the buyer Coast Guard, constituted stocks-in-process. THE dry dock was as essential a part of the shipyard for construction of such vessels as the shed for FRP mouldings because it was only in the dry dock that these vessels could be assembled with various types of components moulded in the said shed, as well as other components, collectively termed as stocks-in-process. Unlike conventional steel vessels, all FRP components, including the hull, of an FRP boat had to be moulded in the shed because the latter was designed and constructed to provide the controlled environment/temperature, necessary to ensure adherence to the requisite specifications of their construction, stipulated in the applicable marine standards. After all such components were moulded using the specialised moulds and the special raw material for their respective purposes in the said FRP moulding shed, they had to be taken out to the dry dock for assembly and fitment inside or over the hull as also for fitment of such other components like the cabin compartments, beds, toilets, doors, racks, cupboards, etc. Once the vessel structure was thus ready, electro-mechanical equipment,

including the engine, radar, electronics, etc., would be installed, fitted and tested, also in the dry dock.

(ii) THE use of the term stocks-in-process mentioned in the insurance policy, in addition to machinery and accessories, included various sections of the vessel used and worked upon in the process of manufacture of the whole vessel and these stocks-in-process could not have been fitted inside the shed for FRP mouldings, in view of the nature of the manufacturing process (described above). Thus, it was never the intention of the complainant to insure the machinery and accessories as well as stocks and stocks-in-process only when inside the said shed. In that situation, covering the manufacture of the FRP vessel against the peril of fire would have not been possible, given the actual sequence of the manufacturing process.

(iii) THE insurance policy schedule, containing the terms machinery and accessories as well as stocks and stocks-in-process and mentioning the sums assured as Rs. 20 lakh and Rs. 40 lakh respectively, did not specify that to be covered against the peril of fire, the machinery and accessories and stocks and stocks-in-process had to be inside the shed for FRP mouldings. Moreover, the special perils described in the said schedule specifically covered, inter alia, engine testing. Engine testing of an FRP boat could be done only in the dry dock by filling it up with water and certainly not in the shed for FRP mouldings. (iv) THE dry dock was also, in view of its construction in cement concrete, etc., a class I construction and thus included in the description of building in the policy. Hence, machinery and accessories, stocks and stocks-in-process (lying or being used) in the dry dock would be covered by the terms of the policy.

On the other hand, the case of the OP, insurance company is the following: (i) The insurance policy was issued on the basis of the proposal form submitted by the complainant. More than any one else, the complainant was in the best position, on the basis of the technical expertise and experience of its owners/management, to clearly describe the items and properties intended to be insured and the extent of their coverage against the risk of fire, earthquake, floods, etc. The proposal form was in respect of Building of class I construction and height of 22 metres and occupied as Engineering workshop. In respect of Description of property, the proposal form mentioned, Building --- Sheds of FRP Mouldings --- Rs. 40 lakh; Machineries and Accessories --- Rs. 20 lakh and Stock and stock in process --- Rs. 40 lakh. There was no mention in the proposal form of any stock in the open or of any stockin-process or operation carried out on such stockin-process in the dry dock, which was open to the sky.

(ii) As evident from the site plan of the complainants shipyard (enclosed by the OP with its written version), the latter included the main moulding shed for FRP components, sheds occupied as machine shop, wood working and moulding shed, stores, fit-out shed and bonded stores. The complainant also manufactured steel boats and barges at this yard. From the description in the proposal form, the insurance policy proposed by the complainant was thus meant only to cover

the shed for FRP moulding and the property therein. Accordingly, the OP insured the building for the FRP mouldings, the machinery and accessories as well as the stocks and stocks-inprocess therein and not any stocks or stocksinprocess stored/lying in the open or being worked upon in the open. The dry dock, a structure admittedly some 10 metres away from the insured shed for FRP mouldings, was open to the sky and thus wholly different from the latter.

(iii) By letter of 16.05.1995, the first (preliminary) surveyor, Mr. Khandeparkar advised the complainant that the policy did not cover the FRP boat. The complainant protested this. So, the OP appointed M/s Mehta and Padamsey Surveyors (Bombay) Private Ltd., a reputed and experienced firm as the second surveyors. The representative of the second surveyors (its Executive Director) visited the site of peril on 04 05 .08.1995 and wrote to the complainant on 09.08.1995, seeking detailed information for processing the claim. In this letter itself, the surveyors stated explicitly that in the fire policy in question, the complainant had covered ... building (sheds for FRP moulding), machinery and accessories and stocks and stocks in process installed and/or lying in the building and that the boat under construction and the machinery and tools had burnt whilst lying in the dry dock which was not the location covered under your fire policy. The information that the complainant furnished to the second surveyors by its letter of 04.04.1996 was not what the latter had sought for correct assessment of the loss. The second surveyors, therefore, wrote to the complainant several letters dated 09.05.1996, 25.07.1996 and 19.09.1996 to submit complete information. The information sought by the second surveyors was relevant and necessary to ascertain both the value of the property damaged and the extent of under-insurance, if any. The complainant did not furnish the relevant details. Thus, the complainant did not comply with clause 6 (i) of the insurance policy, obligating it, as the insured, to furnish information necessary for assessment of the loss.

(iv) As a result of the refusal/inability of the complainant to furnish specific details like the replacement cost of the damaged machinery, value of material and labour components of each item of the stocks-inprocess, bills in support of the details of value, etc., despite repeated requests by the second surveyors (its Executive Director named Mr. M. V. Kripalani), Mr. Kripalani filed a detailed and reasoned affidavit before this Commission on 22.07.1997 to the effect that first, the fire policy did not cover the boat when it was in the dry dock because the insured building was only the FRP moulding shed and machinery/accessories and stocks/stocksin-process inside the insured building and secondly, that it had not been possible to assess the loss nor the adequacy of the insurance.

(v) Further, according to the OP, the value of the FRP boat damaged by the fire was Rs. 2.70 crore approximately. In addition, there was a large quantity of stock in the FRP moulding shed, undergoing processing at the time of the fire. However, the insurance of the stocks and stocksin-process was only for Rs. 40 lakh. (vi) According to clause 10 of the insurance policy, in case of under-

insurance, the insured had to bear a rateable proportion of the ascertained loss. Further, the net amount of loss was also subject to the exclusion clause, the insurance policy did not cover the first Rs. 2,500/- of each and every loss indemnified. (vii) The premium applicable to the property under the insurance policy would have been higher than that charged if the policy were to also cover property in the open, as claimed in respect of the stocks and stocks-in-process in the dry dock that was open to the sky.

4. It needs to be noticed here that with the permission of the Commission, the complainant produced on record a separate survey report dated 12.08.2002 (based on review of the documents and hence more in the nature of an opinion) of M/s Ericson and Richards (Vasco) Ltd., licensed Surveyors. Suffice it to observe in this context that the submissions of the learned counsel for the complainant discussed in paragraph 5 above, is based substantially on the views and interpretations in the said survey report. It is not the case of the complainant that either the FRP moulding shed or the machinery and accessories and stocks and stocks-in-process in that shed were damaged by the fire. The tenability of the claim thus hinges on the determination of insurance coverage of the damaged machinery and accessories and stocks and stocks-in-process outside the FRP moulding shed, specifically in the dry dock of the shipyard. If the answer to this question were to be found to be in the affirmative, the two associated questions of significance would be the reasonable value of the damaged goods and adequacy of the value insured (Rs. 60 lakh in all). Thus, on the basic issue of insurance coverage of the goods damaged by the fire, the case of the complainant is that in view of the specific nature of the process of building, assembling and fitting out an FRP boat of the type in question, removal of the moulded FRP components, including the boat hull, as well as the necessary machinery and accessories from the FRP moulding shed to the dry dock and further work of assembly, fitment, etc., on the hull and other FRP components (collectively termed as stocks and stocks-in-process) in the said dry dock was an imperative. Though this point is not seriously disputed by the OP, the latter's case, however, is that in order to avail of the coverage against the perils stipulated in the insurance policy, the insured goods had to be necessarily inside the FRP moulding shed. In other words, irrespective of the requirements of the manufacturing process, the terms of the insurance policy (based as it was on the complainant's specific proposal) did not include coverage of the machinery and accessories and stocks and stocks-in-process while in the dry dock.

5. (i) The complainant contended that in the Proposal for insurance as well as the insurance Policy, the description of the Property insured did not require that the items of machinery and accessories and stocks and stocks-in-process had to be inside the FRP moulding shed in order to be covered by the Policy; this was so because nowhere was this requirement stated in either the Proposal or the Policy.

(ii) In this context, in his re-examination by the learned counsel for the complainant before this Commission on 09.03.2004, Commodore Anderson, the

Chairman of the Board of Directors of the complainant company stated, inter alia, the following: On the date of taking the insurance Policy, the stock of FRP was approximately Rs. 40 lakh. ... At Page 8 of that balance sheet, words, works in Progress used means all the works on all the four vessels in the open dockyard. It includes steel vessels. Steel vessels were not insured. Every boat has a yard number. ... Yard no. 24 was the FRP boat under construction. ... When the boat is completed, it is handed over to the Coast Guard. The insurance was limited only to FRP sheds, machinery, stocks and stocks in Process Pertaining to FRP construction only. Stocks in Process is (sic) the stocks being Processed into a boat. We take the stocks outside the shed and Process them in order to make a boat and the boat cannot be built in shed. [Emphasis supplied] The insurance taken by the complainant thus admittedly related to the FRP shed (though the word sheds is used, clearly there was only one such shed) and the machinery, stocks and stocks-in-Process Pertaining to FRP construction only. Steel vessels under construction in the shipyard were excluded. In other words, the FRP shed Per se and the machinery, stocks and stocks-in-Process Pertaining to FRP construction in the FRP shed were intended to be and actually covered against the Peril of fire by the insurance Policy. If it is accepted that the FRP boats could not be built in the FRP shed and the use of the dry dock was a must, it defies logic as to why, on the same analogy, the machinery, stocks and stocks-in-Process Pertaining to FRP construction, when lying or being worked upon in the dry dock, were not Proposed to be explicitly included in the ambit of the insurance Policy though the same Property in the FRP shed were.

(iii) Moreover, both from the statement reproduced above and the Description of Property in the Schedule attached to the Fire Policy C, it is clear that the only building described in and covered by the Policy was the FRP moulding shed. The same question as above, therefore, arises: why did a technically qualified set of People who managed the affairs of the complainant company choose not to include the dry dock as a crucial building/structure for insurance coverage against the Peril of fire when so much work of assembly, fitment and testing of an FRP boat had to be necessarily done in the dry dock? We are unable to find an answer to this question, because there is none whatsoever.

(iv) Nowhere in the Pleadings does the complaint claim that the dry dock was a building of class I construction, intended to be covered by the insurance Policy. However, in his arguments before us, the learned counsel for the complainant belatedly emphasised that the dry dock too was a structure of class I construction. In the Policy document, the description of a building of class I construction is explicit and unambiguous: according to this document, titled CLASSIFICATION OF BUILDING attached to the Policy (FIRE POLICY C), such a building had to have not only external walls of one of the types described under the column with the heading External Walls but also a roof of any of the types specified under the column with the heading Roof. Clearly, the dry dock did not have a roof at all and cannot thus be classified as a construction of class I under the terms of the Policy.

(v) It is the settled law of the land that a contract of insurance has to be based on the Principle of uberrima fides or, utmost good faith on the Part of the assured. If the insured (complainant) believed that the machinery and accessories and stocks and stocks-in-Process involved in the construction of an FRP boat of the type in question necessarily required the use of the dry dock, as much as it did of the FRP shed, it was incumbent upon the insured (complainant), Particularly as the technically better qualified Party to the contract, to represent that fact without qualification or obfuscation and seek insurance cover for the Property(ies) in question in the Proposal itself by Paying the necessary Premium.

(vi) The complainants attempt to derive support from the clause relating to SPECIAL PERILS in the insurance Policy also does not take its case far. This clause reads as under: Special Perils: 1. Manufacture of Plastic/Rubber Components, Spray Painting, drying of Painted Goods, Finishing Operations using Flammable Liquids having flash Point below 320 C, Wood working, Upholstering, Engine testing be done and that Flammable Gas Plant be installed; only when incidental to the main occupancy and also value of machinery being less than 5% of the value.

2. Provided Machinery and Floor area occupied by such machines is less than 5% of the total floor area of the building. The complainant sought to rely upon this clause to argue that this too signified inclusion of the dry dock within the coverage of the Policy because engine testing of an FRP boat could be done only in the dry dock. A plain reading of sub-clause 1 of this clause (which alone includes the reference to engine testing), however, makes it clear that all the special Perils covered by this sub-clause were in respect of specific Perilous operations carried out inside the building that was already covered under the insurance Policy this is obvious from the use of the phrase only when incidental to the main occupancy (emphasis supplied). This sub-clause could not cover the extensive assembly and fitment operations in the dry dock, even if they involved one or more of the Perilous operations specified because the dry dock per se was not included in the building covered by the Policy and, by the complainants own showing, the operations in the dry dock, though necessary for putting the FRP boat together, could not have been carried out in the FRP shed which alone constituted the building of main occupancy carrying the insurance coverage. Sub-clause 2 of this clause was clearly not relevant. (vii) We also need to notice a specific Provision of the clause relating to EXCLUSIONS in the insurance Policy. Sub-clause (j) of the Exclusions clause reads as under: Property insured if removed to any building or Place other than in which it is herein stated to be insured except Machinery and Equipment temporarily removed for repairs, cleaning, renovation or other similar Purpose for a Period not exceeding sixty days. Thus, even if it is accepted that for completion of the FRP boat in question, the moulded FRP components had to be removed to the dry dock from the FRP shed (in which the machinery and accessories and the FRP components (stocks and stocks-in-Process) were stated to be in any case insured), the only

Protection that this Proviso could Provide to the complainant was in respect of machinery and equipment removed temporarily for the stipulated Period and for the Purposes specified (as emphasised). That again is not the case of the complainant. (viii) We are, therefore, of the view that the insurance cover, as Proposed by the complainant and accepted by the OP in the Policy on record, did not include the machinery and accessories or the stocks and stocks-in-Process outside the insured FRP shed, i.e., while lying or being worked upon in the dry dock, irrespective of the technical merit of the contention that the FRP boat in question could not have been built fully or tested with the engine or the other outfitments fitted except in the dry dock.

6. AS laid down in section 64 UM (G) (2) of the Insurance Act, 1938, for an insurer to admit a claim in respect of a loss and settle it, it is mandatory for the former to obtain a report on the loss that has occurred from a person who holds a licence under this section to act as a surveyor or loss assessor. A surveyors assessment of loss is thus a statutory imperative. In this case, the surveyor reported that it was unable to assess the loss for want of relevant information sought from the complainant. Therefore, the question that arises is whether the complainant furnished to the insurance surveyors the details of the claimed values of damaged property in a manner sufficient to establish their veracity and consequent assessment of the amount of the loss. (i) The insurance claim dated 24.05.1995 lodged by the complainant with the OP was as under: FRP HULL Rs. 19,20,000; FRP DECK Rs., 9,60,000; FRP SUPERSTRUCTURE Rs. 4,32,000; CABINS/ACCOMMODATION BELOW DECK Rs. 18,72,000; YARD MACHINERY AND TOOLS: a) AIR SUPPLY AND HANDLING UNIT Rs. 4,42,000; b) DEHUMIDIFICATION PLANT Rs. 2,38,000; c) PORTABLE TOOLS LIKE DRILLS, SANDERS AND CUTTERS Rs. 7,86,000; TOTAL Rs. 66,50,000. Though this statement was for a loss of Rs. 66.50 lakh, the claim form (first page) mentioned the figure of Rs. 60 lakh and the complainants letter of 17.05.1995 to the Station Fire Officer, Vasco da Gama reported the loss at Rs. 95 lakh (comprising FRP Interceptor Boat at Rs. 80 lakh and Tools and Machinery at Rs. 15 lakh). (ii) The second surveyors representative wrote to the complainant on 09.08.1995, requesting information and documents on ten specific points, viz., note on chronology of events starting with the date of shifting the boat to the dry dock, original and copies of the fire brigade reports, original and copy of Police Panchnama, site plan showing various sheds and their occupancies, list of machinery, accessories and tools at the shipyard (with their specifications, quantities, years of purchase, original costs, replacement costs, in a prescribed proforma), details of itemwise loss on plant and machinery, accessories and tools (in prescribed proforma), similar details of stocks and stocks-in-process and of the loss thereof, size and specifications of the affected boat with a sketch and selling price of the finished boat. The surveyors letter also advised the complainant to segregate the damaged items and salvaged parts for inspection by the surveyors representative. (iii) The surveyors letter of 19.12.1995 shows that till then the complainant had not furnished the details and documents

requested in August 1995. By letter dated 29.03.1996, the surveyors noted that information requested had still not been received and hence informed the complainant that the (surveyors) claim file had been closed. The next letter of the surveyors was of 09.05.1996 and it acknowledged the complainants letter of 30.04.1996 furnishing some details and documents. However, this letter pointed out quite a few omissions and reiterated the requests for details of original and replacement costs of machinery and accessories with supporting quotations and of their loss, similar details of the portable tools and of stocks and stocks-in-process. In addition to reiterating the suggestion on segregation of damaged and salvaged material, this letter raised the demand for copies of balance sheets of the complainant company for 1994-95 and 1995-96 and of the reports of the Goa Fire Service and Zuari Agro Chemicals (which too had been called in by the complainant, in addition to that of the INS Hansa to tackle the fire). (iv) The papers and documents filed by the complainant do not disclose if the surveyors subsequent letter of 19.09.1996 was replied to. However, the surveyors next letter of 22.04.1997 to the complainant shows that on account of non-receipt of full information and documents, the surveyors finally closed the complainants claim file and the surveyors Executive Director (Mr. Kripalani) filed his detailed affidavit on 22.07.1997. The main content of this affidavit has already been noticed. (v) The reason for the surveyors insistence on the complainant furnishing the details like the itemized full lists, specifications and original and replacement costs and supporting quotations in respect of the replacement costs of stocks, stocks-in-process, machinery, accessories, portable tools, etc., is easy to see. (a) The Police Panchnama of 11.05.1995, signed by two unconnected lay persons in the presence of the ASsistant Sub Inspector of Police Station, Verna, put the loss at Rs. 100 lakh for the entire boat. How this figure was arrived at is anybodys guess. (b) In his first letter of 17.05.1995 to the Station Fire Officer, Vasco Da Gama, the General Manager (Finance) of the complainant quantified the loss at Rs. 95 lakh, including Rs. 80 lakh for the FRP boat and Rs. 15 lakh for the cost of damaged tools and machinery. By a further letter dated 22.05.1995, written to the Station Fire Officer, Vasco Da Gama (on the latters request for details), the Managing Director of the complainant furnished the break-up of the loss of Rs. 95 lakh claimed to have been suffered - this time, the loss on account of the FRP boat (alongwith electrical wiring and fittings and plywood and paneling) was put at Rs. 78 lakh while the total loss on account of the air conditioning plant and fittings, air handling equipment and portable electrical tools and equipment was put at Rs. 17 lakh. (c) In the claim letter dated 24.05.1995, the total amount of loss mentioned in the cover letter signed by the General Manger (Finance) was Rs. 60 lakh, though the statement of details of the items damaged and amounts claimed, signed by the Managing Director himself (Commodore R. A. J. Anderson), put the total loss at Rs. 66.50 lakh with Rs. 14.66 lakh for yard machinery and tools consisting of air supply and handling unit (Rs. 4.42 lakh), dehumidification plant (Rs. 2.38 ;lakh) and portable tools (Rs. 7.86 lakh). Even with the formal claim letter of 24.05.1995, no list/details/dimensions/numbers of individual components/sub-assemblies of the FRP boat

like the superstructure, cabins, accommodation below deck, machinery and tools were furnished. (d) In the letter of 09.05.1996, the Executive Director of the second surveyors pointed out that the list of machinery furnished by the complainant put the original cost of machineries at Rs. 14,53,432.69 and the year of purchase as 1985-86 and sought the details of their present replacement costs with quotations. In the claim statement of 24.05.1995, the entire cost of the yard machinery and tools damaged by the fire, including the portable tools, was stated to be Rs. 14.66 lakh, including Rs. 7.86 lakh for the portable tools. The letter of 19.09.1996 of the second surveyors pointed out that while the total cost of damaged machinery and tools at the original purchase price of 1985-86 was first stated by the complainant to be Rs. 14.53 lakh (rounded off), the original cost of the tools destroyed by the fire was reported by the complainant in its letter of 06.08.1996 to be Rs. 5.11 lakh and their present replacement cost as Rs. 7.06 lakh (rounded off). (e) These few examples of discrepancies in some of the crucial details of the estimated amounts of loss in the communications sent by the complainant, repeated despite their being pointed out by the surveyors representative, clearly bring out the need for the surveyors to insist on the full details as they specified. They also cast doubts on the veracity of the claims for loss. (f) Finally, it may be noticed that in his affidavit of 22.07.1997, i.e., over two years after the incidence of fire, the Executive Director of the second surveyors averred as under: 15) I say that with a view to carry (sic) out my obligations as a Surveyor, I once again requested vide letter dated 19.9.1996 following particulars: (i) Replacement cost of entire machinery (ii) List of stock and stock in process (iii) Break up of material and labour charges of Rs. 51.85 lakh (iv) I also invited the attention of the insured to the fact that as per their balance sheet inventory with them was to the tune of Rs. 2.8 crore approx. as at 31st March 1995. 16) I say that insured did not reply to the said letter for 7 months and therefore I was compelled to close the file vide letter dated 22.4.1997. 17) I say that insured replied to the said letter on 29.4.1997 stating that they are interested in pursuing the claim. 18) I say that till date I have not received any reply despite my subsequent reminder by Registered post ack due. dt 5th June 1997.

***** Secondly, I say that the insured did not furnish the most vital information sought from them such as replacement cost of entire machinery, list of stock and stock in process, break up of machinery and labour charges, etc., which were essential to ascertain the actual loss, adequacy of insurance, etc., and also did not follow the instructions regarding preservation of salvage which were required to finalise the survey and by doing so the insured prevented a thorough assessment, valuation, ascertainment of under insurance factor and verification in accordance with the principles of insurance. This speaks for itself regarding the complainants response/action to substantiate its claim. (vi) We are, therefore, unable to accept the contention of the complainant that the surveyors made unreasonable demands for information. AS regards the question of adequacy of the value insured and, therefore, the premium paid, it is to be noted that by the

complainants own showing the entire FRP speed boat, till its delivery to the buyer, constituted stocks-in-process. In addition, there were machinery and accessories and stocks too, which had been insured. The amounts insured were Rs. 40 lakh and Rs. 20 lakh respectively. AS against that, the unrebutted contention of the OP was that the FRP boat itself was valued at Rs. 2.70 crore approximately. Further, in the claim form the value of the machinery and accessories stated to have been damaged was Rs. 14.66 lakh. In addition, there were considerable quantities of machinery and accessories and stocks in the FRP shed and the dry dock and elsewhere in the shipyard when the fire occurred. It is not the case of the complainant that no machinery and accessories, apart from those actually damaged by the fire, were needed or used for manufacture, assembly and fitment of the FRP boat and the rest of the machinery, etc., in the shipyard were entirely and exclusively for other vessels and barges. In fact, the claim for reimbursement of damaged yard machinery would also show that the shipyard used machinery and accessories for the FRP boats that were also used for non-FRP vessels manufactured by the complainant it is indeed to be expected that there would be quite a lot of machinery, tools and accessories that would be used for both types of vessels. Thus, the value of the entire stock of machinery and accessories, stocks and stocks-in-process in the shipyard, relatable to the FRP boat, either exclusively or partly, at the time of occurrence of the fire would be relevant for determining the adequacy of the insured amount and hence of the extent of underinsurance, For, the latter would have significant bearing on justifiable claim for damage, in view of clause 10 of the Conditions of the insurance policy, even if the complainants contentions regarding coverage of the dry dock and operations carried out therein were accepted. Thus the firm conclusion of the second surveyors representative in his affidavit (*supra*) has to be accepted. In the course of his arguments before us, the learned counsel for the complainant sought to rely on the decision of a Constitution Bench of the Apex Court in the case of *General Assurance Society Ltd. v. Chandmull Jain and Another* [(1966) 3 SCR 500], particularly on the doctrine of *contra preferentem*, i.e., an insurance contract is likely to be construed against the insurance company in case of doubt or ambiguity. (i) The stand of Mr. DCosta is that if it is held that there was doubt or ambiguity about coverage of the insured property in this case when such property was located or being worked upon in the dry dock, the benefit had to be given in favour of the insured and against the insurance company. (ii) Even if, for the sake of argument, we agree with Mr. DCosta we need to put in proper perspective what the Apex Court observed and held while laying down the law. Some of the observations relevant to this case are reproduced:

..... The four essentials of a contract of insurance are, (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium, and (iv) the amount of insurance. See *Macgillivray on Insurance Law* (5th Edn.) Vol. 1, para. 656, p. 316. [Para. 12] 11. A contract of insurance is a species of commercial transactions..... Documents like the proposal, cover note

and the policy are commercial documents and to interpret them, commercial habits and practice cannot altogether be ignored. During the time the cover note operates, the relations of the parties are governed by its terms and conditions, if any, but more usually by the terms and conditions of the policy bargained for and to be issued. When this happens the terms of the policy are incipient but after the period of temporary cover, the relations are governed only by the terms and conditions of the policy unless insurance is declined in the meantime. Delay in issuing the policy makes no difference. The relations even then are governed by the future policy if the cover notes give sufficient indication that it would be so. In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e. good faith on the part of the assured and the contract is likely to be construed contra preferentem that is against the company in case of ambiguity or doubt..... [Emphasis supplied] It follows, therefore, that the definition of the risk to be covered by an insurance policy is its first requirement. The complainant, in making the proposal in this case, did not specify if the property like machinery, accessories, stocks and stocks-in-process proposed to be covered against the risk of fire included those while in or about the dry dock though it took care to include the FRP shed. As already noted, the complainant was in the best position to state if these properties would need to be stored and/or worked upon at both these locations in the process of manufacturing the FRP boat. Secondly, it is common practice for an insurance policy against the risk of fire to define precisely the structure it would amount to an unreasonably undefined risk if the properties to be insured were not defined with specific reference to the premises as clearly as possible. A fire policy for coverage of properties located and/or worked upon on open ground or in a structure open to the sky would surely be on a footing quite different from that for properties located and/or worked upon inside a defined structure of class I construction (or otherwise). Hence, as noticed above (para. 10 supra), the prima facie conclusion would be that the property proposed to be insured in this case were those located and/or worked upon in the FRP shed which too was covered against the risk of fire. The observance of utmost good faith on the part of the assured would be very important, in fact a prior requirement, before the argument of contra preferentem could even be sought to be invoked, to seek the coverage of the property in the dry dock. Secondly, as the discussion above shows without doubt, the degree of underinsurance in this case is undefined and it is the complainant which has to blame itself for not establishing, despite several opportunities, to the surveyors that given the facts of the case, the amount of insurance in respect of the machinery, accessories, stocks and stocks-in-process was adequate and that the appropriate premium therefor was paid. On both these counts (vide the four essentials of an insurance contract, reproduced supra), the complainant is unable to satisfy us. And, in view of this discussion, we do not deem it necessary to examine the applicability to this case of the ratio of the Apex Court judgment in the case of Oriental Insurance Company Ltd. v. Sony Cheriyan [(1999) 6 SCC 451] cited by Mr. S. M. Tripathi,

learned counsel for the OP.

In conclusion, therefore, we have to hold that despite the unfortunate loss of its FRP boat due to fire, the complainant has not succeeded in establishing its claim for indemnity and this is so on account of its own acts of omission and commission.

7. THE complaint is accordingly dismissed. Under the circumstances, the parties are also left to bear their own costs.