**(2014) 08 NCDRC CK 0019**

**In the National Consumer Disputes Redressal Commission**

B.R. Exports APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. RESPONDENT

**Date of Decision :** 01-08-2014

**Acts Referred:**

**Citation :** 2014 0 NCDRC 500 : 2014 3 CPR 557 : 2014 4 CPJ 7

**Hon'ble Judges :** J.M.MALIK J.

**Final Decision :** Disposed off

## Judgement

1. THIS complaint was filed before this Commission on 19.11.1998, however, as per the prevailing practice at that time, the case was registered in the year 2002, as Original Complaint No. 215 of 2002. The Case was put up before the Bench of this Commission, for the first time, on 15.07.2002. This clearly goes to show negligence, inaction and passivity on the part of the Registry. The file did not move an inch for about four years. The practice of deciding few cases and piling up the cases to be decided after 15/20 years'', by the later Judges, was a wrong practice. The very purpose and object of Consumer Protection Act, 1986, stand defeated. Does such fact happens in a District or Civil Court?. We are not aware as to how many such petitions are withheld by the Registry. The Registry is advised to check the files separately and report to the Hon''ble President of this Commission as to how many such cases are pending.

2. M /s. B.R. Exports, the complainant, is a registered partnership firm. It exclusively transacts the business of import and export of emerald jewellery. The complainant firm obtained an insurance policy from M/s. United India Insurance Co. Ltd., OP1. A theft was committed in the premises of the complainant firm, between 23rd -25th December, 1995. The main entrance of the Ram Singh Building is on the Ground Floor. B.R. Exports has got three partners, consisting of father, Sh. Gurbachan Singh Bagga and two sons, Sh. Harmeet Singh Bagga and Sh. Ravneet Singh Bagga. They are engaged in jewellery business in Jaipur. All the three persons have three concerns besides B.R. Exports. They have M/s. Bombay Enterprises Pvt. Ltd., which is engaged in the import and domestic

selling of other less -expensive semi -precious stones and jewellery. Thirdly, M/s. Bagga Gems Corporation, which deals in commercial grade stones and jewellery. The first floor of Ram Singh Building, is occupied by the Accounts Offices of the three family concerns. The second floor is occupied by the officers of the three firms, where they stock their inventory of raw materials and finished goods and where the production facility for the cutting and polishing exists is located. One of the rooms is shared by M/s. Bombay Enterprises and M/s. B.R. Exports. The other room houses M/s. Bagga Gems. There is a channel gate at the foot of the staircase from the second floor to the first floor and an iron door separates the office of M/s. Bagga Gems and the office room shared by M/s. B.R. Exports and M/s. Bombay Enterprises. M/s. Bagga Gems stock their inventory comprising of large volumes of rough and finished commercial grade stones and jewellery in the other room on the second floor. In addition to the cutting and polishing of the Emerald Roughs in the premises of the complainant firm, it engages job workers for cutting and polishing the emerald roughs, particularly, when the ordered quantities are in excess of the cutting and polishing capacity of the complainant firm. M/s. Neha Gems and M/s. MG Enterprises are two main job workers with whom the complainant firm have customarily dealings with them.

3. ON 08.02.1993, 74,995 carats of emerald roughs for job work were handed over to M/s. Neha Gems. Those were not returned despite several requests made in this context. Like -wise, certain qualities of raw material had been handed over for job work to M/s. MG Jewellers, but those were not returned. Previously, the sum insured was Rs. 30.00 lakhs. M/s. Bombay Enterprises Pvt. Ltd., renewed the above said policy for the period between 09.12.1993 and 08.12.1994, but no claims were raised in either of the two years. Subsequently, that policy could not be renewed due to some inadvertence, over -sight and changes in the constitution of the administrative staff which was responsible for getting the insurance policy renewed. The fact that the policy was not renewed came to the knowledge when there was a minor fire in certain electric cables in the neon signs outside the complainant''s firm, in November, 1995.

4. THEREAFTER , Sh. G.S. Bagga, contacted the OP, M/s. United India Insurance Co. Ltd. The value of the stock in hand was approximately, Rs. 40.00 lakhs. Therefore, an insurance cover for Rs. 40,00,000/ - was obtained. The furniture and fittings lying in the business premises were also insured for an additional sum of Rs. 4,00,000/ -. Premium in the sum of Rs. 15,330/ - was paid and the complainant was assured that the insurance would be valid from the next day, i.e., from 22.12.1995 for the period of one year, till 21.12.1996. A miscellaneous cover note dated 21.12.1995 was issued. A copy of the cover note has been placed on record as Annexure -2. It is, further alleged that the policy was not sent till the filing of this complaint, despite several requests. On 23.12.1995, at about 6.30 PM, Mr. G.S. Bagga, placed, inter alia, the finished emeralds, which were to be exported, the next working day, to M/s. Stone Age Co. Ltd., Bangkok, in the Remington Rand Safe. The complainant firm had received a fax from M/s. Stone Age Co. Ltd., on 22.12.1995 at 11.00 PM, a copy of which has been

 

annexed as Annexure -3, requesting for some last minute changes in the specifications. 23.12.1995 was a Saturday and 24.12.1995 was a Sunday, i.e., a weekly holiday, as per the custom prevalent in the markets of Jaipur. On 24.12.1995, Mr. G.S. Bagga, his wife and their elder son, Mr. Harmeet Singh Bagga, left for Delhi to attend a family function of a close family friend, Mr. K.B. Chaudhary. They came back to Jaipur, on 25.12.1995. Mr. Ravneet Bagga and Mr. Randeep Singh Bagga remained in Jaipur to supervise the construction work of their residence which was in progress. On 25.12.1995, just before office hours, Mr. Sajjan Singh, an employee of the complainant firm came to their (complainant''s) residence for collection of keys. Thereafter, he left for office premises. 15 minutes later, Mr. Sajjan Singh telephoned to inform Mr. Ravneet Bagga that there had been a burglary at the shop premises of the complainant firm. Consequently, Mr. Ravneet Bagga and Mr. Randeep Singh Bagga left for the shop premises. There, it transpired that somebody had forcibly entered into the shop from the terrace of the third floor by bending open the iron doors. The locks leading to the two rooms on the second floor in which the inventory of raw materials and finished goods safes had also been forced opened as also iron door between the premises of M/s. Bagga Jems and those shared by the complainant firm and M/s. Bombay Enterprises. Some of the safes were broken and the finished consignments of complainant firm and M/s. Bombay Enterprises were found to be missing. The wooden almirahs in the office premises of M/s. Bagga Jems were also broken open. DCM Benetton Showroom, on the Ground Floor had also been broken into and the petty cash had been stolen.

5. MR . Ravneet Bagga, informed the police and they swung into action, immediately. Information was also given to the Divisional Office -II of the OP over telephone. OP explained that due to Christmas day, no Surveyor could be located or deputed. A report dated 25.12.1995, was lodged with the police, copy of which was placed on record as Annexure -4. FIR was registered on the same day, copy of which is annexed as Annexure -5. Written information was furnished to the Divisional Manager on 26.12.1998, along with copies of the above said documents which were placed on record as Annexure -6.

6. MR . S.C. Jain, Surveyor & Assessor of OP1 visited the premises after getting instructions from the Jaipur Regional Office, in the evening on 26.12.1995. He signed and verified the Stock Register and took photographs of the bent iron doors and safes. Mr. G.L. Yadav, a Surveyor of OP1 also visited the premises on 26.01.1996 to check and verify the incident of theft. It transpired that in addition to the property already reported to the police, emerald roughs valued at Rs. 8,47,780/ - had been stolen. Written complaint was lodged with the police, which is marked as Annexure 6 (colly). Mr. S.C. Jain, vide letter dated 30.12.1995, sought various details, particulars and records from the complainant. OP2 persisted in calling the safe a ''filing cabinet'' from which the inventory of raw materials and finished products had been stolen. The police could not arrest the accused. The Surveyors, vide letters dated 30.12.1995 (Annexure -8), 26.01.1996 (Annexure -10) and 20.02.1996 (Annexure -11), 23.02.1996

 

(Annexure -12), OP2 made enquiries from the job workers. OP2 also called upon M/s. M.G. Jewellers to provide the details which were answered vide Annexure -13. The above said theft excluded all stocks handed over to the job workers, namely, M/s. Neha Gems and M/s. M.G. Jewellers, both of whom had confirmed the fact of receipt of said quantities of emerald roughs directly to OP2 during all this enquiry. Due to delay on 29.02.1996, a request was made to Sh. N.L. Mehta, Sr. Divisional Manager, to expedite the case vide letter, Annexure -14. Thereafter, correspondence went on between the parties. The complainant produced certificate dated 23.05.1996 of the Manager of Jaipur Branch of Remington Rand of India Ltd. stating that the Remington Fire Shield Safe Cabinet sold to the complainant firm were both Fire resistance and burglary resistance and certifying the sale of two Remington Rand Fire Shield, cabinets of four drawers to the complainant company on 06.06.1995. A copy of which was appended as Annexure -17.

7. SEVERAL reminders were sent but those did not ring the bell. Ultimately, this complaint was filed with the following claims: - a) direct the Opposite Parties No. 1 and 2 to pay jointly and severally an amount of Rs. 24,59,054/ - towards the claim for stolen goods and Rs. 40,663/ - towards the claim for damaged fittings and fixtures as made in the Burglary Claim dated 23rd March, 1996, by the complainant firm together with interest thereon at the rate of 24% per annum, from the date of the filing of the present petition, as also and pendente lite and future interest at the same rate, till the date of payment, with effect from 26.01.1996, i.e., on the expiry of one month time period from the date of theft, i.e., 25th December, 1995, as compensation for non -settlement of the Burglary Claim of the complainant firm dated 23rd March, 1996 being Annexure XX to the present petition;

b) Special damages worth Rs. 25 lakhs for the deliberate and unjustified delay in not settling the claim and imposing unjustified costs and losses on the complainant firm and causing the closure of the complainant firm due to absence of liquidity; and

c) any other relief which this Hon''ble Commission deems fit and proper to grant in the facts and circumstances of the present case".

8. THE OPs have enumerated the following defences. The claim of the complainant was repudiated vide letter dated 26.03.1997, which runs as follows: - "We regret to inform you that your claim form/intimation letter dated Nil, informing about an alleged burglary has been repudiated by the company inter alia for the following reasons: -

1) The warranty contained in Section -I, of Schedule -B to the Jewellers Block Policy as per the cover note dated 21.12.95 stands contravened inasmuch as the stocks allegedly with you were not kept in a locked Burglar Proof Safe at the relevant time.

2) Further, the Insurer Company invokes exclusion clause No. 12 of the Standard

 

Jewellers Block Policy where under No. liability attaches for any loss of insured goods occasions when kept out of safe after regular business hours.

3) It has also transpired during the course of investigation into your claim that your company had not transacted any business of any kind in the past almost one year, at the time of taking cover. This material fact was not disclosed to the insurer and renders the contract of insurance void ab -initio and therefore unenforceable.

4) Similarly, a further material suppression of fact on your part lies in failing to disclose that the goods of one M/s. Bombay Enterprises Pvt. Ltd., & other Sister concerns were also kept in the same premises. This fact had relevance to the grant of insurance cover and suppression thereof vitiated the entire policy and discharges the company from any liability.

5) Finally, your claims also being repudiated as the documents/information furnished by you in support of your claim & our investigation thereon and the report of our Surveyor does not add up to the required verification of your loss, at all. We wish to emphatically state that the documents furnished by you in support of the claim are contrary to normal market practices and not convincing at all".

The following further averments were made. The story of theft is a manipulated one. The statement of accounts of the firm for the last three years, reveals that the firm was running on loss. The stock register contained the entire entries regarding the raw material to M/s. MG Enterprises and M/s. Neha Gems, the job workers in 1993, which articles were not received back. The complainant did not disclose this fact to the OP at the time of taking the cover note that it contains that it had lodged a police report against the job workers. The case of the complainant is that certain goods were stolen but the sacks containing relatively inexpensive precious and semi -precious stones had been left behind because the same were too bulky and difficult to carry. After receipt of the report, the insurance company had deputed Mr. G.L. Yadav, Investigator to investigate this claim. He has filed his investigation report, marked as Annexure R -1. Complete assistance and full co -operation was not given to the Surveyor, Sh. S.C. Jain. There were a number of correspondences between them but complete information/all the documents were not supplied to Sh. S.C. Jain. The above said repudiation letter is based on the report of the Surveyors.

9. WE have heard the counsel for the parties. Counsel for the complainant submitted that the theft which took place is a foregone conclusion. He has invited our attention towards the report of Sh. G.L. Yadav, the relevant portion of which is reproduced, as hereunder: - "It is well established in the body of FIR, statement of various independent witnesses that loss had occurred in the premises of ''B R Exports'' during the night of 23/24/25 -12 -1995 (any time between these days)".

Again, Mr. S.C. Jain, also reported as under: -

 

"Physical verification in the show -room, gates and condition of spreaded papers and goos in the room was carried out by us. It revealed that incident of burglary/ door -breaking had taken place in the insured premises and same was also reported to the police to take action under the law of the land for the time being in force".

The complainant has proved his case by filing FIR, final reports, affidavit, etc.

10. SECONDLY , it was pointed out that the safes had been given as ''Remington Fire Sealed Safe'' and its invoice has been placed on record. The same is not a filing cabinet as alleged by the OP. It was argued that the OP, insurance company cannot be allowed to a probate and reprobate on the same facts. On one hand, the OPs are accepting the proposal, issuing the cover note on the declaration and on being satisfied that the articles can be kept in the remington rand safe and on the other hand, when the claim is being lodged, they are denying claim on the ground that the goods were not kept in the burglar proof safe and remington rand safe was a file cabinet. Our attention was invited towards an authority of this Commission, reported in Sh. T.S. Vivekananda Vs. United India Insurance Co. Ltd.,, (2009) 2 CPR 463 (NC), wherein it was held that burglar proof safe is the misnomer but expression safe in common parlance is understood as the safest receptacle which proves against theft. The terms and conditions of the policy were strictly followed. It was argued that it is baseless that the goods were kept out of safe after regular business hours. The goods were kept in ''Remington Fire Sealed Safe'', which was fire and burglar proof. It was submitted that no enquiry was made whether the complainant had transacted any business of any kind in the past one year or not at the time of taking over of cover note. The proposal form is silent about the same. Attention of this Commission was invited towards : (2001) 2 SCC 160, (LIC of India & Ors. Vs. Smt. Asha Goel & Anr.), : (2008) 1 SCC 321 and RP 1987 of 2006, Kokilaben Narendera Bhai Patel Vs. Divisional Manager, LIC of India. In the last authority, this Commission held "No need to emphasis that any inaccurate answer will entitle the insurer to repudiate his liability because there is a clear presumption that any information sought for in the proposal is material for the purpose of entering into a contract of insurance".

11. IT was further submitted that the activities carried out by the complainant and other two firms were different in nature including the stocks and the market of each firm/company. There has been no occasion of clash or mixing of stocks of each firm/company with the stocks of other firm/company. No claim has been made with regard to the loss of stocks to M/s. Bombay Enterprises Pvt. Ltd., however, loss occurred to the said company in the same incident. It must be pointed out here that one of the grounds of the OP is that the complainant suppressed material fact and failed to disclose that the goods of one M/s. Bombay Enterprises Pvt. Ltd. and other sister concerns were also kept in the same premises. It is explained that no such question was ever asked in the proposal form. The complainant did not give any false answer. Although, the

 

goods of M/s. Bombay Enterprises Pvt. Ltd., were stolen, but those articles/goods were not included in the lost list. Copies of the Bank and Stock statements, including the invoice and certificate of origin, etc., were submitted to Mr. S.C. Jain, which clearly go to show that M/s. Bombay Enterprises Pvt. Ltd. had no relation with the firm in question.

12. IT was further argued that the complainant made the following claims before the Insurance Co.: - A

B.

With pendente lite and future interest @ 24% p.a., since the date of claim, i.e., 23.03.1996 and Rs. 25 lacs towards the deficiency in services".

The Complainant had shown its stocks of position of rough emerald on 01.04.1995, 23.12.1995 and stock position of ready emerald goods as on 23.12.1995. However, Mr. S.C. Jain has assessed the loss at Rs. 16,11,238/ - which had no basis. His report is incorrect and without basis. The accounts are duly edited by B Khosla & Co., CA, a reputed CA firm at Jaipur. M/s. Stone Age Company Ltd., Thailand, was a genuine company. In the additional written submissions, the complainant submitted that the OP has failed to pay the admitted loss in the sum of Rs. 16,11,238/ -. We find considerable force in this submission.

13. THE complainant further submitted that Remington Rand Safe was declared in the proposal form and was accepted by OP/Insurance Company at the time of acceptance of proposal. The complainant has admitted that cost of the safe was paid out of the account of M/s. GRB Capital Investments Limited but invoice dated 03.06.1995 was in the name of M/s. B.R. Exports/complainant. The safe was owned by the complainant.

14. AFTER mulling over the record, after hearing the counsel for the parties, and after going through the written synopses, we find that the plea of the learned counsel is mere palliative and does not delve deep enough the roots of malady though it has force in a measure to the extent of admitted amount. This is an admitted fact that the complainant did not disclose the facts that the same premises were used by other two sister concerns and that two job workers did not return their goods. The main question is, whether, this is a material suppression of fact or not? The complainant has, in vain, tried to evade this question by a specious plea that those questions were not asked from it. All the assumptions made by the complainant are wet. The counsel for the complainant himself has cited a number of authorities which also include the celebrated authority of the Hon''ble Apex Court, reported in Satwant Kaur Sandhu Vs. New India Assurance Co. Ltd., : IV (2009) CPJ 8 (SC), wherein it was held, as under: "17. The term "material fact" is not defined in the Act and, therefore, it has been understood and explained by the courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the

 

root of the Contract of Insurance and has a bearing on the risk involved would be "material".

This authority, rather supports the case of the OP. This is a fact which goes to the root of the contract of insurance and has a bearing on the risk involved at the time of obtaining the insurance policy. It was the bounden duty of the complainant to inform the OP that they were having three firms in the same premises, other two firms were not insured and their job workers had not returned their goods. It is well settled that in a contract of insurance policy, anything which would influence the mind of a prudent insurer in deciding, whether, to accept or not to accept the risk, is a material fact. If the proposer has knowledge of such fact, he is obliged to disclose it. Had this fact been disclosed to the insurer, it would not have taken the risk of insuring one firm in place of three firms and conducted the inquiries from the job workers at the very start. The property of three concerns are not demarcated. In case a theft takes place in other firms, the insurance company would be made to pay for the same. In this case, the theft was also committed in two other sister concerns. It is difficult to demarcate from which firm the theft had been committed.

15. IT is difficult to fathom why, the Remington Rand Safe was in the name of M/ s. GRB Capital Investments Limited. No explanation is forthcoming. Why, it was purchased by M/s. GRB Capital Investments Ltd., is a fact, which is shrouded in mystery. This appears to be a lame explanation.

16. IT must be borne in mind that Mr. G.L. Yadav, Deputy Superintendent of Police (Retired) was a mere Investigator. He did not come to the conclusion how much loss had occurred. The survey report of Mr. S.C. Jain is crucial and clinching. The relevant extracts of his report are reproduced here, as under: - At Page 155 of the Paper -book:.

"ii) That since 01.04.94 onwards no business of manufacturing and of sale of goods procured after manufacturing was carried out. Further, since 01.04.95, the business transactions are NIL in total". (Page 155 of the Paper -book)

At Page 156 of the Paper -book:

b) That the name of safe has been replaced by cutting and writing that "STANDARD TYPE OF SAFE -ISI MARK".

c) That in Col. No. 5, the value of 40 lacs has been cut and replaced by stocks of precious stones only emerald. Further facts of goods of other concerns are lying in the room were not disclosed in this column. The value of stocks of two concerns as on date was approx. 17.30 lacs.

d) Basis of valuation of stocks has not been specified in Col. No. 6 of proposal form".

ii) The premium of Rs. 15,330/ - was paid vide Ch. No. 818579 dated 20.12.95 of SBI -Jaipur for which R. No. 309390 was issued on 22.12.95. On perusal of bank statement of insured, it is revealed that since issuance of cheque to insurers till 26.12.95 the balance in the account was Rs. 4528.20 only effective from 07.12.95. Why the cheque received on 21.12.95 was not deposited into bank at the end of insurers on 22.12.95 and 23.12.95 and retained upto 26.12.95 is beyond to understand?

iii) The fact as to mix up of goods of other sister concerns into the same premises was not disclosed by the insured. However, in the cover note No. 33281 dated 09.12.93 in the name of Bombay Enterprises Pvt. Ltd., taken from Oriental Insurance Company it has been mentioned that the goods of firm M/s. B.R. Exports is held in trust with M/s. Bombay Enterprises Pvt. Ltd. The period of policy expired on 08.12.94. And since then the insured had not carried out any business either of purchases or of sale till happening of incidence in the firm M/s. B.R. Exports. The firm M/s. B.R. Exports was got insured vide cover note No. 33029 during 08.12.92 to 07.12.93 of Oriental Ins. Co. Ltd. and thereafter till taking of present cover no insurance was taken by the insured and this fact was also concealed by him in the proposal form".

At pages 159 & 160 of the Paper -book:

iv) That the goods have been stolen from the Remington make cabinet both of Rough stones and of ready goods. Why the packet of ready goods was kept in this cabinet when all other packets were stored in Juneja safe has not been examined and verified.

v) That the ready goods were to be despatched for sale to Bangkok to M/s. Stone age Co. Ltd., from whom a fax message dated 22.12.1995 was received at 11.08 PM on phone No. 363572. Some strange points have been noticed by us of this fax message: -

a) That the same was received only after taking the policy and on the residence telephone at late night.

b) That the party has sent the message from public telephone booth instead of its own business premises. To get a fax message from public telephone booth and that also for a value of US$ 20,250. Further, this order specifies some changes in the sizes and quantity of earlier placed order and quantity of goods. Than how such goods were got ready after revised specifications and shapes in short time of 10.30 PM of 23.12.95 and were available with the insured after the working hours of 23.12.95 in the premises is quite strange.

c) That M/s. B.R. Exports has not transacted any business in the past for almost one year till they have obtained this order for change of sizes and quantity in the night of 22.12.95.

d) That from the said party of Bangkok in the firm M/s. Bombay Enterprises Pvt. Ltd., the insured had made certain purchases in the past as is evident from records so verified by us. The perusal of such records specify some doubts on the order so stated to have been received through fax message and that also from public telephone booth when papers are compared with the fax message.

e) That the letter head used in fax message does not give address of party or telephone number, etc., whereas the said party is giant business house of Bangkok as gathered and is apparent from verification of records of insured.

Therefore, the genuineness of the said fax message seems to be doubtful and for that reason, a letter was sent by us to party at Bangkok to confirm the contents (copy of letter so sent enclosed) but no reply thereof was received from the said party till release of this report. However, insurers should take steps through their overseas surveyors to get the contents verified and investigated of the said fax message for ascertaining the true facts or by enquiry through Government Agencies or at their own end.

At pages 162 & 163 of the paper -book:

Remington Safe:

The insured had specified in the proposal form that goods are kept in Remington Safe and Juneja Safe and had reported to Sh. G.L. Yadav and to us and to police that the ready goods as well as roughs of emerald were stolen away from Remington Safe of 4 Drawers only. We have enquired about the Remington Safe from insured because apparently it does not look like a safe but is double lock fire resistance filing cabinet for which company advertises to keep secured valuable papers. The incidence had happened from 4 drawers cabinet only as admitted by the insured. We have enquired and verified the records of insured as to this cabinet and our observations are: -

i) That the said cabinet was purchased for Rs. 22,627/ - from Remington Rand of India Ltd., only in June, 95 and the payment was made vide cheque No. 637052 dated 03.06,95 for Rs. 14,036/ - and cheque No. 637055 dt. 06.06.95 for Rs. 8,591/ - from M/s. GRB Capital Investments Pvt. Ltd. Though the bill is in the name of M/s. B.R. Exports, but actually, the said cabinet belongs as assets of M/s. GRB Capital Investments Pvt. Ltd. and tallies with its use to procure the papers/documents safe from the fire and further payment made from the account of M/s. GRB Capital Investments Pvt. Ltd., confirms our this opinion too.

(ii) That in the said cabinet stored goods was of Rough of Emerald and Ready Cut Stones packet of M/s. B.R. Exports. This cabinet was purchased only in June 1995 whereas goods with B.R. Exports are available as it is without any change in quantity since Dec, 94 and prior to Dec, 94 there were more stocks with firm and at that time too the goods were stored and kept by the insured without having such cabinet; also confirm that such cabinet was purchased or use of M/s. GRB Capital Investments Pvt. Ltd. and not for use of M/s. B.R. Exports by the insured.

(iii) The insured was asked vide our letter dated 15/5/96 to explain where the goods prior to purchase of Remington Cabinet were stored by the firm. In reply to our query vide letter dated 23/5/96 the insured has specified in para 4 that the goods were stored in the wooden cupboards in the office prior to purchase of such cabinet.

The stock register shown by the insured at the time of physical verification of premises on 26/12/95 to us disclose the available stocks in the premises before loss as under: -

(a) Emerald Rough stones 162725 Carats of Value of Rs. 3542525/ - out of which stocks of 33,830 Carats with M/s. M.G. Jewellers and of 74,995 Carats with Neha Gems as on 1st April, 1995. On 8th May, 1995 entry for 23,830 carats of Emerald Rough has been shown as received from M/s. M.G. Jewellers and has been shown as available in the office since than till date of loss and as such 77730 carats of Rough for Rs. 18,68,280/ - was available in office on 23.12.95.

At Page 165 of the Paper -book:

The aforesaid chart reveals that the Rough Stones for the purpose of manufacturing were purchased by way of Import from USQA by the insured during the years 91 -92 and 92 -93 mainly and some in 93 -94 thereafter the purchases have not been effected either in the year 94 -95 or during the period 1/4/95 to date of loss. Accordingly, the stocks are lying in total at the same value of Rough Stones and Ready Goods as being available and valued on 31/3/94 and disclosed in trading account. This clearly indicate that the investment in the stocks was blocked by the insured since 31/3/94 to date of loss which is against the norms of prudent business man because of involvement of interest on the funds blocked as dead investment. The insured was asked to specify the reasons for maintenance such level of stocks and doing no business; for which the insured has not specified any cogent reasons except that the stocks were hold to gain in future.

At Page 167 of the paper -book:

We vide registered letter dated 23.2.96 asked certain information and papers from M/s. M.G. and M/s. M.G. Jewellers vide their letter dated 7.3.96 made available the copies of letter dated 3.4.93 of M/s. B.R. Exports and 8.5.95 of their own. On perusal of copy of letter dated 3.4.93 provided by M/s. M.G. Jewellers of M/s. B.R. Exports a strange fact was noticed that this letter has been signed by a different persons when compared with the copy provided by insured vide letter dated 12.1.96. This resulted into a doubt on the genuineness of the transactions and therefore a registered letter dated 30.3.96 was again sent to M/s. M.G. Jewellers to dig -out the truth of the transactions but strange enough that the said registered letter was returned by the postal authorities undelivered for the reasons of non -availability of addressee. This information was given to insured and he was requested to ask M/s. M.G. Jewellers to provide us the details but now insured also stated his helplessness. On scrutiny strange fact was further noticed that the insured had made payment for labour charges to M/s. M.G. Jewellers as back as in May 93 to Dec, 93 as under.

 

Total payment of Rs. 1,10,000/ - has been admitted to have been received from M/s. B.R. Exports by M/s. M.G. Jewellers as labour charges in the months of May, July and December, 93. The contents of letter dated 8.5.95 is totally unbelievable as it specifies the return of rough after a period of two years to M/s. B.R. Exports I the same condition in which it was collected by M/s. M.G. Jewellers and rather contradictory to the prevailing trade practice of Jewellers Trade. When asked in this context from insured: he did not give any convincing reply for the payment of advance labour charges and keeping silence for the goods since April, 93 till May 95. However, on 22.6.96 the insured has specified that he has lodged FIR against M/s. M.G. Jewellers in this context and provided the copy of FIR as enclosed. The action of the insured does not seem proper and gives the indication of afterthought because in other similar type of transaction with M/s. Neha Gems, the insured had sent notice on 1.3.95 and started legal proceedings through his advocate and if the condition of M/s. M.G. Jewellers was also same as of M/s. Neha Gems than why the legal action was not initiated at that time when action against M/s. Neha Gems was taken up by him. No cogent reasons for such a lapse were furnished by the insured.

At Page 169 of the Paper -book:

The physical verification so carried out on 26.12.95 of stocks by us when compared with the stocks disclosed by the books of account as available in the premises and as discussed herein above supra under Headings ''Stocks Before Loss'' provides a difference in their values and according to the books of accounts and records there is a deficit of stocks which is because of burglary during 6.00 PM of 23.12.95 to 10.00 AM of 25.12.95 and works out as under: -

There is no reason to discard the report of the Surveyor. In absence of ill -will or malice or animosity, report of the Surveyor has to be given due weight. In United India insurance Co. Ltd., & Ors. Vs. Roshan Lai Oil Mills Ltd. & Ors.,, (2000) 10 SCC 19, the Hon''ble Apex court was pleased to hold: - "7. The appellant had appointed joint surveyors in terms of Section 64 -UM(2) of the Insurance Act, 1938. Their report has been placed on the record in which a detailed account of the factors on the basis of which the joint surveyors had come to the conclusion that there was no loss or damage caused on account of fire, was given and it was on this basis that the claim was not found entertainable. This is an important document which was placed before the Commission, but the Commission, curiously, has not considered the report. Since the claim of the respondent was repudiated by the appellant on the basis of the joint survey report, the Commission was not justified in awarding the insurance amount to the respondent without adverting itself to the contents of the joint survey report, specially the facts enumerated therein. In our opinion, non -consideration of this important document has resulted in serious miscarriage of justice and vitiates the judgment passed by the Commission. The case has, therefore, to be sent back to the Commission, for a fresh hearing".

17. AGAIN , in D.N. Badoni Vs. Oriental Insurance Co. Ltd., : 1 (2012) CPJ 272

 

(NC), it was held that it is a well settled law that a Surveyor''s report has significant evidentiary value unless, it is proved otherwise, which the petitioner has failed to do so in the instant case.

18. ITS stand established that the theft had taken place and the complainant is entitled to the value assessed by the Surveyor. Consequently, we hereby direct the United India Insurance Co. Ltd., OP1, to pay Rs. 16,11,238/ -, with interest, at the rate of 9% p.a., from the date of complaint, i.e. 19.11.1998, within 45 days'' from the receipt of the copy of this judgment, otherwise, the rate of interest shall stand enhanced to 12% p.a., after the expiry of said 45 days, till its realization. Compensation, in the sum of Rs. 50,000/ - is also imposed on the OP1, for its laggard approach in making the admitted amount. Same be paid within the said 45 days, otherwise, it will carry interest at the rate of 12% p.a., till realization. The original petitions stands disposed of.

 