

(2013) 03 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

Consumer Education And Research Society Suraksha Sankool	APPELLANT
Vs	
Iffco-Tokio General Insurance Co. Ltd	RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Citation : 2013 0 NCDRC 202 : 2013 2 CPJ 142

Hon'ble Judges : AJIT BHARIHOKE , SURESH CHANDRA J.

Advocate : ABHINAV VASHISHT , RUKHMINI BOBDE , Galav Sharma , ANUJ MALHOTRA , S.M.TRIPATHI

Judgement

1. THE complainants have preferred this complaint under Section 2 (g) and 2 (r) and Section 21 of the Consumer Protection Act, 1986 with following prayers: (a) to pay the claim of the Rs.1,14,06,950/- with interest at the rate of 18% p.a. from 21.02.2003, till the date of payment; (b) to pay Rs.50,000/- to the complainant no.2 towards mental agony and harassment; (c) to pay Rs.50,000/- towards cost to each of the above complainants.

2. ADMITTEDLY , the complainant no.2 took insurance policy for a sum of Rs.2,25,00,000/- and paid premium of Rs.38,250/- to the opposite parties for insurance cover of the stock of molasses weighing 15000 metric ton against fire. Besides, the complainant no.2 also paid additional premium of Rs.5,625/- for insurance cover against spontaneous combustion. The insurance policy was valid for the period 11.02.2003 to 10.02.2004 (midnight). On 21.02.2003, 9053 metric ton molasses stored in tank no.1 got burnt due to spontaneous combustion. The OP was immediately informed by telephone. On 23rd and 24th of February, 2003 M/s. Mehta and Padamsay (P) Ltd., appointed by the OP, conducted survey and assessed the loss caused due to spontaneous burning at Rs.1,14,06,958/-. The insurance company repudiated the claim vide their letter dated 29.03.2003 stating that since the loss was not caused due to fire the OP was not liable to pay the claim in terms of the policy condition. The repudiation of the claim by the OP, according to the complainant, amounts to deficiency in service thus the complainant no.2 with the assistance of the complainant no.1

Society has filed the instant complaint. The OPs no.1 and 2 in their joint WS have raised preliminary objections that the complaint is not maintainable because the complainants are not "Consumer " for the reason that Insurance Cover was obtained in relation to commercial activity; and that the complaint is bad for non-joinder of Gujarat State Cooperative Bank Limited, who has financial interest in the insured property and the policy is subject to the agreed bank clause. On merits, the factum of insurance, payment of premium by the complainant no.2 as alleged and the loss caused to the stock of molasses by spontaneous combustion as also the quantum of loss have not been denied. Only plea on merit taken by the OPs is that it has rightly repudiated the claim because there was no fire and the molasses got burnt due to spontaneous combustion. On the aforesaid pleas OPs have pressed for dismissal of complaint with costs.

3. COMPLAINANTS as well as OPs have filed affidavit 's evidence in support of their respective contentions. We have heard counsel for the respective parties and perused the record.

4. AT the outset, it may be noted that learned counsel for the OPs have not pressed preliminary objections and has restricted his arguments to the question whether the coverage under the insurance policy for the peril of "its own fermentation, natural heating or spontaneous combustion " stands excluded if there is no flame or fire? Sh. S.M. Tripathi, learned counsel for the OPs has drawn our attention to the relevant terms and conditions of the insurance policy, which are reproduced thus: "STANDARD FIRE AND SPECIAL PERILS POLICY (MATERIAL DAMAGE) IN CONSIDERATION OF the insured named in the Schedule hereto having paid to the IFFCO-TOKIO General Insurance Company Limited (hereinafter called the Company) the premium mentioned in the said schedule, THE COMPANY AGREES, (subject to the Conditions and Exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the Property insured described in the said Schedule or any part of such Property be destroyed or damaged by any of the perils specified hereunder during the period of Insurance named in the said schedule or of any subsequent period in respect of which the insured shall have paid and the Company shall have accepted the premium required for the renewal of the policy, the Company shall pay to the insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its opinion reinstate or replace such Property or any part thereof: 1. Fire Excluding destruction or damage caused to the property insured by (a) (i) its own fermentation, natural heating or spontaneous combustion. (ii) its undergoing any heating or drying process. (b) burning of property Insured by order of any Public Authority.

----- 10) This insurance is subject in all respects to the printed conditions of the policy except in so far as they may be varied by the above conditions. Spontaneous Combustion Policy may be extended to cover the above subject to following endorsement wordings: In

consideration of the payment by the insured to the Company of additional premium of Rs.5906/- the Company agrees notwithstanding what is stated in the printed exclusions of the policy to the contrary that the insurance by (stock of molasses) of this policy shall extended to include loss or damage by fire only of or to the property insured caused by its own fermentation, natural heating or spontaneous combustion. N.B.: The expression "by fire only " in the endorsement above must not be omitted under any circumstances. "

5. SH . S.M. Tripathi, learned counsel for the OPs has contended that in view of the above noted terms and conditions of the insurance policy, the OPs have rightly repudiated the claim because the insurance cover, taken by the complainants, does not cover the damage caused to the molasses by spontaneous combustion unless it results into "fire ". Expanding on the arguments, learned counsel for the OPs argued that even the spontaneous combustion clause is of no avail to the complainants for the reason that aforesaid clause extends the insurance cover the loss or damage "by fire only " caused by its own fermentation, natural heating or spontaneous combustion. Learned counsel in support of this contention has drawn our attention to the note beneath the spontaneous clause, which states that the expression "by fire only " in the endorsement must not be omitted under any circumstances. Learned counsel argued that it is clear unless there is a fire or flame, the insured cannot claim indemnification the loss caused due to spontaneous combustion.

6. LEARNED counsel for the complainant pleaded that the issue raised by learned counsel for the OPs is no more resintegra as it is concluded by the decision rendered by this Commission in the cases of M/s. Roshanlal Oil Mills Ltd. v. M/s. United India Insurance Co. Ltd., 1(1992) CPJ 293 (NC), Saraya Sugar Mills Ltd. v. United India Insurance Co. Ltd., II(1996) CPJ 6 (NC) and Murli Agro Products Ltd. v. Oriental Insurance Co. Ltd., I(2005) CPJ 1 (NC). In the case of MurliAgro Products Ltd. vs. Oriental Insurance Co. Ltd. similar clause of insurance policy came up for interpretation before the five members " Bench of this Commission. In the said judgment, the Commission after analyzing various judgments on the issue came to the conclusion that by accepting the additional premium the insurance company did extend the policy cover in respect of loss caused as a result of burning due to its own fermentation, natural heating or spontaneous combustion. Relevant portion of the aforesaid judgment is reproduced thus: "8.In the case of Saraya Sugar Mills, after considering the similar terms of the policy, this Commission arrived at the conclusion that if fire was required for giving the insurance coverage, then there was no necessity of taking an additional premium for spontaneous combustion. The relevant part of discussion is as under: "We have heard the parties and gone through the records. The relevant facts are not in dispute. The molasses of the complainant in Tank No.1 were burnt and solidised due to auto heating and spontaneous combustion. The Insurance Company "s case is that as there was no fire due to spontaneous combustion therefore the loss was not covered under the policy. Thus the fate of the case entirely hangs upon the definition of "combustion, spontaneous combustion and

fire ". The definition of combustion and spontaneous combustion was considered by this Commission in M/s.Roshanlal Oil Mills Ltd. Vs. M/s.United India Insurance Co. Ltd., 1(1992)CPJ 293(NC). It was observed : "In scientific literature combustion is defined as under : "The burning of any substance, whether it be gaseous, liquid or solid. In combustion, a fuel is oxidized evolving heat and often light " The combustion of solids such as coal and wood occurs in stages. First, volatile matter is driven out of the solid by thermal decomposition of the fuel and burns in the air. At usual combustion temperature, the burning of the hot, solid residue is controlled by the rate at which oxygen of the air diffuses to its surface(Mc-Graw Hill Encyclopaedia of Science and Technology, New York, Vol.3 1982). Another test defines combustion as under : "The term combustion signifies the process of burning associated generally with fire, flame, the generation of heat, and certain products of reaction ". (Encyclopaedia Dictionary of Physics Chief Editor Thewlis, Pergamon Press, Oxford, 1961) ".

As noticed above, the case of the insurance company is that auto combustion/spontaneous combustion did not cause fire. Therefore, the loss is not covered under the policy. "Fire " had been defined in Chambers 20th Century Dictionary as follows : "the heat and light of burning : a mass of burning matter, as of fuel in a grate : flame or incandescence : a conflagration : firing : fuel : a heating apparatus : heat or light due to other causes than burning. "

In the Concise Oxford Dictionary the meaning of "fire " has been given as follows : "Active principle operative in combustion in which substances join chemically with oxygen in air and usu. give out bright light and heat ; flame, incandescence. "

From the above definition of fire given in the two dictionaries, it is clear that fire need not necessarily be accompanied by flame. Fire is a form of heat energy which cause smouldering, burning, heating, melting and perhaps some few more words. The complainant wrote a letter dated 6th February 1991 to the opposite party stating : "We would like to inform you that molasses season 1990-91 stored in covered Pucca Tank No.1 is overflowing due to high temperature and excess foaming in spite of taking best precautions. "

A Telegram was sent by the complainant to Excise Commissioner and Controller of Molasses, U.P. and Collector, Central Excise, Allahabad and its copy was also sent to the opposite party. The telegram reads as follows : "Temperature of Molasses Tank Number One reached eighty five degree centigrade despite all efforts of cooling and controlling it () Auto combustion appears to have started "

This telegram was followed by the complainant by means of letter dated February 12/15, 1991 addressed to the Excise Commissioner & Controller of Molasses, U.P., Allahabad and its copy was sent to opposite party. Thus the case of the complainant is that temperature of the molasses tank had risen due to auto combustion by which the molasses stored in Tank No.1 was burnt and solidised. While repudiating the claim the opposite party attributed the damage

to spontaneous combustion without fire. From the definitions of terms "combustion " and "spontaneous combustion " and the dictionary meaning of "Fire ", it would only be natural to presume that the damage to the stock of molasses has been caused by fire arising from spontaneous combustion. The complainant has paid additional premium at the rate of 0.25 per thousand for spontaneous combustion over and above the basic rate. If the basic rate for the damage by fire simpliciter covered the risk there was no precise purpose of charging additional premium for spontaneous combustion. As remarked in Roshan Lal 's case (supra) by this Commission if the contention of the insurance company is to be accepted it would mean that the risk "spontaneous combustion " is merely tautological inasmuch as it already falls under "Fire " for which basic premium has been prescribed. We have not been able to understand why the additional premium for "spontaneous combustion " was charged if the loss was payable only if it leads to fire. " 9. Against that judgement, Civil Appeal No.15376 of 1996 was filed before the Supreme Court. That appeal was dismissed on 17th February 1997.

7. IN Roshan Lal Oil Mills Ltd. Vs. M/s. United India Insurance Co. Ltd., I(1992) CPJ 293 (NC) this Commission has also observed: "We may, further, observe that if it was the intention to exclude damage by spontaneous combustion in the pre-ignition stage i.e. combustion without fire as contended by the Respondent, this ought to have been stated much more clearly and directly. In any case, it has already been observed that the language used in the insurance policy is unqualified and the rejection of the insurance claim by the respondent was not justified in terms of the insurance policy ".

Similar views are taken by the State Commissions.

8. IT is to be stated that against the judgment rendered by this Commission in Roshanlal Oil Mills Ltd. the Insurance Company has preferred an appeal before the Supreme Court. The Apex Court has allowed the same and remanded to this Commission for fresh hearing in accordance with law, in the light of the observations made in previously, the said observation deals with only non-consideration of the Surveyor 's report. [(Re. M/s. United India Insurance Co. Ltd Vs. Roshanlal Oil Mills Ltd. (2000) 10 SCC 19]. Hence, we have to decide as to whether there is any justifiable ground for taking a different view?

9. FOR the reasons stated hereinafter we are not inclined to take any different view: (a) Firstly, undisputedly, if the damage to the property is because of the "fire, for any reason ", there is insurance coverage. The exclusion clause does not provide that loss or damage caused by fire on account of "spontaneous combustion " is excluded. Reading the term as it is, it can be held that what is excluded is loss or damage caused by spontaneous combustion which may or may not cause fire or flame. (b) Secondly, for the peril which is excluded, namely, the spontaneous combustion, insurance coverage is given, i.e. to say, if the insured property is destroyed or damaged by spontaneous combustion the Insurance Company is liable to pay to the insured the value of the property.

Therefore, it can be stated that it is agreed that insurance coverage is given for spontaneous combustion which could be Item 7, as per the policy which covers damage by such items namely fire, lighting, explosion, etc. (c). Thirdly, recovery of additional premium indicates the nature of the contract that subsists between the parties. That contract cannot be of giving insurance coverage only in case of damage by fire. If that contention is accepted, the object and purpose of payment of additional premium is frustrated. Recovery of additional premium indicates acceptance of risk by the Insurance Company for the perils contemplated. This aspect, to some extent, is discussed while considering the premium in general in Halsbury 's Laws of England, Vol.25 (fourth edition), pr.440, wherein it has been, inter alia, observed: "In making their assessment insurers normally work on the basis of an average of their previous experience of comparable risks, increasing or perhaps reducing the figure according to their estimate as to whether the graph of the risk is tending or likely to rise or fall. The rate of premium in fact charged may give rise to important inferences. The materiality of a representation which has been made may be inferred from a reduced rate of premium being charged. Similarly, ignorance on the part of the insurers of some matter supposed to be well known may be inferred if they charge no more than the ordinary rate of premium, while an exceptionally high rate of premium may be indicative of their acceptance of the risk as hazardous without requiring disclosure of the precise facts making it so. " In the case of Hanil Era Textiles Ltd. Vs. Oriental Insurance Co. Ltd. and Ors. (2001) 1 SCC 269, the Apex Court has referred the aforesaid paragraph from the Halsbury 's Laws of England and has, inter alia, observed that when the premium is thus demanded and collected at a higher rate, it is an indication regarding the nature of the contract that subsists between the parties, namely, that the insurer was aware of the higher risks involved. (d) Fourthly, if the contract is vague, the intention of the contracting parties is to be gathered from the surrounding circumstances or the nature of the contract. In the present case, considering nature of contract it is clear that additional premium was taken from the insured so as to cover loss or damage to the property by spontaneous combustion. Therefore, also, Insurance Company is liable to pay the damage suffered by the Complainant because of "spontaneous combustion ".

10. THEREFORE , acceptance of additional premium for spontaneous combustion leaves no doubt that insured accepted to cover the said risk. Otherwise, there was no necessity for taking additional premium. As against this, the learned Counsel appearing for the Insurance Company vehemently contended that as there was no fire for flame, the Insurance Company is not liable to reimburse the damages. For this purpose, he has also relied upon the slip attached to the policy and also referred to the law of insurance by Raoul Colinvaux wherein the author has stated that: "An insurance policy is a mercantile contract, and the words used in it must be given their plain meaning unless the surrounding circumstances or the nature of the contract make a special construction necessary. Thus, the word "fire, " in contracts of fire insurance, is taken in its

ordinary signification. It is not confined to any technical and restricted meaning, which might be applied to it on a scientific analysis of its nature and properties, nor should it receive that general and extended meaning which, by a kind of figure of speech, is sometimes applied to the term, but it should be construed in its ordinary popular sense. Actual ignition necessary. So unless there be actual ignition, and the loss be proximately caused by such ignition, the insurers are not liable ; for example, where sugar was spoilt by great heat, through a register in the chimney being closed, but where there was no actual ignition, it was held that the assured could not recover. "

11. HE also referred to the insurance law by John H. Magee (Revised Edition) wherein the author has stated that for fire policy "there must be some evidence in addition, that there was a flame or glow ". Author has referred to earlier decision wherein it is observed that combustion or spontaneous combustion may be so rapid as to produce fire but until it does so, combustion cannot be said to be fire. He also referred to Fire Insurance Law by Herbert Taylor wherein the author has observed that "The meaning of the word "Fire " for purposes of a policy may be limited by the contract, and the wording chosen by the parties must always be considered in order to ascertain their intentions. Fire occurs only when there is ignition : spontaneous fermentation or heating without ignition is not a fire. The policy wording, however, usually excludes fire due to spontaneous fermentation or heating of the property actually destroyed or damaged, although it covers any such fire which spreads to any other insured property. Similarly, it expressly excludes the destruction of, or damage to, property by fire caused by it undergoing any process involving the application of heat. "

12. THE aforesaid principles laid down by the English Courts would have no bearing to the policy in question. The policy, in the present case, is not a simplicitor "fire policy ", but a comprehensive policy covering various perils including fire. By taking additional premium, risk by one part of the exclusion clause is given insurance coverage, namely, for loss caused by "its own fermentation, natural heating or spontaneous combustion ". The result is damage due to above causes is given insurance coverage. Therefore, if the insured property is damaged by natural heating, the insurance company is bound to pay the loss suffered by the assured. In this view of the matter, we are not required to consider further scientific or chemical meaning of the word "Fire " and or "Spontaneous Combustion ", which, inter alia, in simple words provides that in some articles even at the ambient temperature oxidization process may start and lead to spontaneous heating. Learned Counsel for the Insurance Company heavily relied upon the slip attached to the policy covering spontaneous combustion and submitted that as per the term even for spontaneous combustion there should be fire. "SPONTANEOUS COMBUSTION In consideration of the payment by the Insured to the Company of additional premium of Rs. _____ the Company agrees notwithstanding what is stated in the printed Exclusion of this policy shall extend to include loss or damage by fire only of or to the property insured caused by its own fermentation, natural heating or

spontaneous Combustion. " N.B. : The expression "by fire only " in the endorsement above must not be omitted under circumstances. "

13. FIRSTLY , it is to be stated that under Item No.8 of the policy spontaneous combustion is covered for which additional premium is recovered. Secondly, the aforesaid terms is apparently vague. It provides that for consideration of additional premium the Company agrees - "notwithstanding what is stated in the printed exclusion of this policy shall extend to include loss or damage by fire only of or to the property insured caused by its own fermentation, natural heating or spontaneous combustion. "

By a bare reading of this clause, it would be difficult to conclude that what it exactly conveys. It is required to read down as - "this policy shall extend to include loss or damage by fire only ", or "loss or damage to the property insured caused by its own fermentation, natural heating or spontaneous combustion ". In any case, if it was intended to cover only loss or damage by fire, there is no question of taking additional premium, because the first part of the policy itself provides that it gives coverage by loss or damage by fire.

14. FURTHER , it makes it clear that there is insurance coverage in case of damage caused by its own fermentation, natural heating or spontaneous combustion. Therefore, this condition apart from fire covers damage caused by the aforesaid three causes. In the report submitted by the surveyor, he has quoted the opinion given by National Chemical Laboratory (Council of Scientific and Industrial Research), which, inter alia, provides that the damage was caused by natural heating. The relevant part of the report is as under: "Now after careful consideration of weather conditions on March 17, 1997 at 12.30 p.m. it is concluded the main cause of damage is temperature due to the sun which burn the soya seed contained in Galvanized iron corrugated (GIC) silo. Due to high temperature at day time the soya material must have absorbed heat and transferred towards central portion. Thus creating high temperature at the middle portion of silo which could burn the volatile oil content of soya seeds. After considering all the data on damaged seeds and fresh seeds it is the rise in temperature of silo has damaged the seeds which have turned black with loss in oil content ".

15. FURTHER , it is settled law that contract of insurance is based upon good faith. It is the duty of the insurers and their agents to disclose all material facts within their knowledge since obligation of good faith applies to them equally with the assured [(Re. M/s. United India Insurance Co. Ltd Vs. M.K.J. Corporation, (1996) 6 SCC 428)]. If the insurance coverage was not extended even by taking additional premium for the damage caused by spontaneous combustion/natural heating which may not result in fire, it ought to have been clearly stated.

16. SECONDLY , if the contract is vague, benefit should be given to the insured. The exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused due to fire.

[(B.V.Nagaraju Vs. M/s. Oriental Insurance Co. Ltd.) (1996) 4 SCC 648)]. Finally, it is to state that it is high time for the Insurance Company to have terms clearly defined in the insurance policy with a reasonable clarity and not to continue with the old forms which terms are vague. In view of the above discussion, we hold the Insurance Company deficient in service and is liable to pay damages suffered by the Complainant. " 10. The ratio of aforesaid judgment is squarely applicable to the facts of the present case, therefore, in our considered view that by repudiating the claim of the complainants, the OP-insurance company has committed deficiency in service and the OP is liable to pay the damages suffered by the complainants. 11. The complainants have claimed compensation of Rs.1,14,06,950/- with interest @ 18% p.a. from 21.02.2003 till the date of payment with cost besides compensation of Rs.50,000/- to the complainant no.2 towards mental agony and harassment. This claim is supported by the surveyor 's report dated 29.03.2003 and there is no other evidence to the contrary. The loss assessed by the surveyor of the insurance company is as under: LOSS Net claim was worked out as follows: Value at Rs.1,500/- per MT of 8,012.000 MT molasses Lying Masonry Tank No.1 and damaged completely By spontaneous combustion Less: Value of salvage @ Rs.75/- per M.T. Assessed loss Less : Excess Net Claim Rs.1,20,18,000.00 Rs. 6,00,900.00 Rs.1,14,17,100.00 Rs. 10,000.00 Rs.1,14,07,100.00

17. THERE is not much difference between the amount claimed by the complainants and the surveyor report, thus we allow the complaint. The insurance company is directed to pay to the complainant no.2 a sum of Rs.1,14,06,950/- with interest @ 10% from the date of report of the surveyor i.e. 29.03.2003 till the date of payment. There is no order as to costs.