

(1995) 01 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

KANORIA CHEMICALS AND INDUSTRIES LTD.

APPELLANT

Vs

NATIONAL INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

Citation : 1995 0 NCDRC 108 : 1995 1 CPC 456 : 1995 2 CCC 970 : 1995 2 CPJ 147 : 1995 3 CPR 35

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : C.S.VAIDYANATHAN , S.RAGHAVAN , VISHNU MEHRA

Judgement

1. M /s. Kanoria Chemicals and Industries Ltd. (for short the company) has filed this complaint against National Insurance Company Ltd. through its various offices making claim for Rs. 13,46,028 towards the damage caused to the complainant's Electrodialyser due to fire with interest at the rate of 18% from 18.8.1988. Rs. 2 lakhs have also been claimed for loss of business and business setback etc. suffered due to denial/non-availability of funds to the requisite extent for business use since 28.8.1988 and for incurring sizeable expenditure in pursuing the claim for four years. The facts as averred by the Complainant-company are that it was established in 1987 and is engaged in the business of manufacturing and marketing chemicals viz. Pentaerythritol, Acetaldehyde and other bye-products. The production unit relevant to the claim is the plant located at Ankleshwar (Gujarat) for the production of Pentaerythritol. The plant has been operational since 1987. During 1987-88, the said plant incorporating into it the membrane technology for Electrodialysis was imported from Japan and commissioned. It was working satisfactorily. Basically the Dialyser is a large receptacle through which chemical solutions (sodium formate/sulphuric acid) are passed for purification and production of Pentaerythritol. It has several membranous septa inside made of ion exchange resins; besides, it has the inevitable Anode and the Cathode compartments to facilitate the process of electrolysis. The anode plates are coated with FRP (vinyle ester resin bonding part) and the cathode of stainless steel. Electricity is an input; at the anode end, the maximum temperature is around 60 degree C. The entire process of feeding

into and draining of the solution from the Dialyser, separation of the products etc. is controlled by PLC (Programme Logic Controller). The rate of DC current (electric power) charged into the Dialyser is 150 am.p. at 600 V. The said plant and machinery (including the Electrodialyser) was insured for a total sum of Rs. 4 crores on payment of the stipulated premium from the year 1987 till the date of the filing of the complaint. The contract of insurance was in force at the time of the mishap described hereinafter. In fact the insurance cover has been and still is a continuous one, being renewed from time to time by the complainant with the very same insurer. On 28th May, 1988 around 9.00 a.m. the Production Manager, on his rounds had reason to get concerned with the functioning of the Dialyser. The whole place was smelling foul due to burning; he also noticed black particles in the Electrode rinse tank bottom. He stopped the Dialyser immediately, as any experienced and knowledgeable senior production executive would do. He found burning smell emanating from the machine. Subsequently, on opening the machine, it was noticed that Electrode Rinse Compartment, Anode Plate⁴ Nos., Electrode Rinse Spacer -and approximately 75 pairs of membranes were damaged due to incidence of fire. As mentioned earlier, the Dialyser is a "purification plant" for the separation of solution containing chemicals by circulating it in the machine. Following a failure in the PLC, the feeding of rinse solution failed while the discharge (drainage) pump continued to operate draining the liquid. As a result, an electricity of DC 600 V. continued to flow even when the feed pump of cooling rinse solution remained inoperative, there was a sharp rise in the temperature, as high as 700 C resulting in fire in the Dialyser causing damage to the Anode, membranes etc. The insurer was informed of the "incident by the complainant letter of 30th May, 1988. The insurer appointed M/s. P.J. Bhatt & Co. as the surveyors. The complainant sent a detailed letter dated 2nd June, 1988 to the surveyors describing the incident, also furnishing an estimate of the damage in terms of value. The amount claimed was well within the policy extent at that time. Notwithstanding visits by the surveyors to the factory site, discussions and documentation provided to them to the extent available with the complainant and relevant to the damage, hardly any progress was made. On being apprised of this by the complainant, the insurer appointed on 21st November, 1988 M/s. Mehta and Padamsey Surveyors (Bombay) Pvt. Ltd. to jointly survey the matter and report to the insurer thereon to facilitate the latter to decide the claim. The complainant and the surveyors could reach an agreement on 16th December, 1988 without prejudice to the assessment of the loss caused due to the incident at Rs. 13,49,028. As the surveyors seemed to maintain that there was no fire in the ED Unit, further detailed clarifications were furnished by the Complainant-Company in the letter dated 10th January, 1989. A technical report by Dr. Keshav V. Dnye, an eminent scientist to whom the complainant had referred the matter for investigation and opinion, was also furnished to insurer vide letter dated 21st December, 1989. The report of Dr. Dnye was furnished by the insurer to the surveyors for consideration on 27th December, 1989. A copy of the certification furnished by the suppliers of the machinery viz. M/s. Asahi Glass Co. Ltd., Japan was also

made available to the surveyors as well as to the insurer. In fact surveyors wanted that an opinion/certification be obtained from the supplier of the machinery. A meeting was arranged between the officers of the insurers surveyors and officers of the Company to settle the claim. Senior Manager (Administration) of the Company tabled a copy of opinion from the Japanese collaborator on the fire in the plant. After prolonged discussions it was decided that an opinion from an expert will be sought to dispel any doubt about admissibility of the claim 1 under the fire policy issued to the Company. The insurers/surveyors sought the opinion from one Shri S. Arunachalam of M/s. Mehta Padamsey & Co. surveyors Pvt. Ltd., Calcutta. Having received no response from the insurers the Company wrote a letter to the Chairman-cum-Managing Director of the insurer on 8th May, 1991. However, the insurer did not respond to that letter. The complainant pursued the matter to the insurer at Senior officer level from May 1991 of September, 1991. On 26th September, 1991 the Complainant, while drawing the insurer's attention to the inordinate delay in the settlement of the claim, furnished another technical note from the firm's technical expert rebutting the proposition that the charring of FRP at the Anode end and membranes of the Dialyser might have been caused by accidental contact with concentrated sulphuric acid. Upto the date of the filing of the complaint claim of the Company was not finally settled. The Complainant had a long wait not to mention the financial strain caused and the business opportunities lost for want of funds flow. Delay in settling the claim will result in imperfection and inadequacy in the quality, nature and manner of performance of the service which the insurance company has undertaken to render and, therefore, will amount to "deficiency" in service. The complaint was filed in May, 1992 for the aforementioned reliefs.

2. THE opposite parties, i.e., the insurance company and its officers have filed a joint counter averring that the claim made in the complaint was clearly barred by limitation as the cause of action for the complaint had arisen on May 28, 1988. The complaint involves disputed questions of fact and therefore, it will be necessary to lead elaborate evidence on the issues that arise for consideration and therefore, the proper Forum to render justice on this issue is civil Court. The damage to the electrical dialyser was not caused due to fire as alleged by the complainant and, therefore, the damage, if any, caused to the electro-dialyser is not covered by the insurance fire policy. The insurance company referred the claim made by the complainant to Surveyors, assessors and valuers, M/s. P.J. Bhat and Co., Ahmedabad and M/s. Mehta Padamsey and Co. Surveyors (Bombay) Pvt. Ltd. Since it prima facie appeared to the Surveyors that the damage in respect of which claim was made by the complainant as due to a cause other than any of the insured perils and also looking to the complexity of the process, the Surveyors consulted M/s. Dr. Bhatt and Associates, which is a reputed firm of industrial consultants, and requested them to give their opinion upon the cause of the damage. Dr. Bhatt and Associates examined all the aspects connected with the claim made by the complainant in depth and in its report

dated 19th June, 1989 summed up its opinion as follows: "Summing up the above phenomena and properties etc. of the construction material as given by the party, the charring etc. are favoured by a vigorous chemical reaction substantiated by (1) Fire in temperature around 100-120 degree C due to increase in voltage/ resistance. Normally temp, resistance of FRP and resins is up to 120 degree C. beyond which resins melt/shrink. (2) Strongly acidic media provided by disulphuric acid used in E.R. Solution. This is because the resins are only stable in weak acid whereas sulphuric acid in any concentration/ dilution remains or acts as a strong acid on these resins. (3) Strongly oxidising condition due to presence of nascent oxygen and presence of persulphatation on anode side. The organic resins are highly reactive to persulphate in acidic media. Thus, higher temp, around 100-120 degree C. presence of strong acid and high oxydising condition has taken part in this incidence and the incidence is a case of chemical decomposition of vinylester resins in presence of oxydising condition in strong acidic media at higher temperature".

The surveyors carefully considered the claim made by the complainant in the light of the facts represented and found, functioning of Electro-dialyser unit, various technical aspects of the process involved and the opinion of Dr. Bhatt & Associates and came to the conclusion that there was no possibility of actual ignition/fire taking place and if this theory is accepted then the subject loss would fall outside the purview of Fire policy held by the insured. In spite of knowing that the alleged damage to the Electro-dialyser unit was not due to fire and it was not covered by the terms of the fire insurance policy held by them, the Complainant persisted in making representations in support of their claim. The Insurance Company re-examined the claim made by the Complainant whenever representation was made by the Complainant. Thus, the grievance made by the Complainant about the alleged delay on the part of the Insurance Company in settling the claim is baseless. Thus according to the insurer no amount is payable to the complainant company for the alleged damage to the Electro-dialyser. The company filed its rejoinder to the counter and pleaded that up to this time the Insurance Company had not sent any communication repudiating the claim though the complainant was aware that the surveyors in the report did not review the claim. In consequence the complainant company furnished further clarification and technical inputs in support of the claim. Vide letter dated 9th December, 1991 the insurer wrote to the complainant as follows: "You would kindly appreciate that in view of the technicalities involed, it has been extremely difficult to take a final decision and as such we have been keeping ourselves open about which your officers at various levels including Shri L.N. Sanwalka, Sr. Manager, Calcutta, is fully aware".

The final decision has not been conveyed so far to the insured. It was reiterated that damage caused to the Electro-dialyser is covered under the policy for the reasons detailed in the complaint.

3. WE have gone through the records of the case carefully and heard the parties.

There is no dispute about the damage to the Electro-dialyser. The damage has been caused at Anode end of the unit (Cathode end being totally unaffected) and that a number of components were charred. The extent of damage in monetary terms i.e. Rs. 13,49,280/- is also not disputed. The bone of contention between the parties is whether the damage caused to the Anode end was due to fire or by chemical decomposition. The complainant's case is that on 28.5.1988 at about 9.00 a.m. the Production Manager on his round noticed that the whole place was smelling foul due to burning. He also noticed black particles in the Electrode rinse tank bottom. When the matter was reported to the Insurance Company they appointed M/s. P.J. Bhatt and Co. as surveyors who obtained the opinion of Dr. Ravinder Bhatt. He visited the plant on 12th September, 1988 with the representatives of the Surveyor. His result of analysis contained in his earlier report dated 21st October, 1988 is as follows: 1. "Microscopic Examination of black charred particles collected from Anode Plate junctions shows partial charring due to chemical decomposition. 2. Fresh sample of Anode Plate adhesive resin shows identical charring when dipped into Sulphuric Acid of strength over 80%. 3. Pieces of Membranes when tested with Sulphuric Acid of strength over 70% and upto 98% shows definite shrinkage and slow charrings the rate of which differs as per the concentration of sulphuric acid changes. 4. Sulphuric Acid has visible effect sod. formate and pentaerythritol solutions. This indicates that concentration of H₂SO₄ has very important role in the process, which has to be very exact as per recommendations an inverse in the Cone. Of H₂SO₄ has damaging effect on material of constructor as well as on pentaerythritol if it comes in contact with it."

4. THEREAFTER , joint survey was conducted by M/s. Padamsey Pvt. Ltd. and M/s. P.J. Bhatt k Co. In the joint report dated 3rd October, 1989, the Surveyor reported as under: "Thus in our opinion, as per both the theories discussed herebefore, there is no possibility of actual ignition/fire taking place and if this theory is accepted then the subject loss would fall outside the purview of the Fire Policy held by the insured."

It appears that the surveyors were of the opinion that there should be "actual ignition/ fire to cover the loss under the policy. When the Complainant came to know of this report he got the matter examined by Dr. Keshav V. Datya of Kevida Consultancy Services, Pune, He investigated the cause of damage. He forwarded his report vide letter dated 20th November, 1989 to the complainant. He ruled out the possibility of incident due to chemical reactions. He dealt with the Heat Generation and the mechanical failure. He arrived at the following conclusions: 1. The protective platinum coating was found to have been washed off. The base plates of a titanium develop high resistance and, in turn, high temperature. The easy flow of current in ionic form from the Anode surface is thus retarded. 2. The Electrode compartment was drained of rinse solution stopping the ionic flow of current and not taking away the heat from the Anode. Air entered the empty compartment from the vent. This has not been sensed by the interlocking/control system. 3. High Electric potential on the hot anode is dissipated as sparks from

the sharp edges of the anode. 4. FRP caught fire by the sparks, generating lot of heat which fused the membranes in the nearby stack No. 6. 5. Since the supply of oxygen was limited, the combustion did not sustain for long, ending in an incomplete burning of FRP where the sparks struck. 6. The damage is not caused by hot acidic oxidising solution. 7. The tripping of Rinse solution pump by the dip in electric supply is not registered by the safety mechanism causing the accident."

5. IT may be mentioned here that M/s. P.J. Bhatt in their preliminary survey report issued during July, 1988 had reported as follows: "As reported, at about 9.00 a.m. on 28.05.1988, insured's Production Manager Mr. Raghavan, on his routine plant round, had noticed some black particles rinse tank bottom and had simultaneously found foul burning smell in the ED area. The Electrodialyser Machine was stopped immediately. On opening the machine, initially it was noticed that (a) Electro Rinse compartment, (b) 4 nos. of Anode plates (c) Electrode Rinse Spacer and approx. 75 pairs of membrane were charred broken."

6. ANODE Plate which are made of titanium sheet and coated with platinum with noble metal, platinum is not affected by sulphuric acid. The Complainant has also obtained opinion of Dr. Thangappan. The Complainant sent the reports obtained by it to the Insurance Company who in turn sent all the reports obtained by it earlier as well as by the Complainant to Mehta and Padamsy Surveyors Pvt. Ltd. who referred the matter to Shri S. Arunachalam. His report is in detail. He considered all the reports obtained by the parties. About the report of Dr. Thangappan, S. Arunachalam has remarked as follows: "The damage to the Anode plate (made of titanium sheet coated with platinum) was confirmed by Titanium Tantalum Products Private Ltd. of which Dr. R. Thangappan, B.Sc. (Tech.), Chem. Engg., Ph. D, MIE, Mil, Ch., FSAEST is the Managing Director. Dr. Thangappan according to our knowledge is one of the eminent Scientists who did pioneering research in Central Electronics Research Institute, Karaikudi (one of the several Institutions in the country under C.S.I.R.). It was Dr. Thangappan who introduced the titanium coated Anodes in Caustic-Chlorine Cell replacing the conventional graphite Anode, thereby effecting economy in power consumption. This is now being replaced by membrane cell technology. The damage to Anode of the Insured's Dialyser stood confirmed by the quotation (towards the repair of the damage to Anode Plates) dated 9th November, 1988 submitted by Titanium Tantalum Products Private Ltd. to Kanoria Chemicals & Industries Ltd. Ankleshwar."

Shri Arunachalam also criticised the two reports submitted by Dr. Bhatt as follows: "That Dr. Bhatt and Associates, the experts in their report dated 21.10.88 referred to certain tests carried out by them, briefly referred to by us under paras 6, 7 and 8 earlier. (b) that the report dated 19th June, 1989 issued by the very same experts, Dr. Bhatt and Associates, did not refer to the tests carried out by them, but dealt with only the process and surmised what would have taken place in the plant, (c) that the text of the report dated 19.6.1989 differed with the report earlier issued by them on 21.10.1988, (d) that there was

no reference (in the second report) what exactly was the premises upon which another report on 19th June, 1989 was issued after a lapse of eight months and without any further enquiry at the plant, (e) that in the absence of any observation or revocation of the first report, it would appear that the same experts "Dr. Bhatt and Associates, had issued two reports under two different circumstances on the subject matter."

7. SHRI S. Arunachalam gave a detailed report. He came to the opinion that the term charring is fire and the damage caused by charring would fall within the scope of fire policy and that it is not necessary that there should be sighting of "leaping orange/red flames."

8. THIS Commission vide order dated 30th April, 1993, after both parties had agreed, referred the matter to Director, Central Salt and Marine Chemical Research Institute, Bhavnagar to furnish to this Commission expert opinion of the Institute on the question whether on the materials disclosed by the parties in their pleading and the documents as well as the reports and affidavits which have been produced before this Commission, the damage to the Electrodialyser is attributable to fire or due to vigorous chemical reaction unconnected with any attribute of fire. Relevant portion of the report of that institute is to the effect: "In the present case it has been said that the anode wash pump has tripped. This amounts to anode not getting continuous supply of wash water, but all the same it would have enough water to conduct the current. Slowly due to electrodialysis and transport depletion at the near the anode region, the electrical parth could have been disturbed. The electrical parth instead of being uniform would have become non-uniform. All these causes would have generally and generously contributed to heating up of the system. This starts at the anode. When the heat energy is more, melting of the gaskets and membrane takes place followed by fusing. They said about 70 pairs got fused. When they are fused, the current flow becomes most irregular, but the energy is being supplied continuously. The current can still flow because the entire stack is wet and has some conducting salt solution. The easy way for passage of current may be, at this time, along the sides (not through the centre entirely). By this time the edges or corners of the anode would have been naked without water. So further damages like charring and other processes which cannot exactly be defined might have taken place. At anode the product of electrodialysis always gives some oxygen and to that extent the damage can be restricted if oxygen cannot enter the system by any other means."

May be the term fire further causes confusion. Fire is a form of heat energy which causes heating, melting, fusing, smouldering, charring, burning and perhaps there may be a few more in words. Some of them have definitely happened in this case. The Insurance Company has filed objection to the report obtained from Central Salt and Marine Chemical Research Institute, Bhavnagar but we do not find any force in those objections as the said report is supported by some of the other reports which have been already referred to above.

9. CONSEQUENTLY , we hold that the damage to the Anode end of the Electrodialyser was caused due to fire and it will fall within the scope of insurance policy.

10. BEFORE closing the case we may mention here that the Opposite Party-Insurance Company has also taken plea of limitation on the ground that the occurrence took place on 25.5.1988 and the complaint was filed in May 1992. It is to be noted that the claim of the Complainant has not been repudiated by the Insurance Company so far. Merely because the Complainant had come to know about the opinion of the Surveyors appointed by the Insurance Company it will not amount to repudiation. Under Article 44(b) of the Limitation Act a claim can be filed within three years of occurrence of the loss or of the date of repudiation. Thus the bar of limitation does not arise in this case at all. In the result we award Rs. 13,49,028/-to the Complainant against the Opposite Party-Insurance Company for the loss suffered by the former. The above amount shall carry interest at the rate of 15% after the expiry of three months from the date of occurrence (three months' time is considered sufficient for the settlement of the claim). Complainant's other prayers are declined because it had come on the record that the electrodialyser was repaired within few minutes from the spare parts and unit commenced its process. Thus there was no business loss to the Complainant. The Complainant is also entitled to the cost of the present proceedings which we fix at Rs. 5,000/-. Mr. Y. Krishan, Member" The facts have been set out in the order of Justice B.S. Yadav, Member recorded above and do not require reiteration.

11. THE insurance policy taken out by the Complainant in this case is fire policy "C. It has insured the property against various types of risks including fire. The question to be considered whether damage to the plant in this case was caused by fire or was the result of chemical decomposition due to rise in temperature and the resultant heat in the electrodialyser without fire.

12. IT is seen from the evidence that the technical opinion on this question is divided, nay conflicting. According to the Complaint Petition "the damage was as a result of sharp rise in temperature to the extent of as much as 700 C" and "the sharp rise in temperature was within an enclosed space and the damage is such that it was on account of fire, though obviously the flame of the fire could not be seen outside. There was foul smell when the enclosed space was opened and this could only have been as a result of fire" The theory of occurrence of fire is further corroborated by the statement in the complaint petition that the whole place was smelling foul due to burning and by the existence of "black particles in the Electrode rinse tank bottom."

13. THE Complainant has supported his case with the opinion of two experts. Dr. Keshav V. Datye had opined that keeping in view the pressence of carbon soot on F.R.P. and also Cathode remaining unaffected, "chemical reactions as a cause either of damage or of accident could be safely excluded". After considering the question of heat generation he has observed that "this rise in temperature is not

enough to explain the observed damages in the anode compartment, the observed burning of the FRP backing up in vertical and horizontal directions on top, bottom and sides". He has also considered the possibility of mechanical failure: the anode compartment stainer getting choked, developing resistance to flow of anode rinse solution, even stoppage of the current flow in the form of ions, resulting in current flowing in the form of sparks along the edges of anode which can ignite FRP, the back up FRP along the edges of the plate may catch fire. According to him "the pump for the electrode-rinse solution might have tripped. The rinse solution might have evaporated or drained" and in the result I the temperature of solution would rise "the anode surface might have lost remaining platinum in the process and the resistance of the anode and, in turn, the temperature might have increased which further retards the ionic flow and helps the sparking....".

He, therefore, concluded that "the observed burning of FRP (Backing up) all around the anode edges is thus because of electric sparks." He concluded by saying that it was the electric sparks from the high electric potential on the anode which caused fire. Further charring is a sure index of the occurrence of burning. In short the cause of damage was fire. It will, however, be seen from the above that the cause of fire is based on various probabilities.

14. THE Complainant has further supported this opinion by the opinion of another expert, Dr. K.P. Govindan, a technical consultant, Aquapharm Chemical Co. Pvt. Ltd. He has opined that damage to the electrodialyser components had been caused by the drying of the anode compartment and the resultant increase in electrical resistance leading to ohmic heating, charring and electrical sparking due to high voltage and current. He has ruled out charring by chemical reaction or damage by chemical oxidation. While the surveyors, appointed by the Insurer, took the view in October 1989 that there was no fire and hence the claim fell outside the Insurance Policy, one of their Directors Shri Arunachalam, however, opined in October, 1990 that charring was conclusive evidence of damage by fire. There is reference to the opinion of another expert Dr. R. Thangappan but we could not find out his finding regarding the cause of damage. The Opposite Party, insurer, has on the other hand obtained the opinion of another expert Dr. Bhatt and Associates. He has averred that "there are no chance of fire in the anode compartment.." In fact, he has ruled that "There was no considerable shooting of temperature in the Anode compartment which would have evaporated E.R. solution and there could have been excessive steam generation because of evaporation of E.R. Solution. The maximum temperature observed was only 80C as reported". According to this expert this was a case of chemical decomposition of vinylester resins in presence of oxidizing condition in strong acidic media at higher temperature.

15. CONSIDERING the conflicting expert opinions, the Counsels for the parties agreed that expert opinion may be obtained from the Director of Central Salt and Marine Chemical Research Institute, Bhavnagar whether the damage to

electrodialyser is attributable to fire or due to vigorous chemical reaction unconnected with any attribute of fire. This Institute in its report has stated that if the Anode wash pump had tripped, conditions will arise in which the system will get heated up "melting of the gaskets, and membrane takes place followed by fusing". In consequence, "the current flow becomes most irregular whereas energy is being supplied continuously." It has speculated "so further damages like charring and other processes which cannot exactly be defined might have taken place." It has summed up by saying that "May be the term "fire,, further causes confusion. Fire is a form of heat energy which causes heating, melting, fusing smouldering charring and perhaps there may be a few more words. Some of them have definitely happened in this case."

16. IT is evident that the opinion of this expert is inconclusive regarding the cause of damage: chemical decomposition or fire. There is no dispute about the fact that nobody observed fire i.e. flame as such. The damage is explained on two hypotheses (a) occurrence of fire due to sparking after abnormal rise in temperature: or (b) chemical decomposition due to rise in temperature but without any fire: in brief "non-fire damage".

17. THE term fire has been defined as under: "Fire": A chemical reaction accompanied by the evolution of heat, light and flame (i.e. a glowing mass of gases), ["Dictionary of Science" by the English Language Book Society]. Fire is also a form of combustion. One of the essential features of fire or combustion is that it must be accompanied inter alia, by flame. There is no direct evidence of flame and, thereof, of fire having occurred in this case.

18. ON the other hand, spark has been defined as "electric spark": "discharge of electricity accompanied by light and sound through a dielectric or insulator". "Electric spark" is not necessarily accompanied by flame unless it results in fire. Thus, we are left with two possible hypotheses for the damage: (a) fire of, (b) chemical decomposition as a result of rise in temperature, in the electrodialyser. In the absence of definitive evidence of flame, the balance of evidence indicates that the damage was a result of "chemical decomposition" or what I would describe as "thermal degeneration" before reaching the point of ignition.

19. I am, therefore, of the view that we cannot hold that the insurer, National Insurance Company has been guilty of deficiency in not settling the claim of the Complainant for damages in this case. In the facts of this case it was open to it to plead that there was no fire and hence the policy of insurance was not attracted.

20. IN any case, when there is such a conflict expert evidence as to the cause of damage, the Consumer Forum is not qualified to determine the cause without taking elaborate evidence of experts after the same has been tested in the fire of cross-examination. As such it would be more appropriate if the Complainant seeks redress by way of suit in a Civil Court, if he is so advised. The Original Petition is dismissed on this limited ground.