(2016) 04 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

Case No : 1 of 2005

MAHAJAN OVERSEAS PRIVATE LIMITED APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LTD. RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Insurance Act, 1938, Section 64(u), Section 64(UM)(2) - Books to be kept by insurers established outside India - Books to be kept by insurers established outside India

Citation : 2016 2 CPR 468

Hon'ble Judges : J.M. Malik, Dr. S.M. Kantikar

Advocate : Amitabh Chaturvedi, Vibha Sharma, Sakshi Gupta

Judgement

1. This is yet, another case of loss caused by fire. Mahajan Overseas (P) Ltd., the complainant, is engaged in the business of processing of yarn fabrics, garments and manufacturing and export of made-ups, fabric and handloom items. The complainant has its factory at Unit-II, Opp. FCI Godowns, Gohana Road, Panipat, Haryana. It obtained two policies, from New India Assurance Co. Ltd., the OP1, one, in the sum of Rs.1.00 crore which was in respect of all kinds of stocks of cotton handloom, cotton yarn, cotton furnishing and / or other goods of like nature, which were stored / lying in the insured premises of the complainant, at M/s. RTI Spinners in a building of first class construction, and the other policy in the sum of Rs.5.00 lakhs, for machinery installed at factory premises situated at Unit-II, Opp. FCI Godown, Gohana Road, Panipat, Harayana and its stocks insured for Rs.75.00 lakhs, lying in the said premises at Panipat.

2. On 08.03.2002, Mr. Anil Singh, Godown-cum-Production In-charge of the complainant company, along with Security Guard, posted at Unit ? II, opened the shop of the workshop godown in which the stitching machines, cutting tables, etc., were kept and noticed that fire was coming from the back side. The shutter was also opened and it transpired that the godown was full of flames and smoke and there was a devastating fire. Suddenly, the roof of the godown fell down and hence nobody could go inside the affected godown. Mr. Anil Singh immediately

informed M/s. RTI Spinners, the landlord of the premises, local fire brigade and also the Director of the complainant company. The matter was reported to the Media and Newspaper, such as "The Tribune", "Dainik Jagran", etc., marked as Annexures C-10 (Colly). As a matter of fact, the complainant had taken the two sheds on rent from M/s. RTI Spinners where different types of handloom items, cloth, yarn, etc., were stored in large quantities and sewing machines and 4-5 years'' old accounts records were kept.

3. Mr. Gulshan Kumar Dhawan, Local Surveyor of the OP1 visited the site and recorded the statement of Mr. Vinod Kaushik, Director of OP1, wherein it was stated as under :- " the fire had spread to the whole shed very quickly and the intensity of the fire was so tremendous that the roof of trusses collapsed which made it difficult for the fire brigade people to control the fire. The adjoining sheds where sewing machines and cutting table were lying were also affected but the sewing machines and cutting tables were removed and were safe. Some stocks lying there were also affected. There was also fire in the godown of M/s. RTI Spinners".

Copy of the statement has been placed on record as Annexure C-5.

4. After the fire, to meet various deadlines for fulfilling its export obligations, the complainant shifted the sewing machines salvaged from Unit-II (situated at RTI Spinners, Gohana Road, Panipat) to its other premises, viz., Unit-I, situated at Industrial Area, Panipat. The Divisional Manager of the OP1 had no objection. On 15.03.2002, the complainant vide its letter, informed the OP1 that they were going to remove the debris of the shed fallen on the date of fire, i.e, 08.03.2002. Copy of the letter dated 15.03.2002 has been placed on record as Annexure C-7.

5. Mr. Z.U. Islaam, Manager of OP2, inspected the site of loss on 19.03.2002 and submitted his report dated 22.03.2002 to OP1, as under:-

" this may be noted that the message of this major fire was given to TAC quite late (after 10 days of outbreak of fire) and as such, the entire contents of affected godowns and all machinery and even light fittings / wiring of the manufacturing shed were removed. Therefore, many of the requisite information like exact occupancy of the affected godown, extent of damage, method of storage, cause of fire and conditions, electrical installation, etc., could not be ascertained with accuracy".

6. The Loss Prevention Association of India Ltd., (LPAI), also visited the site. It submitted its report dated 08.05.2002, and observed as under:- " The whole roof of the building was collapsed. In some areas, walls were also damaged. All the stocks in the godown were gutted and became a total loss...... At the time of the visit, most of the debris had been removed and repairing work of the damaged shed had already been started".

7. It is contended that on 27.03.2002, one Mr. Tikoo, from M/s. V.N. Sareen & Co., Insurance Surveyors was appointed as Surveyor by OP1, who physically

visited the occupancy of the godowns / contents of the affected godowns, machinery / fittings, installed in the manufacturing shed and instructed the complainant company to remove the debris and salvage the semi-burnt stocks, if any.

8. On 01.04.2002, M/s. S. Soni & Co., Surveyors, were appointed as Final Surveyors in place of M/s. V.N. Sareen & Co. They made enquiries and assessed the loss. However, the claim of the complainant was not settled, despite delay of considerable time. Lot of correspondence was exchanged between the parties, which has been placed on record as Annexures C-11 to C-32. On 22.12.2003, vide Annexure C-19, the OP1 sought consent from the complainant company to accept an amount of Rs.60,82,143/-, in full and final settlement of the claim, under the policy for Rs.1.00 crore. The said letter dated 22.12.2003, is reproduced here as follows :-

" Reg : Your fire claim on 08.03.2002.

With reference to above, your file had been forwarded to Head Office through Regional Office and they have processed the file and calculation arrived at is as under :-

Value of stocks at the affected premises Rs. 1,68,76,304/-

Less : Stocks in the manufacturing block Rs. 5,00,000/-

Stocks in affected block Rs. 1,63,76,304/-

Less : Safe Stock Rs. 2,52,585/-

Less : Dead/slow moving stocks @ 2.5% Rs. 4,09,458/-

Less : Salvage Rs. 79,418/-

Add : Fire fighting expenses Rs. 10,056/-

Gross loss assessed Rs. 1,56,44,949/-

Under Insurance 1,00,000

1,63,76,304 i.e.,61.06% Rs.95,52,806/-

Net Loss assessed Rs. 60,92,143/-.

Less : Excess Rs. 10,000/-

Rs. 60,82,143/-

Net Loss payable comes to Rs. 60,82,143/-.

You are requested to give your consent for above loss for the amount, Rs.60,82,143/-".

9. Ultimately, the claim of the complainant was repudiated vide letter dated 07.09.2004, which runs as follows :- "Reg : Your fire claim under Policy

No.353900/11/ 01/2692 & 3874, date of loss ? 08.03.2002.

You have reported a fire accident in your factory on 08.03.2002. Immediately, preliminary survey was arranged by our company through Mr. Gulshan Kumar Dhawan. Based on the estimate of loss given by you, Head Office has arranged Final Survey through M/s. S.Soni & Co., who submitted their report dated 09.01.2003. We have asked Surveyors for various clarifications on their Survey Report. We have carefully examined all the papers available and we observe the following :

"The report of Mr. Z.U. Islam, Manager, Tariff Advisory Committee, Delhi, R.O., who carried out his survey on 19.03.2002, clearly states that ''the entire contents of the affected godowns and all machinery and even light fittings / wiring of the manufacturing shed were removed. Therefore, many of the requisite information like exact occupancy of the affected godown, extent of damage, method of storage, cause of fire and conditions of electrical installations, etc., could not be ascertained with accuracy".

The Surveyor, Mr. Sanjiv Soni, who visited the site on 2.4.2002, has confirmed in his report that there were stocks available in the godown and outside. This shows that the contents of the godown were tampered with.

The above action clearly violates condition No.6 of the fire policy issued to you, more specifically, the following provision :-

"The insured shall also, at all times, at his own expense, produce, procure and give to the company, all such further particulars, plans, specification books, voucher invoices, duplicates of copies thereof documents, investigation report (internal/ external), proofs and information with respect to the claim and the origin and cause of the loss and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the company, as may be reasonably required by or on behalf of the company, together with a declaration on bath or in other legal form of the truth of the claim and of any matters, concerned therewith".

Further, your claim also attracts the following provisions of condition No.8, of the Fire Policy issued to you.

Condition No.8.

"If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy or if the loss of damage be accessioned by the willful act, or with the connivance of the insured, all benefits under this policy shall be forfeited.

Therefore, we hereby reject your claim in terms of Condition Nos. 6 & 8 of the Fire Policy issued to you.

The company reserves its right to recourse to additional ground / measures other than stated above, as and when deemed necessary".

10. Ultimately, this complaint was filed before this Commission, with the following prayers:-

a) direct the Opposite Party No. 2 to produce its report dated 22.03.2003 on the record of this Hon''ble Commission in these proceedings and supply a true copy thereof to the Complainant Company;

b) direct the Opposite Party No. 1 to pay to Complainant Company a sum of Rs.1,75,00,000.00/- (rupees One Crore Seventy Five Lacs only) alongwith interest at the rate of 24% per annum with quarterly rests from the date of loss till the date of realization of the entire claim or such other compensation (in lieu of interest) as this Hon''ble Commission may deem fit and proper in the facts and circumstances of the case;

c) direct the Opposite Party No. 1 to pay to Complainant Company a further sum of Rs.20,00,000.00/- (Rupees Twenty Lacs only) towards compensation for loss, harassment and mental agony caused to it and its directors, shareholders and employees due to delay in settlement of its claim and the subsequent illegal rejection of its claim;

d) direct the Opposite Party No. 1 to pay to Complainant Company the costs of the present proceedings; and,

e) pass any other or such further orders which this Hon''ble Commission may deem fit and proper in the facts and circumstances of the case in favour of the Complainant Company and against the Opposite Party No.1".

DEFENCE :

11. Both the OPs have contested this case. The insurance company, OP1, listed the following defences. It is stated that the present complaint is not maintainable and it is open to the complainant to file civil suit on payment of advolerem court fee. The repudiation of the claim is valid and legal. The complainant is not entitled to compensation in view of Condition Nos. 6 & 8 of the policy. It is contended that the cause of loss was not explained by the complainant. According to the complainant, the cause of loss is ''short circuit'', but the same is false. At the place of loss, there is no electricity supply. The complainant was running the factory through diesel generator set and there is no question of electric short circuiting. There is no electrical wiring at the place of loss. Again, at the time of occurrence of the incident, the factory of the complainant was closed and was not working. The complainant has failed to produce the proof in support of its case. Condition No.6 deals with the cause of loss and condition No.8 deals with making deliberately false statement that the fire had occurred due to electrical short circuit.

12. Again, the complainant had removed the contents of factory affected godowns, all machinery and even light fittings / wiring of the manufacturing shed

well before 19.03.2002 without the permission of the OP. However, para 23 reveals that letter dated 11.03.2002, seeking the permission was sent to OP1. These facts also could not come to the notice of the Surveyors. It is contended that no offer was given for settlement and if given, that was not accepted. It denied that the complainant had taken on lease any premises belonging to M/s. RTI Spinners at monthly rent of Rs.5,000/-. The complainant had admitted that the machinery was insured for Rs.5,00,000/- and the stocks were insured for Rs.75,00,000/-, which were lying at the premises situated at Opp. FCI Godowns, Gohana Road, Panipat, Haryana. It has also denied that it advised the complainant to obtain fresh policy for Rs.One Crore for the stocks and machines lying at Panipat site. It has further denied that Mr. Tikoo, Surveyor from OP1 inspected the godown and instructed the complainant to remove the debris, salvage from the affected site. All other allegations have been denied.

13. In its written statement, Tariff Advisory Committee/opposite party No. 2 submitted that the case is not maintainable against the Tariff Advisory Committee/opposite party No. 2. Again, no relief has been sought against opposite party No. 2. The opposite party No. 2 is not a necessary party. Again, there is no privitiy of contract between the complainant and the Tariff Advisory Committee/opposite party No. 2. The Tariff Advisory Committee is a statutory body established under Section 64 (U) of the Insurance Act to control and regulate the rates, advantages, terms and conditions, that may be offered by the insurers in respect of the General Insurance Business. The purpose of its report, as conceded by the complainant himself, was to suggest measures to minimise the risk and also to verify whether the rate, premium charges by OP 1 was in order as per the tariff rates prescribed by the Tariff Advisory Committee. Opposite party No. 2/TAC is hereby discharged.

14. We have heard the learned counsel for the complainant and learned counsel for the opposite party No. 1, which are the main parties in this case. We have perused their written synopses. The counsel for the insurance company/OP 1 defended the repudiation letter. However, it is admitted that the articles were lying at the premises of M/s RTI Spinners, Gohana Road, Panipat, Haryana, taken on rent by the complainant from M/s RTI Spinners. It is also indisputable fact that the incident of fire took place on 8.3.2002 and the preliminary surveyor submitted first report on

15. 3.2002. His report clearly reveals that he could not find out the cause of loss. The counsel for the opposite party strenuously argued that the plea set up by the complainant that the cause of fire is short circuit, is made out of whole cloth. He submitted that dallops of mystery surround this most important point. TAC visited the premises on 19.3.2002. Its report clearly goes to show that in the affected godowns, all the machinery and even light fittings/wiring of the manufacturing shed were removed prior to its visit. Consequently, many of the requisite information like exact occupancy of the affected godown, extent of damage, method of storage, cause of fire and conditions of electrical

installations, etc. could not be ascertained with accuracy. The report filed by the TAC specifically mentions that cause of fire could not be known. It was further argued by counsel for the opposite party No. 1 that Mr. Sanjiv Soni, the Surveyor visited the site on 2.4.2002. He was a final surveyor. He reported that there were stocks available in the godown and outside. The counsel opined that this is a clear cut indication that the contents of the godown were tampered with. Loss Prevention Association of India (LPAI) also submitted their report. They ruled out the possibility of fire caused by short circuit. It reported that the probable cause of fire that affected premises did not have electrical connections, the Diesel Generator Set (used for electric supply) was switched off as the factory was closed. The company did not have the electrical supply from the State Electricity Board. M/s S. S. Soni vide report dated 9.1.2003, made an assessment of Rs.1,61,28,764/- by taking the amounts as mentioned in the trading accounts since the quantitative records were burnt in the fire. He further opined that Unit ? II, the premises in question, includes two sheds, out of which one shed was used for manufacturing activity where machines were lying and the other shed was used as storage block and the separate policies/cover note were issued for both the blocks. It also came to the conclusion that fire affected premises is the storage block with the sum insured towards stock of Rs. 1 crore. It was also pointed out that at the instance of the landlord of the premises, the complainant removed the debris of the shed affected by fire without the consent and knowledge of the opposite party, as admitted by the complainant in para 23 of the complaint. 15. Lastly, the counsel for the opposite party invited our attention towards the proviso appended to Section 64 (UM)(2) of the Insurance Act, which runs as follows:

"Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor."

16. It was pointed out that the OP after perusal of various reports on record and other relevant record, made a final assessment of Rs.60,82,143/- vide letter dated 22.12.2003 and deposited the said amount with this Commission on 17.3.2006. It was argued that it should be held that the repudiation letter is valid, just and reasonable and the complaint should be dismissed.

17. We find it extremely difficult to countenance the contentions raised by learned counsel for the opposite party No. 1. The repudiation of the claim is badly flawed. It is surprising to note that while offering claim of Rs.60.82 lakhs, the OP did not raise any objection regarding ''origin and cause of loss'' and/or removal of/tampering with contents of affected godowns i.e. insured premises viz. machines, debris, electrical wiring and stocks. The opposite party cannot ride both the horses at the same time.

18. The issue regarding the short circuit was never raised by the opposite parties or Surveyors till 7.9.2004 despite of voluminous correspondence exchanged between the parties from March 2002 till September 2004. It stands proved that

the fire took place due to short circuit. The Surveyor''s report submitted by M/s S. Soni and company, records the finding that the fire had not originated in the factory of the complainant but had originated from the neighbouring godown of M/s RTI Spinners, who were in fact getting electricity from Vidyut Board and the short circuit

took place in the premises of M/s RTI Spinners. The OP itself confirmed it in its reply to interrogatories No. 24 at page 49 to 54 of part II file. The reply was given by Ms. Rajkumari, Senior Divisional Manager, New India Assurance Company Ltd. and the reply runs as follows: "24. In reply to the interrogatory No. 24, I say that the cause of fire in the case of RTI spinners is short circuit."

The case of the opposite party is outlandish mish mash of half truths, half falsehoods and contradictions.

19. It is also interesting to note that the opposite party itself settled the claim of M/s RTI Spinners, which arose out of the same fire. The claim of M/s RTI Spinners was settled in May, 2002. The argument that there was no electric connection in the premises in dispute, thus, pales into insignificance. Moreover, all the survey reports stated in tandem that the possibility of mala fide intention sabotage on the part of complainant, was completely ruled out. It is also noteworthy that the contents of the affected godown were removed only after informing the OP vide letter dated 11.3.2002. On the contrary, it is the opposite party, which pursued this matter in a lackadaisical manner. This was a cause of fire and the matter should have been settled within a week. Surveyors are supposed to give the initial report immediately. It is difficult for the owner of the premises i.e. M/s RTI Spinners to wait particularly when the premises in dispute are owned by it and not by his tenant. Again, there was delay in informing the TAC as well. Mr. Tikoo of M/s V. N. Sareen & Co., the second surveyor of OP was appointed on 27.3.2002 but he did not file any report and wasted the time of the insurance company. All the goods and materials were noticed by the first Surveyor, Shri Gulshan Kumar Dhawan, Surveyor & Loss Assessor. Photographs were also taken and there was no allegation that any goods were removed or tampered with.

20. Again, M/s S. Soni and Company made a final report in the sum of Rs.1,61,28,764/-. There is no reason to discard this report. In absence of any evidence in this regard, its report appears to have no guiles. Its piece of evidence towers among the rest. See the view taken by the Apex court in the Case of United India Insurance Company Limited and others vs. Roshan Lal Oil Mills and others 2000(10) SCC 19 ; the recent judgment decided by a bench headed by Hon''ble Mr. Justice Ashok Bhan in D.N. Badoni vs. Oriental Insurance Co. Ltd. I (2012) CPJ 272 (NC) and Sikka Papers Limited vs. National Insurance Company Limited and Ors. (2009) 7 SCC 777 . Lastly, the Apex Court in the case of Ishwar Singh vs. Oriental Insurance Company Ltd., SLP No. 21424 of 2015, decided on 6.7.2015 upheld the order of this Commission wherein the judgment of Apex court reported in Sri Venkateswara Syndicate vs. Oriental Insurance

Company Ltd. and another 2009 (8) SCC 507 was relied upon.

21. In the result, we hereby order that the opposite party No. 1/New India Assurance Company Ltd. will pay a sum of Rs.1,61,28,764/- alongwith interest @ 6% per annum from the date of filing of this complaint till its realisation. We also impose costs of Rs. 1 lakh upon the opposite party No. 1/New India Assurance Company Ltd. for causing unnecessary delay, harassment, mental agony, litigation charges etc. to the complainant. The said amount be paid within 90 days from today otherwise it will carry interest @ 9% p.a.

