
(2017) 02 BOM CK 0206

In the Bombay High Court

Case No : 588 of 2016 IN SUIT NO 2683 of 1984

Messrs. Haldyn Glass Works Private Limited

APPELLANT

Vs

The Oriental Fire and General Insurance Co. Ltd., & Ors.

RESPONDENT

Date of Decision : 06-02-2017

Acts Referred:

Citation : (2017) 02 BOM CK 0206

Hon'ble Judges : Anoop V. Mohta, A.M.Badar

Bench : DIVISON BENCH

Advocate : Zubin Behram Kamdin, Vivek Vashi, Parinaz Vakil, Utkarsh S.

Final Decision : Allowed

Judgement

1. The appellant has challenged Judgment and order dated 14th December 2005 of the learned Single Judge whereby, the following operative order is passed :

"In view of the above discussion I have answered issue Nos.1 to 4 accordingly.

Hence I pass the following order :

i) the defendant no.1 to pay plaintiff Rs.1,35,135=50 and future interest on the said amount at the rate of Rs.9% p.a. from the date of filing of the suit till the date of decree and further interest on Rs.1,35,135=50 Ps. At the rate of Rs.6% p.a. from the date of decree till realisation of the amount.

ii) The defendant no.1 to pay plaintiff the proportionate costs of this suit and bear their own.

iii) The suit against defendant nos.2 to4 stands dismissed with no order as to costs."

2. The basic events are as under :

During 01/09/1982 to 19/10/1983, the Appellant's workers, which had been unionized under the General Employees" Union (GEU)-a recognized workers

union, demanded a bonus (approx. of 30% of their salary). Appellant not agreed to the same. After numerous negotiations, the Appellant agreed to pay bonus of 23%. However, the workers refused this offer. On 19/10/1983 from second shift, the Appellant had been experiencing a lot of abusing, booing, shouting slogans, disorderly conduct, and various other unfair labor practices and other illegal acts on the shop floor. These acts had resulted in the disruption of the smooth functioning of the Appellant. The workmen at the Appellant's Production Department and of the Quality Control Department, in collusion and in combination with one another, damaged production at various levels. Even, good bottles manufactured were destroyed with an intention to cause wrongful loss to the appellants. Though the Appellant had the right for a cause of action, however, in a bid to ensure cordial relations, the Appellant refrained from doing so.

3. On 20/10/1983, the workmen of the Appellant's Production Department and of the Quality Control Department had in collusion and in combination with one another, launched the most pernicious method and dishonest act of goslow willfully and deliberately under normal working conditions. The workers indulged in these acts from the first shift of 20/10/1983. As a result of such acts, the normal output had dropped by over 70%. The Appellant by its letter dated 22/10/1983, addressed to Respondent No. 1 stated that the malicious damage by the workers of the Appellant was from the first shift of October 20, 1983. These malicious acts had consequently resulted in a production being deliberately brought down by over 80%. The Appellant, by its notices dated 24/10/1983 stated that, the Appellant had suffered heavy financial losses due to the intentional go slow tactics, adopted by the workmen of the Appellant. The output of the Appellant had been deliberately brought down by over 85%. On 24/10/1983, the Industrial Court passed an Injunction Order, restraining the Workers Union ("the GEU") from indulging in any further unfair labour practices and/or staging any demonstrations at the Premises of the factory and/or residence of the Appellant's Directors. Notice dated 25/10/1983 was issued informing the workers of the Industrial Court's Injunction, restraining the workers from any other acts. The workers were also informed that the said Order was binding upon them. The workers of the Appellant chose to blatantly disobey the Order of the Industrial Court and continued the unfair labour practices and other activities, with the malicious intent of causing damage. On 26/10/1983, the Appellant informed the local police authorities that the workers of the Appellant were blatantly and willfully defying Order dated 24/10/1983 passed by the Industrial Court. On 27/10/1983, the GEU stated that the general office staff had decided to donate 3% of the amount payable to each member of the staff towards the bonus payable to the workers.

4. On 28/10/1983, respondent No.1 informed the Appellant that they had appointed M/s. C.P. Mehta and Co. as the surveyors to assess the loss ("Surveyors"). The Surveyors visited the Appellant's factory on 29/10/1983. However, the malicious damage to the production had ceased. During

29/10/1983 and 06/06/1984 Correspondence moved between Appellants, Respondent No.1 and Surveyors whereby, the Appellants submitted the claim along with voluminous data proving the loss suffered on account of the malicious acts of the workmen; and Respondent No. 1 and Surveyors sought numerous clarifications and other information, which was promptly provided by the Appellant.

5. Appellant filed Suit No. 2613 of 1984 on 12/10/1984 for claiming loss suffered on account of the malicious acts of its workmen, under the 4 (four) policies issued by Respondent No. 1. The Surveyors' Report dated 20/11/1984 admitted a loss of Rs.4,95,043/(Rupees Four Lakh Ninety Five Thousand and Forty Three Only) but, nonetheless concluded that the loss was not caused by malicious damage. On 14/12/2005, the learned Single Judge passed the impugned Order, and hence, this Appeal.

6. After hearing the counsel appearing for the appellant and considering the survey report dated 20/11/1984 and the supporting evidence lead by the respondents and further by reading the reasons given by the learned Single Judge, we are inclined to interfere with the impugned reasons/Judgment/Order. Admittedly, as per the procedure, survey report prepared and filed by recording the every details and clear finding that "insured net loss is Rs.4,95,043/", however, the opinion was expressed that "the loss has not been caused by malicious damage".

7. The witness of respondents Mr.Milan D. Mehta (surveyor) has also supported the report and the loss amount, so recorded. However, he has also accepted that "the same has not been caused due to malicious damage". In the crossexamination, the actual loss suffered as recorded by the surveyor remained intact. One Mr.A.B.Raut, Assistant Manager of defendant has also accepted the survey report and its finding. Therefore, there is no issue with regard to the amount of loss, so recorded in survey report and supported by these main witnesses of the respondents. The learned Judge has reduced the amount, though by giving clear finding with regard to the malicious damage issue in favour of the appellant as under :

" So considering, all the facts and circumstances, I am inclined to accept the version of the plaintiff that the workers in the quality control department were resorted to such acts whereby they were deliberately, with malicious intention of causing loss to the plaintiff company discarding good bottles as defective bottles. However, besides this the plaintiff has not proved any other overacts or malicious acts committed by the workers which caused damage to the plaintiff's production. If the workers would have carried out such other activities as mentioned by the witnesses, then certainly they would have made reference about the same in the notice or in the letter issued to the Insurance Company. However, there is no mention of other activities"

8. In our view, the findings so recorded by the surveyor in the survey report,

supported by two witnesses of respondents, there was no reasons to interfere with the quantum, so decided by the authorities, as the same was even admitted by the Assistant Manager of the respondents.

9. The only issue was as objected by the witness of the respondents with regard to "the malicious damage", and not on the quantum as noted. The learned Judge has not accepted that part of the report and the evidence of two witnesses and thereby, rejected the defence of the respondents itself, on the issue of "the malicious damages". There is no counter challenge by the respondents. We are also of the same opinion with regard to this issue. Therefore, in our view, this is a case where we are inclined to interfere with the Judgment/Order passed by the learned Single Judge of reducing the amount, as recorded above.

10. In such insurance claim matters ultimately the respondents and their officers, who after due inquiry by following the due procedure, have arrived at a conclusion including noted the actual loss, which is requisite and required for a surveyor to place on record, so that appropriate compensation/quantum of award can be awarded. Having done as per the power and by following the due procedure, this finding of reduction of quantum, ought not to have been disturbed by giving the reversal finding, first time in the impugned Judgment. This is also for the reason that, the learned Judge has recorded that the plaintiff's reduction was struck down about 35%. This appears to be contrary to the actual material and correspondence placed on record, one of which is page 47 whereby, 85% is mentioned. The reduction, therefore, so made by the learned Judge is appeared to be incorrect and it is contrary to the record itself. That resulted into reduction of the amount. We are convinced in the facts and circumstances of the case, based upon the documents and evidence placed on record and specific events, the finding of malicious damage is in favour of the appellant, as observed by the learned Single Judge, the loss to the tune of Rs.4,95,043/required to be granted in favour of the appellant, by setting aside the order to that extent. The respondents have not challenged this Judgment, including the finding given by the learned Single Judge specifically, about the malicious damage aspect.

11. The leaned counsel appearing for the appellant fairly stated that the defendant claimed the decree to the sum of Rs.4,91,187/only and interest thereon, therefore, the Judgment and order be passed accordingly.

12. In the result, following order : i) Appeal is allowed.

ii) The Judgment and Order is modified to the following extent.

(a) Respondent No.1 to pay appellant 4,91,187/and future interest on the said amount at the rate of Rs.9% p.m. from the date of filing of the suit till the date of decree and further interest on Rs.4,91,187/at the rate of Rs.6% p.m. from the date of decree till realisation of the amount.

(b) Respondent No.1 to pay appellant the proportionate costs of the suit and

bear their own.

(c) Suit against respondent Nos.2 to 4 stands dismissed with no order as to costs.

iii) No costs.