(2005) 08 AHC CK 0152

In the Allahabad High Court

Case No : Original Petition No. 68 of 1996

M/s. Azeel International Pvt. Ltd — APPELLANT

Vs

M/s. United India Insurance Co. Ltd — RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:
Consumer Protection Act, 1986 — Section 2(1)(g)

Citation : (2005) 08 AHC CK 0152

Hon'ble Judges : M.B.SHAH, J and Dr.P.D.SHENOY, J

Final Decision : Disposed Of

Judgement

M. B. Shah, J.

1. It is the say of the Complainant, M/s. Azeet International Pvt. Ltd., that it was dealing in manufacture of corrugated fibre board and boxes for packing of horticulture, industrial electronics and dairy products, etc. Its plant was located at village Barotiwala, District Solan, Himachal Pradesh. The working process of the plant had been for manufacturing fiveply corrugated fibre board from kraft paper by a fully automatic and integrated system where all the five piles of the board would move at a time and the board would be dried instantly and then the corrugated board would be cut off to the required dimensions. The Complainant has described the further process, with which we are not concerned . For this, it is its say that it had the factory building,

administrative block, boiler tank, waterstorage plant and machinery, generator room and boiler house, security room, electricity transformer, fuel oil tank, etc. insured with M/s. United India Insurance Co. Ltd., of Mohali Branch, for a sum of Rs. 10,5,95,000/, and was paying insurance premium regularly at the rate of Rs. 23, 149/ per year. The Complainant, for this purpose, has taken a fire policy for the period 25th August, 1993 to 24th August, 1994.

2. Unfortunately, on 13111993 fire broke out in the factory premises and destroyed the building and the material lying therein. Immediately a report was

lodged with the Police. The copy of the FIR lodged with the Police Station, Barotiwala, is dated 16111993. For that purpose, a telephonic message was sent on 13111993 at 1.00 a. m. Phonograms were sent to the Madras and the Mohali branch offices of the United India Insurance Co. Ltd., on the same day. A separate letter dated 16111993 was also addressed to the Regional Manager, United India Insurance Co. Ltd., at Chandigarh, stating the estimated loss at Rs. 65 lakhs caused to the building, plant and machinery, accessories, administrative block, electrical installations etc., and Rs. 35 lakhs for the loss caused to the stocks/raw material, etc.

3. On the basis of the said information, the Complainant was informed by the Insurance Company that Shri K. C. Gupta, Surveyor and Loss Assessor of Panchkula, Haryana, has been deputed for preliminary survey, and M/s. Digamber Lal Puri and Sons, Delhi, have been appointed as final Surveyors, for assessing the loss caused to the Complainant due to fire on 13111993. Mr. K. C. Gupta, Surveyor and Loss Assessor, wrote a letter dated 6121993 to the Complainant seeking certain documents for making preliminary survey. Thereafter, the Complainant wrote letters to the Insurance Company to provide necessary funds to protect the saved property, as the savedproperty was lying in open as the roof was burnt in the fire. This was necessary, because of the advent of winter rains. The Complainant, thereafter, supplied the necessary records to the Surveyors. As nothing was heard, complaint was filed before this Commission on 1141996 for a direction to the Insurance Company to pay Rs. 88.67 lakhs to the Complainant for the loss suffered by it.

4. Thereafter, on 22nd August, 1996, the Insurance Company offered to settle the claim by paying Rs. 15, 40, 144/ on a condition that the Complainant shall give a receipt in full and final settlement of the claim. The Complainant refused to do so on the ground that he was entitled to have much more than what was offered. As the Complainant has not given the receipt, the Insurance Company did not pay the amount as assessed by the Surveyor. However, when the matter came up for directions, by order dated 24th February, 2004, we directed the Insurance Company to pay the said amount of Rs. 15, 40, 144/ with interest at the rate of 12% p. a. as the Complainant has taken loan from Himachal Pradesh Financial Corporation to whom he was required to pay the amount with interest at the rate of 12.5% p. a. plus penal interest. At the time of hearing of this matter, it is admitted that the said amount is paid by the Insurance Company.

5. Therefore, the only question which requires consideration is whether the complainant is entitled to have any additional payment of compensation.

6. The Complainant has claimed Rs. 27.26 lakhs towards the damage to buildings and Rs. 40.95 lakhs towards a damage to the machinery. i. e. in all Rs. 68.21 lakhs, from the Insurance Company. The claim for stock was rejected on the ground there was no Insurance coverage for the stock.

7. For appreciating the claim we would refer to Surveyors reports.

I. Preliminary Survey Report dated 2241994 by Mr. K. C. Gupta (Panchkula):

As per the preliminary survey report, Mr. K. C. Gupta, visited the place on 16111993. In the said report, it is mentioned that the main activity of the Complainant Company is manufacturing of corrugated fibre board and cartons for packaging of apples and other fruits to protect the forest wealth and the project was approved and appreciated by the Himachal Pradesh Government. In the preliminary survey report it is also stated that cost of the project was as under :

Cost of Project Rs.

Land 0.84 lakhs

Building and Site Development 32.48 lakhs

Plant and Machinery and other fixed assets 76.64 lakhs

Preoperative expenses 16.69 lakhs

Margin money 10.00 lakhs

Total 127.65 lakhs

Means of Finance Rs.

Loan from HDFC 44.20 lakhs

Loan from HPIDC 40.03 lakhs

Central Subsidy 25.00 lakhs

Soft Loan Assistance 5.00 lakhs

Promoters share 13.42 lakhs

Total 127.65 lakhs

It is also mentioned that the construction of the factory building was firstclass for all purposes and the main plant consisting of 5 ply combine automatic corrugating plant and box making plant with board printer was purchased from M/s. Micro Mechanical Industries Pvt. Ltd., Bombay in the year 1987 at the cost of Rs. 28, 74 310/. The rest of the machinery was purchased from different manufacturers/suppliers. The total cost of the buildings as on 3131993 was Rs. 62.25 lakhs and the depreciated value of the same was Rs. 53.25 lakhs. Similarly, the total cost of the machinery and plant as on 3131993 was Rs. 74.19 lakhs with depreciated value as Rs. 55.78 lakhs. It is also mentioned that the fire burnt stocks of corrugated sheets and boxes were removed by the Fire Brigade to extinguish the fire completely and that fire originated within the main building and it could be due to short circuit only. He has submitted the preliminary report along with various documents of purchase and estimates for building.

Final Survey Report of M/s. Digambar Lal Puri and Sons. Dated 7121994:

Thereafter, there is a report dated 7121994 by M/s. Digambar Lal Puri and Sons, Surveyors and Loss Assessors. They have also arrived at the conclusion that the exact cause of fire has remained unascertained but the same can possibly be attributed to electric shortcircuit in electric fittings of fire engulfed area, and it is stated that evidently fire was quite severe in nature. He has assessed the loss to the building as under :

A. Loss to main factory, ground floor as per details worked out in detailed abstract of cost by Mr. Kishan Chand Gupta, NOIDA (Annexure 9) 7,58,911

B. Loss of Administrative Block building on 1st/Mezzenine floors as per details provided by Mr. Kishan Chand Gupta (Annexure g) 5,18,909

12,77,820

Less : Depreciation at 10% 1,27,782

11,50,038

Less : value of salvage @ 15% 1,72,506

9,77, 532

With regard to the assessment of loss caused to the machinery, the Surveyors had a long discussion with the insured, but finally they have observed that the insureds adamant views about the loss caused to the machinery and the difference of opinion, the insurers were asked to appoint some other agency/ person to finally assess the loss. They have also referred to the estimate submitted by M/s. Subhash Anita and Associates, Chandigarh, whereby the damage to the property was assessed at Rs. 23,02,595/ details thereof are mentioned in the report dated 331994.

III.Valuation Report of Mr. Kishan Chand Gupta (NOIDA), dated 881994:

Thereafter, Mr. Kishan Chand Gupta, Chartered Engineer and Structural Consultant, has been engaged by M/s. Digambar Lal Puri and Sons, to assess the value of the factory building and administrative block (above foundations) as in November, 1993. He had, vide his report dated 881994, assessed the value of the main shed of the factory building at Rs. 29,12,434/ and that of the administrative block at Rs. 10,97,947/. The total value assessed, after depreciation, was Rs. 36.09 lakhs (26.21 lakhs + 9.88 lakhs). Thereafter, he has assessed the damage caused to the main factory (excluding Administrative Block) at Rs. 7,58,911/ and for administrative block at Rs. 5,18,909/. Total loss assessed for these two buildings was Rs. 12, 77,820/. There is a note to the effect that 10% depreciation to be deducted if policy required. It is further mentioned that

in arriving at Rs. 12,77,820/ dismantling charges and salvage charges have both been ignored as they would mostly balance each other. They have assessed the main shed and administrative block as if its height is 20 ft.

IV. Machinery Report of M/s. B. K. Sharma and Associates, dated 2681995:

For the machinery there is a report dated 26th August, 1995 of B. K. Sharma and Associates whose assessment of loss is as under:

Machinery Loss as assessed by Surveyors

Sl. No. Particulars Assessment by the Surveyors Depreciation

(In Rs.) (In Rs.)

1. Main plant 2,65,000 5,000

2. Box stitching machine 20,000

3. Board Printer 15,000

4. Heavy duty Platen machine 2,000

5. Slotter/creaser 1,000

6. Workshop equipment 35,000

7. Electrical equipment 40,000 5,000

8. Working table 11,000 5,500

9. Fire fighting equipment 13,750 2,500

10. Screen printing equipment 5,15,000 3,60,500

11. Weighing scale 10,000

12. Laboratory equipment 64,000 6000

13. Stores and spares 1,00,000 4,000

14. Boiler accessories 50,000

The Surveyor has assessed the loss in two methods : (i) on reinstatement basis ; and (ii) on depreciation basis.

On reinstatement basis, he arrived at the conclusion that assessment of the machinery without boiler is Rs. 9,09,250/. Thereafter, he has arrived at the conclusion that there was under insurance, because the total valuation of the machinery comes to Rs. 63.71 lakhs and the insurance was taken for Rs. 47 lakhs. Hence, there was under insurance, he assessed the loss at Rs. 6,70,117/ for the machinery plus Rs. 19,240/ for the boiler, the total of which comes to Rs. 6,89,357/.

On depreciation basis, he arrived at the conclusion that the total loss was Rs. 9,81,750/. However, he deducted Rs. 3,51,625/ for depreciation. In all, he assessed the loss at Rs. 5,80,125/. Thereafter, he further deducted salvage value at Rs. 22,500/ and assessed the loss at Rs. 5,57,625/. Thereafter, for boiler he assessed the net claim as Rs. 19,215/, and added the amount of Rs.19,215/ for loss of boiler; the total assessed loss was Rs. 5,76,840/ (i. e. Rs. 5,57,625 plus Rs. 19,215).

The Insurance Company selected to pay the less amount on the depreciation basis and offered to pay Rs. 5,76,840/ for damages to the machinery.

Submissions :

8. Learned counsel appearing on behalf of the Petitioner submitted that the aforesaid reports are given after a lapse of 3 years, and because of the delay on the part of the Insurance Company, the Complainant is totally ruined. She submitted that there was no reason for the Insurance Company not to accept the assessment for the building as valued by M/s. Subhash Anita and Associates, Chandigarh, at Rs. 23.03 lakhs. She further submitted that K. C. Gupta, Surveyor, assessed the loss to the building at Rs. 12,77,820/. This assessment is based on the assumption that the height of the building was 20ft. As a matter of fact, as proved on record, the height of the building was 30ft. Therefore, the building was required to be properly assessed on the basis of the height, i. e. at 30ft., and if that is done there is no reason for not accepting the valuation given by M/s. Subhash Anita and Associates, Chandigarh, at Rs. 23,02,595/.

9. For the machinery, she submitted that the Insurance Company has taken adamant stand that fire has not affected the machinery. This was totally wrong. Sophisticated machinery were badly affected because of the heat of the fire and could not be restarted. Therefore, there was no reason for not paying the amount on the basis of the total loss of machinery. For this purpose, she was referred to the certificate given by the manufacturer, M/s. Harneet Metals Pvt. Ltd. that the machinery cannot be restarted. In any case, she has submitted that the so called deduction on the ground of depreciation by the Surveyors are totally arbitrary and unjustified.

10. It is also contended that the Complainant requested the Insurance Company to settle the claim. As it was not settled within the reasonable time, the Himachal Pradesh Financial Corporation put the unit to sale repeatedly, and on 1191996 it was sold for a sum of Rs. 20 lakhs. For this purpose, the Complainant has relied upon the tender notices and the letter dated 1st November, 1996 written by the H. P. F. C. It is, therefore, submitted that the value of building, plant and machinery, accessories along with electrical installations at Rs. 105.95 lakhs. And, therefore, due to the fire the loss was more than Rs. 80 lakhs.

11. As against this, the learned counsel Mr.. Raina submitted that the assessment made by the Surveyor is just and reasonable and it does not call for any interference.

12. Findings:

(a) As stated in the preliminary report total cost of the building as on 3131993 was Rs. 62.25 lakhs; depreciated value was Rs. 53.25 lakhs. Similarly, the total cost of machinery and plant on the said date was Rs. 74.19 lakhs with depreciated value at Rs. 55.78 lakhs. If this aspect as well as the loss assessed by the independent Surveyor, M/s. Subhash Anita and Associates, Chandigarh vide report dated 331993, is taken into consideration, it cannot be said that the assessment of loss to the building at Rs. 2302595/ was in any way erroneous. This is also in consonance with the fact that Kishan Chand Gupta in his report dated 8894 assessed the loss caused to main factory and the Administrative Block at Rs. 12,77,820/. However, the said assessment was on the assumption that the height of the building was 20ft.

As a matter of fact, the height of the building was 30ft. This is specifically stated in the report dated 22nd April, 1994 by Mr. K. C. Gupta. He has stated that:

"The insured factory building is laid over a land of 3 Bighas and 1 Biswa and the covered area is 22000 s. ft. approximately. The building consists of main factory block, laboratory block, (1st floor) Boiler House, Watchmans room, Office Block, W. C. Block, Tube Well house, Stores for paper waste etc., as reported the building was constructed as per requirement of the Machinery and Project, under the supervision of the Financial Institution having a height of 30 feet keeping the provision of Gantry crane, required to run the plant at full capacity. The building is built of burnt bricks walls and the main block (processing/storage) with A. C. C. roofs resting on steel structure. The roofing of other Blocks i. e. Office Block in front including the Laboratory portion is of lintered roofing. The construction of the factory building is 1st class for all purposes."

If that height of 30 ft. is taken into consideration then, there was no reason to doubt the detailed survey report given by M/s. Subhash Anita and Associates, Chandigarh. Admittedly, the building was constructed before five years and M/s. Kishan Chand Gupta has recommended depreciation by 10%. If we take into consideration the total cost of the building as stated in the preliminary survey report, it is apparent that the total cost was Rs. 62.25 lakhs and the depreciated value was Rs. 53.25 lakhs. In such set of circumstances, the valuation of M/s. Subhash Anita and Associates, Chandigarh, was required to be accepted. Even in Kishan Chand Guptas report, it has been specifically mentioned that there is no question of further deduction because dismantling and salvage charges would balance each other. Therefore, loss for the building can be reasonably assessed at Rs. 23,02,595 less 10% depreciation, i. e. Rs. 20,72,336/.

(b) The next item is with regard to machinery. It is true that for machinery Complainant has produced on record certificate given by Harneet Machines Pvt. Ltd., that all the machines were beyond repair and hence no repair estimates were given. However, it is difficult to accept this report in view of the fact that Surveyors have found that machinery could be repaired. Now, that is the main dispute between the parties all throughout. But, for this there is no other evidence except Surveyors report. If we take the figure given by the Surveyors, M/s. B. K. Sharma and Associates, whose assessment is accepted by the Insurance Company, into account, then for the loss to the machinery on reinstatement basis the damage was for sum of Rs. 6, 89,357/. However, the

Insurance Company has paid the loss on the basis of depreciation value at Rs. 5, 76,840. In our view, if the machinery was not working and it was required to be made functional

, then the reinstatement basis was the appropriate method of valuing the damages. Hence, the Insurance Company shall pay Rs. 6,89,357/ towards the damage to the machinery.

(c) At this stage, we have to accept the contention of the learned counsel for the Complainant that there was unusual delay in setting the claim. The fire took place on 13111993, and the Complainant was trying to see that he is reimbursed as per the insurance policy. However, nothing was done for years together, and, as such, he is ruined, because financial institution took over possession of the premises, because of the failure on the part of the Complainant to pay the amount on due dates. Thereafter, the Complainant was required to approach this Commission on 1141996. At that stage, on 2281996, the Insurance Company offered to settle the claim by paying him Rs. 15,40,144/ with a specific condition that the Complainant shall give receipt towards full and final settlement of the claim. This was also undue coercion. Finally, as per the order dated 2422004, the Insurance Company paid the settled amount with interest as directed. For this harassment also the Insurance Company is required to pay compensation to the Complainant. We assess the said compensation at Rs. 1 lakh.

In the result, the complainant is partly allowed. The Insurance Company is directed to pay loss as under :

(i) for the building .... Rs. 20,72,336

(ii) for the machinery .... Rs. 6,89,357

Rs. 27,61,693

Less : The amount paid Rs. 15,40,144

Rs. 12,21,549

The Insurance Company shall pay the balance amount of Rs. 12,21,549/ to the Complainant with interest at the rate of 12.5% from six months after the occurrence of fire, i. e. 1351994 till the date of payment. The Insurance Company shall also pay a sum of Rs. 1,00,000/ towards the compensation, as mentioned above. These amounts shall be paid within a period of eight weeks from today.

The complaint is disposed of as above.

Order accordingly.

