(2003) 09 AHC CK 0169

In the Allahabad High Court

Case No : Original Petition No. 228 of 1997

New Horizon Sugar Mills Ltd. APPELLANT

Vs

United India Insurance Co.Ltd. RESPONDENT

Date of Decision : 11-09-2003

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

Citation : (2003) 09 AHC CK 0169

Hon'ble Judges : K.S.Gupta, J and B.K.Taimni, J

Final Decision : Dismissed

Judgement

B.K. Taimni, Member.

1. This complaint has been filed by the Complainant, M/s. New Horizon Sugar Mills Ltd. alleging deficiency in service on the part of the Opposite Party, United India Insurance Co. Ltd.

2. Undisputed facts of the case are that the Complainant has a sugar factory of standing which also has a copower generation unit for selfconsumption. This power plant generated electricity by consuming dry bagasse as feed stock. Dry bagasse is used in the boiler as feed stock and the steam produced in the boiler passed through 2.2 M.W. turbine connected through a shaft to Alternator and Excitor. Below these machines on lower level, there is a cooler pit from which cool air gets sucked by the generator cooling fan so as to prevent the turbine from overheating and in the said pit are located bus bar hangings, current transformer, cables lamp etc. The cables run from cooler pit to the adjacent panel room. A line diagram was furnished to the opposite party at the time of the Policy.

3. It is also not disputed that the Complainant had a valid policy for the dated 111997 to 31121997 for an amount of over Rs. 28 crores. It is also not in dispute that present dispute relates to Power Generation Plant which is insured in the said policy for Rs. 321 lakhs. On 15th January, 1997 there was an alleged fire

accident in the Complainant Mill causing extensive damage to the Turbine. The matter was reported to the Opposite Party. In the mean time, the Complainant also constituted an internal committee to go into the causes of accident, as also obtained, report from the expert of M/s. Edison Electrical Works, Chidambaram. On the matter being reported to the Opposite Party they appointed the first surveyor and the second surveyor. These surveyors'' reports were not made available to them and their claim not being settled within a reasonable time. It is in these circumstances that this complaint was filed on 2991997 alleging deficiency in service on the part of the Opposite Party, praying for following reliefs:

?(a) direct the opposite parties to pay Rs. 125 lakhs being the amount of compensation claimed under policy No. 091100/483/11/04/020.L.R./96 valid for the period 111997 to 31121997;

(b) direct the payment of interest at the rate of 24 per cent from the date of the claim and the date of actual disbursement of the claim;

(c) appoint an independent surveyor and direct him to conduct fresh survey and place the report before the Hon''ble National Commission; and

(d) pass such further order or orders as this Hon''ble National Commission may deem fit and proper in the circumstances of the case.?

In the written version filed by the Opposite Party, their stand is that the occurrence of damage is on account of mechanical failure and is not of electrical origin. Thus, it falls outside the terms of policy as brought out in Exclusion Clause (g), which reads as under:

?Loss or damage to any electrical machine, apparatus, fixture or fitting... or to any portion of the electrical installation, arising from or occasioned by overrunning excessive pressure, short circuiting, arcing self heating or leakage of electricity from whatever cause (lighting included, provided that this exemption shall apply only to the particular electrical machine, apparatus, fixture, fittings or portion of the electrical installation so affected and not to other machines, apparatus, fixtures, fittings, or portions of the electrical installation which may be destroyed or damaged by fire so set up?.

(Emphasis supplied).

It is their stand that they immediately appointed the spot surveyor whose report is quite clear. The opinion of the spot surveyour is as follows:

Cause An analysis:

The exact cause could be analyzed, only after having few more visits and having an interaction with the Representative of the manufacturer. However, it could be analyzed that the loss might have occurred due to any of the following probable cause.

(0.1) The Governor might have failed first, which might have resulted in an excess flow of steam, resulting in for a high speed. Thereby, there is a possibility for the shaft to break and short circuit. This might have resulted in a push of the shaft to lead for the damage to the footing of the exciter and the bearing pedestal. In continuation of this, there might have been a short circuit in the bus bars and burning of the current transformer coils.

(0.2) The fire might have got initiated by the breakage of the inspection lamp, leading for a spark. This might have burnt the sleeves of the cable, connecting wires of the current transformer, Hylum insulation of the bus bars and lead for the breakage of the inslators. Short circuiting between phases of the outgoing terminals of bus bars might have resulted, leading for magnetic inbalance in the rotor winding. This might have created a major vibration and caused a damage to the base of the support pedestal at the exciter end. As the exciter and bearing pedestal were thrown away, the rotor shaft might have got altered from its positions abnormally and there might have been a change in the axis of rotation. This might have caused for the breakage of rotor shaft at the gear box end. As a consequent effect of this, the alternator body might have got pushed towards, the gear box to cause the disaster to gear box and the Diaphragm units.

Opinion :

If the cause of loss is as per the first cause analyzed earlier, it becomes a loss due to mechanical break down only and does not fall in the accepted perils of a fire policy.

If the cause of loss is as per the second cause, analyzed earlier, it is a consequent loss of a small fire occurred due to leakage of electricity. The Section (g) of the exclusions of the fire policy reads as ?The insurance does not cover the loss of or damage to any electrical machine, apparatus, fixture or fitting (including electric fans, electric household or domestic, appliances, wireless sets, television sets and radios) or to any portion of the electrical installation, arising from of occasioned by over running, execessive pressure, short circuiting, arcing self heating or leakage of electricity from whatever cause (lighting included), provided that this exemption shall apply only to the particular electrical machine, apparatus, fixtures, fittings or portion of the electrical installation so affected and not to other machines, apparatus, fixture, fittings or portion of the electrical installation which may be destroyed or damaged by fire so set up.

4. The fire has been only to the insulating material of the bus bars and bunches wire of the current transformer. The loss to these items are excluded, as the loss is due to a fire caused either by short circuiting or by leakage of electricity. There has been no spreading of fire, so set by the leakage of the electricity to cause damage to other machine or a portion of electrical installation. Hence, the claim, if it is a resultant of the second cause analyzed, falls within the excluded peril of the fire ''C'' policy.

5. The admissibility of the claim due to any other possible cause, could be

analyzed only on further inspection and investigation.

6. The second surveyor M/s. Sunder Raman & Associates relying upon the report of expert Mr. B. Krishnaswamy described the cause of loss to be on account of mechanical failure. Thus, as per the written version filed by the Opposite Party, since the damage caused in this was not covered by the terms of the policy being a case damage on account of mechanical failure not by any fire, the repudiation of the claim was in order. Rejoinder was filed rebutting the points made by the OP and reiterating the point made in the complaint in its complaint.

7. Affidavits by way of evidence were also filed, 3 on behalf of the complainant and 4 on behalf of the Opposite Parties.

8. We heard the parties. Of these witnesses only 2 witnesses, namely, Shri M.D.N. Prabhakar and Shri S. SunderRaman were crossexamined. Arguments advanced by the learned Counsels for the parties were heard.

9. Basic facts are not disputed hence not being reproduced. The issue revolves around the fact whether the damage caused was on account of ''fire'' or was it caused by mechanical failure?

10. The case of the complainant can be summarized in following words:

?The bursting of the bulb resulted in igniting the PVC wires thereby creating fire to the current transformer provided in the main bus bar, the supporting Hylum Sheets and the insulating barriers got charred. The flames leapt upto the terminals to the alternator since they were in the cooling air suction room. Due to the fire in the terminals the flames enveloped the alternator disturb the magnetic imbalance in the rotor winding creating major vibration and damage to the base of the support pedestal at excitor end. The bed bolts of pedestal were also broken and the alternator raft or shaft was lifted abnormal due to the sudden change in the axis. Due to the sudden imbalance the alternator excitor, the turbo flex coupling was flown aside due to centrifugal force. As a result of this, the turbine alternator and the excitor were completely damaged beyond repair.?

11. Whereas the case of the Opposite Party can be summarized in following terms:

?As every horizontal rotor deflects under its own weight, it is never possible to have the centre of mass and the true centre line of the shaft coincide. As the rotor speeds up, this eccentricity of mass results in an increasing centrifugal force tending to bend the shaft. At a certain speed this unbalanced centrifugal force neutralizes the elasticity of the shaft which resists deflection. The shaft deflection increases progressively, and, if unrestrained, failure would result. In an actual Turbine, the shaft will rub before this happens, causing considerable damage. The speed causing indefinitely large deflection of the rotor for a small initial eccentricity is the critical speed of the shaft.?

The letter of repudiation dated 2751997 issued by OP reads as follows:

?We have scrutinised all the relevant documents in the above claim. From a careful consideration of the material papers including the Final Survey Report dated 2341997 submitted by the independent Surveyors M/s. Sunder Raman & Associates, it is seen that the proximate cause for the damage and loss is mechanical failure consequent to the Turbine reaching undamped critical speed following the reduction on its load due to stoppage of crushing, and running at the same speed for a longer period.

It is further seen that the occurrence of damage is not of electrical origin or by fire but was purely due to a mechanical breakdown wherein due to the abnormal vibration caused by the Turbine running at undamped critical speed for a long period rubbing of the Turbine Rotor on the casing and the rotor of the generator on the stator had occurred resulting in thick sparking and followed by extensive damage to the Turbine assembly, Gear Box casing, Generator Rotor, Excitor etc.

In as much as the loss had not been caused by fire or any of the other causes covered by the Policy and since mechanical breakdown, the proximate cause for this damage, does not fall under the purview of a Fire ''C'' Policy, we REGRET out inability to proceed further with the CLAIM?.

(Emphasis supplied)

It is these grounds which complainant was to meet, which in our view he has failed to do so.

12. It is pertinent to note that the complainant wishes to rely upon the two reports generated by a committee of their own officers to go into the cause of loss as also the report from M/s. Edison Electrical Works. We do not see any affidavit filed on behalf of the Turbine operator. It is on record that while he is said to have left the complainant''s employment but his whereabouts are known and was available. We also do not see any affidavit filed on behalf of M/s. Edison Electrical Works whereas we have on record an affidavit of the second surveyor as well as of that of the expert Mr. B. Krishnaswamy on record.

13. It is an accepted legal proposition that the report of the surveyor who is appointed under the provisions of the Insurance Act have to be given greater importance as has been held by the Hon''ble Supreme Court and in this Commission in catina of judgments. The second surveyor has relied upon the expert opinion of Mr. B. Krishnaswamy to suggest that the damage was caused by mechanical failure. Despite all the time available to the complainant he has not been able to produce even one single expert witness to counter the expert opinion rendered by Mr. B. Krishnaswamy. His affidavit remain unrebutted hence has to be accepted as unrebutted piece of evidence, which inter alia means that read together the deduction shall be that the damage was caused by mechanical failure, thus taking the instant damage outside the provisions of the insurance policy as any loss or damage arising from or occasioned over running excessive

pressure are excluded from the terms of policy. Coupled with this, we have the report of the surveyour Mr. S. SunderRaman. Paras 7.11 to 7.16 of his report reads as follows:

?(7.11) Further, during our visit, we had found all the coupling both between Turbine & Gear Box and Gear Box & Generator in tact. Had there been a fire, which in turn resulted in short circuit in the rotor assembly leading to vibration, as indicated by the Insured''s Electricial Consultant, then any abnormal vibration with electrical short circuiting within the Generator would have first resulted in the shearing of the Bolts of the coupling because of a mechanical failure, since the Generator, as a Unit, is a driven system and not a prime mover.

(7.12) Under ?Inspection and Observation? supra, we have also pointed out that based on the physical inspection of the Generator and Stator windings, there is no evidence of fire mark or burning of insulation.

(7.13) The incident of fire would have definitely resulted in abnormal heat generation and consequent decolouration of the windings, peeling of pain on the casing and charring of the entire winding assembly, which had not taken place.

(7.14) Further, beneath the Generator the Copper Bus connector was totally in tact and clean free from any char marks as is evident from the photographs, thereby the possibility of flame travelling from the current Transformer Pit upwards does not arise. (All emphasis supplied).

(7.15) We have also observed that the Insured, on his own, have upgraded the capacity of TG Set without any reference to the Manufacturer nor have informed the Insurers about the same, which may please be noted by the Insurers.

(7.16) Thus, based on our inspection, technical anyalysis on the cause of loss, review of the various Failure Reports offered by the Insured, it has become evident and clear that the proximate cause for this damage does not fall under the purview of Fire ''C'' Policy and in our opinion the damage has occurred essentially due to a mechanical failure. Thus, the claim does not entail admittance.?

14. This clearly typifies that had there been fire, it would have left us ''telltale'' marks which are conspicuous by their absence. These observations of the Surveyor have not been rebutted in any manner.

15. We have also seen the internal report prepared by the complainant. Immediate witness was the turbine operator and next in line was Junior Engineer on duty. How they describe the incident is that they observed sparking and heavy blasting sound. Word ''Fire'' they allegedly mention at the end. In the totality of the facts and material brought on record by the parties, we are inclined to believe that it was a case of mechanical failure following the reduction of load on Turbine, because of stoppage of crushing activity, the Governor had failed to regulate the speed of Turbine. In our view the complainant has failed to rebut by way of any expert evidence, the reasons for damage as expounded by

the surveyor duly supported by Expert evidence as also complainant has failed to prove by any concrete evidence or proof that it was a case of fire started by the bursting of the bulb leading to chain of events resulting in the reported loss. This is not proved to be even a proximate cause of loss. The two key witnesses, Turbine Operator and Junior Engineer do not say so even as per the internal enquiry of the complainant. Finding of this report also does not say a word on any nexus between the alleged bursting of the bulb and the damage. The finding of internal inquiry report reads as follows:

?The damage to the Turbine was mainly due to alternator rotor damage and the alternator rotor damage was mainly due to imbalance of the magnetic field and the imblanace was mainly due to the opening of the end windings and the opening of the end winding was due to fire incident occurred in the Bus bar Chamber.?

The complainant has not been able to prove his case or meet the grounds of repudiation.

16. In the light of above discussion, we are unable to appreciate the arguments advanced by the learned Counsel for the Complainant that fire was caused by burning bulb and leading to the chain of events responsible for the damage. As held out by the expert witness Mr. B. Krishnaswamy, it was a case of mechanical failure and short circuiting if any could have only further contributed to the damage. Damage by mechanical failure is not by fire hence outside. Fire Policy. Loss by short circuit if any falls in the exclusion clause. Thus, we find that the repudiation is in order. In view of above we are unable to see any merit in the complaint which is dismissed.

17. No order as to costs.

Complaint dismissed.