**(2014) 07 NCDRC CK 0019**

**In the National Consumer Disputes Redressal Commission**

NEW INDIA ASSURANCE CO. LTD. APPELLANT

Vs

G.B. Springs Pvt. Ltd. RESPONDENT

**Date of Decision :** 16-07-2014

**Acts Referred:**

**Citation :** 2014 4 CPJ 54

**Hon'ble Judges :** V.K.JAIN J.

**Final Decision :** Appeal dismissed

## Judgement

1. THE respondent M/s. G.B. Springs Pvt. Ltd. is engaged in manufacturing of springs for the Indian Railways, Defence Department and Ordinance Factories and had got its assets including the stock of raw material, finished products etc. insured with the appellant company. A claim was lodged by the respondent/ complainant with the Insurance company alleging therein that on 19.2.2009, when the cooling plant was on, some anti social element damaged its pipe line, causing loss of Rs. 21,79,590 to them. The matter was also reported to the police. The Insurance Company deputed a surveyor namely Sh. Preetesh Joshi who inspected the spot and submitted a preliminary report, which, to the extent of its relevant, reads as under: "Cause Of Loss:

As per verbal statement of Sh. Hari Narayan Jha that on the previous, night, i.e., on 19.2.2009, while the shift was under operation, the quenching oil in the Tank got empty and it was noticed that the Oil Pipe outside the factory shed is broken and the Oil is spilled out.

Observations:

The Insured''s operational staff Sh. Hari Mohan Jha and Sh. Jai Prakash, who were there in the duty at the time of loss were interrogated and it was told by them that, while the work was under progress in the night shift, suddenly the quenching Tank got empty and no more Cool Oil was being supplied into the Tank and they checked and found that the Pipe outside the Factory shed was broken and the pipes were fallen on the ground and the Oil spilled over and drained out through the drain into the field outside the Factory Premises.

The Oil Tank was Empty and All the Pipes outside the shed were lying on the ground uprooted and only one pipe had broken from the Elbow Joint.

The loss has definitely taken place on the said day and time and in my opinion it seems to be a clear case of malicious damage and any connivance or misrepresentation on the part of the Insured is ruled out.

The extent of loss sustained could not be ascertained, as the Insured was not available during that time."

It would thus be seen that the surveyor Sh. Preetesh Joshi accepted the case of the complaint that the incident in question was a clear case of malicious damage. He was of the view that there was no connivance or misrepresentation on the part of the insured. However, the extent of the loss could not be ascertained by Sh. Preetesh Joshi, since the insured was not available at that time.

2. THE appellant company, thereafter appointed another surveyor S.K. Agarwal & Co. who submitted the report dated 20.7.2009. The report of S.K. Agarwal & Co., to the extent of its relevant reads as under: "9.00 Analysis into Cause of Loss and Coverage under Policy:

9.01 The Insured''s version was that some miscreants with intention to cause financial loss, has deliberately broken the oil pipeline resulting in the entire quenching oil got drained away. During our discussion, insured Mr. B. Gupta elaborated that somebody might have climbed to the window shed where the pipe U -bend rested and then, might have lifted the pipe length and dropped it towards the floor. As the pipes were fallen due to their dead weight and the weight of oil contents in the pipe, the elbow was broken. To our query as to how the pipes got unscrewed from each other, he stated that due to falling, they were detached from each other.

9.02 During our site visit Mr. Gupta told us that he himself conducted inquiry into the likely cause of the loss and in this regard interrogated all the workmen present at the site when the likely event might have occurred. We asked him to provide us the copy of internal inquiry report complete with his detailed analysis as to the likely cause of the alleged loss. But, such inquiry report was not provided. In his letter of March 9, 2009, he only mentioned as point # 9 that:

"We suspect Sri J.P. Singh responsible for this act from the detailed investigation carried out by us in house. We are in the process of terminating his services. His past record is also bad and he had been suspended in the past for malicious activities against the company for which we enclose herewith his suspension record."

9.03 We noted the contents of the enclosed records about the suspension of Sri J.P. Singh. It is pertinent that the referred records were related to events occurred in 1996, when Sri J.P. Singh was just a workman. Now, at the time of the loss, Sri J.P. Singh was shift supervisor at insured''s works. The fact that long period of 13 years had passed since suspension of Sri J.P. Singh due to involvement in worker''s strike, and that the insured had himself promoted him to the level of shift supervisor, makes us opine that just on the basis of 13 years old suspension letter, Sri J.P. Singh cannot be charged of having malicious motives against the insured.

9.04 To our specific query to the insured to let us know if there has been any labor trouble and occurrence of any such incident, which might lead to unrest/ sour relationship with any worker or supervisory staff in their factory, the insured himself confirmed to us in his letter of March, 9, 2009 that they did not have any labor trouble in last two years. In the light of these inputs given by the insured, it is not foreseen that Sri J.P. Singh would be having any malicious motive against the insured. During our site visit & inquiry about the incident, we interrogated Sri J.P. Singh for about two hours to obtain details about the circumstances of the loss. He fully cooperated in giving the necessary information. There was no sign of any malice in his conduct or body language against the employer.

9.05 We also analysed the observed damages with a view to see if such damages could be caused deliberately. The site inspection showed damages only in the elbow. The short pipe length attached to the elbow was in fact to facilitate fitting of elbow in the piping system. The pattern of the breakage in the elbow was not result of an external force but was of metal failure due to abnormal vibrations. As a result of the vibrations, the cast iron elbow got cracked and the quenching oil started spilling and leaking from there.

9.05 The site of pipe installation did not show any sign of force as had there been any such force applied on the pipe system, it would have left rub marks on the masonry window shed. But no such mark existed on the masonry window shed at and around the elbow. The insured''s verbal explanation that somebody might have dropped the pipe lengths did not seem feasible as it did not explain how the pipes were unscrewed from each other, how the pipe rack was lifted and dropped when it was affixed at one end to the vertical pipe above at the elbow and to the cooling coils at the other end, and how was that there were no rub marks on the masonry work due to alleged pulling of the pipe rack.

9.06 Based on our site inquiry, examination of the insured''s submissions and the site observations, we are of the view that the subject event was an accidental loss. We did not find any sign or possibility of deliberate act by any one to cause such damages to the elbow as we noticed during our survey.

9.7 So, we are of the view that the peril of malicious damages has not occurred as there was no evidence of anyone present around the affected property having malice against the insured and the nature of observed damages itself showed it to be result of an accident rather than deliberate act of someone holding malice against the insured. In our opinion, the claim will not fall under the scope of standard fire and special peril policy."

Thus, in the opinion of S.K. Agarwal & Co., the incident in question was not a malicious act and was an accidental act, as a result of metal failure due to abnormal vibrations, which resulted in the cast iron elbow getting cracked and the quenching oil splitting and leaking from there. Based upon the report of S.K. Agarwal & Co., the claim was rejected by the Insurance Company. Being aggrieved from the rejection of its claim, the respondent preferred a complaint before the State Consumer Disputes Redressal Commission, Uttarakhand vide impugned order dated 16.5.2014, the complaint was allowed to the extent of directing the appellant to pay compensation amounting to Rs. 6,35,589 to the respondent, along with interest at the rate of 6 % per annum from the date of filing of the complaint and Rs. 5,000 towards cost of litigation. Being aggrieved from the order of the State Commission, the appellant is before us, by way of this appeal.

3. THE learned Counsel for the appellant submits that the Sh. Preetesh Joshi was appointed only for the purpose of carrying out a preliminary and spot survey and the final assessment including verification of the cause of the incident was to be undertaken by S.K. Agarwal & Co. The learned Counsel for the respondent/ complainant on the other hand submits that the first surveyor i.e. Sh. Preetesh Joshi had clearly reported that the incident in question was a malicious act and the only job left by him was the assessment of actual damage sustained by the complainant and therefore S.K. Agarwal & Co. could not have again gone into the cause of the incident. He also submits that the Insurance Company was not competent to appoint a second surveyor without recording, reasons necessary for such an appointment. On merits, he submits that the incident in question was a malicious act, which was duly reported to the police. He has also drawn our attention to the report dated 9.5.2009 submitted by Police Station Sahaspur, District Dehradun to the learned ACJM III, Dehradun, stating therein, that the incident in question was an act of some workers of the factory, with intention to cause damage, which had resulted in heavy financial loss to the management.

4. DURING the course of arguments, the learned Counsel for the appellant submitted that IRDA has classified assessors into various categories, depending upon their specialization/expertise, experience and the amount of the claim. He, further, submits that considering the nature of the incident and the extent of the claim, Sh. Preetesh Joshi was not competent to finally assess the cause of the incident and therefore S.K. Agarwal & Co. was appointed for the purpose. We have carefully perused the written statement, filed by the Insurance Company. The written statement, however, contains no such averment. Nowhere it is stated in the written statement that considering the expertise and experience of Sh. Preetesh Joshi and the extent of the claim, he was not competent to assess the cause of the incident. There is no averment in the written statement that the first surveyor could not have taken a final view on the cause of the incident and it is only the second surveyor, who was competent to do so. On the other hand, the

 

averment in para 14 of the written statement is that spot inspection was carried out by Sh. Preetesh Joshi and S.K. Agarwal & Co. was appointed for the assessment of the loss. It thus appears to us from the written statement that Sh. Preetesh Joshi was competent to report the cause of the incident to the Insurance Company and S.K. Agarwal & Co. was appointed for the purpose of computing the loss, considering the report of Sh. Preetesh Joshi to the effect that in the absence of the complainant, the loss on account of the incident could not be assessed by him. The learned Counsel for the respondent has drawn our attention to the decision of the Hon''ble Supreme Court in Sri Venkateswara Syndicate v. Oriental Insurance Company Limited &Anr., : II (2010) SLT 664 : II (2010) CPJ 1 (SC) : (2009) 8 SCC 507. Referring to the scheme of Section 64UM of the Insurance Act, 1938, the Hon''ble Apex Court, inter alia held as under: "33. Scheme of Section 64 -UM, particularly of Sub -sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint the second surveyor or surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of surveyor/surveyors. There is no prohibition in the Insurance Act for appointment of second surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first surveyor and the need to appoint second surveyor.

35. In our considered view, the Insurance Act only mandates that while settling a claim, assistance of a surveyor should be taken but it does not go further and say that the insurer would be bound by whatever the surveyor has assessed or quantified; if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured."

5. THE learned Counsel for the appellant submits that the mandate given to Sh. Preetesh Joshi was only to carry out a preliminary survey and report of the actual position prevailing on the spot and the Insurance Company could have appointed the second surveyor to ascertain the cause of the incident and assess the damage. However, as noted earlier by us, the surveyor Sh. Preetesh Joshi has not limited his report to what he noticed on the spot, he also made inquiry as regards the cause of the incident and reported that it was an act of some miscreants. A perusal of the written statement filed by the appellant would show that it did not claim before the State Commission, that Sh. Preetesh Joshi has exceeded his brief and that he should not have gone into the cause of the incident. It appears to us that in the absence of the Insurance Company rejecting the report of Sh. Preetesh Joshi, it could not have appointed a second surveyor

 

to go into the cause of the incident. The second surveyor, therefore could only have computed the loss on account of the incident.

6. AS noted earlier, according to the second surveyor, S.K. Agarwal & Co., the incident occurred on account of metal failure due to abnormal vibration, which caused cast iron elbow to crack resulting in the oil spilling and leaking from the place of crack. However, the report does not indicate what was the basis of the surveyor coming to the aforesaid conclusion. The report is silent as to how the surveyor came to know that the plant of the insured was making abnormal vibrations. In the absence of the finding of the fact that the plant was making abnormal vibrations, there could be no question of the assessor drawing an inference that such vibrations could have resulted in cast iron developing cracks resulted in spilling of the oil. No expert opinion was obtained either by the assessor or by the Insurance Company to show that abnormal vibrations were being caused in the plant of the insured. No expert opinion was taken that abnormal vibrations could result in cast iron elbow developing cracks. The assessor appointed by the Insurance Company was not a Metallurgical Engineer and therefore could not have formed an opinion that abnormal vibrations could result in cast iron elbow developing cracks. Moreover, this was not a case of elbow merely developing cracks. Here the elbow had got broken and was found lying on the ground. Therefore, in our opinion, there was no foundation from the assessors S.K. Agarwal & Co. to say that there was a metal failure due to abnormal vibrations and such vibrations had caused in cast iron elbow crack resulted in oil leakage. As noted earlier, Police Station, Sahaspur has submitted a report to the learned ACJM III, Dehradun in NCR6/09 under Section 427 of IPC. The insured had reported the matter to the police and the aforesaid case was registered on the said report. The report of the Police Station, to the extent it is relevant, reads as under: "On 29.2.2009 at about 10.30 in the night the pipe attached to the cooling oil process in G.B. Springs, Chhota Rampur was damaged by someone due to which about 22000 litres cooling oil stored in the factory had leaked out by which management suffered heavy loss. The above was enquired into when it was found that in the factory for the purpose of coil cooling process a ground tank of about 8 x 13 ft. is made in which two pipes in and out are fitted which were firmly attached to the stabs of the factory which were not likely to fall in normal course, which in the night of 10.2.2009 some unknown person felled and damaged in which connection it was learnt that these pipes were so fitted for more than 5 years. Cooling process was going on when they were damaged by some unknown person due to which about 22000 litres oil had flown out. At the time of occurrence Shri Jai Prakash production engineer G.B. Springs was on duty. He was on duty from 8 p.m. to 8 a.m. The work was going on in the factory at the time of incident. With the above, Shri Jai Prakash the labour Suvaidh, Santosh, Kamal Kishore, Shatrughan all were on duty. Inquiry was made from all these individually when it was known that when Shri Jai Prakash had come on duty the pipe was OK and cooling process was going on. At about 9.30 p.m. Shri Jai Prakash went to take meats and when he came back at about

 

10.30 p.m., he found the oil tank empty. Then he saw the pipe broken due to which all the oil had flown out. He stopped the cooling process and informed the authorities. During inquiry apart from all the above the inquiry was also made from the factory management, manager, administrative officer but so far no clue could be found. Sir in the above respect it is to inform that from security point of view there is 8ft high wall around the factory, as a result except from the main gate no one can enter the factory from any place.

Sir, this fact has come to notice from inquiry so far that above incident has been committed by some one deliberately with intention to cause loss who is one of the workers on duty that day, who is yet to be identified.

Sir, this fact has come to notice from inquiry so far that the cooling pipe of the plant was fixed in that condition for 5 years which was not possible to fall in normal course. The above act has been committed by some worker of the factory with intention to cause damage. As a result the factory management has suffered heavy financial loss for which inquiry is still going on."

7. CONSIDERIN G the report of the police and the report of the first surveyor Sh. Preetesh Joshi coupled with the fact that the report of the second surveyor was not based on any expert opinion and the said surveyor was not an expert to opine that excess vibrations could have resulted in the cast iron elbow developing cracks and also considering that even the second surveyor did not say that it was a case of misrepresentation on the part of the insured and that the incident was concocted or planned by the complainant with a view to take compensation from the Insurance Company, we are of the considered view that the State Commission was fully justified in partly allowing the claim.

8. WE would also like to note here that a questionnaire was sent by the second surveyor to the first surveyor and in reply to the said questionnaire, the first surveyor, had inter alia, stated that when he surveyed the spot, the elbow was found broken and there was no sign of wear as an age factor. Since this is not the case of the appellant that the incident in question was engineered by the complainant, it appears to us that it was actually a mischievous act either on the part of the complainant''s employee(s) or some other person who wanted to damage the plant of the complainant''s company. In the absence of expert opinion, we cannot accept the report that the incident in question had happened on account of abnormal vibrations for the cast which caused cracks in the cast iron elbow, resulting in the spilling and leakage of the oil from the points of cracks. For the reasons stated hereinabove, we find no merit in the appeal and the same is hereby dismissed.