
(2013) 04 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

SALEM TEXTILES LTD.

APPELLANT

Vs

United India Insurance Co. Ltd. Rep. by its Chairman And
Managing Director

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Citation : 2013 2 CPJ 444

Hon'ble Judges : J.M.MALIK J.

Judgement

1. IN this case, Salem Textiles Ltd. the complainant has claimed a sum of Rs. 7,42,00,000/- along with interest @ 18% p.a. from 21.04.1998, till the date of payment of the full amount for loss of stocks of raw materials and yarn, damage to building, plant and machinery, in their mills which was gutted in devastating fire from the United India Insurance Co. Ltd., as it had obtained insurance from it. The incident took place on 21.03.1998 at the new godown of the complainant's mills. The fire was noticed when the third shift was in progress with about 200 employees. The police and fire brigade were informed. The OP was also apprised of these facts on 21.03.1998 itself. The excise authorities were also informed. The details of the huge loss suffered by the complainant are given below. Damage to yarn stock Rs. 2,00,29,363/-, damage to cotton stock Rs. 5,05,53,495/-, cotton new godown fully damaged to the extent of Rs. 19,87,500/-, weighing scale Rs. 1,26,170/-, Labour work at cotton godown from 20.03.1998 to 31.03.1998 Rs. 1,92,815/- and fire extinguisher, damaged and consumed Rs. 83,585/-, total being Rs. 7,29,72,928/-.

2. OP also appointed M/s. Selva & Selva I -Tech, Salem as Preliminary Surveyor. It had also appointed M/s. Rank Associates, as final Surveyor. The Preliminary Surveyor visited the mills on 21.03.1998 itself and came to the conclusion that loss amounted to Rs. 98,63,225/- The Final Surveyor, however, came to the conclusion that the loss was up to Rs. 72,36,290/- All the necessary documents were provided by the complainant to the Surveyors. It is alleged that unreasonable and illegal demands were being made endlessly by the Surveyors for submission of accounts in the specified formats. Besides the repetitive

demands for records already submitted calling for record of one Surveyor when they had been handed over to another Surveyor, lack of arrangements between two Surveyors, etc, have caused untold hardship to the complainant and has been used as a ruse and excuse by the Surveyors for their own incompetence and gross delay. The Surveyors failed to perform their task professionally and properly. The delay on the part of the OP has driven the complainant to their wits end and they were left with no option but to approach this Commission for necessary relief. Consequently, the present complaint was filed for the above said amount and additional compensation amounting to Rs. 3,42,00,000/- towards business loss was also claimed besides the costs of the case. Op's DEFENCE: The Op has listed the following defences in its written statement. The complaint involves many complicated questions of disputed facts and law, which cannot be adjudicated by this Commission in a summary proceedings. The matter should be decided in an elaborate trial after taking extensive, oral as well as scrutiny of voluminous documents/records. The Preliminary Surveyor could not ascertain the cause of fire but the insured confirmed that the same could have been caused by malicious act. However, the Final Surveyor found that the sparks of fire could not be due to malicious act. There is no electric connection in the godown. The delay was caused due to the non-cooperative attitude of the complainant. The answer to various queries were vague in nature or the complainant omitted to answer certain points. The Surveyor also found that the damage was predominantly due to mechanical twisting of steel trusses while falling down and the trusses did not have much thermal damage. Again, damage to AC sheets was due to mechanical damage and at the time of the survey, many ventilator glasses were in broken condition. It was observed by the Surveyor that the soot deposits on wall were also not commensurate with the extent of damage claimed by the insurer. Both the Surveyors made the same objections. The claims made by the complainant are vague and on the higher side.

3. IT is further averred that MO2 returns to Textile Commissioner is a monthly statistical return showing consumption and month-end stock to cotton, yarn, etc., Copies of MO2 returns given by the insured/complainant to the surveyor and copies collected by the surveyor from TC's office for 1997-98 shows wide variation. Month-end quantum of stock in MO2 returns given to the surveyor was seen to have been inflated for the financial year 1997-98 by 7,62,661 kgs cotton. The insured/complainant claimed that this was due to clerical error. Central excise rules make it statutory that RG1 Register (Daily Yarn Production Countwise) should be pre-authenticated by Central Excise Officials. The RG1 Register copies given to surveyors have central excise pre-authentication only for three months. Violation of this rule carries strict penalty. It is doubtful whether RG1 copies given to the surveyor were the ones actually maintained by the insured/complainant.

4. FURTHERMORE, the Closing stock of pressed cotton bales as per surveyor's working is 597 bales as against claim of 5128 bales by insured/complainant. The signed stock statements given by the insured/complainant to the surveyor for

some days in February, 1998 shows that the insured/complainant had been holding a maximum of seven days stock during the period. Therefore, sudden increase of stock as on date of loss to 5128 bales (nearly 60 days stock) is doubtful. The complainant claims that over 5000 bales were lost in fire. The fire raged for about six hours and there were hardly any traceable remnants. According to the surveyor, in such a short time, 5000 bales of cotton cannot be lost in fire. The surveyor has furnished technical details of the production of the unit based on power consumption. It was observed that yarn production of 25,20,778 for 1996 -97 and 1997 -98 had been unaccounted indicating that the production and other records submitted by the insured did not reflect the true position. Again, a prudent manufacturer does not keep his important records in a godown. However, the case of the complainant is that important documents kept in the godown were destroyed during fire. However, it was found by the preliminary surveyor that the records kept in the almirah were in good condition. This shows that false declaration was made by the complainant. Surveyor also found that iron hoops were strapped and bundled in an orderly fashion -awaiting disposal as scrap. The surveyor opined that these straps could not have held cotton material as claimed by the insured/complainant. According to the reports of the surveyor, it is apparent that the cone winding production for 1996 -97 and 1997 -98 as per RG1 register is lower by 16.4 lac kg of yarn. Consequently, dependability of RG1 register is questionable. Lastly, the actual lap production as worked out by the surveyors for 1996 -97 was 53,66,724 which was reduced by the complainant by 2.6 lacs to 50,01,283. The supporting documents showed the pencil figure of specific counts were erased and altered from 22 kg and 8 kg. The daily report file certified by the factory manager for these dates shows that the count was 22 kg only. Further rejection of lap during count change indicates that there was no count change to 15/8 kg. The effect of reducing lap production is reducing issues to mixing thereby closing stock of raw material piles up whereas the actual physical stock is much lessor. The final surveyor has estimated the insured outstanding liabilities to the extent of information collected by them at 37.36 crores.

5. THE preliminary surveyor has also commented on the precarious financial condition of the insured. The OP has received many letters from various Banks, IT Department, complainant's landlord requesting pro -rata payment of their dues. All these facts clearly reveal that the insured was in financial difficulties. However, the final surveyor has assessed the loss without prejudice for Rs. 72,36,290/ - less salvage of cotton and yarn. The salvage was segregated and the final surveyor had arrived at an approximate salvage value of Rs. 4 lakh. Considering the deteriorating value of salvage, the surveyor negotiated with the complainant and agreed to retain the salvage for 3.95 lakh subject to condition No. 7 of the policy. Under these circumstances, the final surveyor recommended repudiation of the claim due to violation of policy conditions. The final surveyor's report dated 26.03.1999 of M/s. Rank Associates revealed gross discrepancies in the claim, especially pertaining to value of stocks said to have been lost,

maintenance of books and registers and other vital aspects. The claim was found to be highly exaggerated. M/s. Srivatsan Surveyors Pvt. Ltd. Verified the genuineness of the purchase bills for cotton stocks. The Investigator had made enquiries and afforded opportunity to obtain confirmation of the bills and the complainant vide letter dated 20.07.2001 admitted that he suppliers were not willing to do so. The Investigators by their reports confirmed that the bills were fictitious and discrepant on various other aspects, vide Annexure OP -3. All the other allegations have been denied.

6. WE have heard the counsel for the parties and perused the written synopsis filed by the counsel for the complainant. Counsel for OP submitted that his written statement be taken as written submissions. The first question which falls for consideration is, "Whether loss was committed due to fire or not - We have gone through the reports filed by the two Surveyors, mentioned above and the report of M/s. Srivatsan Surveyors Pvt. Ltd., Investigators. Preliminary surveyor vide his report dated 23.07.1998, mentioned as under: - The truss were buckled, bend and misaligned and the A/C sheets were completely cracked, the building has to be reconstructed.

The market rate for constructing the same building except plinth foundation and flooring was estimated at Rs. 150 per sq.ft.

The first surveyor also assessed the cost for reconstruction as Rs. 19.50 lakh whereas the counter claim by the complainant is Rs. 19.87 lakh. There is only a wee bit difference. The certificate of the Fire Station Officer dated 05.12.1998 clearly indicates that the fire fighting operation continued for more than 18 hours. The complainant has also filed photographs in support of its case. For all these reasons, we find that the goods of the complainant were gutted in fire.

7. THE second question is, "Whether the OPs were entitled to depute 2nd Surveyor and ultimately, the third Surveyor/Investigator -. As a matter of fact, there is no provision in Insurance Act to appoint the second Surveyor or an unlicensed Investigator. An Investigator can be appointed only if the claim is found to be fraudulent. This view was taken by this Commission in an authority reported in Sarvalaxmi Marines, Represented by Prop. Smt. Angoli Suseela, : 2008 (1) ALT (NC) (CPA).

8. UNDER these circumstances, we hold that the insurance company tried to delay the case by appointing unnecessary Surveyors and Investigators. The report of the first surveyor towers above the rest. This piece of evidence has substance, it can do without frills. The next submission made by the counsel for the complainant is that the claim made by it is correct and the surveyors have reduced the same for unjustifiable reasons. According to the counsel for the complainant, the stack plan shows that the stock containing 8798 bales could be easily stored in affected godown. Secondly, earlier to the date of fire, the bankers of the complainant, M/s. Karnataka Bank Ltd., Salem had appointed Mr. A. Gowthaman, Chartered Accountant, for conducting the stock audit. The stock

audit was conducted on 17.06.1997 and also on 05.12.1998 in the capacity of concurrent auditor. He submitted in his report that mill had stocks worth more than Rs. 18.31 crores on 17.06.1997 and Rs. 7.45 crores on 05.012.1998. The complainant also appointed M/s. Bala & Shakti, Chartered Accountants, on 17.06.1997. They prepared detailed reports. Their report calculates and mentions that the closing stock as on 20.06.1998 was 5215 bales, i.e. 8,54,299 kgs. The value of the same was over Rs. 6.00 cores. Again the statement of Mr. V. Thiagarajan, Godown Keeper reveals that there were 5128 kgs of steel hoop irons lying inside the affected godown and in the surveyors report it was only 383.70 kgs which is false. The power consumption report submitted by the OP is incorrect. The statement of both the surveyors are contradictory and not reliable.

9. FOR the following reasons, we clap no value with these arguments. A clear glance on the claim made by the complainant clearly goes to show that it is on the higher side. They have claimed compensation from 20.03.1998 to 31.03.1998 to the extent of Rs. 1,52,815/ - and fire accident damage to the extent of Rs. 83,585/ -. Such like claims cannot be granted. One must come to the Court, with clean hands. There are two reports of the Surveyors. The first report reveals that the damage was assessed at Rs. 98,63,225/ -. There is no reason to discard this report. This report was prepared on the same very day, i.e., immediately after the occurrence. The surveyor is an independent person and no reason was suggested to discard his statement. There is no ground to view his evidence with distrust. This piece of evidence overshadows the rest. The CAs appointed by the complainant are interested persons and no much reliance can be placed on their reports. We also ignore the report of the second surveyor as there was no need to appoint him. The report of the first surveyor is a well - reasoned report. The relevant portion is reproduced below: - 22.0 CIRCUMSTANTIAL EVIDENCES:

22.1 Only few bales aggregating approximately 400 bales were stored in the godown at the time of fire as against the claim of nearly 5000 bales.

22.2. As disclosed by the Insured in the policy schedule that there was only FP Cotton bales and yarn stored in the fire affected godown. But, the Insured had stored cotton, viscose, polyester, wool, spandex and flax, cotton waste like FS, comber noil, silver waste, dyed cotton, hard waste, oil waste, etc. in the fire affected godown.

22.3. We inspected the other godown called Karthikeya Rice Mill, it was declared for the purpose of insurance as storage of cotton FP bales. But, there was no FP bales kept in all the 3 godowns. Instead of cotton FP bales, there was a storage of cotton waste borahs, flax fibre, yarn, yarn stock and machinery spares were stored in the godown. There is no relevancy of material stored in the godown as against the material declared for the purpose of insurance as far as these godowns are concerned.

22.4. Next, we inspected K.K.C. Chandra Rice Mill Godown and it was said to

have been vacated 2 years ago, but it was declared as storage of FP bales for the purpose of insurance. We asked the insured, why a vacated godown was declared for insurance as storage of cotton FP bales, but there was no reply from the insured end. Some seeds pertaining to M/s. Raasi Seeds Pvt. Ltd., Attur were stored in this premises.

22.5. We inspected godown and it was stored with silk waste as against declared as cotton FP bales in the policy schedule.

22.6. On the same line while inspecting the STL, new godown, there was a lot of contradictory evidences regarding storage of cotton FP bales. Only 400 cotton FP bales were stored in the godown as against the claim of 5,100 cotton FP bales.

22.7. Upon inspecting all the godowns declared and meant for storage of cotton FP bales, all the other 6 godowns except STL new godown were found stored with other than cotton FP bales. Similarly, we feel that only few bales stacked in the fire affected godown and the insured claim of having stored 5,000 bales cannot be sustained.

22.8. In between the cotton FP bales, there was a lot of bare bale strips counting 130 bundles of steel hoops in strips form weighing 5,218 kgs were kept inside the godown in between the fire affected bale lots. Apart from this, 21 bundles were also found in between the bales and it has not been weighed by us, since it was jammed between the falling of truss. The insured were not able to explain the reason for stacking in many strips inside the FP bale godown.

22.9. The insured has claimed nearly 8,51,930 kgs of cotton which roughly amounts to 5,000 bales. This seems a highly exaggerated fact from our visual observation, as we were able to estimate only 400 number of bales to be affected.

10. THIS view is fortified by the following authorities. This Commission has held in *Pentagaon Steel Pvt. Ltd. Vs. New India Assurance Co. Ltd. & Ors,, III* (2010) CPJ 339, that Reports of Surveyors are to be given credence over reports of Surveyors appointed by complainants, who are interested persons. Complainant had raised demand of highly exaggerated claim. In *Ashu Textiles Vs. New India Assurance Co. Ltd. & Anr,, III* (2009) CPJ 272 (NC), it was held that Surveyor's report has to be given more weightage than the report of the Fire Brigade.

11. IN *Dabiruddin Cold Storage Vs. New India Assurance Co. Ltd. & Ors,, I* (2010) CPJ 141 (NC), it was held that Surveyor's report being important document, cannot be easily brushed aside. The insurer was held liable to pay loss assessed by the Surveyor, with interest.

12. SAME view was taken in *New India Assurance Co. Ltd. & Anr. Vs. New Good Luck Retrading Works,, III* (2009) CPJ 262, wherein it was held that Surveyor's report cannot be brushed aside easily, without valid justification. In latest authority reported in *New India Assurance Co. Ltd., Vs. Febama Agencies, : I* (2013) CPJ 133 (NC), it was held that report of Surveyor is an important

document and it is to be relied upon unless, it is contradicted by more credible evidence.

13. CONSEQUENTLY , we find that the complainant is entitled to have a sum of Rs. 98,63,225/ - with interest @10% p.a. from the date of filing of complaint, till its realisation.

14. NOW , the question of litigation charges and compensation for delay arises. The complainant has cited an authority reported in P. Venkateswara Rao Vs. New India Assurance Co. Ltd.,, III (1998) CPJ 14 (NC) wherein it was held that insurance company should not have delayed the settlement of claim for more than three months, after the report of the Surveyor. Keeping in view the facts and circumstances of the case, we impose costs towards litigation charges and delaying the matter in the sum of Rs. 2,00,000/ - which should be paid within two months, otherwise, it will carry interest @ 10% p.a. OP would be entitled to the adjustment of the amount already paid to the complainant. The matter stands disposed of.