
(2009) 07 SC CK 0134

In the Supreme Court Of India

Case No : Civil Appeal No. 4315 of 2006

Sr. Divisional Manager, O.I. Co. Ltd. and Another

APPELLANT

Vs

Target Plywood Industries Ltd.

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Citation : (2009) AIRSCW 4707 : (2009) 9 JT 42 : (2009) 6 MhLj 914 : (2009) 9 SCALE 147 : (2009) 7 SCC 759 : (2009) 10 SCR 356 : (2009) 5 Supreme 708 : (2009) 7 UJ 3369

Hon'ble Judges : Mukundakam Sharma, J;B. S. Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—In this appeal we are called upon to deal with a fire insurance claim made by the respondent who put up a complaint seeking direction for payment of a sum of Rs. 81.33 lakhs. The aforesaid claim includes a claim of a sum of Rs. 79,08,314/- for the stocks which were destroyed by the fire and which were duly covered by the Insurance Policy issued by the appellant after payment of full premium.

2. The respondent herein is a small scale industry engaged in the manufacturing and marketing of plywood and allied products. It had taken two insurance policies as stated hereinbefore from the appellant after paying full premium. During the period of the aforesaid two policies, on 25.11.1997, a fire broke out in the factory which engulfed the godowns of the said factory and completely destroyed all the stocks which were lying within the said godown resulting in heavy loss to the respondent.

3. The management of the company immediately sent information to the fire brigade, the Police and also the insurer. The complainant- respondent thereafter submitted a claim as stated hereinbefore for a sum of Rs. 81.33 lakhs including a sum of Rs. 79,08,314/- for the stocks destroyed by fire. It is needless to point out that we are here concerned only with regard to the claim and assessment

made with regard to the loss of the stock destroyed. After receipt of the aforesaid claim of the respondent company, the insurance company appointed and engaged a Surveyor M/s. Subhash Kapoor & Associates for making assessment of the loss. The Surveyor made an enquiry, examined the records and thereafter submitted an interim survey report dated 12.12.1997. In the said interim report, the Surveyor accepted that it was an accidental fire. It was stated in the said interim report that loss in respect of the stocks would be around Rs. 75 lakhs considering the unaffected stock, recoverable salvage lying in the premises of the insured. The Surveyor also reported that the Company did not maintain reasonable record of the stock and therefore the said Surveyor is unable to certify the correctness of the valuation of closing stock because of the discrepancies between the physical stock and the book records, as details of stock, consumption etc. of stock was not provided, in the absence of which they are unable to certify the correctness of the stock and its valuation.

4. Subsequently on 6.3.1998, the Surveyor submitted a final survey and assessment report in which the Surveyor assessed the loss caused to the stock of Rs. 62,38,655.76 from which salvage value and thereafter 50% of the amount was deducted for various alleged deficiencies as stated in the report and assessed the loss of Rs. 28,64,560.38.

5. Not being satisfied with the said report, the insurance company considered it necessary to appoint an Investigator to investigate and to make re-assessment of the claim amount based on verification of books and records. Accordingly M/s. S. Soni & Co., Surveyors were appointed/engaged as the investigators who caused an enquiry during the course of which records available with the claimant Company were examined. Besides, the investigator also made enquiries with the banks of the respondent Company where the stocks of the company were hypothecated and also verified the records from various suppliers and transporters and checked the original G.Rs and production records and the stock records placed before it and thereafter submitted its report. In the said report, it was held that there was actually an accidental fire in the factory premises of the respondent as claimed and stated by the respondent.

6. It also transpires from the report submitted that Stock Register, Ledger Accounts and production statements were submitted before the investigator by the respondent Company in terms of their request and therefore all relevant records appeared to have been submitted by the respondent company to the said investigator. The said investigator verified all those records and on examination thereof and on the basis of other records examined by them which were collected by them not only from the respondent Company but also from other quarters, made an assessment recording therein the loss of stock as on 25.11.1997 as Rs. 61,50,990.15.

7. It was mentioned in the Report that they have thoroughly checked the sale transactions during the period 1996-97 and during 1997-98 to check the date of loss and found them in order with the sale bills. They also verified the sales with

the sales tax returns and found that sales are co-relating with the sales tax returns. They further found that the purchase transactions are properly entered in the books of accounts and payments are proper.

8. They, however, deducted an amount of Rs. 32,08,624.00 from the total loss of the stock of Rs. 61,50,990.15 holding that the purchases are not genuine and also an amount of Rs. 1,61,746/- on the ground that these are purchases for which payment was not made/or the bill is tampered with and does not have Form 31, thereby arrived at the stock position as on 25.11.1997 which was destroyed by fire at Rs. 27,80,620.15. They have also deducted an amount of Rs. 5,09,535.00 towards salvage of leftover stock based on Surveyor's Report and thereby arrived at a total loss of stock of Rs. 22,71,085.15. They also made a loss assessment entry in the report in the following manner:

LOSS ASSESSMENT

Now based on our verification, we have assessed the loss of stock, which is computed as under:

Loss of Stock 22,71,085.15

Less: Dead Stock Factor @ 5% 1,13,554.25 _____ Loss Assessed
21,57,530.90 _____

9. On submission of the aforesaid report, the appellant Company approved the claim for an amount of Rs. 22,46,536/- and consequently appellant sent a discharge voucher to the Union Bank of India from whom the voucher was fully discharged in full and final payment of claim for an amount of Rs. 22,23,404 and received from the bank under letter dated 27.07.2000.

10. The appellant issued their cheque for the aforesaid amount and served the same to the said bank on 31.07.2000 which was acknowledged by the bank on the same date.

11. The respondent Company, aggrieved by the meager amount paid towards its claim, filed a complaint before the National Consumer Disputes Redressal Commission alleging deficiency of service against the appellant Company. The aforesaid complaint was entertained by the Commission and the appellant company filed a reply enclosing therewith the report of Surveyor and the Investigator. The Commission heard the counsel appearing for the parties, examined the entire records and by its judgment and order dated 19.7.2006 it allowed the complaint of the respondent and held that the value of the stock destroyed by fire was Rs. 57,29,120.76. It was held that the deduction of 50% of the alleged various deficiencies made by the Surveyor were unjustified. It was also made clear in the said order that the Commission was relying on the assessment made by the Surveyor and not by the Investigator. Consequently, a direction was issued by the Commission directing the appellant to pay a deducted amount of Rs. 28,64,560/- with interest @ 10% per annum from 1.6.1998 (i.e. after seven months from the date of the incident and three months from the date

of the report of the Surveyor). The appellant was also directed to pay a cost of Rs. 1 lakh.

12. Consequent upon the said order of the Commission, the Insurance Company deposited the amount calculated on the basis of the said judgment and order with the National Commission.

13. The Insurance Company was aggrieved by the aforesaid judgment and order and, therefore, it has filed the present appeal in this Court.

14. While admitting the present appeal filed by the insurance Company, this Court directed that the respondent shall be permitted to withdraw the amount awarded, which was deposited before the National Commission upon furnishing a bank guarantee to the satisfaction of the Commission.

15. The respondent Company, however, filed an application seeking modification of the order passed by this Court on 19.10.2006. In the said application, an order came to be passed by this Court to the following effect:

xxx xxxx xxx In view of the facts stated in the application, order dated 19th October, 2006, is modified to this extent only that the respondent shall be permitted to withdraw twenty five per cent of the amount awarded without furnishing any security and the rest as directed under the said order. To this extent, order dated 19 October, 2006, stands modified. I.A. No. 3 is, accordingly, disposed of.

16. Consequent upon the said order, the respondent has withdrawn 25 per cent of the amount awarded by the National Commission without furnishing any security and the balance 75 per cent amount was also withdrawn by furnishing a bank guarantee which is valid till date.

17. In the light of the aforesaid background facts, we examined the grounds taken in the present appeal by the appellant Insurance Company with the assistance of their counsel.

18. The respondent was also represented by Mr. Yasobant Das, learned senior counsel who also assisted us and took us through the various documents which the respondent are relying upon in support of their claim. The Commission while considering the records extensively referred to the Survey Report dated 12.12.1997 and particularly relied upon the contents of paragraph 42 and 53 of the said report, which we reproduce hereinafter:

42. Value of the stocks arrived at the aforesaid basis was worked out at Rs. 62,38,655.76. The relevant details are given under the Heading

"Assessment of Loss".

53. Total value of stock as on the date of loss has been concluded at Rs. 62,38,655.76 - Refer details under the heading "Assessment of loss.

19. Paragraph 55 of the said Survey Report wherein the reason for discount of

50% was given by the Surveyor was also quoted by the Commission which we reproduce hereinafter:

Gross stock amount after adjustment for above salvage value has been discounted by 50% to account for (i) inaccuracies in Audited Balance Sheet, (ii) Auditors qualifying remarks that the Insured had not maintained reasonable records of stocks, (iii) non-establishment of precise production of Face and Core Veneer within the factory premises (iv) Wastage of wood from logs to Face and Core Veneer and (v) sale of scrap - saw dust etc.

20. Thereafter the Commission has also referred and considered the Report submitted by the Investigator. The Commission noted that the investigator did not agree with the discount of stock of 50 per cent and also the findings and conclusions arrived at by the investigator that for some purchases complainant had failed to establish the same because according to them lorry receipts were fictitious, inasmuch as one of the alleged transporters denied having issued the lorry receipt in question whereas the other transporter namely M/s. Amit Transport Co. had no existence at all, which according to the investigator proves that the purchases/stocks were actually not sent or even if it was sent they did not go to the factory but had gone elsewhere.

21. The Commission further noted the report of the investigator to the effect that the purchases made from Aggarwal Enterprises and from Bansal & Co. although were entered into their records and payments were shown to have been made but the same are disallowed since the same as per explanations given in the report do not seem to be genuine or authentic.

22. The Commission thereafter noted the fact of verification of bank records by the Investigator and their assessment and also the summary of total assessment which are reproduced hereinafter:

Verification of Bank Records:

We visited the Union Bank of India, the bank where the stock is hypothecated and obtained the stock inspection reports and stock statements. As per the bank's inspection report, they inspected the stock on 5.11.1996 and 31.12.1996. We found that as per the stock statement as on 31.3.1997 the value of stock is Rs. 78,35,492.11. We also verified the payments made by the insured through bank and found that they are in order except one payment mentioned above was not made for Rs. 1,61,746/-.

OUR ASSESSMENT

On the basis of above facts, we assessed the loss as follows:

Stock as on 25.11.98 as per Trading A/c Rs. 61,50,990.15

Less : Purchases which are not genuine as per (Schedule A) 32,08,624.00

Less : Purchases whose payment is not made (and bill is tampered with and

does not have form 31. 1,61,746.00 ----- Rs. 33,70,370.00
----- STOCK AS ON 25.11.97 Rs. 27,80,620.15

Less : Salvage of leftover (after loss) Based on Surveyor's report. (-) Rs.
5,09,535.00 ----- LOSS OF STOCK Rs. 22,71,085.15

From the aforesaid amount, there was further deduction on the assessment that there would be deduction @ 5% for dead stock and further reduced it by Rs. 1,13,554.25 and arrived at loss for the stock at Rs. 21,57,530.90.

Thereafter, the loss for building and other plant and machinery was assessed and the loss was summarized as under:

SUMMARY OF TOTAL LOSS ASSESSMENT

The loss is summarized as below:

Particulars	Loss	Average	Dead	Stock	NET LOSS	Allowed	Clause	Factor	5%
ASSESSED									

STOCKS	2271065.15	NIL	113554.25	21,57,530.90					
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Building &	610137.00	28798.00	NIL	32,239.00	Electrical Fittings				
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Plant &	63500.00	1733.55	NIL	61,766.45					
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TOTAL	239560.15	30531.55	113554.25	22,51,536.35					
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Less : Excess Clause 2500 x 2 Policies (-) 5,000.00

NET LOSS ASSESSED 22,46,536.35

23. The Commission factually recorded in its order that in the aforesaid complaint it is only concerned with the method adopted by the Surveyor in deducting the value of the stock of 50 per cent and deduction of stock of Rs. 32,08,624/- by the Investigator on the record that the Lorry Receipts were fake and that the purchase of the stock for which payment is made to the vendor by an account payee cheque/draft was not believed. That was so recorded by the National Commission on the ground that both the Surveyor and the Investigator assessed the loss of stock of Rs. 62,38,655.76 and Rs. 61,50,990.15 respectively.

24. The ground that was taken by the respondent/complainant was that the aforesaid 50 per cent deduction made by the Surveyors and not allowing the amount shown as deduction by the Investigator was unjustified.

25. The aforesaid contention was considered by the Commission in the light of the records and on appreciation thereof, the Commission held as follows:

(i) ...the Investigator has reduced the amount of Rs. 61,50,480/- by Rs. 32,08,624/- on the alleged ground that the purchases were not genuine because two lorry receipts were not tallying. They have ignored the fact that for the said purchase bills amount was paid by cheque or demand drafts. For arriving at such

conclusion the Investigator has ignored the bank accounts. In this complaint the Complainant has produced the extract of bank account, as quoted above, which establishes beyond doubt that the amount was paid by the Complainant by account payee cheques and/or drafts. Therefore, the said ground given by the Investigator is without any substance. Similarly, the Surveyor has reduced the amount by discounting it by 50%. The method of discounting by 50% is even not accepted by the Investigator. In any case, the reason given for discounting is mainly on the basis of auditor's final remarks without considering the relevant letters written by the Chartered Accountant to the Company and its reply as well as final certificate given by the Chartered Accountant on 10.8.1997 wherein they have stated that the stock statement was produced before them and the same was found to be true and proper and in respect of quantity and its value for the year ended 31.3.1996. The other ground which is given is with regard to non-establishment of precise production of face and core-veneer within the factory premises and wastage of wood from logs to face and veneer as well as sale of scrap-saw dust. In our view, this would have no bearing with regard to the existing stock as per the stock registers.

26. For the aforesaid reasons, the Commission allowed the complaint and held that the value of the stock destroyed by fire was Rs. 57,29,120.76.

27. A careful look at the aforesaid findings recorded by the Commission would make it crystal clear that the Commission came to the aforesaid finding on the ground that the Investigator had ignored the fact that for the said purchase, bills amount was paid by cheques or demand drafts. It also recorded the finding that the method of discounting by 50 per cent is not based on appropriate reasons which is established from the fact that the aforesaid method of discounting by 50 per cent is not even accepted by the Investigator.

28. The Commission held that the aforesaid reason given for discounting is mainly on the Auditor's final remarks but it ignored the relevant letter dated 10.8.1997 written by the Chartered Accountant to the Company and its reply as well as final certificate given by the Chartered Accountant on 10.8.1997. Interestingly, however, the Commission was totally silent about the letters of the transporters by which all the aforesaid goods were alleged to have been carried to the godown of the respondent. One of the two transporters categorically stated they did not issue any such receipt and the receipt shown to them are fake whereas the other alleged transporter did not have any existence. Those records were relevant records which were required to be considered by the Commission while recording its findings and coming to its conclusion. Besides, the aforesaid letter/certificate of the Chartered Accountant stated to have been issued on 10.8.1997 was not filed alongwith the documents that were originally filed but the same came to be placed on record only after evidence was closed and the matter was listed for final arguments. The said certificate dated 10.8.1997 does not find any mention in any of the correspondences which were filed and placed before the Commission. In any case, the said document was

required to be appreciated alongwith all other relevant records and on the basis thereof the Commission should have come to an appropriate finding. In our considered opinion, the findings and the conclusions arrived at by the Commission was also not appropriate as they are found to be abrupt and arrived at by ignoring certain vital and material evidence on record. At the same time we also find that the deduction of 50 per cent on the alleged various deficiencies as suggested by the Surveyor is without any basis and no reason has been given to justify 50 per cent deduction from the actual assessment of the loss.

29. At this stage, learned Counsel appearing for the respondent stated before us that the matter may not be remanded back to the Commission as the respondent Company had already suffered huge loss and that a final order may be passed by this Court, if necessary reducing the deduction of 50 per cent towards deficiencies. We enquired from the learned Counsel appearing for the appellant who submitted before us that it is not possible for him to give any concession in that regard.

30. A fire broke out in the factory of the respondent on 25.11.1997. Twelve years have passed by and therefore we are of the considered opinion that it would not be worthwhile to remit the matter back to the Commission. The appellant Company accepted the report of the Investigator wherein also the total loss of the stock was shown to be Rs. 61,50,990.15. Some of the aforesaid claims are based upon receipts which were not found to be authentic by the Investigator. The respondents were prepared to accept deduction of 35 per cent from the total claim for the alleged deficiencies. They have also been paid 25 per cent of the amount found due by the Commission over and above what was assessed and paid by the Insurance Company.

31. In view of the aforesaid factual position and peculiar circumstances of the case we hold that the total loss of stock is Rs. 57,29,120.76 out of which 35 per cent of the amount would stand deducted so the total loss is assessed at Rs 37, 23, 928.49. The respondent is also entitled to 10 per cent interest in terms of the order of the Commission on the said amount as no argument was advanced by the appellant on the aforesaid issue.

32. The respondent has already received the amount which was awarded by the Commission over and above what was paid by the Insurance Company. An amount of 25 per cent was allowed to be withdrawn without security and for the balance amount which was also withdrawn by the Company, they had issued a bank guarantee, which is valid till date.

33. It is therefore, directed that the Commission shall now recover the excess amount paid to the respondent in terms of this order and return the said excess amount paid/deposited by the Insurance Company within eight weeks from today.

34. Respondent shall also give an undertaking in this Court within four weeks that they would return the excess amount as determined by the Commission within four weeks.

35. The appeal is disposed of in terms of the above order.