
(2017) 02 MAD CK 0160
In the Madras High Court
Case No : C.S. No. 602 of 2010

Sriraj Steels (P) Ltd.

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Citation : (2017) 2 MLJ 557

Hon'ble Judges : Mr. C.V. Karthikeyan, J.

Bench : Single Bench

Advocate : Mr. Rathina Asohan, Advocate, for the Plaintiff; Mr. M.B. Gopalan, Advocate, for the Defendant

Final Decision : Disposed Off

Judgement

Mr. C.V. Karthikeyan, J.—The Suit filed for a direction directing the defendant insurance company to pay a sum of Rs.39,65,619/- together with interest at the rate of 18% p.a. on Rs.31,55,000/- from the date of filing this suit till the date of realisation and also to pay a sum of Rs.10,00,000/- as damages for mental agony caused to the plaintiff for delay in rejection of the claim and for costs.

2. The Plaintiff :

The plaintiff is a Private Limited Company incorporated under the provisions of Companies Act 1956 and having their manufacturing unit and registered office at Sanniyasikuppam, Pondicherry. The plaintiff is engaged in the manufacture of steel ignots, castings etc. They have a production capacity of 2400 MTS /per annum.

3. It had been stated that due to the hostile action by the electricity department and financial strain, the unit was temporarily closed in August 2006. The plaintiff have been taking Standard Fire and Special Perils Policy with the defendant from March 2003, which had been regularly renewed and the last renewal was from 04.04.2007 to 03.04.2008 valuing the building at Rs.44.50lakhs and stocks at

Rs.40lakhs vide policy No.010803/11/07/11/00000006.The premium has also been paid.

4. It had been further stated that on 30.07.2007 at around 3.00p.m., a group of people consisting of 20 to 25 rowdy elements trespassed into the plaintiff's factory, attacked the security guard caused damages to the building, removed the machinery ransacked the factory premises and looted valuable materials and properties. They also took away some of the vital parts of the machinery and the main part of compressor was taken away in a bullock cart. This happening occurred for a period of two hours. A police complaint was given immediately, but the police came only on the next day. FIR No.111 of 2007 for the offences punishable under Sections 147, 452, 427, 379 of IPC read with 149 of IPC was registered and 10 to 12 people were arrested and remanded to judicial custody. This was brought to the knowledge of the Divisional Manager, Mr. Vasanth Singh of the defendant on 30.07.2007, on the very same day itself at 11.00p.m. On 31.07.2007, the defendant sent Mr. Mohammed Ali, Surveyor to conduct site inspection. The plaintiff submitted the claim form on 07.09.2007 estimating the loss at Rs.31.55lakhs along with statement of loss and a copy of the FIR.

5. In the plaint, the details had also been given with respect to the theft/ damages and value of each machinery which are as follows :-

S.No.

Details

Theft/Damage

Value(in lacs)

I

Furnace :

a. Capacitor

6 Nos.

b. Electronic Devices

6 Nos.

c. Copper Busbar/Plate/Linths

24 Nos.

d. Copper Choke

1 No.

e. Copper C.T.Coil

1 No.

f. Transformers

4 Nos.

g. Heat Exchanger

1 No.

h. S.S.Motor (5 HP)

1 No.

i. Panel Board

1

15.00

II

Plant and Machinery

a. Electronic Circuit Board

3.75

III

Crane a. 3 HP Motor

2 Nos.

b.Steel Rope/Control box

0.60

IV

Machineries :

a. Pollution Equipment 7.5HP Motor

1 No.

0.75

b.Air Compressor

2 Nos.

1.00

c. Welding Machine

1 No.

0.40

d. Weighing Machine

1 No.

0.50

e. C.I.Bed (2 MT)

2 Nos.

0.40

f. Trumpet (1 MT)

1 No.

0.20

V

Transformers (2 Nos.) Power Cable

52 Meters

1.00

VI

Motors (Mono Block Pump)

a. 7.5.HP

1 No.

b. 5.0 HP

2 Nos.

c. 3.0 HP

1 No.

0.30

VII

Cooling Tower (3 HP Motor)

2 Nos.

0.40

II

Plant and Machinery

VIII

Furniture and Office Equipments

a. 1.5 MT Window A/c.

1 No.

b. Steel Almerah

1 No.

c. Coil Fan

2 Nos.

Sofa set and table chairs

0.30

IX

Factory Building

a. Office

b. Factory/Shed

c. Stores Shed

d. Toilets

e. Lab Equipments 6.00

X

Compound Wall

0.50

XI

Scraps

0.45

Total

31.55 lacs

6. It had been further stated that on 20.08.2008, the defendant intimated that the policy does not cover theft and consequently, the claim was not admissible and repudiated. A complaint dated 08.09.2008 was made to the grievances department of the defendant to reconsider the claim. By letter dated 10.09.2008, repudiation was confirmed and survey report dated 15.07.2008 was enclosed. The plaintiff has disputed the findings given in the survey report stating that after rioting, machinery were taken away and it cannot be treated as theft. Instead of indemnifying the loss, the plaintiff did not accept to their liability.

7. The plaintiff sent a letter dated 24.09.2008 to the Deputy General Manager with a copy to the Chairman of the defendant and also personally met the Chief Manager on 05.11.2008. A reminder was sent on 04.02.2009. It had been

submitted that the defendant is liable to honour the claim made by the plaintiff and consequently the suit had been filed.

8. The written statement :-

In the written statement, the defendant had stated that according to condition No.6 (ii) of the Policy, the claim of the plaintiff was repudiated. The said clause was as follows :-

"In no case whatsoever shall the Company be liable for any loss or damage after the expiry of 12 months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration; it being expressly agreed and declared that if the Company shall disclaim liability for any claim hereunder and such claim shall not within 12 calendar months from the date of the disclaimer have been made the subject matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder."

9. It had been further stated that the suit had not been filed within twelve months from the date of repudiation. It had been further stated that though at the time the policy was taken, the plaintiff company was in operation, subsequently, the factory remained closed, at least from 30.08.2006 and several thefts took place before the incident on 30.07.2007. It had been further stated that the closure of the factory was not informed to the defendant and consequently, the defendant also relied on condition No.1 of the Policy which is as follows :-

"1. This Policy shall be voidable in the event of misrepresentation, mis-description or non-disclosure of any material particular"

10. The defendant also relied on condition No.3 of the Policy, which is as follows :

"3. Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the Insured, before the occurrence of any loss or damage, obtains the sanction of the Company signified by endorsement upon the policy by or on behalf of the company :-

a) If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by Insured Perils".

11. It had been further stated that the defendant had appointed the independent Surveyor Mohammed Ali and Investigator David Nagaraj to conduct Survey. The substantial items of the claim was due to theft, which was not covered under the policy. It had been stated even under riot cover, theft was specifically excluded. It had been stated that in view of suppression and misrepresentation, the defendant was not liable to the suit claim. It had been further stated that the police registered only a case of theft. It had been stated that the claim did not

fall under the conditions of the policy. It had been therefore stated that the suit must be dismissed.

12. Issues :

On consideration of the pleadings, the following issues were framed :

1. Whether the policy of insurance under which the claim is made by the plaintiff is not valid in terms of condition Nos.1 and 3 of the policy and the reasons given by the defendant for rejecting the insurance claim of the plaintiff is legally sustainable?
2. Whether the mob attack by a group of unruly elements on the plaintiff factory, causing damage to the machinery and building and removal of parts of some of the machinery, would amount to "theft"?
3. Whether the survey report dated 15.07.2008 of the surveyor appointed by the defendant has acted within the scope of reference?
4. Whether the plaintiff's claim is sustainable under the policy and if yes, to what extent?
5. Whether the plaintiff is entitled to damages as claimed?
6. Whether the plaintiff is entitled to interest at 18% per annum?
7. To what other relief is the plaintiff entitled?

13. The trial :-

To substantiate the issues, the parties went to trial and the plaintiff examined two witnesses namely the Managing Director of the plaintiff company as PW1 and the Director, who claimed to be incharge for day to-day affairs of the plaintiff company as PW2. The defendant also examined two witnesses namely, the Branch Manager in the branch office, where the plaintiff had taken the insurance policy, who also worked as Senior Divisional Manager and had occasion to deal with the plaintiff claim as PW1 and the Surveyor Mohammed Ali as PW2. The plaintiff filed Exs.P1 to P13. The documents included, Ex.P3, the copy of the insurance policy dated 04.04.2007, Ex.P4, the copy of FIR in Crime No.111 of 2007 Thirubhuvane Police Station dated 31.07.2007, Ex.P5, the claim form along with Statement of loss and bills and invoices dated 07.09.2007 as Ex.P5, Ex.P6, the letter from the defendant stating that the claim is not admissible dated 20.08.2008 and Ex.P8 the letter confirming the date 10.09.2008. The defendant marked Ex.D1 to D4 including the letter by the plaintiff, dated 31.07.2007, to the defendant informing about the closure of factory after theft as Ex.D1 and the proposal dated 25.03.2003, given by the defendant to the plaintiff as Ex.D4.

14. General facts and issues to be determined and decided.

a) The plaintiff is a Private Limited company incorporated under the provisions of Companies Act 1956. It is engaged in manufacturing Steel Ingots, casting etc.

and have their manufacturing unit and registered office at Sanniyasikuppam, Thirubhuvani Post, Mannadipet Commune, Pondicherry ? 605 107.

b) The plaintiff had taken Standard Fire and Special Perils Policy with the defendant from March 2003. This policy was lastly renewed for the period from 04.04.2007 to 03.04.2008. The plaintiff company had literally stopped production from 2006 itself. It is the claim of the defendant that this was not informed by the plaintiff when the policy was renewed in 2007. It is the claim of the plaintiff that the policy was renewed by the defendant only after personal verification and that whether the factory was closed or functioning was not a relevant issue in determining the claim. On 30.07.2007, a mob of about 20 to 25 persons entered into the plaintiff's factory and committed offences, according to the police as spelt out in FIR No.111 of 2007, punishable under Sections 147, 452, 427, 379 Indian Penal Code, read with 149 Indian Penal Code.

c) The plaintiff laid an insurance claim for loss of property. This has been rejected by the defendants on the grounds, viz, 1) non disclosure of material facts that the plaintiff company had actually closed down on 30.08.2006 and did not resume production and there was also no electricity supply and (2) the loss under the head "theft" is not covered under the policy.

On the basis of the above primary facts the issues framed for consideration will now have to be decided.

15. Issue No.1

This issue relates to condition No.1 and condition No.3 of the insurance policy. The insurance policy that had been entered into between the plaintiff and the defendant, has been marked as Ex.P3. This is for a period from 04.04.2007 to 03.04.2008. The claim by the plaintiff is for an incident relating to 30.07.2007. Consequently the said date is covered within a period of policy. Further the defendant has denied the liability on the ground that there has been a deliberate suppression /non disclosure of material facts, while renewing the policy. The terms of the policy will have to be analysed. In this connection, Ex. D4, dated 25.03.2003 is the proposal form given by the defendant to the plaintiff. A perusal of Ex.D4 reveals that the defendant insurance company had forwarded a proposal for Standard Fire and Special Perils policy and the proposer is the plaintiff herein. The particulars of the plaintiff had been stated in the said proposal form and the business of the proposer is stated as "Engineering Workshop". There is a declaration at the end by the insured i.e., the plaintiff that

"If any additions or alterations are carried out in the risk proposed after the submission of this proposal form then the same should be conveyed to the insurers immediately".

b) The learned counsel for the defendant very strongly relied on this declaration and stated that if there has been any alterations in the risk proposed after the submission of the proposal form then it should be conveyed to the insurer. The

learned counsel for the defendant, relied on the cross examination of PW1 in which, he had stated as follows :-

"... remained closed and did not resume till the incident on 30.07.2007. When our factory was closed on 31.08.2006 at the time we have not informed to the defendant of the same. The Policy under Ex.P3 was renewed subsequently in April 2007. At the time of renewal we have not written to the defendant about the same but they had come to our factory at the time of renewal when it was informed to them orally".

c) The learned counsel for the defendant very strongly relied on this admission and stated that the factory was closed from 30.08.2006 was not informed to the defendant at the time of renewal, which dis13 entitled the plaintiff from seeking any relief from the insurance policy under condition No.1 of the said policy. However, the evidence in entirety will have to be seek. The plaintiff had not informed the defendant at the time of closure. But the witness was categorical that at the time of renewal of the policy in April 2007, the defendant was informed that the factory was closed.

d) A further perusal of the actual policy given under Ex.P3, dated 04.04.2007 reveals the general conditions. Clause 1 is as follows :-

1. THIS POLICY shall be voidable in the event of misrepresentation, mis-description or non-disclosure of any material particular.

Under Clause 3 (a), it has been stated as follows :-

3. Under any of the following circumstances, the insurance ceases to attach as regards the property, affected unless the Insured, before the occurrence of any loss or damage, obtains the sanction of the Company signified by endorsement upon the policy by or on behalf of the Company :-

a) If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by Insured Perils.

e) Relying on the above, the learned counsel for the defendant stated closure of the factory owing to non supply of electricity is a material fact and is a material suppression affecting the risk, if the same is not disclosed by the insured. He further stated that it is an admitted fact that from 31.08.2006 onwards periodically there had been thefts and the risk component has increased. The learned counsel for the defendant also stated that it is not correct to state that the defendant had visited the insured place at the time of renewal. He relied on the following evidence of DW1 :-

"No insurance officials will visit the insured place at the renewal also. Whenever there is a big risks, we will go along with out Engineers to the insured place. As I was in the capacity of Divisional Manager and as such I aware about the accident

through my Branch Manager, Rattan Bazaar Branch office at that time, I do not remember the date of the same. After getting the information, my role was in general we appoint suitable surveyor for the said loss".

f) In this regard, I fear, I am not able to agree to the propositions of the learned counsel for the defendant. The witness has expressed his opinion regarding visit of officials at the time of renewal. Evidence has to be case specific. Categorisation of insured into "big" and "small" is condemnable. It is just not proper on the part of the defendant to categorise the insured companies as big risks and small risks. Once any person pays a premium, he expects that attentive care would be shown to him by the insurance company when a claim is lodged. In the year 2007, it was the duty of the defendant to ensure responsibility at the time of renewal. The plaintiff is a policy holder from 2003 onwards.

The fulcrum of insurance is based on public policy and if the adjudication of claim of the insured with money collected from the public through premium is to be discriminated between big risks and small risks then it goes against public policy. Insurance companies should move away from feudal attitude and wholesomely accept principles keeping the insured in mind. They need not distribute largesses, but should never negate claims which are lawful from the eyes of the common man. The General Insurance Business (Nationalisation) Act 1972 was passed "to serve better the needs of the economy by securing the development of general insurance business in the best interest of the community and to ensure that the operation of the economic system does not result in the concentration of wealth to the common detriment,". The defendant appears to have moved away from this avowed objective. The policy of the State was to serve Article 39(c) of the Constitution of India. The fact that the plaintiff company factory was closed from 31.08.2006 is not a fact which could have been completely hidden by the plaintiff. A simple visit by a representative of the defendant would have been sufficient. The defendant cannot sit in an armchair, collect premium and then place the blame on the insured at the time when a claim is lodged. They rely on clauses which, had been drafted prior to the nationalisation of the insurance companies and which are used, not as enabling provisions, but as an escape route to avoid liability even from legitimate claims. It is time, insurance companies must realise that this is not "Raj" era but "Swaraj" era.

g) The learned counsel for the plaintiff relied on *Satwant Kaur Sandhu v. New India Assurance Co. Ltd.* Reported in 2010 ACJ 265 on the ground that the contract of insurance falls under the category of contract uberrima fides i.e., the contract of utmost good faith on the part of the assured. This is relied on for the fact that the plaintiff herein had not disclosed that the factory was closed from 2006 onwards and it is claimed that is a material fact, which has been suppressed. In fact, this is the primary reason under which the contract of insurance has been repudiated by the defendant. It is to be noted that the defendant has insured the materials available in the factory. It is not explained

before this Court as to how the contract of insurance would have varied if the factory is not functioning. Either way the loss of the machinery cannot be disputed. The insurance is for the loss caused due to rioting and consequent damages and consequent theft by the mob of the machineries. This fact was not dependent on whether the factory was functioning or not. Consequently, I hold that the alleged non disclosure of the factory was closed was not a material fact and cannot be a ground to deny the claim of the plaintiff. In fact, there is a specific stand of the plaintiff that the contract was renewed only after personal inspection by the official of the defendant. When that is the specific stand taken by the plaintiff, the onus shifts to the defendant to reject renewal if they had deemed fit. On the other hand, they had collected premium and consequently they are bound to honour their undertaking.

h) The learned counsel for the plaintiff relied on unreported judgment in C.S. No.1493 of 1988, dated 21.06.2002 in Zip Industries Private Ltd. v. The Oriental Insurance Company Ltd. Rep. by its Divisional Manager, City Branch Office No.2, 115, Broadway, Madras 600 108, on the ground that if there is suppression of material facts, the same would disentitle the plaintiff from making any claim. Suppression of the material fact in that case was Burglary, whereas, here the fact that was stated not to have been disclosed was the closure of the factory. Moreover, the policy of insurance was renewed at a time when the factory was closed and according to the plaintiff, after inspection by the official of the defendant. Consequently I hold that on facts, the said judgment is distinguishable.

i) I hold that there is no violation of Clause 1, 3(a) of the insurance policy and I hold that the defendant is liable to the plaintiff and issue No.1 is answered against the defendant.

16. Issue No.2

On 30.07.2007, a group of people had entered the premises of the plaintiff company, and in this regard, the First Information Report has been marked as Ex.P4. A case in Crime No.111 of 2007 had been registered by the Thirubhuvane Police Station on 31.07.2007. It is to be mentioned that the police complaint had been lodged without any delay on the very same day. Hence, the veracity of Ex.P4 cannot be questioned by the defendant. Ex.P4 reveals that a complaint had been given by the Managing Director of the plaintiff company Mr. S. Giridharan and on the basis of it, on 31.07.2007 at 02.30 p.m. the Station House Officer, namely Sub Inspector of Police had registered the First Information Report in Crime No.111 of 2007 under Sections, 147, 452, 427, 379 of Indian Penal Code read with 149 of Indian Penal Code These sections relate to rioting, trespassing, mischief, causing damage and theft, by an unlawful assembly.

b) The defendant and the learned counsel for the defendant have cleverly isolated Section 379 and has pointed out that consequently, the defendants are within their rights to repudiate the claim. Again, I disagree. It is not the stand of

the plaintiff that a person or a group of persons trespassed surreptitiously into the company premises and removed certain machineries. There has been forceful entry by an unlawful assembly. They caused a riot. They caused damage. They looted the machinery. The violent group of people, who entered into the factory on 30.07.2007 committed acts of rioting by forming into an unlawful assembly and in the course of such rioting apart from damaging, the goods they also removed the machineries from the factory premises. It is part and extension of a riotous act of rioting. It can hardly be expected that the insured will contemplate a situation, wherein a violent group of people will enter the factory commit riot and destroy his machinery and then disperse peacefully. There will be one or more members of the group, who will loot or thief articles which can be removed and for which they may take a fancy. This is part of the chain of action constituting rioting. The learned counsel for the defendant pointed out the Clause (v) in the insurance policy and stated that rioting is covered but theft is excluded. I am unable to accept the view projected. The defendant company should never confuse theft simpliciter and theft as a result of a riot by an unlawful assembly.

c) The learned counsel for the defendant had relied on Clause V relating to material damages with respect to riot, strike and malicious damage. The entire Clause is reproduced .

V) Riot, Strike and Malicious Damage : Loss of or visible physical damage or destruction by external violent means directly caused to the property insured but excluding those caused by

a) total or partial cessation of work or the retardation or interruption or cessation of any process or operations or omissions of any kind.

b) Permanent or temporary dispossession resulting from confiscation, commandeering, requisition or destruction by order of the Government or any lawfully constituted Authority.

c) Permanent or temporary dispossession of any building or plant or unit or machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery or prevention of access to the same.

d) Burglary, housebreaking, theft larceny or any such attempt or any omission of any kind of any person (whether or not such act is committed in the course of a disturbance of public peace) in any malicious act.

If the Company alleges that the loss of damage is not caused by any malicious act, the burden of proving the contrary shall be upon the insured.

d) A careful reading reveals that the exception of "theft" applies only to disturbance of public peace. Here there has been theft in connection with rioting within the factory premises.

e) Learned counsel for the defendant relied on M/s. Industrial Promotion & Investment Corporation of Orissa Ltd., v. New India Assurance Company Ltd. & Anr. reported in 2016 SCC online SC 842, for the fact that a contract of insurance should be construed strictly, without adding or deleting from the terms thereof. Clause V, when construed strictly includes rioting and excludes theft only when it is accompanied by disturbance of public peace. Hence, the factory premises was invaded by an unlawful assembly. The general peace of the general public was not disturbed. A careful reading of the said Judgment reveals that in that case, the claim was refused on the ground that the appellant therein had not proved theft and entry. Here, in this case, the entry of 20 to 25 persons causing rioting has been clearly established and it was only a result of such entry that theft had taken place. Consequently, in this case, the claim is admissible.

f) The learned counsel for the defendant further relied on Vikram Greentech India Limited and another v. New India Assurance Company Ltd., reported in 2009 5SCC 599 and more particularly on paragraphs 16, 17, 18 and 19 which are as follows :

16. An insurance contract, is a species of commercial transactions and must be construed like any other contract to its own terms and by itself. In a contract of insurance, there is requirement of uberrima fides i.e., good faith on the part of the insured. Except that, in other respects, there is no difference between a contract of insurance and any other contract.

17. The four essentials of a contract of insurance are : (i) the definition of the risk, (ii) the duration of the risk, (iii) the premium and (iv) the amount of insurance. Since upon issuance of the insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of the risks covered by the insurance policy, its terms have to be strictly construed to determine the extent of liability of the insurer.

18. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy. (General Assurance Society Ltd. v. Chandmull Jain, Oriental Insurance Co. Ltd. v. Sony Cheriyan and United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal)

19. A document like proposal form is a commercial document and being an integral part of policy, reference to the proposal form may not only be appropriate but rather essential. However, the surveyors' report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible.

g) The observation above actually against the defendant since, if the terms of the contract are to be construed strictly then rioting is included and omission to

mention "closure of factory" is not excluded. The defendant cannot bring his own interpolations, opinions and interpretations. The repudiation of the contract that closure of factory is a material fact is not mentioned in the contract of insurance. Moreover, as observed by the Hon"ble Supreme Court "the surveyors" report cannot be taken aid of nor can it furnish the basis for construction of a policy. Such outside aid for construction of insurance policy is impermissible. In this case, the defendant had relied on the opinion of the Surveyor as would be seen in the following discussion. There was total non-application of mind by the higher officials, to whom the plaintiff pleaded for reconsideration of the rejection of the claim. For all the reasons stated above, I answer issue No.2 in favour of the plaintiff and hold that mob attack by a group of unruly persons on the plaintiff factory is not "theft" simpliciter.

17. Issue No.3

The survey or report dated 15.07.2008 was annexed with Ex.P10, the reply given by the defendant. A perusal of the report shows that the surveyor has himself entered into judgment with respect to the claim that can be granted and claims that can be denied.

b) The Surveyor has observed : As the insured has claimed around Rs.31.55 lakhs loss. In that most of the items listed by the insured where said to be stolen/ theft. Since the policy does not cover theft, the material loss due to theft/stolen cannot be considered.

c) This reveals the preconceived notion of the surveyor himself. Again in the very same report, he has stated as follows :

Regarding the compound wall work the Civil contractor M/s. S.Sattayavel, Pondicherry has given a quotation for Rs.17,093/-. The Contractor has given an estimate to insert the post and slabs which are not available (i.e.) the stolen / theft slabs has to be replaced hence the loss to compound wall cannot be considered since it is not covered in the scope of policy (under Section IPC 379)

Regarding the Furniture's claimed by the insured has not been considered since the materials like AC, Almarha, Fan, sofa set were stolen/theft which is not covered in the scope of policy (under Section IPC 379) Regarding the Scraps claimed by the insured has not been considered since the materials were stolen/ theft which is not covered in the scope of policy (under section IPC 379)

Regarding the Furnace parts claimed by the insured has not been considered since the materials like Choke, Capacitors, busbars, Heat exchanger Pump CT coil etc were stolen/theft. Even the panel board said to have damaged where not found at the spot. On seeing the photos of the panel the entire parts were stripped off. (under Section IPC 379)

d) It is seen that the Surveyor has himself negated the claims. The duty of the Surveyor is to assess the damages which has been caused and submit his report. The absurdity of the Report is evident from the very fact that the materials

rejected by the Surveyor, can never be stolen simpliciter. There has to be rioting, damages caused and deliberate and hostile removal, which was what had occurred at the plaintiff's factory on 30.07.2007.

e) Learned counsel for the defendant also relied on *Sri Venkateswara Syndicate v. Oriental Insurance Co. Ltd.* and another reported in 2009 ACJ 2837 with respect to the report given by the Surveyor. The learned counsel relied on paragraphs 21 and 22, in which it has been held as follows :

21. The Insurance Regulatory and Development Authority ("IRDA" for short) has formulated Insurance Surveyors and Loss Assessors (Licensing Professional Requirements and Code of Conduct) Regulations, 2000, which regulate the licensing and the work of surveyors. These regulations stipulate that the surveyor shall investigate, manage, quantify, validate and deal with losses arising from any contingency and carry out the work with competence, objectivity and professional integrity by strictly adhering to the Regulations.

22. The assessment of loss, the claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by insured, a loss adjuster, popularly known as the loss surveyor, is deputed who assesses the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the surveyor/surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them.

f) In this case, the ability of the Surveyor is not disputed. However the Surveyor cannot give his opinion with respect to acceptance or rejection of claim. The learned counsel relied on the word "validate" and therefore stated that the Surveyor in this case DW2 has every right to reject the claim. I disagree. To be specific, if the word had been "invalidate" the stand of the learned counsel can be appreciated. Oxford's English Dictionary defines "validate" as "Demonstrate or support the truth or value of" and "invalidate" as "deprive (an official document or procedure) of legal validity because it contravenes a regulation or law". The duty of the Surveyor is only to "validate" a claim. "Invalidation" is the prerogative of the higher officials, who, in this case, have exhibited a remarkable attitude of absolute non application of mind. A careful reading of the insurance contract shows that rioting is covered and when rioting is covered consequent, theft is also covered. Consequently, the claim of the plaintiff has to be upheld.

g) I hold that the Surveyor can only assess the damages caused and estimate of the damages. Whether such damages are admissible or not has to be decided

only by the higher officials of the defendant company. It is not for the Surveyor to decide inadmissibility. Consequently, I hold that the Surveyor has exceeded his limit in his report dated 15.07.2008. The issue is answered accordingly.

18. Issue No.4

In view of the findings given with respect to issue No.1 & 2, I hold that the plaintiff's claim is sustainable under the policy. I further hold that the fact that the factory was closed from August 2006 cannot be held against the plaintiff. Further, the fact that it was not disclosed by the plaintiff, also cannot be held against the plaintiff. The defendant had the duty to verify the particulars of the insured. The defendant cannot hide behind differentiations of "big risks" and "small" risks. From the angle of the defendant, any person who pays premiums, must be given the same amount of care and attention irrespective of the quantum of the premium. It will be highly inappropriate if the defendant were to justify adopting an attitude by stating to a common person, who pays a relatively lower amount of premium to sit on a wooden bench and wait for his turn to be called, while at the same time, extend hospitality to a person, whose premium is relatively higher, offer him a sofa and also host lunch or whatever a "high premium" paying person is specially entitled to. This is against the public policy and against the object of the nationalisation of the insurance company. With respect to the quantum, it is seen that the plaintiff has claimed the sum of Rs.31,55,000/- being the total loss sustained. In this connection, the plaintiff has also produced the bills that can be produced and have been marked as Ex.P5. The bills and invoices had been enclosed along with the claim form dated 07.09.2007. This Court cannot sit and calculate and adjudicate over the claim made. Either the defendant should have taken up the responsibility of assessing the loss sustained and thereafter had decided on the admissibility of the claim, or the defendant should accept the entire claim raised by the plaintiff. In this case, as pointed out above, the Surveyor has admitted a loss of Rs.80,918/- as is seen from his report dated 15.07.2008, enclosed along with Ex.P.10. The report of the Surveyor is rejected by me, since the Surveyor himself has rejected various claims quoting Section 379 of Indian Penal Code and the higher officials have played "baa baa black sheep" and meekly accepted the opinion of the Surveyor. In fact, as pointed out above, even in the Clause with respect to the duty of a Surveyor, there is no word as "invalidate", The duty of the surveyor is only to assess, quantify, investigate and "validate" the claim. This simply means that he must estimate the loss suffered. If he had doubts regarding admissibility, he must refer that aspect to his higher officials. Here, this was not done. Consequently, the defendant will have to suffer the loss created by their own Surveyor submitting a report which does not contain assessment of loss, but contains only opinions regarding rejection of the claim and further compounded by the non-application of mind by the higher officials. Since the defendant, though had an opportunity to evaluate the loss, but had not done so, this Court has no other opinion but to accept the claim of the plaintiff that the loss suffered by them amounted to Rs.31.55 lakhs. This issue is answered accordingly.

19. Issue No.5

The plaintiff, apart from claiming the actual loss of Rs.31.55lakhs, has also claimed a sum of Rs.10lakhs as damages for mental agony. This claim is rejected by me. The policy is for indemnifying the loss suffered by the defendant. It does not extend, to provide solace for the mental agony. The plaintiff's claim on this ground has no legal standing and consequently, it is rejected and this issue is answered accordingly.

20. Issue No.6

Even though the claim of the plaintiff for the loss suffered is quantified at Rs.31.55 lakhs and even though the plaintiff has claimed interest at the rate of 18% p.a., I hold that the defendant is liable to pay any interest only at the rate of 6% p.a. This is on the ground that the defendant is a Public Limited Company dealing with public money. Consequently, I hold that the plaintiff is entitled to interest from the date of the plaint till the date of judgment, but entitled to interest at 6% p.a. from the date of decree till the date of payment at 6% p.a. only. This issue is answered accordingly.

21. In the result, the suit is decreed for a sum of Rs.31,55,000/- together with interest at the rate of 6%p.a. from the date of plaint till the date of realisation. Time for payment is 3 months from the date of receipt of a copy of this Judgment by the defendant. In view of the contractual relationship between the parties, costs are not awarded.