(2016) 06 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Case No : 415 of 2011

UNITED INDIA INSURANCE CO. LTD. APPELLANT

Vs

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Citation : 2016 3 CPR 178

Hon'ble Judges : V.K. Jain, Prem Narain

Advocate : A.K. De, Kishore Rawat, S.N. Bhat

Judgement

1. The complainant obtained a Standard Fire and Special Perils Policy which inter-alia covered stock of molasses kept in the factory building of the complainant to the extent of Rs. 1,74,00,000/-, for the period from 05.04.2008 to 04.04.2009. The policy was issued by United India Insurance Co. Ltd. though it appears that two insurance companies namely United India Insurance Co. Ltd. and Oriental Insurance Co. Ltd. were co-insurers, share of Oriental Insurance Co. Ltd. being 60% and the share of the Oriental Insurance Co. Ltd. being 40%. On 13.04.2008, at about 08:30 am, molasses kept in one of the tanks in the factory premises of the complainant leaked from the bottom side. There was a nipple type formation of four inches constructed in the tank and the said nipple was welded to the tank near the bottom base. Molasses leaked from the bottom portion of the tank and the complainant was unable to control the said leakage, as a result of which the entire quantity of molasses leaked out. On intimation being given to United India Insurance Co. Ltd., M/s National Surveyors were appointed to visit the factory premises of the complainant and assess the loss. Though the complainant had lodged a claim of Rs. 50,58,585/-, the loss was assessed by the surveyor at Rs. 20,42,739.60/- primarily on account of under insurance since the value of the molasses stored in the factory at the time of the incident was Rs. 4,30,88,888.40/- as against the insured value of Rs. 1,74,00,000/-. Despite the assessment made by the surveyor, the claim was rejected by the insurer vide letter dated 10.09.2008 sent by United India Insurance Co. Ltd. on the ground that the loss had occurred due to corrosion or

rupture in the nipple, leading to the opening of the welding joint of the nipple, causing leakage of molasses, which was not a covered peril. Being aggrieved from the rejection of the claim, the complainant approached the concerned State Commission by way of a consumer complaint.

2. The complaint was resisted by the insurers, primarily on the same ground on which the claim was repudiated.

3. The State Commission, vide its order dated 19.08.2011, allowed the complaint and directed the insurers, i.e. United India Insurance Co. Ltd. and Oriental Insurance Co. Ltd. to settle the claim at Rs. 50,58,585/- in the ratio of 60% by United India Insurance Co. Ltd. and 40% by Oriental Insurance Co. Ltd. They were also directed to pay the aforesaid amount with interest @ 10% per annum and the cost of litigation quantified at Rs. 5,000/-. Being aggrieved from the aforesaid order, both the insurance companies have filed two separate appeals.

4. The first question which arises for our consideration in this case is as to whether the loss to the complainant happened due to one of the perils covered under the insurance policy or not. The insurance policy taken by the complainant admittedly, covered loss due to bursting and/or overflow of water tanks, apparatus and pipes. Admittedly, there was no overflow of water tanks, apparatus and pipes in this case. Therefore, the only question would be whether the loss happened due to bursting of water tanks, apparatus and pipes. The report of the surveyor, to the extent it is relevant, reads as under: INCIDENCE OF LOSS

.... There is a nipple type formation of size 4", which is constructed in the Tank and this Nipple is welded to Molasses Tank. This is near the bottom base and at the time of cleaning the Tank, the water and slush is drained from this nipple by cutting the same. The Molasses was leaking from the bottom portion and they were unable to control the same. They made efforts to put mud stones, but, the molasses was leaking out and the entire quantity of Molasses stored in the tank had leaked out.

5. It appears that the nipple has given way, could be due to opening of the welding joints or failure of the welded joints or metal fatigue causing rupture. Due to this the molasses has leaked out from the Tank-1. There were no physical damages to the Molasses Tank, the Pipings, Valves or the surrounding area. And it was clear that, the leakage has occurred from the Nipple only.

6. .... The statement by Mr. B.K. Gumme, Chief Chemist addressed to the Excise Department highlights the incidence in detail alongwith note, where it is clearly indicated in Answer No. 1 " the rupture in the bottom drain nipple was a main cause of Molasses." Again in the Note addressed to the Excise Department in Answer No. 6 - Why the Nipple failed? The reason indicated was "the reason suspected due to failure of welded joints inside, which cannot be seen. "

"The loss and damages to the Molasses has occurred due to the rupture of the nipple of the Molasses Tank may be by weakening in the welded joints of the nipple, as also could be due to rusting. This could be due to metal fatigue or due to weak welded joints or due to corrosion or rupture in the nipple leading to the opening of the welded joints of the nipple causing leakage of Molasses and resultant loss of the Molasses.

This is not a peril covered under the Policy and hence Claim is not admissible, payable under the Policy.

5. It is evident from the report of the surveyor that molasses had leaked from the tank due to rupture of the nipple of the said tank. Since the nipple had been welded to the tank near its bottom, it became a part and parcel of the tank itself. Therefore, it can hardly be disputed that a rupture of the tank had resulted in leakage of molasses from it. The surveyor took the view that since the rupture of the nipple could be due to metal fatigue or due to week welding joint or rusting, the claim was not covered under the insurance policy. In our opinion, in case there is no difference between the rupture and bursting, the claim would be covered under the policy, as the bursting/rupture, irrespective of the cause of the said rupture/bursting, was one of the insured perils. It is immaterial whether the rupture/bursting took place due to weakening of joint, due to metal fatigue, rusting or any other reason. Once it is shown that there was a bursting/rupture of the nipple which had resulted in the loss to the complainant, such a loss would be covered under the insurance policy. Coming to the question as to whether rupture and bursting carry identical meaning or are two altogether different causes, we find that the term "bursting" has not been defined in the insurance policy. Therefore, we have to necessarily fall back upon the dictionary meanings of the terms "rupture" and "burst". The term "rupture" is defined in the Oxford Advanced Learner''s Dictionary, New 8 Edition as under : th Rup-ture / noun, verb.

1. (medical) an injury in which something inside the body breaks apart or bursts the rupture of a blood vessel. 2a situation when something breaks or bursts ruptures of oil and water pipelines. 3(informal) a hernia of the abdomen I nearly gave myself a rupture lifting that pile of books. 4(formal) the ending of agreement or of good relations between people, countries, etc. a rupture in relations between the two countries. Nothing could heal the rupture with his father.

Verb 1. (sth/yourself) (medical) to burst or break apart sth inside the body; to be broken or burst apart: a ruptured appendix. He ruptured himself (= got a HERNIA) trying to lift the piano. 2 sth (formal) to make sth such as a container or a pipe break or burst; to be broken or burst: The impact ruptured both fuel tanks. A pipe ruptured, leaking water all over the house. 3 sth (formal) to make an agreement or good relations between people or countries end: the risk of rupturing North-South relations.

"Burst" is defined as under in the aforesaid dictionary:

1. [intransitive, transitive] to break open or apart, especially because of pressure from inside; to make something break in this way That balloon will burst if you blow it up any more. The dam burst under the weight of water. Shells were bursting (= exploding) all around us.(figurative) He felt he would burst with anger and shame. a burst pipe. something Don''t burst that balloon! The river burst its banks and flooded nearby towns. Synonyms at Explode

2. 2 [intransitive] + adv./prep. to go or move somewhere suddenly with great force; to come from somewhere suddenly He burst into the room without knocking. The sun burst through the clouds. The words burst from her in an angry rush.

3. 3[intransitive] be bursting (with something) to be very full of something; to be very full and almost breaking open. The roads are bursting with cars. To be bursting with ideas/enthusiasm/pride. The hall was filled to bursting point . The hall was full to bursting .(informal) I''m bursting (for a pee)! (= I need to use the toilet right now).

6. It is quite clear from a comparison of the dictionary meaning of the above referred two terms though they are almost synonyms with each other. The definition of "rupture" specifically refers

to bursting, meaning thereby that there is really no difference between rupture and bursting. No material has been placed before us to show that bursting would be altogether different from rupture in the context of an incident of this nature. Therefore, we have no hesitation in holding that rupture of the nipple of the tank was nothing but a bursting of the said nipple which formed part and parcel of the tank, having been embedded to its bottom. Therefore, we find no merit in the contention that the incident of loss of molasses was not a covered peril.

7. The next question which arises for consideration is as to what amount the complainant is entitled on account of loss suffered by it due to leakage of molasses from the tank. Though the complainant had submitted a claim of Rs. 50,58,585/-, the report filed by the surveyor shows that the value of the stock of molasses found in the factory premises of the complainant at the time of the loss was Rs. 4,30,88,888.40/-. Since the insured value of the molasses was Rs. 1,74,00,000/-, there was gross under insurance. The surveyor was therefore, fully justified in assessing the loss at Rs. 20,42,739.60/-. In our opinion, the complainant in entitled only to the aforesaid amount. The learned counsel for the complainant submits that the plea of under insurance was not pressed by the appellants before the State Commission and therefore, they should not be allowed to take the plea at this stage. We however, find no merit in the contention. Under insurance having been applied by the surveyor while assessing the loss, it was for the complainant to challenge the said application. In the Memorandums of Appeal filed by the insurance companies, plea of under insurance has been duly undertaken. Even otherwise, we find no reason to disallow the plea of under insurance in the case of admitted under insurance on

account of value of molasses of the complainant being substantially higher than the stock of the molasses got insured by the complainant.

8. Mr. Rawat who represents Oriental Insurance Co. Ltd., submits that instead of directing the insurers to pay in the ratio of 60% and 40% respectively, the State Commission should have directed the United India Insurance Co. Ltd. alone to pay the entire admissible amount and it would be open to United India Insurance Co. Ltd. to claim the aforesaid amount from the Oriental Insurance Co. Ltd., as per the internal procedures of the said companies. We however, find no merit in the contention since in our opinion, both the insurance companies were co-insurers, share of United India Insurance Co. Ltd. being 60% and the share of Oriental Insurance Co. Ltd. being 40%. We therefore, dispose of this appeal by directing both the appellants to pay a sum of Rs. 20,42,739.60/- to the complainant alongwith interest @ 10% per annum with effect from six months from the date of lodgment of the claim till the date of payment and cost of litigation quantified by the State Commission at Rs. 5,000/-. The payment shall be paid in the ratio of 60% and 40% by United India Insurance Co. Ltd. and Oriental Insurance Co. Ltd. respectively. The payment in terms of this order shall be paid within six weeks from today. On such payment, the appellant shall be at liberty to withdraw the amount deposited by them with this Commission alongwith interest which may have accrued on that amount.

