**(2015) 05 NCDRC CK 0086**

**In the National Consumer Disputes Redressal Commission**

**Case No :** 32 of 2005

Western Tobacco Limited APPELLANT

Vs

UNITED INDIA INSURANCE CO LTD RESPONDENT

**Date of Decision :** 07-05-2015

**Acts Referred:**

**Citation :** 2015 2 CPR 880

**Hon'ble Judges :** J.M.MALIK , S.M.Kantikar J.

**Advocate :** DEEPESH JOSHI , RAJUL SHRIVASTAVA , A.K.DE

# Judgement

1. THE report of the Surveyor towers above the rest unless it is shown that his action is mala fide or stems out of an ulterior motive.

2. M /s Western Tobacco Limited, the complainant -company transacts the business of manufacture of cigarettes and deals in export of cigarettes and cut tobacco. The complainant obtained two insurance policies from M/s United India Insurance Company Ltd., opposite party. Unfortunately, the fire broke out at the factory of the complainant during the night falling between 28 -29th August, , 2003 causing extensive damage to the raw material, building, plant and machinery. The police and the OP were apprised of the facts immediately.

3. THE Branch Manager of the insurance company/OP 2 appointed Shri Amit Rupal, Surveyor and loss assessor for the ascertainment of the loss sustained by the fire. The said surveyor visited the site on 29.8.2003 when the fire was still on. According to the complainant, it sustained loss to the tune of Rs.2,72,02,341.840/ - concerning raw material, Rs.1,03,87,399.50 towards imported raw material total being Rs.3,75,89,741.430/ -. The complainant also sustained loss of Rs. 30 lakh on account of loss of building, plant, machinery and electrical installation. He sustained total loss in the sum of Rs.4,05,89,741.430. The complainant submitted the claim before the insurance company/OP. He also annexed certificate issued by the Municipal Corporation, Bhopal, Ex. A -7; true copy of the certificate of Chief Municipal Officer, Nagar Panchayat, Obedullahganj, annexure A -8(a) and certificate of Office of Chief Engineer Electrical Safety as

Annexure A -8(b), showing the cause of fire as short circuit. However, another Surveyor, Shri Pradeep Jariwala of one M/s Mehta and Padamsey Pvt. Ltd. was also appointed without there being any need for such appointment. The second Surveyor visited the factory in a number of times for inspection. Since the complainant was facing a financial crunch, therefore, the complainant sent a letter to the Surveyor requesting him to release part payment/on account of payment of some money till the final decision was taken because the surveyor always assured him that the claim of the complainant would be settled soon. Copies of those letters were placed on record as Annexure A -9 (Colly). M/s Mehta and Padamsey agreed that the complainant had sustained loss to the tune of approximately Rs. 4 crore and offered the complainant a settlement amount of Rs.3,16,00,745/ -. The complainant sent letters to the Surveyor on 12.12.2003, a copy of which was placed on record as Annexure A -10 and letter dated 15.12.2003 annexure A -11. However, negotiations could not materialize.

4. THERE was further correspondence between the complainant and the surveyor and the complainant had agreed to accept an amount of Rs.3,16,00,745/ - vide letter dated 28.11.2003 (annexure 14) and dated 12.12.2003 (annexure A -15). However, on 19.1.2004, the complainant was informed that Surveyor was directed to re -investigate the matter. The complainant cooperated with the Surveyor and there were further correspondence.

5. THE complainant received a letter of repudiation of 8.10.2004 i.e. after almost a year and 2 months of the date of cause of loss, its true copy has been produced on record as annexure A -18. The complainant has picked up a conflict with this repudiation letter. Ultimately, this complaint was filed in this Commission on 6.4.2005. The break -up of the claim made by the complainant is mentioned as hereunder : JUDGEMENT_4_LAWS(NCD)5_2015.htm

6. THE OP listed the following defences. According to the complainant, the cause of fire was short circuit. It has placed reliance on various certificates. It wants this Commission to presume that there was short circuit. However, it is clear that this fact was introduced by the complainant himself. The certificate of police station Mandideep annexure A -4 mentions that ''it seems that some fire has broken out from the short circuit''. Nagar Panchayat''s certificate dated 11.9.2003 (annexure 5) states that ''the reason of the fire was told to of (sic be) electric short circuit. The letter issued by the office of the municipality council, Mandideep date 10.9.2003 states that the reason of the fire is guessed to be electric short circuit. It is contended that under these circumstances, these certificates produced by the complainant carry exiguous value and no reliance should be placed upon it.

7. IT is also averred that though there was a short circuit but it was not a short circuit "alone" which caused the fire but rather a further act of negligence on the part of the complainant, which has been suppressed by the complainant. The certificate of the Chief Electrical Engineer states that ''the insulation in on the joint in the cable was as per Indian standard. It is clear that so called certificate

 

was in response to the clarification sought for by the claimant and more particularly relates to investigation report, which has not been annexed to the complaint. The entire report did not see the light of the day. The Chief Electrical Engineer recorded the statement of the electrician of the claimant, who stated that there was a fault in 40 KWA line, which was repaired by him view days back. The investigating officer also mentioned in his report as under: "During the night of accident i.e. on 29/8/03 at 2.30 A.M. the light of the factory went off. And when the light came against the Electrician helper Shri Sheitan Singh who was on duty, reached the control room and put on the M.C.B., which went off when the total power was gone. Few of the lights were on in W.M.S. hall. At the time of accident there was a load of about 40 K.W. on this circuit. According to the statement of Sh. Ramnarayan, that present electric load, if the M.C.B. gets on then load increases than the scheduled one, hence the cable wire went hot, because of the joint in the cable, and the hot material dropped on the wire. Beneath that a great quantity of paper and flammable material was lying. And the hot insulation (P.V.C.) dropped on the paper, which caught fire, and the flames turned into big fire. At the time of investigation the B. Phase of 100 M. P. main switch was found on. And H.R.C. Fuse insulation result was found "O" in state when measure at Zero."

It is averred that although there was a short circuit, yet, the fire was not caused by the short circuit only but because of the insulation tape, which was around the joint in the cable. Again, there ought to have been no such joint in a cable of a load such as 40 KWA and above and this joint caused the fire to heat up, the insulation melted and the melted insulation fell on combustible material which was placed before the cable joint. It is explained that it is thus clear that if there was no such joint in the cable, there could have been no occasion for any insulation tape to burn and a fire to take place. It is evident from the statement of the claimants electrical, the joint was put in by the claimant and which ought not to have been put in the first place. The complainant has also placed on record annexure P -1, true copy of the investigation report dated 12.09.2009. The clarificatory certificate was issued by an Assistant Engineer, who had no authority to issue the same. Again, the certificate does not state that joint was permissible but that the putting of the insulation tape is as per Indian Standard. It is averred that joint may be permitted and often to occur in wiring but in a cable of such high voltage and in a factory premises which is full of combustible raw material being the process of the manufacture of cigarettes the allowing of a joint in a cable of 40 KW was negligence on the part of the complainant.

8. IT is explained that in view of the terms of the policy condition No. 3 -a, the complainant is not entitled to any compensation. As per that provision, if the complainant makes any alteration in the process of manufacture or in any of the circumstance which affect building in which the insured property is housed in such a manner that the risk in question increases, on the causing of such circumstance, the insurance policy ceases to exist. Putting a joint in the cable, the complainant made an alteration in the building in which the insured property

 

was lying.

9. THE complainant did not cooperate with the inquiry made by the Surveyor. The delay was caused by the complainant himself. All the documents were not produced before the Surveyor as is apparent from the letter of surveyor dated 18.3.2004. All the material records were stated to have been burnt. The surveyor had placed reliance on the statements submitted by the insured and also the statements taken out from the system installed in the computer at the insured factory. The Surveyor recommended and investigated into the fire because they were not satisfied with the cause explained to them by the insured. Again, although the surveyor''s report appears to be in favour of the insured, yet, it raises sufficient doubts about the cause of the fire. The final report of the surveyors states that during their rounds to the factory of the insured, they have noticed joints made in electric cable in unaffected departments and suggested the insured to improve upon their safety. The final report dated 18.3.2004 clearly suggested that though there was no direct evidence, which goes to show that the fire was deliberately caused, ''there are certain circumstantial evidence which go against the insured but there is no definite fool proof evidence to establish the allegation. It is vehemently denied that any settlement offer was made to the complainant.

10. IT is further averred that the complainant has wrongly alleged that the OPs are putting pressure on the Surveyor to delay the matter. It is explained that there was no communication between the surveyor and the OP. It is explained that the OP has validly repudiated the claim of the complainant. Evidence, Submissions and Findings

11. THE portion germane to the present controversy in the repudiation letter dated 8.10.2004 runs as follows: "1.You have stated in the claim form that a fire took place on account of short circuiting whereas according to the investigation report of MPEB the short -circuit occurred in a cable hazardously joined by you causing over heating in the metallic wires leading to sparking and consequent fire. You and your factory staff are well aware that the cables meant to carry heavy load such as 40 KW should not have any joint anywhere and any such joint in the cable lines violate the basics of Industrial Safety norms specified under the Factory''s Act and also MPEB guidelines for power distribution. The proximate cause was short -circuiting followed by accompanying fire. In fact no fire would have taken place but for your act of contributory negligence in putting up a joint on the cable carrying load upto 40 KW. The willful negligence in putting up a joint on a high power cable line has in fact increased the risk of loss/ damage by the insured peril and hence violate General Conditoin (B) sub clause 3A of the policy insured.

2. The surveyors have reported that no reliable books or records were made available to them for assessment of loss of raw material/consumables etc. instead an internal computer generated statement was submitted without corroborative evidences, which is violative of clause 6 of the General Conditions.

 

Non -submission of reliable records amounts to non -disclosure of material facts.

3. According to Survey report your company has claimed a loss of Rs.1862451/ - towards purchase of raw materials from A1 -Safe. The loss of stocks claimed by you do not find any place in the monthly stocks statements submitted to the banks.

4. With regard for claim for purchase of various materials from Ayodhya Graphics worth Rs.223871/ - between 12.08.2003 to 24.08.2003 no proof of receiving the materials and their damage by fire was adduce by you. The claim preferred by you shall not be admissible in the absence of any proof of their existence at the factory at the time of fire.

5. The surveyors have observed a large accumulation of packing materials as per information provided. No proof was given about the existence at the factory premises at the time of fire and their destruction. You have also not explained any reason for huge accumulation of these materials and their usability in the manufacturing process. Had such stocks been of any use any prudent manufacturer availing bank finance would not have stocked such non -moving items. These items are either consumed in the manufacturing process for which consumption entries have not been passed or these stocks are obsolete and have no commercial value. Existence of these stocks as claimed not being established beyond doubt cannot be considered for indemnity.

6. As per records it was observed that there was an excise raid at your office and factory premises on 23rd and 24th August, 2003. For unknown reasons you did not produce excise records for verification of the quantum of stocks and the daily production, which is necessary for a fair assessment of loss by the surveyors. It is reiterated that non -submission of excise records amounts to non -disclosure of material facts and violates clause 6(b) of the General Conditions attached to the policy. Under such circumstances a fair assessment of loss allegedly suffered is not possible. Further, the stocks allegedly lying in the factory as per stock statement were not verified by the bankers who have extended credit facilities to your company. In fact one of your bankers have recalled the credit facilities sanctioned to you, which is stocking and speaks of the market credibility of your company. Our higher authorities have taken a serious view of the incident as the incident has serious consequences on the reliability of the averments and information provided by the company.

7. ..xxxx"

12. WE have perused the report of the surveyor. Its important paras run as under: "6.08 During our subsequent visit to the Insured''s premises, we verified the existence of remains of short circuited cable and cable tray which were in burnt condition and as sketched by Electrical Inspector during their verifications. During our round to the factory of the Insured, we also noticed joints made in electrical cables in unaffected departments and have suggested the Insured to improve upon safety.

 

6.12 Based upon verification made by various statutory agencies and upon investigations made by us, we conclude that the fire had initiated by a spark, in electrical cables due to short circuit which fell on cigarette packing materials mostly papers which being inflammable material, fire spread very fast.

8.05.4 d. During our investigation, we have not come across any evidence to establish that the fire was deliberately caused. There are certain circumstantial evidences which go against the Insured but there is no definite fool -proof evidence to establish the allegation.

8.05.7 The officer of Bank of India whom we contacted personally informed us that they were satisfied with their dealings with the Insured. According to the bank the party had gone weak about 10/12 months ago and were not able to honour their commitments in time but there was an improvement in the position in the last 2/3 months. However, the inspection report dated 15.05.2003 stated as follows: "The position of all the accounts are not satisfactory accounts are overdue. There is no operation either in advance account or current account of the party. Books could not be checked on account of non -availability of the key person i.e. Mr. Shankarnarayan who had gone to Mumbai. Other Remarks The factory can run better but is having shortage of funds factory running at 60% capacity (in May 2003) General remarks Company was suffering from temporary shortage of funds but expects to tide over the difficulty as funds were expected from abroad against the bills.

8.05.9 We visited the factory of Ayodhya Graphics at Mandideep to verify their records to ascertain that they had in fact supplied the materials worth Rs.22,33,871/ - between 12.08.2003 to 24.08.2003 to the Insured for only one consolidated bill dated 24.08.2003 was submitted by them to the insured. M/s Ayodhya Graphics could not show their books of accounts under the pretext that they were lying with their Chartered Accountants. They could merely show the copies of delivery challans. The invoice did not appear to be satisfactory. Looking at the size of their factory and fact that they had not supplied similar materials in the past to the Insured and had carried out some labour job of printing on cardboard boxes only. At our request, the Insured had submitted a list showing name and address of the genuine suppliers of raw materials which was not included the name of M/s Ayodhya Graphics. Hence, we did not accept the invoice as genuine and have removed the value of the bill of Rs.22,33,871/ - from valuation and assessment of loss on stocks of raw materials.

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The Insured have agreed to assessment of item (A) above. We repeat that the assessment of loss on Raw Materials includes excise duty of Rs.22,29,160/ - which the Insured may be required to pay if they do not succeed in their appeals with the authorities. Hence this amount of Rs.22,29,160/ - is payable by the Insurance Company to them only if the Insured pay the amount of a future date and produce the proof of payment to Insurer.

 

11.04. The Electrical Engineer, Mr. Dwivedi at Bhopal certified that the fire was caused by electrical short circuit. We also investigated the cause of the fire from various angles and came to the conclusion that the fire had occurred on account of short circuit. Various Government authorities also stated in their certificates/ report that fire had occurred due to the short circuit though one of the weekly published from Bhopal viz. "M.P. Capital Times" having very small circulation raised a question in their weekly published on 28th November 2003 as to whether the fire occurred or was set by somebody. Our inquiries revealed that the statements made in the weekly were baseless and were in all probability made with ulterior motives.

11.13 In view of what is stated herein the Insurers may decide about the final quantum of loss. They may if they so desire treat the loss as "non -standard loss" in absence of authentic records." [EMPHASIS SUPPLIED]

13. THE cause of occurrence was noted by Shri Amit Rupal, Surveyor vide preliminary report which is reproduced as follows: "The stock within the raw material godown was almost full to the capacity. The electrical wiring of the raw material godown was observed almost completely burnt. As the cigarette paper/ raw material is highly combustible, hence, in my opinion, short circuit at and point of the wiring could have ignited the raw material stock, resulting to the devastating fire.

In the light of above, the short -circuit as probable cause cannot be ruled out. The fire is however believed to be purely accident. ESTIMATED LOSS The copies of the stock statements as on 1.8.03 and 29.8.03, duly signed by the insured, are enclosed herewith. The inventory of the stock of unaffected raw material, available after the fire is also enclosed. Based upon my preliminary verifications and enquiries, the estimated loss in respect of reported fire, in lieu to Stock, Building, Plant and Machinery and Electrical Installations would be approx. around Rs.4.5 crores."

14. WE have heard the learned counsel for the parties. The only submission made by learned counsel for the complainant was that, although, the complainant has suffered a huge loss, yet, he will be satisfied if the complainant is granted compensation as per the assessment of loss made by the Surveyor. No other argument was advanced.

15. IT is pertinent to note that in its written version, in para ''K'' at foot of entire page, the OP has himself written: "(I) In further reply to para 17, I say that it may be pointed out that Surveyor is an independent person. The Surveyor is not an employee of the insurance company. Therefore, it is wrong to state that the Respondents were putting pressure on the Surveyor to delay the matter." Although the Surveyors have mentioned about the joints, yet, they did not reject the claim on this ground.

16. ON the other hand, learned counsel for the OP vehemently argued that the report of the surveyor does not prove the case fully. He contended that the

 

surveyor has given few facts, out of which same have already been detailed above, which surround this case with dollops of mystery. He contended that the clear picture does not begin to jell. He argued that in absence of any evidence, the complainant is not entitled to any compensation. He urged that the report of Surveyor must be rejected and the presence of "Joint" itself attributes to the negligence on the part of the complainant for which it is entitled to no compensation.

17. IT is thus clear that above said incident took place due to contributory negligence of both the parties. The OP also admits it in its repudiation letter. Both the surveyors have tried to help the complainant out of the way. The certificate issued by the Chief Electrical Commissioner cannot be pushed under the carpet that caries infinite value. It stands established that the insulation in all the joints in the cable was present. The statement of the electrician of the complainant recorded by the Chief Electrical Engineer clearly goes to show that the presence of joint was there. The investigating officer came to the conclusion that cable wire went hot because of the joint in the cable, the hot material dropped on the wire, the beneath of that quantity paper inflammable material were lying and the hot insulation/PVC dropped on the paper which caught fire and flames turned into big fire. The complainant has made no effort to scrub this charge. The question of existence of joint remains established on the record. The excuse given by the Surveyors that the joint was not at the relevant place is nothing but a ruse to help the insured. Is not that a biased report? It is difficult to fathom why did they take the but and ben stand. It is surprising to note that the Surveyors have elliptically spoken on the issue of joint.

18. SECONDLY , it must be borne in mind that the complainant was facing financial stringency. It is admitted fact that they were having no enough funds on the day of occurrence. Such like harsh reality cannot be glossed over.

19. IT is also clear that the complainant did not give the exact amount of their loss. Whenever a person is excited he talks, nineteen to the dozen. The complainant is not sure about its loss. It swings and oscillates from DAN to Beer Sheba.

20. THE guess work was the main foundation upon which the surveyors formed their opinion upon the accounts of the complainant. The surveyors in a clumsy manner investigated the case hit or miss.

21. LASTLY , it is also clear that the complainant did not take steps to prevent such like event. The record reveals that they were taking all the things in a happy go lucky manner. When a person deals with such like dangerous situation with flammable articles, he is supposed to tread upon the eggs.

22. THE OP has himself placed reliance on the report of the Surveyors. It clearly indicates towards the contributory negligence. Consequently, the complainant is entitled to the extent of 2/3rd assessment made by the Surveyors. Consequently, we hereby direct the OP to pay a sum of Rs.2,47,18,250 82,39,416 =

1,64,78,834 within 90 days from the receipt of copy of this order otherwise it will carry interest at the rate of 9% per year after the expiry of said 90 days till realization. There shall no order to any other interest or costs in view of its peculiar facts.