

GUJARAT OLEO CHEMICALS LTD. Vs. THE NEW INDIAASSURANCE CO. LTD. AND ORS.

**GUJARAT OLEO CHEMICALS LTD. Vs. THE NEW INDIAASSURANCE CO.
LTD. AND ORS.**

1. GUJARAT OLEO CHEMICALS LTD.

D-315, Crystal Plaza Link Road, Andheri (West)

MUMBAI – 400 053

.....Complainant(s)

Versus

1. THE NEW INDIAASSURANCE CO. LTD. AND ORS.

87, Mahatma Gandhi Road,

MUMBAI – 400 001

.....Opp. Party

Case No. : CONSUMER CASE NO. 4 OF 2007

Date of Judgement : 06 December 2023

Judges : JUSTICE RAM SURAT RAM MAURYA

HON'BLE BHARATKUMAR PANDYA

For Complainant : MS. SWECHCHA MISHRA, ADVOCATE

For Opp. Party : MR. KARTIK BRUNDAVAN, ADVOCATE

MR. UMESH PRASAD, ADVOCATE

MR. LAKSHAY SAWHNEY, ADVOCATE

MR. NOEL CHEROBIN, ADVOCATE

Facts:

- **Gujarat Oleo Chemicals Ltd (complainant) is a company engaged in manufacturing chemical products. It has a factory at GIDC, Panoli, Ankleshwar.**
- **The complainant obtained a Standard Fire and Special Perils insurance policy from New India Assurance Co Ltd (opposite party 1) to cover its building, plant & machinery and stock.**
- **On 24.02.2005, a fire broke out in the complainant's factory premises. The complainant informed the insurer on 25.02.2005.**
- **The insurer appointed surveyors who submitted a preliminary survey report dated 16.11.2005 assessing the loss. The complainant filed objections to this report.**
- **By letter dated 29.03.2006, the insurance company repudiated the claim. The complainant engaged an independent surveyor who assessed the total loss at Rs. 5,21,12,725/-.**
- **The complainant then filed the present consumer complaint seeking direction to the insurance company to pay the assessed loss amount.**

Court's Opinions:

- **By order dated 04.04.2008, the Commission directed the insurance company to deposit Rs. 2.43 crores with interest @10% from 01.02.2006. This amount was subsequently released in favor of Andhra Bank, which was also a secured creditor of the complainant.**
- **Two other secured creditors, Technology Development Board and Stressed Assets Stabilization Fund, also got impleaded as opposite parties 7 and 8.**
- **In compliance with the Commission's directions, a joint survey report dated 22.02.2017 was submitted, assessing the loss at Rs. 2.60 crores.**
- **On 26.07.2019, the Official Liquidator appointed in the liquidation proceedings stated that the complainant is**

ready to accept this assessed amount.

- *By order dated 19.08.2019, the Commission gave opportunity to the parties to settle the matter as per the insurance company's offer to pay Rs. 2.60 crores along with interest.*
- *By subsequent orders, the Commission observed that unless contrary directions are given by NCLT, the complaint would be disposed as per the insurance company's offer which was accepted by the Official Liquidator.*

Arguments: Complainant:

- *Insurance company illegally repudiated the claim and did not pay the rightfully assessed loss of over 5 crores.*
- *Seeks direction to insurance company to pay the loss amount with interest.*

Insurance company:

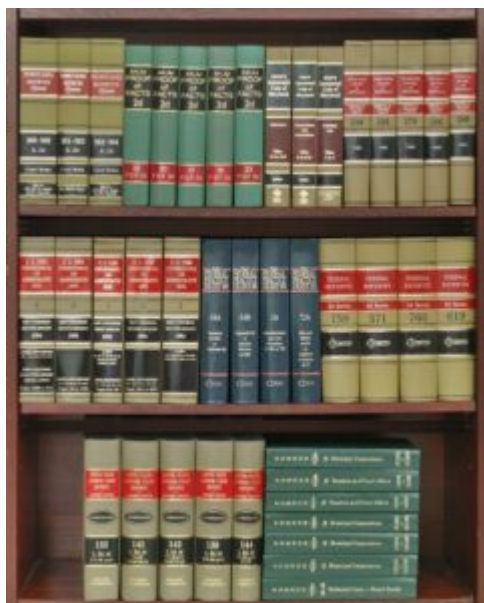
- *Originally disputed the claim but subsequently agreed to pay Rs. 2.60 crores assessed as loss in joint survey report along with interest.*

Andhra Bank, Technology Development Board, Stressed Assets Stabilization Fund:

- *As secured creditors of the complainant, sought release of deposited amount.*

Official Liquidator:

- *Accepted insurance company's offer to pay Rs. 2.60 crores as full settlement.*



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Full text of Judgement :

1. Heard Ms. Swechcha Mishra, Advocate for the complainant, Mr. Kartik Brundavan, Advocate, for opposite parties-1 to 5, Mr. Umesh Prasad, Advocate for opposite party-6, Mr. Lakshay Sawhney, Advocate for opposite party-7 and Mr. Noel Cherobin, Advocate for opposite party No.8.
2. Gujarat Oleo Chemicals Ltd. has filed above complaint for directing the New India Assurance Company Limited (opposite party-1) to (a) pay Rs.52112725/- with interest @ 10% p.a. from July, 2005 till the date of actual payment; (b) pay Rs.521127/- as exemplary damages; (c) award litigation cost; (d) and any other relief which is deemed fit and appropriate in the facts of the case.
3. It has been stated that Gujarat Oleo Chemicals Ltd. was a company registered under the Companies Act and engaged in manufacturing of chemical products and derivatives for commercial purpose. The complainant has its factory at plot No.631-639, GIDC, Panoli, Ankleshwar. New India Assurance Company Limited is a public insurance company. The complainant has obtained Standard Fire and Special Perils (Material Damage) Policy from New India Assurance Company Limited for

coverage of Rs.2.55 crores for building, Rs.17.35 crores for plant & machinery and Rs.13.60 crores for stock. On 24.02.2005 at about 4.40 am the fire broke down in the factory premises of the complainant. The complainant informed the insurer about the fire incident on 25.02.2005. The insurance company appointed Cunningham & Lindsey International Pvt. Ltd. as well as J. Basheer & Associates as surveyors for survey and assessment of the loss. After survey, the surveyor submitted a preliminary survey report dated 16.11.2005. Although the complainant filed a detailed objection to the report dated 16.11.2005, but opposite party-1 repudiated the claim by letter dated 29.03.2006. The complainant engaged an independent surveyor who also assessed the loss of Rs.2713424/- for building, Rs.4557398/- for plant & machinery and Rs.44841899/- for stock (total Rs.52112725/-). Thereafter this complaint was filed.

4. This Commission by order dated 04.04.2008 directed the insurance company to deposit Rs.24306000/- with interest @ 10% p.a. from 01.02.2006. In compliance of the aforesaid order, the insurance company has deposited the amount. Thereafter, Andhra Bank (opposite party-6) got itself impleaded and moved MA/176/2008 for release of the amount deposited by the insurer. This Commission, by order dated 22.01.2009 directed to release the amount deposited by the insurance company alongwith accrued benefit in favour of Andhra Bank. Thereafter, Technology Development Board & Stressed Assessment Stabilisation Fund also got impleaded as opposite parties- 7 & 8 in the complaint as they were also secured creditors of the complainant.

5. In compliance of the direction of this Commission, joint survey report dated 22.02.2017 was submitted in which the loss was assessed to Rs.26010785/-. In the meantime, liquidation proceeding was started against the complainant before the National Company Law Tribunal on 17.01.2018 in which Official Liquidator was appointed. When the case was taken up on 26.07.2019, the counsel for the Official Liquidator stated

that the complainant is ready to accept the amount of Rs.26010758/- as assessed in the joint survey report dated 22.02.2017. In view of the statement of the counsel for the Official Liquidator, this Commission has directed the counsel for the insurance company to take instruction from the insurer that the aforesaid amount be deposited alongwith appropriate interest. On 19.08.2019 when the case was taken up the counsel for the insurance company on instruction informed that the insurance company is willing to deposit Rs.26010785/- alongwith appropriate interest in full and final settlement of its claim adjusting the amount already deposited on 04.04.2008. This Commission in the order dated 19.08.2019 gave an opportunity to the parties to settle the matter on the proposal given by the insurance company. Again this Commission in the order dated 19.11.2019 observed that unless contrary directions are given by National Company Law Tribunal to the Official Liquidator the complaint would be disposed of in terms of the offer given by the insurance company. Thereafter, the Official Liquidator has filed his affidavit dated 28.04.2021 accepting the amount as well as the manner for apportionment of the amount between opposite parties-6 to 8.

11. Since the terms of settlement have now been accepted by the Official Liquidator, we dispose of this complaint directing the insurance company to deposit balance amount of Rs.1704758/- with interest @ 10% p.a. from 01.02.2006 till the date of deposit with the Official Liquidator within a period of two months. Andhra Bank shall also remit the amount of Rs.30787681/- as released in its favour vide order dated 22.01.2009 alongwith interest accrued on it @ 10% p.a. from 22.01.2009 to the Official Liquidator who shall apportion the total amount between opposite parties-6 to 8 in the proportion as mentioned in his affidavit.

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