

LEGACY GLOBAL PROJECTS PVT. LTD. V. ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.

1. LEGACY GLOBAL PROJECTS PVT. LTD.

.....Complainant(s)

Versus

1. ICICI LOMBARD GENERAL INSURANCE COMPANY LTD.
REPRESENTED BY ITS MANAGING DIRECTOR, ICICI
LOMBARD HOUSE, 414 VEER SAVARKAR MARG, NEAR
SIDDHI VINAYAK TEMPLE, PRABHADEVI,
MUMBAI-400025

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 1851 OF 2018

Date of Judgement: 11 Jan 2023

Judges:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Mr. Ankur Singh, Advocate

For the Opp.Party : Mr. Saurav Agarwal, Mr. Arjun Masters,
Mr. Zahid Laiq Ahmed, Mr. Girsh Ahuja &
Ms. Kavya Pahwa, Advocates

Facts:

Legacy Global Projects Pvt Ltd (Insured) was developing a residential project "Legacy Cataleya" in Bangalore. They obtained Contractor's All Risk Insurance policy from ICICI Lombard (Insurer) for Rs 45 crores. In June 2015, water leakage from municipal pipeline entered the project's basement

being constructed, leading to soil erosion, collapse of excavated piles, damage to nearby structures. Insured engaged experts for inspection, advice and took steps for rehabilitation under their guidance. Surveyor was appointed by Insurer to assess the loss. After various communications over next months, surveyor submitted final report on 24.06.2016 assessing net loss as Rs 62,62,525/-. This amount was paid by Insurer to Insured in Jan 2017 but Insured claimed it was deficient and filed complaint seeking higher claim amount.

Court's Opinion:

Preliminary objections of Insurer have no merits, complaint is maintainable. Some delay in submitting papers by Insured but no prejudice caused due to draft assessment being shared. Policy covers indemnification of loss necessitating repair/replacement, not the actual repair/replacement costs. Surveyor rightly disallowed expenses incurred for reinforcement of construction at site after damage. Assessment of third party liability loss based on expert report seems reasonable. No irregularity found in deductions made by surveyor. Hence complaint dismissed as deficiencies not found in claim processing or assessment.

Arguments:

By Insured:

Claimed amount much higher than actual settled claim of Rs 62 lakhs hence deficiency occurred. Non-supply of final survey report is deficiency in service.

By Insurer:

Delay by Insured in submitting required papers. Survey properly done and claim correctly settled as per policy terms. No further amounts admissible.

Sections – None referred

Cases cited:

Harsolia Motors Vs National Insurance Co (2005)

Galada Power and Telecommunication Ltd Vs United India Insurance (2016)

Saurashtra Chemicals Ltd Vs National Insurance Co (2019)

Malana Power Co Ltd Vs Oriental Insurance Co (2019)

I have summarized the key details and aspects under separate headings as requested. Please let me know if you need any clarification or have additional questions.

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Court

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Full Text of Judgment:

1. Heard Mr. Ankur Singh, Advocate, for the complainant and Mr. Saurav Agarwal, Advocate, for opposite party.

2. Legacy Global Projects Private Limited (the Insured) has filed above complaint for directing ICICI Lombard General Insurance Company Limited (the Insurer) to pay (i) Rs.64189160/- with interest @24% per annum, from the date of loss till actual payment, as the balance insurance claim; (ii) Rs.1000000/-, as compensation for harassment and loss of reputation; (iii) cost of litigation; and (iv) any other relief which is deemed fit and proper, in the facts and circumstances of the case.

3. The facts as stated in the complaint and emerged from the documents attached with the complaint are as follows:-

(a) Legacy Global Projects Private Limited (the Insured) was a company, registered under the Companies Act, 1956 and engaged in development and construction of residential and commercial buildings. The Insured entered into a Development Agreement dated 16.10.2012 with Ms. Shagufta Praveen, Mr. Syed Ziauddin, Ms. Benazir Kauser, Ms. Sadia Banu (the owners of the land) for constructing a group housing project (i.e. two basements + ground floor + 15 upper floors), which consisted of two units i.e. Type "A" Unit of floor area 4800 sq.ft. and Type "B" Unit, of floor area of 5100 sq. ft. and other amenities over

3088.15 sq. mtrs. Land at Site No.30, Cunningham Road, Bangalore-560052. The Insured obtained approval of Layout Plan, "No Objections" and "Clearance" from various departments during 2012 to 2013 for construction of the building named as "Legacy Cataleya".

(b) ICICI Lombard General Insurance Company Limited (the Insurer) was a joint venture insurance company and engaged in the business of providing different types of insurance services. The Insured obtained "Contractor All Risk Insurance Policy" No.5004/99329903/00 /000, for the period of 01.02.2015 to 17.09.2018, from the Insurer, for sum insured of Rs.45/- crores with additional cover, of the above site.

(c) The Insured installed 750 mm diameter contiguous piles (touch piles) to facilitate excavation of the foundation and started excavation of basement in August, 2014, which was done up to depth of 8 meter. The Insured started construction of foundations for retaining walls around the basement, in June, 2015. On 08.06.2015, the Insured noticed that leakage from water pipeline of municipal water supply from neighbouring property and gushing into basement. The Insured made a complaint in this respect on 09.06.2015 to Assistant Executive Engineer, High Ground Pumping Station, who came to the spot and identified the leakage, which was coming from adjacent Income Tax Colony from 350 mm water supply line. Assistant Executive Engineer informed that for fixing the leakage, digging work up to 10 to 12 feet in depth was required, for which prior permission of Income Tax Commissioner was required. The Insured gave a written complaint to BWSSB, on 12.06.2015, for fixing the leakage soon but the complaint remained unattended. On 15.06.2015, 350 mm water supply pipeline burst and water started filling in basement site rapidly. There was heavy rainfall during 11.06.2015 to 16.06.2015 in Bangalore city. Heavy rainfall and the water from burst pipeline inundated in basement, due to which, soil erosion and caving of earth around the site started. As a result, Income Tax Layout stone compound in length about 10 feet collapsed, an old house collapsed and three trees in

neighbouring property were uprooted and fell towards basement site. Due to which, piling work done at the site collapsed.

(d) The Insured engaged Prof. B.R. Srinivasa Murthy (Retd.) Civil Engineers, for inspection of the site and advise for remedial measure for strengthening the existing shore piles and to protect neighbouring buildings, who inspected the site on 15.06.2015 and submitted his report, advising various remedial steps to rehabilitate the site to its original condition and save neighbouring buildings. The Insured also engaged M/s. Prasad Consultants and Civil-Aid Technoclinic Pvt. Ltd. for their advises for remedial measures. The Insured took all the steps as recommended by above experts to rehabilitate the site to its original condition and save neighbouring buildings under the supervision of above experts in between 16.06.2015 to 26.06.2015.

(e) On 17.06.2015, the Insured informed the Insurer about the inundation and loss through email sent by Mahindra Insurance Broker. The Insurer appointed Professional Insurance Surveyor and Loss Assessors Pvt. Ltd., Bangalore, as the surveyor on 18.06.2015, for survey and assessment of loss. The surveyor inspected the spot on 19.06.2015 and on subsequent dates, took photographs and made inventory. The surveyor, vide letter dated 24.06.2015, demanded various papers and claim form for assessment of loss, which were supplied to the surveyor on 28.08.2015. Thereafter, the surveyor held a meeting in the office of Mahindra Insurance Broker on 15.09.2015 and discussed all the circumstances of the incident, loss and remedial measured taken by the Insured as well as claim and its supporting documents. The surveyor, vide letter dated 01.10.2015, acknowledged receiving of earlier papers but asked for some more information and item-wise break-up of the cost incurred, quantity of piles and capping beams along with supporting invoices and offer for salvage etc, which were supplied through the Insurance Broker. The surveyor then held meetings on 09.11.2015 and 30.12.2015 in the office of Mahindra Insurance Broker, in which, same queries were again clarified. The surveyor, vide letter dated 13.01.2016, asked

for some more information, papers, details of pre-incident and post-incident expenses and sought for a meeting with the Insured Engineers to understand the structural details and dimensions. The Insured submitted these papers and information on 10.02.2016. The Insurer, vide email dated 06.06.2016, sent to Insurance Broker, shared the sheet of assessment of loss. The surveyor submitted Final Survey Report dated 24.06.2016, without supplying its copy to the Insured.

(f) After receiving Final Survey Report, the Insurer, vide email dated 19.08.2016, informed the Insurance Broker that the claim was being settled for Rs.6262525/- and the Insured was asked to sign discharge voucher as full and final settlement of the claim, for release of above amount and issue a letter of subrogation. The Insured, vide letter dated 22.08.2016, informed that he was accepting that amount under protest and informed that your insistence to sign the discharge voucher was in violation of Circular dated 24.09.2015, issued by Insurance Regulatory and Development Authority of India. The Insurer, through email dated 21.10.2016, again demanded above papers for release of the amount with warning that failing which, the claim would be closed. The Insured, vide email dated 25.10.2016, gave same reply to release the amount without insisting to sign the discharge voucher and sent the papers of KYC and cancelled cheque. The Insurer, vide email dated 27.10.2016, informed that KYC and AML documents were mandatory for release of the amount and Letter of Subrogation would entitle the Insurer to realize the amount of damage from third party. The Insured sent Letter of Subrogation on 09.11.2016. The Insurer paid Rs.6262525/- to the Insured on 04.01.2017. The Insured gave a representation to Grievance Cell of the Insurer on 15.06.2017 but nothing was done. Then this complaint was filed, 16.08.2018, claiming deficiency in service.

4. The Insurer filed its written reply on 11.10.2018, and contested the case. The Insurer stated that as soon as the Insured informed regarding inundation and loss, the Insurer appointed Professional Insurance Surveyor and Loss Assessors

Pvt. Ltd., Bangalore, as the surveyor on 18.06.2015, who inspected the site of the Insured, on 19.06.2015 and on subsequent dates for survey and assessing loss. The Insured took time in submitting the necessary papers to the surveyor. The surveyor supplied a draft of assessment of the loss to the Insurer, which was shared with Insurance Broker, vide email dated 06.06.2016. The Insured did not file any objection to the said draft assessment. The surveyor submitted Final Survey Report dated 24.06.2016, assessing the net loss to Rs.6262525/-. The Insurer, vide email dated 19.08.2016, asked the Insured to sign discharge voucher as full and final settlement for above amount, sent a Letter of Subrogation, KYC documents etc. Letter of Subrogation was sent through email dated 09.011.2016. Thereafter, Rs.6262525/- was released on 04.01.2017. The surveyor has correctly assessed the loss according to the terms of the policy. The claim of the Insured was in respect of the actual damages caused due to inundation and the cost incurred for reinforcement of the construction. As under the policy, the Insurer is liable to reimburse loss as such, the costs incurred for reinforcement of the construction were not allowed by the surveyor. Final Survey Report dated 24.06.2016 does not suffer from any illegality. Draft assessment of loss by the surveyor was shared to the Insured vide email dated 06.06.2016 but the Insured did not pointed out any illegality in it. The Insured is not entitled to any further claim. There was no deficiency in service on its part. The Insured, being a commercial organization, is not a consumer as defined under Consumer Protection Act, 1986 and the complaint is not maintainable.

5. The Insurer, vide IA/12799/2019, sought for amendment of the written reply, which was allowed by order dated 10.12.2019. In amended written reply, the Insurer took plea that the Insured was negligent in not constructing RE wall of sturdy structure to accommodate and redistribute lateral pressure caused by slopes. The Insured did not take appropriate step to minimize the loss and violated General Condition No.5(b) of the policy. The loss had occurred due to

negligence of Bangalore Water Supply and Sewerage Board but the Insured failed to provide reasons to the surveyor for not holding Bangalore Water Supply and Sewerage Board as responsible for loss despite repeated request of the surveyor vide letters dated 24.06.2015, 01.10.2015 and 13.01.2016. The Insured failed to provide requisite and valuable information in this respect to the surveyor. Civil Expert H.S. Sheshagiri in his report dated 15.06.2016, also held Bangalore Water Supply and Sewerage Board as responsible for the damages. The Insured undertook to cooperate and render all assistance in the manner required by the Insurer to take lawful action against the person, liable for causing the loss in Letter of Subrogation dated 09.11.2016. The Insurer wrote a letter dated 01.08.2019 to the Insured, seeking its co-operation for instituting legal action against Bangalore Water Supply and Sewerage Board but he did not respond.

6. The Insured filed Rejoinder Reply on 13.02.2020, in which, the facts stated in the complaint were reiterated. The Insured filed Affidavit of Evidence of Rakesh Prabhu and documentary evidence. The Insurer filed Affidavits of Evidence of Bhaskar Babu, Vice President, Palghat Krishnaiyer Narayanan, the surveyor, H.S. Sheshagiri, Civil Engineer and documents. Both the parties filed their written synopsis.

7. We have considered the arguments of the counsel for the parties and examined the record. Preliminary objections raised by the Insurer have no force. This Commission in Harsolia Motors Vs. National Insurance Company Limited, (2005) I CPJ 27 (NC), held that the contract of insurance is a contract of indemnity and element of profit is not involved in it, as such consumer complaint, by an Insured engaged in commercial activities, is maintainable. In the present case, the claim was settled for a lesser amount than claimed. The Insurer now cannot be permitted to raise any plea of violation of General Condition in this complaint in view of judgments of Supreme Court in Galada Power and Telecommunication Limited Vs. United Insurance Company Limited, (2016) 14 SCC 161 and Saurashtra Chemicals Limited Vs. National Insurance Company Limited,

(2019) 19 SCC 70. The Insured has already signed Letter of Subrogation on 09.11.2016 and supplied to the Insurer. As under the insurance policy, the Insurer has entered into a contract to indemnify the loss, as such, the claim cannot be denied on the ground that the Insured did not take any legal action against Bangalore Water Supply and Sewerage Board.

8. Relying upon judgment of this Commission in Malana Power Company Ltd. Vs. Oriental Insurance Company Ltd, 2019 SCC OnLine NCDRC 36, the counsel for Insured submitted that non-supply of Final Survey Report itself amounts to deficiency in service. In the present case, the draft assessment of loss has been shared with the Insured vide email dated 06.06.2016. Therefore, no material prejudice has been caused to the Insured due to non-supply of survey report.

9. The claim of the Insured were broadly in three categories i.e. (i) Material Damage, (ii) Third party liability and (iii) Loss minimization expenses. The claim of material damage included the damages caused due to inundation and the expenses incurred for reinforcement of the construction. The Insured claimed Loss Minimization Expenses as Rs.422005/, which was allowed by the surveyor in full. Although the Insured has set up loss minimization expenses separately but also claimed the expenses incurred for reinforcement of the construction in the head of safety measure and included it, in material damages. The surveyor/Insurer allowed the actual damages caused due to inundation and disallowed the expenses incurred for reinforcement of the construction. The relevant terms of the policy is quoted below:-

"The company hereby agrees with the Insured (subject to the exclusions and conditions contained herein or endorsed hereon) that if, at any time during the period of insurance stated in the said schedule, or during any further period of extension thereof, the property (except packing materials of any kind) or any part thereof described in the said schedule be lost, damaged or destroyed by any cause, other than those specifically excluded hereunder, in a manner necessitating replacement or repair, the company will pay or make good all

such loss or damage up to an amount not exceeding in the whole the total sum insured hereby. The company will also reimburse the insured for the cost of clearance and removal of debris following upon any event giving rise to an admissible claim under this policy but not exceeding in all the sum (if any) set opposite thereto in the schedule."

10. A bare perusal of aforesaid clause makes it clear that the Insurer undertook to indemnify the loss necessitating replacement or repair and not the replacement or repair cost. The phrase "all such loss or damage" refers to the term "be lost, damaged or destroyed by any cause". The construction of the Insured was at the initial stage of piling, excavation and laying down foundation, which were damaged due to insured peril. The surveyor/Insurer has not committed any illegality in disallowing the expenses incurred for reinforcement of the construction, which was actually a replacement or repair. Expenses for removal of debris is payable maximum 5% of total loss. In the present case, the surveyor has allowed Rs.325841/- i.e. 5% of total assessed loss of Rs.7201384/-, for material damages.

11. So far as loss of third party liability is concerned, the Insured has claimed Rs.11718733/- and the surveyor assessed it to Rs.845000/-. The surveyor found that the Insured has only furnished the estimates of the claim statement in respect of their claim towards surrounding property and not furnished the BOQ, Bills for the costs incurred for the reinstatement. Therefore, he assessed the loss, on the basis of the report of H.S. Sheshagiri, a Civil Engineer. Income Tax Layout stone compound in length about 10 feet collapsed, an old house collapsed and three trees in neighbouring property were uprooted. The house was found an old house of more than 75 years. Income Tax Layout stone compound was also an old construction. H.S. Sheshagiri assessed its valuation according to government rate. There is no illegality in it.

12. Deductions were made under the head of under-insurance and excess clause. The complainant could not point out any illegality in it.

O R D E R

In view of aforementioned discussion, the complaint is dismissed.