

M/S. MOHAN INDUSTRIES v. DIVISIONAL MANAGER, ORIENTAL INSURANCE CO.LTD. & 2 ORS.

M/S. MOHAN INDUSTRIES

...Appellant

DIVISIONAL MANAGER, ORIENTAL INSURANCE CO.LTD. & 2 ORS.

...Respondent

Case No: REVISION PETITION NO. 661 OF 2014

Date of Judgement: 01 November 2023

Judges:

DR. INDER JIT SINGH

PRESIDING MEMBER

For Appellant: MR. AKSHAT SHRIVASTAVA,
MR. SATVIC MATHUR, ADVOCATES

For Respondent: MR. RAJESH K GUPTA,
MR. RITESH KHARE, MR. SIDDHARTH SANGAL,
ADVOCATES

Facts:

The petitioner had obtained two insurance policies worth Rs. 9,71,600 and Rs. 6,18,000 from the Oriental Insurance Company (Respondents 1&2) through the State Bank of India (Respondent 3). The policies covered raw materials and machinery against fire losses. On 22/23 February 2001, petitioner's husk stock caught fire, resulting in 45% loss. The cause of the fire was disputed – petitioner alleged it could have been due to someone's mischief, laborers smoking bidis, etc. while the insurance company's surveyor concluded it was due to spontaneous combustion. The insurance claim was rejected stating that the cause was an excluded peril. Petitioner approached the District Consumer

Forum seeking 45% claim amount and other reliefs.

District Forum Order:

Directed Respondents 1&2 to deposit 45% loss amount i.e. Rs. 4,40,294 with interest. Directed Respondent 3 to pay Rs. 2,000 for mental agony. Also directed all respondents to pay litigation costs of Rs. 500 each.

Arguments by Insurance Company (Respondents 1&2) in Appeal and Revision Petition:

Fire policy contained exclusion clause, exempting damage caused by spontaneous combustion. Petitioner did not know actual cause of fire and claim was based on speculation. Surveyor's report and forensic lab analysis showed fire was caused by spontaneous combustion due to stockpile's high carbon content, moisture and lack of ventilation. This is specifically excluded under policy. State Commission rightly set aside District Forum order allowing the claim.

Arguments by Petitioner in Revision Petition:

Evidence by insurance company inconclusive to deny claim. Onus was on them to conclusively prove excluded peril. Insurance company cannot deny claim based on technicalities when visible loss suffered.

Exclusion clause was absent from policy document provided. It was insurance company's duty to provide suitable policy as per business. Insurance company tried to avoid legal and moral duty to pay compensation for loss suffered.

Arguments by Respondent No. 3:

Nothing alleged against the bank in revision petition. Bank had complied with District Forum order. Bank only facilitated getting insurance policy as joint holder. Policy copies were provided to petitioner also. Remaining dispute is only between petitioner and insurance company.

Court's Opinions and Order:

Main issue is cause of fire and whether it falls under exclusion clause. Based on surveyor's report, forensic analysis and police panchnama, fire was caused by spontaneous combustion of insured material. This is a specifically excluded peril. Consumer Forums cannot examine survey reports like civil courts. No deficiency in surveyor's report found. State Commission rightly concluded exclusion clause applies and claim rightly rejected. No jurisdictional error in State Commission order. Scope of revision petition is extremely limited. Doesn't find any illegality, material irregularity or jurisdictional error in State Commission order.

Order:

Revision Petition dismissed.

Sections:

Revision Petition filed under Section 21(b) of Consumer Protection Act, 1986.

Cases Referred:

Rubi Chandra Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269]

Khatema Fibres Ltd. vs New India Assurance Company Ltd. & Anr., II (2021) 9 S.C.R.268

Sunil Kumar Maity Vs. State Bank of India & Ors. [AIR (2022) SC 577]

Laws Referred:

Consumer Protection Act 1986

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Court

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Full Text of Judgment:

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 29.07.2013 of

the State Consumer Disputes Redressal Commission, Maharashtra (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No.A/04/1901 in which order dated 08.09.2004 of Bhandara District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Petition No. 68/2003 was challenged, inter alia praying for setting aside the order dated 29.07.2013 passed by the State Commission in.

2. While the Revision Petitioner (hereinafter also referred to as complainant) was Respondent No.1, Respondents 1 & 2 (hereinafter also referred to as Insurance Company) were Appellants and Respondent No. 3 (hereinafter referred to as the Bank) was Respondent No. 2 before the State Commission in the said A/04/1901, the Revision Petitioner was Applicant and Respondents were Non-Applicants before the District Forum in Petition No.68/2003. Notice was issued to the Respondents on 29.01.2014. Parties filed Written Arguments/Synopsis on 08.10.2021 (Petitioner), 21.08.2023 (R-1 & 2/Insurance Co.) and 02.05.2018 (R-3/Bank) respectively.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that: –

(i) The petitioner obtained two insurance policies, one worth Rs.9,71,600/- insurance amount being covering a validity period from 21.07.2000 to 20.07.2001 and the other worth insurance amount of Rs.6,18,000/- covering period from 05.02.2001 to 04.02.2002. Both these policies covered the raw material, machinery of the factory against fire. Petitioner contends that during the intervening night 22/23.02.2001, the husk stock in the factory of the petitioner burnt by somebody else mischievously might have caught fire by accidentally smoking of biri or cigarette, by the labour of industry or by any passer of road as the place of material was placed in open plot, resulting in petitioner suffering a loss of 45% of the valuation of stock. When smoke was observed emanating from the burning husk heap, the workers tried their best to put off the flame by getting water over the flames. The incident was reported at P.S. Bhandara and incident spot panchnama report was prepared as per procedure. The

insurance company appointed inspector to evaluate the loss by assessing the loss incurred to the petitioner's goods and material in said fire. The inspector informed the insurance company that the fire originated due to a natural chemical reaction and result antignition, due to which the insurance company cannot be held responsible for the same according to the agreed terms and conditions of the relevant policies.

(ii) Respondent No.3/Bank introduced the respondent insurance company with its choice and interest to safeguard his loan amount and the R-3 Bank is in the custody of original documents of both the policies. When the surveyor, who is the Chartered Accountant, came to the place of incident, he told the petitioner that the policy for the period from 05.02.2001 to 04.02.2002 is a Shopkeeper Policy and the petitioner is a SSI Unit where this policy is not applicable. Here for the first time the petitioner came across to this policy through the Surveyor. Hence, the complainant/petitioner herein filed a Petition/complaint before the District Forum Bhandara.

4. Vide Order dated 08.09.2004 in the Petition No. 68/2003 the District Forum has partly admitted the petition and directed the Non-Applicant Party Nos. 1 & 2 to deposit 45% loss amount suffered by Applicant equal to Rs.4,40,294/- into the bank loan account of the Applicant within a period of one month from the date of this judgment/order. In addition to that they should deposit 9% interest amount as aforesaid amount calculated w.e.f. 1.6.2001 onwards upto the actual date of depositing such interest. Non-applicant No. 3 (Bank) was directed to pay Rs.2,000/- towards mental agony to the Applicant/Petitioner herein within a period of one month from the date of passing the order. The District Forum also directed the Non-Applicants/Respondents -1 to 3 to individually pay Rs.500/- each to the Applicant towards litigation cost, within one month of the date of order.

5. Aggrieved by the said Order dated 08.09.2004 of District Forum, Respondents-1 & 2 appealed in State Commission and the State Commission vide order dated 29.07.2013 in FANo. A/04/1901 has allowed the Appeal and the set aside the order passed by the District Forum

against the Appellants/Opponents-1 & 2.

6. Petitioner has challenged the said Order dated 29.07.2013 of the State Commission mainly on following grounds:

(i) The insurance company had relied upon the report of its own inspector who has opined that the fire caused to the raw material was due to natural chemical combustion. Except this report, nothing was placed on record by the insurance company, therefore the evidence of the insurance company being inconclusive could not have been relied upon. Before the District Forum, the insurance company emphasized on the technical clause of the policy i.e. exclusion clause. In this regard, it is to be seen, whether the complainant/petitioner was aware about the terms and conditions of the policy. It was proved on record before the District Forum that the R-3/Bank has taken out the policies on behalf of the petitioner to secure its loan amount.

(ii) The insurance company had also admitted that the petitioner had taken the policies and placed his claim on the reason of fire due to cigarette whereas the insurance company had resisted the claim on the ground that fire was due to natural chemical combustion. But in all this visible loss incurred to the tune of 45% of the valuation of the material and the insurance company had shirked its responsibility by taking aid of technicality. It is the cardinal principle of law that the claim of the policy holder cannot be defeated on the technicality. The Hon'ble Courts have held that when the policy is issued by the Insurance Company and whose premium are regularly paid by the insured, then the claim cannot be rejected on mere technical grounds and the insurance company must fulfil the contract entered upon.

(iii) The District Forum has held that the provision or the exclusion clause upon which the insurance company is emphasizing is also absent from the policy document. It is also the responsibility of the insurance company to provide the best suitable policy to the petitioner considering his requirement as to his business and workshop.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1 Petitioner in addition to repeating what has been stated in para 6 under the grounds, has contended in its written arguments that the insurance company have tried to shun their moral and legal responsibility to pay the compensation of loss incurred to the petitioner and thereby deprived him of his genuine and reasonable claim amount. The District Forum rightly concluded the matter that when it is clearly became evident to the insurance company that the loss incurred to the petitioner due to the loss of raw material in his factory due to chemical reaction naturally as per insurance company's version or as due to discarded burning butt of cigarette or beeri, and regarding both these versions although there was no sound proof to hold the cause of fire as such, and insurance company knew about loss of 45% of goods, instead of realizing the fact, the insurance company tried to run away from their responsibility.

7.2 It is contended by Respondents-1 & 2/insurance company that the State Commission has noted in its judgment that the Fire Policy contained an Exclusion Clause which specifically excludes "destruction and damage caused to the property insured by its own fermentation, natural heating or spontaneous combustion". The petitioner is a manufacturer of raw cattle feed and raw material Konda is required for preparation of the cattle feed. It is alleged by the petitioner that "in the intervening night of 22.02.2001 and 23.02.2001 the Rice Broker (Konda) was burnt by somebody else mischievously or might have caught fire by accidentally smoking of bidi or cigarette by the labourer of industry or by any by-passer of road as the material was placed on open plot." It is thus abundantly clear that the petitioner did not know the cause of fire and his submission was based on speculation and hypothesis. He surveyor appointed by the insurance company opined in his report that damage to the insured stock has been caused by spontaneous combustion and the same is an excluded peril. It is mentioned in Surveyor's report that the burnt material was sent to M/s Qualichem Labs for chemical analysis. In their report, it was found that there was organic material having carbon content of 22.6% and because of huge stock and moisture the lower part of the material started decaying and fermenting. This generates tremendous amount of heat because of its natural process and some organic inflammable gases formed which catches fire and in absence of sufficient air, it starts

burning slowly and converting raw material into blackish burnt masses. This happens automatically if there is no proper ventilation and cooling system. The State Commission also observed that "The surveyor's report finds support in the panchanama wherein it is specifically mentioned that on investigation there is no indication regarding presence of any suspicious object or thing which may have caused fire to the Konda found and the incident was reported when fumes were found being exuded from the spot.

" The State Commission therefore rightly held that "

10. We perused the surveyor report and find that is observed by the surveyor that since there is no evidence of actual ignition or flame and items like Konda/Oil Cake/Coal are prone to self heating spontaneous combustion the damage to insured's heap of Konda appears to have been caused only due to spontaneous combustion which is an excluded peril under the policy. The Claim would be therefore not fall under the policy."

It is also contended that the claim of the complaint was rightly repudiated by the insurance company and the State Commission rightly set aside the order of the District Forum allowing the claim. Even if it is assumed that the Respondent No.3/Bank took the policy for and on behalf of the complainant, it is not the case of the complainant herein that the policy terms and conditions were not made available to R-3. The insurance company, in support of its contention, has relied upon the judgements by the Hon'ble Supreme Court in SriVenkateswara Syndicate Vs. Oriental Insurance Company Ltd. and Anr. (2009) 8 SCC507 and Khatema Fibres Ltd. Vs. New India Assurance Co. Ltd. & Anr. 2021 SCC OnLine SC 81.

7.3. It is contended by Respondent No.3/Bank that the petitioner availed loan from the Bank for his business of manufacturing raw cattle feed. In terms of the loan agreement & conditions, the Bank as joint-holder with petitioner took 'Fire Insurance Policies' from the Oriental Insurance Co. Ltd. (R-1 & 2). Three copies of each policy were issued, out of which the petitioner also received one copy of the policies. The verification of the book accounts i.e. the stock statement was verified by the Bank on 22.02.2001. The fire broke out at the premises on 22/23.02.2001 and 45% of the stock i.e. Broker Rice (konda) etc. was damaged in the said fire. No fire brigade was called

or used for the dousing of the said fire. Survey or was appointed and the report clearly stated that there is no evidence of actual ignition or flame and items like Konda/OilCake/Coal are prone to self-heating-spontaneous combustion. The insurance company rejected the claim on the ground that damage is caused by 'Spontaneous Combustion' which is an excluded peril under the policy. From a bare reading of the grounds of the Revision Petition, it is clear that nothing is alleged against the Bank, thus, no relief can be granted in the RP against the Bank. The Bank had complied with the order of the District Forum and no appeal was preferred by the petitioner against the said order, thus, the order of the District Forum has attained finality vis-à-vis the petitioner and the Bank. The remaining dispute, if any, is between the petitioner and the insurance company. The Bank is not liable in any way.

8. We have carefully gone through the orders of the State Commission, District Forum, Surveyor's Report and other relevant records of the case as well as rival contentions of the parties. The main issue to be considered in the present case is as to what was the cause of the fire and whether it falls under the 'Exclusion Clause' of the policy or not. While the petitioner contends that the Rice Broker (Konda) was burnt by somebody mischievously or might have caught fire by accidental smoking by any labourer of industry or by any by-passer of road as the material was placed in the open plot, the insurance company, based on the report of the Survey or, has concluded that the damage to the insured stock has been caused by spontaneous combustion and the same is an excluded peril. The Survey or in his report has stated that there is no evidence of actual ignition or flame and items like Konda, Oil Cake are prone to self-heating spontaneous combustion. The surveyor had sent the burnt material to M/s Qualichem Labs for chemical analysis and their report shows that there was organic material having carbon content of 22.6% and because of huge stock and moisture the lower part of the material started decaying and fermenting. This generates tremendous amount of heat because of its natural process and some organic inflammable gases formed which catches fire and in the absence of sufficient air, it starts burning slowly and converting raw material into blackish burnt masses. This

happens automatically if there is no proper ventilation and cooling system. Even in the Police Panchnama, it is specifically mentioned that on investigation there is no indication regarding presence of any suspicious object or thing which may have caused fire to the Konda and the incident was reported when fumes were found being exuded from the spot. The State Commission in its order has also observed that there is no evidence of actual ignition or flame and items like Konda/Oil Cake/Coal are prone to self heating spontaneous combustion etc., which is an excluded peril under the policy and the claim would not therefore not fall under the policy.

9. It was held by Hon'ble Supreme Court in *Khatema Fibres Ltd. vs New India Assurance Company Ltd. & Anr.*, II (2021) 9 S.C.R.268 that "A Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor's report to forensic examination of its anatomy, just as a civil court could do. Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop."

10. In view of the foregoing, we are of the view that the State Commission has rightly come to a conclusion that the cause of fire was spontaneous combustion, which is an excluded peril under the policy and hence the insurance company was right in repudiating the claim. As was held by the Hon'ble Supreme Court in *Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.* [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In *Sunil Kumar Maity Vs. State Bank of India & Ors.* [AIR (2022)SC 577] held that "the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not

vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdictionil legally or with material irregularity”, we do not find any illegality, material irregularity or jurisdiction error in the order of the State Commission, hence the same is upheld. Accordingly, the Revision Petition is dismissed.

11. The pending IAs in the case, if any, also stand disposed off.