

Repudiation of insurance claim by Oriental Insurance Co. in a fire incident case ruled as deficient service: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

M/S. HARI & CO.

...Appellant

ORIENTAL INSURANCE COMPANY LIMITED & 2 ORS.

...Respondent

Case No: CONSUMER CASE NO. 1469 OF 2017

Date of Judgement: 01 January 2024

Judges:

**SUBHASH CHANDRA
PRESIDING MEMBER**

For Appellant: MR. RAMESH KAINTHOLA, ADVOCATE

For Respondent: MR. J. P. N. SHAHI, MS. AASTHA KAUSHAL, ADVOCATES

Facts:

The complainant, M/s Hari & Co., is a Customs Bonded Warehouse dealing in timber logs under a license issued by the Assistant Commissioner of Customs. As per the license terms, the warehouse keeper is required to insure the goods against various risks by taking out insurance in the name of the President of India through the concerned Customs Officer. Accordingly, the complainant had taken out a Standard Fire and Special

Perils policy from the Oriental Insurance Co. Ltd (OP1) valid from 25.10.2013 to 24.10.2014 for a sum insured of Rs. 85 crores. Between Feb-April 2014, timber logs imported by two companies were stored in the complainant's warehouse. On 09.09.2014, a fire broke out in the warehouse resulting in extensive damage. FIR was lodged and Oriental Insurance intimated about the incident on 09.09.2014 itself. Oriental Insurance appointed a surveyor to assess the loss. The surveyor submitted a report on 08.05.2015 assessing the claim at Rs. 3,19,56,008/- after adjusting for salvage value and under insurance. Oriental Insurance repudiated the claim vide letter dated 23.06.2016 citing breach of policy conditions relating to failure to establish insurable interest, suppression of material facts about importers' goods being stored and breach of warranty. Aggrieved by repudiation, the complainant has filed the consumer complaint seeking the assessed claim amount, interest, costs and relief.

Arguments by Complainant:

The warehouse was duly insured with Oriental Insurance as a Customs Bonded Warehouse as per license requirements. The policy named the Commissioner of Customs as the insured and the proposal mentioned it was a stock of timber logs in the customs bonded warehouse. Nature of stock was disclosed as timber logs valued at Rs. 25 crores. Being a bonded warehouse, goods belonging to importers could be stored as per customs regulations. This was known to the insurer. All invoices were provided to the surveyor and customs duty of Rs. 1.19 crores was paid on the damaged goods of the two importers. The surveyor report dated 08.05.2015 concluded the total logs at risk was Rs. 85.98 crores against insured amount of Rs. 85 crores. No breach of policy terms was noted. After deductions, the net assessed claim was Rs. 3.19 crores which the insurer wrongly repudiated. The insurer's contentions about failure to disclose material facts, establish insurable interest, breach of warranty are all unsustainable. The claim of Rs. 3.19 crores with interest and costs deserves to be allowed.

Arguments by Opposite Party (Insurer):

Complainant has failed to establish insurable interest with respect to the burnt goods belonging to importers. Storage of importers' goods

was not disclosed to the insurer or incorporated in the policy which amounts to suppression of material facts. The policy was in the complainant's name but imported goods held in trust were damaged for which no claim is payable. Fact of imported goods being stored was not disclosed before the policy inception or renewal which breaches the policy conditions. Complainant has admitted goods were held in trust for third party importers, so claim cannot lie. Insurable interest has not been established even after 12 months post incident, so repudiation is justified. Allegation of asking for importer NOC does not amount to admission of claim. Claim of Rs. 3.19 crores with interest is denied as policy conditions breached.

Court's Reasoning and Decision:

It is established from the policy that it covered the complainant's bonded warehouse in the name of Commissioner of Customs which was known to the insurer. Being a bonded warehouse, presence of importers' goods was as per customs regulations and not undisclosed. This was not excluded in the policy. The complainant duly intimated the claim and provided invoices of damaged stock to the surveyor. Customs duty was also paid on goods of two importers. The surveyor assessed the loss at Rs. 3.19 crores after adjustments and found no breach of policy terms or warranties. The insurer's contentions about suppression of facts, failure to establish insurable interest, breach of warranty are unsustainable. Repudiation of claim on grounds of breach of policy terms is incorrect and deficiency in service. The insurer's reasons for claim repudiation do not appear bonafide or legally tenable. Accordingly, the Commission allows the complaint and directs Oriental Insurance to pay the assessed claim of Rs. 3.19 crores with 6% interest from claim date till realization within 2 months. Litigation costs of Rs. 50,000 also awarded in favour of the complainant.

Key Sections and Cases Referred:

*Consumer Protection Act, 1986 – Section 21: Deficiency in service.
Insurance Act, 1938 – Section 64UM: Mandatory appointment of surveyor for claims above Rs. 20,000.*

Referred Cases:

Sri Venkateswara Syndicate vs Oriental Insurance Co (2009): Surveyor

report binding unless perverse.

New India Assurance Co. vs Pradeep Kumar (2009): Surveyor report not sacrosanct but deviation must have valid grounds.

The Commission allowed the complaint by the bonded warehouse against the insurance company for repudiating the fire claim assessed by survey or at Rs. 3.19 crores. Repudiation on grounds of suppression of facts and breach of policy terms was ruled as unsustainable. The insurance company was directed to pay the assessed claim with interest and costs.

Download

Court

Copy <https://dreamlaw.in/wp-content/uploads/2024/01/task-3.pdf>

Full Text of Judgment:

1.This Complaint under Section 21 of the Consumer Protection Act, 1986 (for short "the Act") alleges deficiency in service in denial of a legitimate insurance claim of ₹3,19,56,008/-by the Opposite Party in respect of the Standard Fire and Special Perils Policy (in short, the'Policy') issued by the Opposite Party.

2.The facts, in brief, are that the Complainant is a Customs Public Bonded Warehouse dealing in timber under section 57 of the Customs Act, 1962 with a license issued by the Assistant Commissioner of Customs. Under this license warehouse keepers of the Customs Public Bonded Warehouse are required to insure the goods against various risks by subscribing to insurance policies in the name of President of India through the concerned Customs Officers. Accordingly, the Complainant had obtained a Standard Fire and Special Perils Policy from Opposite Party No.1. Between February 2014 and April 2014, timber logs were imported by M/s Saudagar Enterprises and M/s Vel Murugan Timber Industries from Myanmar and werekept in the warehouse of the Complainant. On 09.09.2014 around 2:30 PM a fire incident occurred in the warehouse which caused extensive damage. An FIR No.322 of 2013 dated12.09.2014 was lodged and the Opposite Party intimated by e-mail on 09.09.2014 and letterdated 10.09.2014. The Opposite Party appointed a Surveyor namely, M/s J. B. Boda Insurance Surveyors and Loss

Assessors Pvt. Ltd. who inspected the site and submitted a report dated 08.05.2015 assessing the claim @ ₹3,19,56,008/- after making adjustments for salvage and conditional average. The Opposite Party vide the reputation letter dated 23.06.2016 repudiated the claim against which the Complainant is before this Commission with the following prayer:

- a. declare that the Opposite Parties have rendered deficient service to the Complainant
- b. direct the Opposite Parties to pay to the Complainant a sum of ₹3,19,56,008/- (Rupees Three Crores Nineteen Lakhs Fifty Six Thousand Eight only) together with interest @ 18% per annum from 08-05-2015 till the filing of the present complaint and further to pay the said sum with interest @ 18% per annum from the date of this complaint till the date of realization;
- c. order litigation costs in favour of the Complainant and against the Opposite Parties.
- d. pass any other order(s) as may be deemed fit and proper in the circumstances.

3. The Complaint was resisted by way of a reply by the Opposite Party.

4. Parties led their evidence. Short synopsis of arguments were filed by the parties. I have heard the arguments and perused the material on record.

5. The case of the Complainant is that the warehouse was insured for the goods lying there in under a Standard Fire and Special Perils Policy for the period from 25.10.2013 to 24.10.2014 for ₹85 Crores. The Surveyor had assessed the claim correctly after deducting the salvage and conditional average and that all documents including the proof of payment of customs duty of ₹1,19,97,056/- had been provided based on the letter of the Assistant Commissioner of Customs dated 11.12.2015. The letter of repudiation on the ground of suppression of fact that the damaged goods belonged to importers and not to the Complainant was contested on the ground that the warehouse itself was a Bonded Warehouse and that it was wrongly concluded that the goods were held by the Complainant in trust. The Complainant submitted that the policy itself was in the name of the Commissioner of Customs as per

the terms and conditions of the Bonded Warehouse license and the items insured was a stock of timber logs in the Customs Bonded Godown and under the policy the risk description is "Materials stored in Open – Storage of Category I hazardous Goods subject to warranty that goods listed in Category II, III, Coirwaste, Coir fibre and Caddies are not stored therein".

The "Risk Details" mentions 'Timber Logs' and the 'Nature of Stock' as "On stock of timber logs in Custom Bonded Godown" for a sum of ₹25,00,00,000/-/. The proof of customs duty paid is stated to have been provided to the Opposite Party/Surveyor. It was contended that the Surveyor's Report dated 08.05.2015 had also noted that based upon the invoice for the timber logs made available, excluding some stocks which was not covered, the total value at risk in the insured Customs Bonded Warehouse as on the date of loss was ₹85,98,82,732.42 ps. against the sum of ₹85 Crores which indicated under insurance. It was also noted that the Surveyor did not find any breach of any condition of warranty under the policy in question. After deducting the net salvage value of ₹19,69,514/- and applying deductible excess of ₹16,81,895.17ps., the net claim arrived at was ₹3,19,56,008/-. The conclusion of the Opposite Party that they were yet to establish the insurable interest to the insurer even after 12 months based on the Surveyor's inspection as per which it was concluded that the burnt down properties did not belong to the insured and that the stocking of importers goods was neither disclosed nor incorporated in the insurance policy amounted to suppression of material facts and that the Complainant had not provided any opportunity to incorporate the said fact at the inception of the policy and until occurrence of the claim was equally a violation of the terms and conditions of the policy. It is the case of the Complainant that the fact that the warehouse was a Bonded Warehouse was known to the Opposite Party as is evident from the policy itself. The details of the items stored were correctly disclosed by way of supply of the relevant invoices to the Surveyor. The conclusion of the Opposite Party that there was suppression of facts and violation of terms and conditions of the policy is, therefore, stated to be not correct since neither was there any suppression of material facts nor has any breach of terms and conditions been pointed out by the Surveyor. The prayer of the

Complainant, therefore, is that the claim be allowed in terms of the Surveyor's assessment of loss of ₹3,19,56,008/-.

6. It is the contention of the Opposite Party that despite the lapse of more than 12 months the Complainant had failed to establish insurable interest with regard to the burnt down properties which did not belong to it and that stocking of importers goods had not been disclosed or incorporated in the insurance policy which amounted to suppression of material facts. According to the Opposite Party, the goods damaged due to fire on 09.09.2014 were goods held in trust and therefore, no insurance claim was payable. The fact that the risk involved imported goods had not been disclosed either before inception of the policy obtained on 25.10.2013 or on 28.06.2014 when the policy was extended by way of endorsement. The Opposite Party's case is that the Complainant has admitted that the goods were held in trust for 3rd party importers and therefore, the claim did not lie. It was denied that ₹3,19,56,008/- with interest @ 18% p.a. was payable and it was contended that the Complainant was required to establish insurable interest. It was denied that on 13.06.2016 it had asked the Complainant to provide NOC from the importers of timber logs who had stored the timber in the warehouse. It is argued that the seeking of this information also did not amount to any admission of the claim.

7. From the foregoing, it is evident that the Complainant had obtained the insurance policy for a Bonded Godown in the name of Commissioner of Customs. It is not in dispute that there was a fire on 09.09.2014 and that for the logs stocked on behalf of two importers in the Bonded Godown, the required custom duty had been paid. The conclusion of the Opposite Party that the Complainant had suppressed material facts and had failed to disclose its insurable interest and was, therefore, in breach of terms of terms and conditions of the policy cannot be appreciated since the policy itself stated that it was being obtained in the name of the Commissioner of Customs. The Opposite Party was well aware that the nature of the business in the warehouse was that of Customs Public Bonded Warehouse. It had approved the policy after requisite due diligence on 25.10.2013 and further extended it by way of endorsement on 28.06.2014. It is now not open for it to contend

otherwise. It is an established law that in a claim of insurance that exceeds ₹20,000/-, the insurance provider is required to appoint a Surveyor under Section 64 UM of the Insurance Act, 1938. The Hon'ble Supreme Court in Sri Venkateswara Syndicatevs. Oriental Insurance Company Limited, (2009) 8 SCC 507 has laid down that appointment of a Surveyor is mandatory and its report has to be acted upon unless it is shown to be perverse although the report of a Surveyor is not so sacrosanct that it cannot be deviated from, as held by the Hon'ble Supreme Court in New India Assurance Company Limited vs Pradeep Kumar(2009) 7 SCC 787. The claim has been repudiated by the Opposite Party on the ground of breach of conditions relating to suppression of facts and non-establishment of insurable interest. It is noteworthy that the report of the Surveyor is categorical in stating that there is no breach of any terms and conditions of the policy and based on the invoices provided, the value of the loss has been ascertained to be a little in excess of the sum insured of ₹85 Crores forwhich under insurance has been concluded and the necessary average excess deducted.

8. In view of the above, the reasons for repudiation of the claim advanced by Opposite Party do not ring true. It was well within the knowledge of the Opposite Party, as is evident from the policy itself, that the premises ensured was a Customs Bonded Public Warehouse. There was no condition imposed that in such a warehouse the goods held would be duty paid by the insured. Under the scheme of the Department of Customs, the Custom Bonded Warehouse did not mandate the stocking of property which was duty paid only by proprietor of the warehouse. Having provided the Policy and extended the insurance cover to the Bonded Warehouse against premium collected by it, it is now not open for the Opposite Party to contend that the claim was not valid on the ground that the goods did not belong to the insured. The Opposite Party has not brought to my notice any condition in the policy that specifically excluded any property that was held in trust in a Custom Bonded Warehouse. The grounds for repudiation of the claim are, therefore, not sustainable and liable to be set aside. The claim of interest @ 18%, however, is not justifiable as per current commercial norms.

9. In view of the foregoing discussion, I find merit in the claim which is accordingly allowed with the following directions:

(i) The Opposite Party shall pay to the Complainant the sum of ₹3,19,56,008/- along with interest @ 6% p.a. from the date of the claim till realization within two months, failing which the applicable rate of interest shall be 9% p.a.

(ii) The Opposite Party shall also pay to the Complainant litigation costs of ₹50,000/-.

10. Pending IAs, if any, also stand disposed of by way of this order.