

TASTE'L FINE FOODS PVT. LTD. V. UNITED INDIA INSURANCE CO. LTD.

1. TASTE'L FINE FOODS PVT. LTD.
OFFICE AT: 1122, 2ND FLOOR, BUILDING NO.11,
SOLITAIRE CORPORATE PARK, ANDHERI KURLA ROAD,
ANDHERI (EAST),
MUMBAI-400093

.....Complainant(s)

Versus

1. UNITED INDIA INSURANCE CO. LTD.
OFFICE AT: UNIVERSAL INSURANCE BUILDING, SIR P.M.
ROAD FORT, GREATER
MUMBAI-400001

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 2788 OF 2017

Date of Judgement: 03 Jan 2023

Judges:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

HON'BLE MR. SUBHASH CHANDRA, MEMBER

For the Complainant : Mr. Arvind Nayar, Sr. Advocate with Mr. Aman Raj Gandhi, Advocate Mr. Parthasarathy Bose, Advocate Mr. Pranay Tuteja, Advocate

For the Opp.Party : Mr. A.K. De, Advocate Mr. Zahid Ali, Advocate Ms. Ananya De, Advocate

Facts

Complainant is a food manufacturing and export company having

two units – Unit 1 for ready-to-eat products and Unit 2 for frozen foods. Complainant had taken fire insurance policy for Rs. 7 crores from United India Insurance Company Ltd (Opposite Party). On 3.11.2015, a fire broke out in Unit 2 resulting in loss of stock. Fire brigade took 7 hours to largely extinguish it. Complainant filed insurance claim for Rs. 2.25 crores which was revised to Rs. 2.15 crores and finally to Rs. 1.72 crores based on meetings with surveyor and documents submitted. Surveyor assessed total loss at Rs. 16.44 lakhs vide report dated 21.06.2016. Insurance company also offered Rs. 16.44 lakhs but complainant approached consumer court alleging deficiency in service.

Court's Opinions

Complaint is maintainable before consumer courts based on allegation of deficiency in service. On merits, only dispute is with regards to assessment of actual loss which complainant alleges is more than surveyor's report. Various documents filed by complainant including auditor reports, accountant certificates, invoices etc have discrepancies as pointed out by surveyor. Complainant failed to clarify/reconcile them. Surveyor rightly disallowed claims for destruction charges, unused packing materials etc. as per terms of insurance policy. In absence of contrary evidence from complainant on assessment of semi-finished goods, container value etc, surveyor's report is reliable. Thus surveyor has discussed all aspects and given reasoned basis for loss assessment. No arbitrariness or illegality found. Complainant entitled to receive Rs. 16.44 lakhs as assessed by surveyor. Interest to be paid from 30 days of submission of surveyor's report.

Arguments by Complainant

Surveyor sought numerous documents which were promptly provided but still assessed very low loss. Stock figures were confirmed by statutory auditor and also bank's auditor. 60-70 metric tonnes of burnt waste as estimated by Pollution Control Board proves higher loss. Disallowance of unused packing

material claim, destruction charges etc was unjustified. Arbitrary valuation of semi-finished goods, container value by surveyor. Interim survey report had assessed Rs. 1 Cr loss. Final report is contradictory.

Arguments by Opposite Party

Complainant's claim exaggerated. Surveyor assessed loss in detail after verifying documents. Complainant did not reconcile invoices and other documents with their claimed loss figures when pointed out discrepancies. Addl. documents filed did not substantiate claimed higher loss. Surveyor rightly assessed loss. Amount of Rs.16.44 lakhs as per surveyor's report was offered to complainant. No deficiency in service by insurance company.

Sections – None

Cases cited – None

Referred laws – IRDA guidelines

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Court

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Full Text of Judgment:

1. Complainant is a company registered under the provisions of Companies Act, 1956. The Opposite Party is Insurance Company, dealing with various type of Insurances, including fire Insurance.

2. The Complainant deals in manufacturing, processing packaging and storage of frozen Indian breads, frozen snacks, ready to cook/bake food, ambient staple ready to eat meals, ready to cook sauces, pastes and condiments. Almost all products manufactured by the Complainant are exported. The Complainant has two units

(i) for production of ready to eat products (hereinafter referred to as "Unit-1") and (ii) for manufacturing and stocking of frozen food products (hereinafter referred to as "Unit-2").

3. The Complainant took Standard Fire & Special Perils Policy No.0220001115P103526547 for Rs.6 crores, later enhanced to Rs.7 crores. The Policy covered the risk of loss of goods, stock and material in the factory due to fire. The Policy was renewed from time to time. The Policy was valid from 26.06.2015 to 25.06.2015. On 03.11.2015 at about 2.00 to 2.30 hours, the Supervisor of the Complainant Company noticed that fire took place in Unit-2. He immediately informed the fire brigade of Karad Municipal Council. The fire brigade took about 7 hours to largely extinguish the fire. It took six days to completely douse the fire and kill the residual heat. The Police was also informed on 04.11.2015. On inspection by the Opposite Party, it was found that almost entire frozen food and raw material stock lying in Unit-2 was completely burnt and destroyed. The Opposite Party appointed M/s Parimal R. Shah & Company as Surveyor and Loss Assessor. The Complainant submitted a claim for Rs.2,25,85,437/-. On 20.05.2016, the Complainant revised the claim to Rs.2,15,83,085/-. In compliance of notice dated 06.11.2015 issued by Maharashtra Pollution Control Board, the Complainant also spent an amount of Rs.3,15,948/- for recycling and apportionment of waste food. On 20.06.2016, a meeting took place between the Complainant and the Surveyor wherein the Complainant was informed that several items were not covered under the Policy. The Complainant, therefore, reduced/revised the claim to Rs.1,82,31,946/- and submitted the revised claim, vide email dated 29.07.2016 and supplied a hard copy to the Surveyor through courier. The Opposite Party held meeting with the Complainant and the Surveyor on 16.08.2016 and the Complainant was asked to resubmit the claim on the basis of the supporting documents. On 16.09.2016, the Complainant once again reduced the claim to Rs.1,72,81,539/-. The Complainant came to know that the Surveyor, vide final Survey Report dated 21.06.2016 had already submitted the Survey Report assessing the loss at Rs.16,44,128/-. The Complainant, vide email dated 13.02.2017, raised its grievance before the Customer Care Department of the Opposite Party. The Opposite Party, vide reply dated

15.02.2017, refused to entertain the claim of the Complainant stating that the Complainant is entitled to the claim of Rs.16,44,128/- as assessed by the Surveyor. Alleging deficiency in service on the part of the Opposite Party, the Complainant filed the instant Consumer Complaint with following prayer: -

“(a) The Opponent be ordered to pay an amount of Rs.2,54,84,447/- (two crore fifty four lakh eighty four lakh four hundred forty seven only) to the Complainant, towards compensation for the loss arising due to fire, as particularly mentioned in clause 18 of the complaint above,

(b) The Opponent be further ordered to pay interest @ 18% per annum on the principal amount of compensation of Rs.1,72,81,539/- (one crore seventy lakh eighty one thousand five hundred thirty nine only), from the date of this complaint till its actual receipt by the Complainant,

(c) The Opponent be further ordered to pay the entire cost of the complaint to the Complainant,

(d) Any other order deemed fit and proper be passed.”

4. The Complaint was resisted by the Opposite Party by filing the written statement. The Opposite Party took the preliminary objection that the Complainant was not a “Consumer” within the meaning of Consumer Protection Act, 1986.

5. On merits, it was stated that the allegations against the Opposite Party were made to extract money from them. On receiving the intimation about the incident of fire, the Opposite Party appointed M/s Parimal R. Shah & Company as Surveyors to assess the loss, who submitted their final Survey Report dated 21.06.2016 assessing the loss at Rs.16,44,128/-. The Surveyor had given elaborate reasoning for arriving at the amount of loss against each item. The Complainant was supplied with a copy of the Survey Report but was not satisfied with the same. Therefore, a number of meetings were held between the Complainant, Opposite Party and the Surveyor. After submission of Final Survey Report, the Complainant revised

their claim twice and submitted additional documents to the Surveyor. The Surveyor observed that the additional documents submitted by the Complainant did not substantiate the claim of the Complainant. In this regard the Surveyor sent email dated 17.10.2016 to the Opposite Party. The Opposite Party offered an amount of Rs.16,44,128/- as assessed by the Surveyor to the Complainant but the Complainant refused to accept the same. There was no deficiency in service on the part of the Opposite Party and the Complaint was liable to be dismissed.

6. Heard the Learned Counsel for the Parties and carefully perused the record. Learned Senior Counsel for the Complainant submitted that the Surveyor many times sought voluminous documents from the Complainant to substantiate the claim. The Complainant promptly responded to the demands and furnished the records. To substantiate the claim, the Complainant also obtained a certificate from the Chartered Accountant M/s V.S. Rawat & Company. The stock was also confirmed by the Auditor nominated by Bank of India, vide report dated 06.09.2015. Maharashtra Pollution Control Board issued notice dated 06.11.2015 to the Complainant mentioning that on physical examination of the site, the quantity of burnt and semi burnt food waste was estimated to be approximately 60 to 70 metric tons. The Complainant handed over 34,110 kg. burnt and semi burnt food waste for recycling to Alchemist Oil Pvt. Ltd. for a sum of Rs.3,15,948/-. The Complainant claimed an amount of Rs.26,79,214/- against packing material not in use, which was rejected by the Opposite Party arbitrarily. The Opposite Party wrongly rejected the claim of Rs.71,82,557/-. The Complainant's sales tax returns from 01.04.2015 to 30.09.2015 showed a turnover of purchase of Rs.5,89,74,948/- and a gross turnover of sale of Rs.8,33,21,541/-. The Audit Report of Chartered Accountants dated 02.09.2016 and certificate dated 10.10.2016 issued by the statutory auditor of the Complainant regarding purchases from 01.04.2015 till the date of accident certified the purchases of Rs.6,84,15,606/- There was no rationale for non-consideration of raw material having value of less than Rs.1000/-. Surveyor's assessment of loss on

packing material was based on conjectures and surmises. The Surveyor had not given any reason for considering the value of the semi-finished products at 50% of the cost of the finished products. There was no basis for the Surveyor to observe that one container load could have maximum value of Rs.5 to 6 lakhs. Learned Senior Counsel submitted that on the basis of the preliminary Survey Report, the Opposite Party was offering Rs.1 crore to the Complainant. It was inexplicable as to how the opinion of the Surveyor changed so drastically and culminated in final assessment at Rs.16,44,128/-. Loss caused to plant and machinery, food items and packing materials was over Rs.2 crores. After discussion with the Surveyor and the Opposite Party, the Complainant revised the claim twice and ultimately submitted a claim of Rs.1.72 crores. It is quite strange how the Surveyor had assessed the loss at Rs.16,44,128/- .

7. Learned Counsel for the Opposite Party submitted that the Complainant made exaggerated claim under each item. The Surveyor had made thorough assessment of each item of the claim and given elaborate reasoning for arriving at the loss. The Complainant was supplied with a copy of the Final Survey Report but the Complainant was not satisfied with the loss assessed by the Surveyor. Therefore, various joint meetings were held between the Complainant, Surveyor and the Opposite Party. After receipt of the Final Survey Report, the Complainant revised the claim twice and submitted additional documents to the Surveyor. The Opposite Party offered an amount of Rs.16,44,128/- as assessed by the Surveyor but the Opposite Party refused to accept the same.

8. Facts of the case are that the Complainant took Standard Fire & Special Perils Policy No.0220001115P103526547 for Rs.6 crores, later on enhanced to Rs.7 crores. On 03.11.2015 at about 2.00 to 2.30 am fire broke out in Unit-2. The Complainant informed the fire brigade of Karad Municipal Council. The fire brigade took about 7 hours to largely extinguish the fire. It took six days to completely douse the fire and kill the residual heat. The Police was also informed

on 04.11.2015. The Opposite Party deputed M/s Parimal R. Shah & Company as Surveyor and Loss Assessor. The Complainant submitted a claim for Rs.2,25,85,437/-. On 20.05.2016, the Complainant revised the claim to Rs.2,15,83,085/-. In compliance of notice dated 06.11.2015 issued by Maharashtra Pollution Control Board, the Complainant also spent an amount of Rs.3,15,948/- for recycling and apportionment of waste food. The Complainant revised the claim twice and finally submitted the claim for Rs.1,72,81,539/-. The Complainant came to know that the Surveyor, vide final Survey Report dated 21.06.2016, submitted the Survey Report assessing the loss at Rs.16,44,128/-. The Complainant, vide email dated 13.02.2017 raised its grievance before the Customer Care Department of the Opposite Party. The Opposite Party, vide reply dated 15.02.2017 refused to entertain the claim of the Complainant stating that the Complainant is entitled to the claim of Rs.16,44,128/- as assessed by the Surveyor.

9. Regarding maintainability, this Commission in Harsolia Motors v. National Insurance Co. Ltd. I, (2005) CPJ 27 (NC) decided on 03.12.2004 held that since an Insurance Policy is taken for reimbursement or for indemnity of the loss which may be suffered on account of insured perils, the services of the Insurer cannot be said to have been hired or availed for a commercial purpose. This Commission does possess the requisite jurisdiction to entertain a Consumer Complaint wherein there is allegation of deficiency in the services by the service provider. In view of the above, the Complaint is maintainable.

10. On merits, the only dispute relates to the assessment of loss. The Complainant filed claim of Rs.1,72,81,539/-. The Surveyor assessed the loss at Rs.16,44,128/-. The Opposite Party also offered an amount of Rs.16,44,128/- assessed by the Surveyor. The Complainant alleged that the assessment made by the Surveyor was incorrect. To substantiate the claim, the Complainant filed a certificate dated 12.09.2017 issued by M/s V.S. Rawat & Company, Chartered Accountants. The certificate shows that it was issued on the basis of purchases made by the Company. As per said certificate the loss sustained by the

Complainant due to fire was Rs.1,72,81,539/-.The certificate does not mention as to how the Chartered Accountants arrived at the figure of loss. No reasoning whatsoever or supporting evidence has been placed to support the certificate. The certificate dated 12.09.2017 relied by the Complainant is of no help as far as assessment of loss is concerned.

11. The Complainant alleged that the Surveyor as well as the Opposite Party ignored the Auditor's Report dated 06.09.2015 to substantiate the purchases made by them. The main dispute related to the loss sustained by the Complainant. The incident of fire took place on 03.11.2015 and the Auditor's Report is dated 06.09.2015. This report has nothing to do with the loss sustained due to fire.

12. The Complainant further alleged that for verification of the stock, they had also supplied Bank Auditor's Report of M/s Muttha and Lahoti, which was ignored by the Surveyor. In this regard, it is relevant to mention that the Surveyor observed that the copy of the report was unsigned and undated. The item-wise details of stocks such as raw materials, WIP & finished goods was not enclosed with the report. The Surveyor further observed that "the insured was requested to submit the working papers of the bank stock auditors and/or the documents submitted by the insured to the stock auditors based on which the stock auditor arrived at the value of stocks of the company of Rs.6.95 Cr. As on 20.10.2015 in their report, however the same was not made available. In view of the same, we have not placed much reliance on the stock audit report meant for their bankers and used the information only for the purpose of reviewing the same." From the aforesaid observation of the Surveyor, it is clear that the Surveyor found discrepancies in the aforesaid Auditor's Report and the Complainant was asked to produce certain documents to support the Auditor's Report, which the Complainant failed to do. The Surveyor, therefore, did not place much reliance on the Auditor's Report, which in our view was justified.

13. The Complainant also alleged that the quantity of burnt

and semi burnt food waste was approximately 60 to 70 metric tons. To verify whether the salvage was unfit for consumption, the Surveyor asked the Complainant to produce the report of the concerned authority. In this regard, Surveyor observed that "the Insured was requested to submit the copy of the letter of the respective authority informing them about the fire incident as well as the letter stating that the salvage is unfit for consumption and submit the authority's inspection report, which is still awaited." From the observation of the Surveyor, it is clear that though the Complainant alleged that the quantity of burnt and semi burnt food waste was approximately 60 to 70 metric tons, they failed to produce any evidence to support their allegation. As the Complainant failed to provide any evidence, the Surveyor after detailed discussion, considered the lumpsum value of the salvage at Rs.90,000/-.

14. The Complainant alleged that the Surveyor wrongly disallowed claimed of Rs.3,15,948/- for disposal of salvage. Regarding destruction charges, the Surveyor observed that under the Policy, there was provision for payment of charges for removal of debris. Under the Policy, there was no provision for destruction charges. The Surveyor observed that since the loss was assessed based on market value of the stock, the destruction cost were not integral part of the original value of the stock and the same could not be considered while working out the loss. We have also gone through the Policy and found that there is no provision for destruction charges. The Surveyor, thus, rightly disallowed the same.

15. Regarding claim for packaging material not in use due to fire, the Surveyor observed that "these materials claimed were stored in unaffected Ambient Unit of Insured. Insured has claimed the cost of same on the basis that they cannot use the unaffected packing material due to their commercial inability as finished goods of these materials were lost in fire. Matter was discussed with the insured and their insurance intermediary and both were apprised about the facts. However,

as the materials are not affected by fire and are in totally safe to use, the loss due to inability of Insured to use these materials is not covered under the scope of policy. The Surveyor had given specific reasons for disallowing the claim. As the packing material was safe and not damaged due to fire, the Surveyor was justified in disallowing the claim of Rs.26,79,214/- against packing material not in use due to fire.

16. The Complainant also alleged that the Surveyor illegally disallowed the substantial claim of Rs.71,82,557/- against packaging material. This claim has been discussed in detail by the Surveyor. The observation of the Surveyor reads thus: –

“Insured provided an item wise list of packing material items claimed. We requested Insured to provide invoice supporting to verify the quantity and rate claimed and Insured in support provided their total purchase invoices of all items for last 6 months. On preliminary verification we observed certain discrepancies vis-a-vis claim amount and invoice details. We thus asked Insured/their insurance intermediary to correlate the invoice so submitted with their claim list. However, Insured’s representative could not do the same and in spite of our repeated requests they are unable to correlate their won invoices with their own claim.”

From the above, it is clear that the Complainant could not correlate the claim amount with the invoice details. The Surveyor further observed that they made many efforts to correlate the claim with the supporting evidence and they noticed following discrepancies: –

“▶ Specification wise or size wise purchases and consumption details were not submitted.

- ▶ Month wise consumption details were not available.*
- ▶ Item wise export details vis a vis packing materials used in those export consignment not listed and submitted.*
- ▶ Many of the items were in stocks for more than 6 months.*
- ▶ Cross tally with the items purchases and used in export was*

not reconciled.

▸ *If we consider the normal practice of packing inventory level of a month, then volume of exports vis a vis volume of purchase of packing materials was not tallying and justified.*

▸ *Considering the major quantum of packing material was regularly stored in Unit 1 (Ambient Unit) which is unaffected by fire incident, the insured could not justify of storing of such high quantum both in volume and value in manufacturing area and more so near to Cold room area which is used for manufacturing of product.*

▸ *Further in affected area, the packing activity portion was partially used."*

On the basis of the aforesaid discrepancies, the Surveyor observed that Insured/s claim of packing material was not substantiated by sufficient supporting evidence. Amongst other, the Surveyor observed that majority of the stock of packing materials were stored in Ambient Unit (Unit 1) which was not at all damaged due to the fire and hence the claim value for packing materials was higher than the actual possible loss. Accordingly, the Surveyor assessed the loss of packing materials at Rs.3 lakhs. On 19.10.2022, Learned Counsel for the Complainant was asked to show evidence regarding closing stock of packaging material. He stated that the stock registers were maintained electronically and there were no physical registers. Later, when further queried, he stated that he stands corrected and that hard copies of documents showing stocks and stock registers are maintained. He, however, failed to produce either the stock register or the hard copies of the documents showing stocks of packaging material allegedly maintained electronically to the Court. When asked to produce the stock registers later, he stated that records were not available as they got burnt in the fire. Moreover, the Complainant had not produced any evidence to show that the assessment made by the Surveyor was wrong. The argument is, therefore, rejected.

17. The Complainant also alleged that on the basis of

preliminary Survey Report, the Opposite Party was ready to make interim payment of Rs.1 crore to the Complainant and in the Final Survey Report the Surveyor strangely assessed the loss at Rs.16,44,128/-. It is noteworthy that there is no interim survey report on record. The Complainant had also not stated as to when the interim survey report was filed by the Surveyor. The Opposite Party is also silent on the interim survey report. There is also no allegation that the Opposite Party had not produced the preliminary Survey report to the Complainant. The onus is on the Complainant to prove the allegation that on the basis of interim survey report the Opposite Party was ready to make payment of Rs.1 crore to the Complainant. The Complainant failed to discharge the onus of proof. The allegation of the Complainant is, therefore, rejected.

18. The Complainants also alleged that the Surveyor arbitrarily did not consider the raw material having value less than Rs.1000/-, totalling Rs.8,08,707/-. In this regard, the Surveyor observed that the insured had made large number of purchases on different dates, at various rates and in different quantities. Surveyor also observed that on verifying the data with the supporting documents, it was found that the rates drastically varied in various raw materials. In absence of sufficient clarification and documents from the Complainant, the Surveyor considered the rates as appeared in the actual invoice verified on sample basis. As the Surveyor found various discrepancies in raw material purchases and the Complainant failed to clarify the same, the Surveyor was justified considering the rates on sample basis. The allegation of the Complainant is, therefore, rejected.

19. The Complainant further alleged that there was no rationale on the part of the Surveyor to value the semi-finished products cost at 50% of the finished products and considering an average 50% completion. In this regard, the Surveyor observed as follows: –

“Additionally, in case of claim of semi-finished goods, we had requested Insured to provide the details of stage of production of items claimed, production register/planning details, basis of appointment, etc. to verify the cost of semi-finished stocks. However, insured arbitrarily considered 95% of finished goods rate cost as the cost of semi-finished goods. We discussed with Insured that it cannot be possible that a running factory will have all the semi-finished items at 95% complete stage. Insured till date has not provided substantive supporting to prove their contention.

Thus, in absence of supporting and details from Insured’s end, we have considered on the semi- finished cost rate at 50% of finished cost rate considered by us considering on an average 50% completion level.”

From the aforesaid observation of the Surveyor, it is clear that as the Complainant had not provided the details of stage of production of items. In absence of details relating to stage of production of items, the Surveyor was justified in considering the semi-finished cost rate at 50% of finished cost rate on an average of 50% completion level. The allegation of the Complainant that the Surveyor had not given any rationale to assessment of the value of semi-finished products is accordingly rejected.

20. It was also alleged on behalf of the Complainant that the Surveyor had arbitrarily observed that one container load could have maximum value of 5 to 6 lakhs only. In this regard, the Surveyor observed that “if one has to go with the volume and value, such one container load could at maximum can have the value of Rs.5 lacs to Rs.6 lacs only. Either in the Complaint or in the written arguments, the Complainant had not given as to what was the actual value of one container nor any evidence has been filed in this regard. The Complainant also failed to show any illegality in the assessment of value of one container. In the absence of anything contrary to the observation of the Surveyor, the value assessed by the

Surveyor has to be accepted. The argument of the Complainant is, therefore, rejected.

21. For the foregoing discussion, we find that the Surveyor had discussed every aspect in detail and given reasons for assessment of loss. The Complainant failed to point out any illegality or arbitrariness in the Survey Report. The Surveyor assessed the loss at Rs.16,44,128/-. The Complainant is, therefore, entitled for an amount of Rs.16,44,128/-.

22. As regards interest, it is relevant to mention that though in the written statement it is stated by the Opposite Party that they offered Rs.16,44,128/-, there is no evidence on record in this regard. As per IRDA guidelines, the Opposite Party is bound to make payment within 30 days from the date of submission of Final Survey Report. The Final Survey Report was submitted on 21.06.2016. The Opposite Party was required to pay the amount within one month i.e. upto 21.07.2016. The interest, thus, would be calculated from 21.07.2016.

23. In the result, the Complaint is partly allowed. The Opposite Party is directed to pay an amount of Rs.16,44,128/- as assessed by the Surveyor with interest @ 6% p.a. from 21.07.2016 till realization. There will be no order as to costs. The order be complied within 8 weeks.