

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1469 OF 2017

1. M/S. HARI & CO.

Registered Office : 4/29-E, Madurai Bypass Road, Tuticorin - 628
006, Tamilnadu, Through its Constituted Attorney Mr. R.
Arulmurugan

.....Complainant(s)

Versus

1. ORIENTAL INSURANCE COMPANY LIMITED & 2 ORS.

Divisional Office 6-A, North Cotton Road, AVM Buildings, 1st
Floor, Tuticorin - 1, Tamilnadu, Through Sr. Divisional Manager

2. THE ORIENTAL INSURANCE CO. LTD.

Regional Office-1, Ramalinga Radiance, IInd Floor, 78, TPK
Road, Madurai - 625 003, Tamilnadu, Through Regional Manager

3. THE ORIENTAL INSURANCE CO. LTD.

Head Office, Oriental House, A-25/27, Asaf Ali Road, New Delhi
- 110 002, Through the Managing Director

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE COMPLAINANT : MR. RAMESH KAINTHOLA, ADVOCATE

FOR THE OPP. PARTY : MR. J. P. N. SHAHI, ADVOCATE AND
MS. AASTHA KAUSHAL, ADVOCATE

Dated : 01 January 2024

ORDER

ORDER

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 were kept 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 dated 12.09.2014 was lodged and the Opposite Party intimated by e-mail on 09.09.2014 and letter dated 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 therein 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, Coir waste, 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 Syndicate vs. 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 for which 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.

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SUBHASH CHANDRA
PRESIDING MEMBER