

2023 SCeJ 437

SupremeCourtOnline 448604

SUPREME COURT OF INDIA

Before:- Justice Hrishikesh Roy and Justice Sanjay Karol, JJ.

New India Assurance Co. Ltd. & Ors. -
Appellants

Versus

M/s. Mudit Roadways - Respondents

Civil Appeal No. 339 of 2023.

24.11.2023.

Insurance - In the realm of risk and uncertainty, individuals and organisations seek solace in the bastion of insurance - a covenant forged on the bedrock of trust. Trust serves as the cornerstone, forming the essence of the insurer-insured relationship. The fundamental principle is that insurance is governed by the doctrine of uberrimae fidei - there must be complete good faith on the part of the insured.^[9*] The heart & soul of an insurance contract lies in the protection it accords to those who wish to be insured by it. This understanding encapsulates the foundational belief that insurance accords protection & indemnification, preserving the sanctity of trust within its clauses. Effectively, the insurer assumes a fiduciary duty to act in good faith and honour their commitment. This responsibility becomes particularly pronounced when the insured, in their actions, have not been negligent. In light of the vital role that trust plays in insurance contracts, it is important to ensure that the insurer adequately fulfils the duty that has been cast on it, by virtue of such a covenant - Consumer Protection Act, 1986 - Insurance Act, 1938 Section 64(UM)(4). [Para 57]

Insurance - Survey report - Multiple survey reports suggesting different causes of fire present a perplexing conundrum on the insurance claim - The reports provided by the insurer, though submitted with in-

tent, were found to be inconclusive and also contradictory - The reports furnished by the claimant, which include assessments by government departments and two independent surveyors, have however consistently identified the cause of the fire as a short-circuit - While it is difficult to go by the reports relied upon by the insurance company, the reports furnished by the claimants being consistent and logical are more acceptable in ascertaining the true cause of the fire. [Para 48]

Customs Act, 1962 Sections 12 and 46

Cases Referred :-

1. *Canara Bank v. United India Insurance Company* (2020) 3 SCC 455.
2. *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*, (2016) 14 SCC 161: (2017) 2 SCC (Civ) 765].
3. *JSK Industries Pvt. Ltd. v. Oriental Insurance Co. Ltd.* 2022 SCC OnLine 1451.
4. *Khatema Fibres Ltd. v. New India Assurance Co. Ltd.* 2021 SCC OnLine SC 818.
5. *New India Assurance Co. Ltd. v. Pradeep Kumar* (2009) 7 SCC 787.
6. *Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd.* (2019) 19 SCC 70.

For the Appellants :- Mr. C. George Thomas, Advocate.

For the Respondents :- Mr. Praveen Swarup, Mr. Parthiv K. Goswami, Sr. Advocate, Mr. Mrinal Kumar Choudhary, Sr. Advocate, Mr. Devesh Tripathi, Ms. Anasuya Choudhary, Mr. Faraz Anees, Mr. Mukeshwar Nath Dubey, Mr. Abhishek Yadav, Ms. Richa Pandey, Mr. Alok Tripathi, Mr. Ravi Kumar, Mr. Rajatdeep Sharma, Advocates.

JUDGMENT

Hrishikesh Roy, J. - Heard Mr. Aditya Kumar, learned counsel appearing for the appellants. Also heard Mr. Parthiv K. Goswami and Mr. Mrinal Kumar Choudhury, learned Senior Counsel for the respondent.

2. This appeal challenges the 10.8.2022 order of the National Consumer Disputes Redressal Commission (hereinafter referred to as, 'the NCDRC' for short), which partially allowed the consumer complaint directing the Insurance Company to pay Rs.6,57,55,155/- for a fire insurance claim with 9% interest from claim denial date within 8 weeks, or face 12% interest beyond the stipulated 8 weeks.

INSURANCE POLICIES & CLAIM PROCESS

3. The respondent purchased the following insurance policies:

| R. N. o. | Description | Date Premium Paid | Dur- ation of Policy | Sum In- sure- d |
|----------|---|-------------------|--------------------------|-----------------------|
| | Standard Fire and Special Perils Policy 1708001117010000734 | 19.06.2017 | 19.06.2017 to 18.06.2018 | R s. 6 Crores |
| | Customs Duty Package Policy 1114004617248000017 | 30.09.2017 | 30.09.2017 to 29.09.2018 | R s. 20 Crores |
| | Standard Fire and Special Perils Policy 1114001117010001014 | 30.11.2017 | 30.11.2017 to 29.11.2018 | R s. 150 Crores |
| | Additional Endorsement to Customs Duty Package Policy | 29.12.2020 | - | R s. 75 Crores |

4. These insurance policies covered premises of 106750 sq. ft. (covered area) and 15000 sq. ft. (open area) at Survey No.

09, Hissa No. 03, at Village - Veshvi, Taluka - Uran, District - Raigad, Maharashtra. The claimant leased the premises from M/s. Platinum Logistics for warehousing purpose. Claimant paid Rs.44,02,562/- to New India Assurance for safeguarding the custom bonded goods and for covering the risk against fire, etc.

5. During the pendency of the insurance policies, on 14.03.2018, a fire broke out at the insured warehouse. The respondent then informed the Insurance Company and the Custom authorities about the same. The Insurance Company appointed M/s. J.C. Bhansali and Co. as Surveyors to assess the loss. On 03.10.2018, the insured raised a claim for a sum of Rs. 6,57,55,155/-. Of the total claim, Rs. 5,54,17,891/- was against Policy No. 17080011170100000734; Rs.18,73,984/- under Policy No.11140011170100001014 and Rs. 2,15,18,802/- under Policy No.11140046172480000017 respectively.

REPORTS ON THE FIRE ON 14.03.2018

6. On the day of the fire incident, the matter was also reported to the police, resulting in the FIR No. 03/2018 on 15.03.2018. Police investigation prima facie concluded an electrical short circuit as the cause, which was relayed to the Insurance Surveyor.

7. Another report (dated 23.04.2018), addressed by the Inspection Division of Department of Industry Energy and Labour of the Maharashtra Government, recorded that the fire accident in a portion of the warehouse was on account of electrical sparks since the area had an electrical setup and stored combustible materials like boxes, papers and chemicals.

8. The Jawaharlal Nehru Port Trust's investigation, conducted by on-site firefighters revealed in their report (09.05.2018) that the probable cause was an electrical short circuit.

9. Two additional reports (07.08.2018 & 31.08.2018) prepared by independent surveyors appointed by the claimant's clients were submitted. Both reports indicated

that a short circuit was the likely cause of the fire.

10. M/s. Screen Facts Services Pvt. Ltd., the Forensic Examiner hired by the Insurance Company, inspected the portion of the fire-affected warehouse and in their report (10.12.2018) stated that combustible materials were stored where the fire occurred but ruled out short circuit as the cause, due to the absence of electrical wiring. The Forensic Examiner highlighted that welding work on the roof, carried out until 16:04 hrs. on the incident day, was a possible cause. It recorded that negligence during welding work in the secure warehouse caused the fire due to sparks and inflammable materials.

11. The Investigator, M/s. J. Basheer & Associates, appointed by the appellants, concluded in their 11.04.2019 report that fire was due to an electrical short circuit, contradicting the Forensic Examiner's findings. They also noted that the insurance policy did not cover the warehouse at Survey No. 9/3 because it was not affected by the fire.

12. M/s. J.C. Bhansali & Co., the Insurance Company's Surveyor, in their report (15.04.2019) concluded the following:-

"1. Cause of Fire is due to the negligence on the part of the management in not taking adequate precautions when the construction work was going on;

2. Almost 18000 to 20000 sq. ft. area of the roof of bonded Warehouse which is custom bonded Warehouse was uncovered, i.e., there were no roof sheets at the time of loss, due to which circumstances affected the building insured or containing the insured property were changed, in such a way which increased the risk of loss or damage by insured perils and;

3. The Survey Numbers of the fire affected Warehouse have not been declared/covered under the Policy.

4. Policy covers location at survey No. 9/3, but the office of the insured and a Warehouse located at the Surveyor No. 9/3 were not fire affected and they were safe;

5. Hence, claim under reference is out of the scope of relevant policy & liability under the claim does not arise."

13. After receiving the Survey and Investigation Reports, the Insurance Company, with their 15.07.2019 communication, rejected the respondent's claim. In their subsequent communication (14.12.2019), the following two reasons were stated: 1) The insured premises at Survey No. 9/3 was unaffected by the fire, and 2) The fire resulted from the insured's negligence during roof construction in a secure customs-bonded warehouse with hazardous chemicals. Construction work in the warehouse increased the risk, causing insurance coverage to cease under Clause 3 of the policy's terms and conditions. Following are the details of the repudiation letters issued by the Insurance Company:

| Sr No | Date | Letter of Repudiation |
|-------|----------|--|
| 1. | 28.06.19 | Insurance Company's letter repudiating the claim with respect to policy no. 1114046172480000017 (Customs duty package policy) |
| 2. | 15.07.19 | Insurance Company's letter repudiating the claim with respect insurance policy no. 17080011170100000734 (Standard Fire and Special Perils Policy- Goods Held in Trust) |
| 3. | 14.12.19 | Insurance Company's letter repudiating the claim with respect insurance policy no. |

| | |
|--|---|
| | 17080011170100000734 (Standard Fire and Special Perils Policy) |
|--|---|

CONSUMER COMPLAINT

14. The respondent, dissatisfied with the aforesaid repudiation of claim, filed Complaint No. 765 of 2020 under the Consumer Protection Act, 1986, citing service deficiencies and unfair trade practices by New India Assurance Co. Ltd. In their response, the Insurance Company referred to the Investigation Report (11.04.2019) from M/s. J. Basheer & Associates and the Final Survey Report (15.04.2019) from M/s. J.C. Bhansali & Co. They contended that the fire occurred during roof welding work undertaken by the insured without adequate precautions. It was also stated that the insured warehouse at Survey No. 9/3 was not affected by the fire. Furthermore, the roof work in the warehouse increased the risk, violating general condition 3 of the Insurance Policy, justifying the repudiation.

15. In the impugned order, the NCDRC considered two vital issues to arrive at its decision:

(i) Whether the Complainant's Warehouse located at Survey No. 9 Hissa 3 (9/3) Village Veshvi, Tal-Uran, District - Raigad was insured by the Opposite Party;

(ii) What was the cause of fire incident that occurred on 14.03.2018?

16. The NCDRC ruled in favour of the complainant concluding that the insurance policy covered the complainant's warehouse. On the second issue, NCDRC noted the time lag between the welding work and the fire incident and observed that the Forensic report is inconclusive. The other reports suggesting an electrical short circuit as the cause of the fire was found to be more acceptable.

17. Adverting to the roofing work done by the insured, NCDRC held that it did not significantly increase the risk, and therefore Clause no. 3 was inapplicable. Referring to

the ratio in *New India Assurance Co. Ltd. v. Pradeep Kumar (2009) 7 SCC 787*; NCDRC highlighted that the approved Surveyor's report, though important, is not absolute and not binding on the parties. The NCDRC accordingly ruled in favour of the insured finding deficiency in service of the insurance company. Thus, direction was issued for payment of the specified sum, with interest.

ARGUMENTS

18. Mr. Aditya Kumar, the learned counsel for the appellants, contended that the cause of the fire was negligence on the part of the insured. Reports of the forensic investigator (M/s Screen Facts Services Pvt. Ltd.) dated 10.12.2018 (Annexure A-10) were relied upon, which found that electrical short-circuit was not the cause of the fire incident. Instead, the fire could have occurred due to sparks that may have fallen on flammable chemicals stored in the adjoining area, during welding. Surveyor's Report (M/s Bhansali & Co.) dated 15.04.2019 (Annexure A-12) was relied upon to further suggest that the fire occurred due to negligence on the part of the insured in not taking adequate precautions during the roof repair work. By undertaking such repair work without precautions, the insured property was altered in a way that increased the risk of loss or damage. Additionally, storing hazardous chemicals during construction or repair work was itself a negligent act and amounted to violation of policy conditions.

19. The learned counsel points out that the forensic inspector and the surveyors were specifically tasked to investigate the fire incident. Since short-circuit as the cause of fire was ruled out, Mr. Kumar argues that the negligence theory on the part of the insured (in undertaking roof construction work in the vicinity of stored combustible materials), ought to be accepted.

20. For the appellants, Mr. Kumar also reads the Surveyor's Report (M/s Basheer & Associates) dated 11.04.2019 (Annexure A-11) which concluded that the insurance pol-

icy did not cover the premises of the fire-affected warehouse. And as such, repudiation is justified since the insurance coverage was limited to the office of the insured and the warehouse which suffered no burning incident.

21. Since Rs. 2,15,18,802.45/- was claimed towards custom duty liability, the appellants argue that compensating the insured warehouse is erroneous as custom duty liability rests only upon the importer under sections 12 and 46 of the Customs Act, 1962. The counsel relies on section 23 of the Customs Act, 1962 to argue that granting of compensation for destroyed imported goods stored in the warehouse, is unjustified. Additionally, it is also contended that the Customs Department's demand letter lacked a statutory basis. It is therefore submitted that the insured cannot seek indemnification for the fire loss as any such compensation would amount to unjust enrichment.

22. The learned counsel submits that the doctrine of waiver as applied in *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd. (2016) 15 SCC 161*, had been overruled. Moreover, a legal submission can be urged at any stage of proceedings. Therefore, grounds of unjust enrichment and customs duty could still be argued before the court although they were not argued earlier.

23. Per contra, Mr. Parthiv K. Goswami, the learned senior counsel appearing for the claimant contends that the insurance company cannot be permitted to urge additional grounds beyond those mentioned in the letter of repudiation. The appellants must therefore limit their submissions to the grounds mentioned in the repudiation letter.

24. The learned counsel then submits that it is clear from the Leave & License Agreement dated 04.07.2015 that M/s Platinum Logistics had leased out land situated on Survey No.9/3 in Village - Veshvi, Taluka - Uran, Raigad to the claimant. Further, approval was sought & obtained from

the Customs Department for a bonded warehouse on the same land. The insurance policy mentions the location of the insured premises as Mudit Roadways, Survey No.9/3 CPP Forbes CFS, Chirner Road, Village - Veshvi, Uran, MH1369, Maharashtra-400702. For justifying the claim, Mr. Goswami reads the two communications from the Tehsildar, Uran, Raigad dated 25.03.2018 (Annexure R-18) and 23.03.2018 (Annexure R-20) and also relies upon the telephone connection (Annexure R-16), electricity connection (Annexure R-17) and other communications from the Executive Magistrate (Annexure R-10) to point out that the fire incident occurred in the same address of the insured warehouse. Besides, the customers who appointed their own independent surveyors (M/s Kannan & M/s Proclaim) noted that the warehouse where the stock got burnt, was located at Survey No. 9/3 (Annexure R-8). Accordingly, it is argued that there was no basis for the insurance company to contend that the fire in the warehouse was outside the purview of the premises, covered by the insurance policy.

25. Specifically on the aspect of cause of fire, Mr. Goswami contends that the welding machine & cylinders were taken away from the field of view at 11.56.16 hours and the roof welding work did not continue in any case, beyond 16.04 hours on 14.03.2018. Therefore, if the sparks from the welding work were the cause of the fire, it would not go unnoticed for 26 minutes since combustible chemicals, papers, etc. would have instantaneously caught fire. Because of the conspicuous gap of around 26 minutes between the end of the welding work and the occurrence of fire, it would be illogical according to Mr. Goswami to attribute the welding work to be the cause for the fire. With this projection, the claimants contend that there was no negligence on the part of the insured and the cause of fire was rightly attributed to an electrical short-circuit.

26. It was further argued that multiple reports from different govt. departments as

well as independent surveyors supported the conclusion that the fire had occurred on account of a shortcircuit. In addition, it was also pointed out that no welding took place during the GI sheet roofing work as those would melt during welding. Instead, nuts & bolts were used in the GI roofing work.

27. On the aspect of the violation of insurance policy conditions, it was argued that roof repair work was being carried out to address the water leakage issue from the warehouse roof. Thus, there was no alteration of the insured premises which would have increased the fire risk. The insured therefore never violated the general condition.

28. On the issue of remission of customs duty, it is argued that the benefit of Sections 22 & 23 of the Customs Act 1962 was only available to importers and not those who hold such goods in trust for their clients. In addition, undertaking obtained from the claimant stating that they would not claim a remission or abatement on the customs duty payable (Annexure R-4) was also placed on record. It is accordingly submitted that the remission and abatement of duty available does not benefit the claimants and the said amount (Rs. 2,13,00,061/-) may directly be paid to the Customs Department.

29. The learned counsel for the claimants relied on *Canara Bank v. United India Insurance Company (2020) 3 SCC 455* to contend that the insurance company cannot escape its liability if there is nothing to prove that the fire was caused by the insured itself, irrespective of what the cause of fire was. Reliance was also placed on *Khatema Fibres Ltd. v. New India Assurance Co. Ltd. & Anr. 2021 SCC OnLine SC 818* to argue that the surveyor's report was not sacrosanct and therefore, could be departed from, if needed.

DISCUSSION AND CONCLUSION

30. We have reviewed both parties' arguments and carefully examined the multiple reports from various agencies, civic au-

uthorities, the insurance company, and surveyors.

CONTENTIONS BEYOND THE LETTER OF REPUDIATION

31. The relevant portion of the letter of repudiation is reproduced below:

"... the insured premises b
not affected due to alleged fire. The
above mention premises where the
loss occurred due to alleged fire is
not insured under the Policy. Thus c
the alleged loss dogs (sic) not fall
within the purview of the policy...
.....

The root cause of the fire incident e
was due to the negligence on
the part of the Management in not
taking adequate precautions when
the construction work was going on
that too in a secured customs
bonded warehouse where many
hazardous chemicals were stored: f
The alleged cause of fire is hot (sic) g
covered under the policy..."

The insurance company in their letter h
mentioned two specific grounds to repudiate the claim: (i) that the location of fire
was part of the premises not covered under
the insurance policy, and (ii) that there was
negligence on the part of the insured in car-
rying out repairs at the roof of the ware-
house which caused the fire.

32. Notably, in earlier cases like *Galada Power and Telecommunication Ltd. v. United India Insurance Co. Ltd. & Anr. (2016) 14 SCC 161* and *Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd. (2019) 19 SCC 70*, it was declared that new k
grounds for repudiation cannot be introduced during the hearing if they were not l
included in the repudiation letter. This legal i
principle was reiterated in *JSK Industries Pvt. Ltd. v. Oriental Insurance Co. Ltd. 2022 SCC OnLine 1451*:

"10. Mr. Gopal Shankarnarayan, m
learned senior counsel for the appellants has argued both on sub-
stantive and procedural points to
assail the aforesaid orders. His first

submission is that the insurance company cannot resist a claim petition on grounds beyond those cited by them while repudiating a claim. In support of this argument, a decision of this Court in the case *Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd. [(2019) 19 SCC 70]* has been cited. In this judgment, it has been held: -

"23. Hence, we are of the considered opinion that the law, as laid down in *Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161: (2017) 2 SCC (Civ) 765]* on Issue (2), still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC."

33. Canvassing supplementary arguments during the hearing, (beyond those in the insurer's repudiation letter), is explicitly prohibited. Consequently, it is held that the insurer cannot introduce additional reasoning beyond those detailed in their letter, to justify the repudiation.

LOCATION OF FIRE IF COVERED UNDER THE POLICY

34. Let us now analyse whether the burnt site was covered under the insurance policy. The Leave & License Agreement dated 04.07.2015 identifies all three warehouses functioning within the compound operated by M/s Platinum Logistics, with the same Survey No. i.e., 9/3. In fact, the policy documents as well as the License issued under section 57 of Customs Act 1962 refers to the warehouse situated at Survey No. 9/3, Village - Veshvi, Gavan Phata, Chirner Road, Opp. Forces CFS, Taluka - Uran, Raigad. The policy document specified the address of the insured as 'Mudit Roadways,

Survey No. 9/3, Opp. Forbes CSF, Chirner Road, Village - Veshvi, Uran, MH1369, MH-4000702.' In addition, the impugned order rightly points out that the warehouse was physically verified by the Customs Authorities after which telephone and electricity connections were provided to the insured at the same address. All communication addressed to the claimants, including letters of repudiation from the insurance company, admit to having insured the premises located at the given address.

35. Therefore, looking at the policy documents, the Leave & License Agreement and various communications received from the customs, police, fire & electricity departments, it is reasonable to conclude that the insured premises was the one that was identified and insured at Survey No. 9/3, by the insurance company. Needless to say, there is nothing to conclude that the area where the fire occurred on 14.03.2018 was not covered by the said insurance policy.

ALTERATION TO INSURED PREMISES & RISK INCREASE

36. To consider this aspect, Clause 3 in the insurance policy is relevant which reads as below:

"3. Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the Company signified by endorsement upon the policy by or on behalf of the Company:-

(a) If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by Insured Perils.

(b) If the building insured or containing the insured property becomes unoccupied and so remains for a period of more than 30 days.

(c) If the interest in the property passes from the insured otherwise than by will or operation of law."

37. Clause 3(a) indicates that the insurance policy would cease to be applicable or cover the insured premises in certain cases where there is an increased risk of loss or damage to the insured premises or goods within it. In this case, the insured had undertaken repairs on the rooftop to prevent water leakage to the warehouse. Such essential repair work on the rooftop by itself, cannot be reasonably construed to be an alteration that would increase the risk of loss or damage, as has been urged by the insurance company. In our assessment, the said repair work would not fall in the category of an alteration which would increase the risk insured for the warehouse premises. Therefore, no infirmity is seen with the view taken by the NCDRC on the same.

CAUSE OF THE FIRE & NEGLIGENCE - MULTIPLE REPORTS

38. While dealing with the 14.03.2018 fire incident, several agencies, authorities and organisations have reported on the warehouse fire accident. Those are summarized as follows:

| S.N O. | REPORT | DATE | FIND-INGS | AP-POINTE D BY |
|--------|---------------------------------|----------------|---|---|
| 1. | Electri- cal In- spector | 23.04.2 018 | Sparks created from the Short Circuit of the Electri- cal setup at the corner of the Godown . | Under section 161(2)(a), The Electric- ity Act, 2003 by the Ap- propri- ate Gov- ern- ment. |
| 2. | Asst. Man- ager, Jawa- | 09.05.2 018 | Probable cause of incident reported | Claimant |

| | | | | |
|---|---|----------------|---|---|
| a | harlal Nehru Port Trust's | | as Elec- trical Short Circuit. | |
| b | Inde- pendent Sy. - M/s H Kannan | 07.08.2 018 | Sparks from Electri- cal Short Circuit ignited inflam- mable chemi- cals stored. | Bajaj Allianz Gen. Insur- ance Co. - Insur- ers to M/s. Global Exim (M/s Mudit Road- way's Clients) |
| c | Inde- pendent Sy. - M/s Proclaim | 31.08.2 018 | Probable Cause of incident deter- mined as Short Circuit based on the police report & fire bri- gade. | TATA AIG Gen. Insur- ance Co. - Insur- ers to Ex- panded Polymer System (M/s Mudit Road- way's Clients) |
| e | Police Investi- gation (Not an- nexed) | 03.11.2 018 | Electri- cal short circuit could be the cause of fire | |
| f | Order of the Ex- ecutive Magis- trate | 03.11.2 018 | IO con- cluded that the acciden- tal fire was | Section 21 CrPC, Rule 105 of Bom- bay Po- lice |

| | | | | | | | | | | |
|----|--|------------|--|---------------|----|---|------------|--|---------------|---|
| | | | caused pursuant to Short Circuit | Manual, 1959. | | | | cal wir- ing equip- ment near the area of incident. | | a |
| 7. | M/s. J Basher & Associates | 11.04.2019 | Relied on Police Report (3.11.18) to conclude cause of fire as Short Circuit. Observed that fire affected warehouse survey nos. are not the risk location as per insurance policy. | Insurance Co. | 9. | M/s. J.C. Bhansali & Co Investigation Report | 15.04.2019 | Negligence by management in not taking adequate precautions while construction work was underway leading to sparks falling during welding. | Insurance Co. | b |
| 8. | M/s Screen Facts Services Pvt. Ltd. Forensic Investigation Report | 10.12.2018 | Sparks from the ongoing welding work ignited the flammable chemicals b/w A & D. Cause not electrical in nature as there was no electri- | Insurance Co. | | | | (Based on M/s Screen & J Basheer). | | c |

38.1 The above tabulated summary of reports reveals multiple and conflicting findings. Seven of the reports suggest short-circuit as the cause for fire. The 23.04.2018 report of the Electrical Inspector highlighted that a short-circuit around 4:30 pm on 14.03.2018, led to sparks in M/s. Mudit Roadways' warehouse. Consequently, the falling electrical sparks ignited the boxes, papers, and chemicals. The Assistant Manager of the Jawaharlal Nehru Trust also affirmed that the fire was triggered by an

electrical short-circuit, as observed by the fire-fighting teams at site.

38.2 Likewise, M/s. J. Basheer & Associates' 11.04.2019 report suggest that the fire's exact cause is inconclusive but a short-circuit could be the spark for the incident. The Special Executive Magistrate-cum-Assistant Police Commissioner in the Navi Mumbai Port Division accepted the police investigation report and concluded (on 03.11.2018) that the accidental fire resulted from a short-circuit.

38.3 The forensic investigation report dated 10.12.2018 analysed various aspects, including the chemical analysis of debris and CCTV footage from the 17 cameras installed in the insured premises. It determined that a short-circuit was not the cause but rather sparks from rooftop welding work may have triggered the fire. The surveyor's report from M/s. Bhansali & Co. dated 15.04.2019 also aligned with such conclusion. Investigators found that substantial welding work was conducted that day and pointed towards sparks igniting the stored flammable chemicals in the warehouse. According to them, the insured's negligence during construction work in a warehouse with numerous hazardous chemicals, was the root cause for the fire.

38.4 Although the footage from Camera No. 3 and video from Camera No.9 were not available, the forensic team analysed the available CCTV footage. They observed that welding equipment with cylinders were being brought to the rooftop at 11:51:17 hrs and the welding work being carried out from 11:51:17 hrs to 11:56:16 hrs, after which the equipments were removed from the vicinity. At 12:10:17 hrs., a worker was observed removing the welding red boxes. This is noteworthy as it indicates that the welding equipments were taken away by the workers around four hours before the fire occurred. Subsequently, the workers were seen transporting GI roofing sheets as head loads to the roofing work site, which continued until 16:04 hrs. The CCTV footage showed workers also using a crane to move GI roofing sheets and MS

Roofing Trusses to the roof repair area post-welding. A substantial time gap of 4 hours, 19 minutes, and 43 seconds separated the end of welding work from the fire itself. Even if rooftop repair continued until 16:04 hrs., a significant 26-minute time lag existed before the fire started.

38.5 The Forensic Investigator's conclusion that sparks from rooftop welding caused the fire appear to be illogical, as they overlooked other potential causes like short-circuit. Negligence despite workers not being involved in welding-related tasks near the time of the fire, was wrongly attributed to the insured. Moreover, evidence was not available that sparks fell on flammable chemicals attributable to activities, undertaken by workers.

39. Of the nine reports, seven suggest short-circuit as the likely fire cause, while two infer negligence on the insured's part, for inadequate precautions, during warehouse construction.

40. Logically if it were the welding sparks which caused the fire, it should have occurred shortly after 11:54:27 during the welding works or around 16:04 hours during rooftop repair. The 4 hours 19 minutes 43 seconds time gap is startlingly significant. The 26- minute time lag after roofing work ended and the fire does not have any rational explanation. There is no evidence of welding during the roofing work at 16:04 or closer to the fire time, which explains the inconclusive forensic report stating sparks "could have" caused the fire at 16:30.

41. The repudiation as noted is based on two reports (i) the forensic report of Screen Facts Service Pvt. Ltd. and of (ii) M/s Bhansali & Co. The first one notably was inconclusive. The other reports suggest short-circuit as the likely cause, not negligence. The significant time gap that exists between the welding work and the fire at 16:30 has no logical explanation. The basis of the repudiation accordingly appears to be un-reasonable and is not acceptable.

VALUE OF A SURVEYOR'S REPORT

42. According to the Insurance Act 1938, an approved surveyor's assessment is necessary for a claim. The claimant however contends that the surveyor's report is not definitive. The key question is the extent to which the report is binding and under what conditions can it be overridden in. To address this, Section 64(UM)(4) of the Insurance Act, 1938 can be usefully read which concerns surveyors and loss assessors:

64-UM. (4) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessor"):

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessors".

43. The above provision mandates that claims above Rs. 20,000 must be initially assessed by an approved surveyor. It is noteworthy that the insurer has the discretion to settle the claim for a different amount, than what is assessed by the surveyor.

44. In *New India Assurance Co. Ltd. v. Pradeep Kumar* (supra), the court addressed whether one had to accept payment based on the surveyors' assessment or could provide independent evidence to

support higher costs for replacement and repairs. The court's pertinent conclusion is as follows:

"22. In other words 1although assessment of loss by approved surveyor is a prerequisite for payment or settlement of claim of twenty thousand rupees or more by insurer, yet surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured."

45. Guided by the above ratio, the situation in the present case is found to be similar. The surveyor's report cannot be considered a sacred document and contrary evidence, including an investigation report, is subject to rebuttal. The key question is whether the investigation report is indispensable, or if the survey report alone is sufficient, to determine the cause of the fire.

46. The analysis of the forensic examiner is reproduced below for ready reference: -

"19.01. Insured has claimed for loss due to fire. Cause of fire as claimed-fire due to short circuit.

19.02. Cause of fire was investigated by M/s Screenfacts Services Pvt Ltd.

19.03. M/s Screenfacts Services Pvt. Ltd. have concluded cause of fire as under:-

19.04. Taking into consideration the construction of roofing in the gap between E & F segments of the warehouse on that day. which involved considerable welding working it is opined that during welding at the rooflevel sparks could have fallen on the adjoining flammable chemicals stored between A & D indicating the fire.

19.05. The root cause of the fire incident was due to the negligence on the part of the management in not taking adequate precautions when the construction work was going on, that too in a secured customs bonded warehouse where many hazardous chemicals were stored."

47. The surveyor's abovementioned report, although comprehensive otherwise, is inconclusive on the aspect identifying the actual cause of fire. Given that the surveyor's report only relies on the Forensic Examiner, i.e., M/s Screen Facts Services Pvt. Ltd.'s findings, it would be unsafe in this Court's opinion to rely on the said report.

EXTENT OF LIABILITY WHEN CAUSE OF FIRE INDETERMINABLE

48. Multiple survey reports suggesting different causes of fire present a perplexing conundrum on the insurance claim. The reports provided by the insurer, though submitted with intent, were found to be inconclusive and also contradictory. The reports furnished by the claimant, which include assessments by government departments and two independent surveyors, have however consistently identified the cause of the fire as a short-circuit. While it is difficult to go by the reports relied upon by the insurance company, the reports furnished by the claimants being consistent and logical are more acceptable in ascertaining the true cause of the fire.

49. On the above aspect, the NCDRC has rightly placed reliance on *Canara Bank v. United India Insurance Co. Ltd. (2020) 3 SCC 455*, wherein the Court decided to not place reliance on the surveyor's report conducted by M/s Truth Labs, for lack of sufficient analysis & held that:

"In any event, neither in the report of M/s Truth Labs nor in the other reports by the Insurance Company is there anything to show that the insured had set the cold store on fire. Whether the fire took

place by a short circuit or any other reason, as long as insured is not the person who caused the fire, the Insurance Company cannot escape its liability in terms of the insurance policy. We reject the contention of the Insurance Company that the fire was ignited by the use of kerosene and hence it is not liable."

50. Therefore, it was unequivocally declared that the precise cause of a fire, whether attributed to a short-circuit or any alternative factor, remains immaterial, provided the claimant is not the instigator of the fire. This case underscored the fundamental principle that an insurance company's obligation to the insured is of much greater import. The NCDRC's judicious application of this binding precedent appears to be well-merited.

APPLICABILITY OF CUSTOMS DUTY & UNJUST ENRICHMENT

51. In order to better appreciate and understand the argument pertaining to unjust enrichment, the claim statement (11.02.2019) needs to be perused. The claimant as can be noticed, deducted Rs. 2,39,00,664.20 for covered losses and Rs. 19,75,388 for burnt cargo salvage. Notably, the final custom duty amount under the policy was determined as Rs. 2,13,00,061.01. Customs authorities communicated their intent to recover this precise sum, Rs. 2,13,00,061, from the insured through the letters dated 06.02.2019 and 26.10.2020. In response to these communications, the insured submitted an undertaking on 11.08.2015 (Annexure R-4), explicitly stating that they would not seek any remissions related to customs duty under sections 22 and 23 of the Customs Act 1962. This action rules out unjust enrichment for the claimants on account of the customs duty.

52. Additionally, the Public Warehouse Licensing Regulations, 2016 mandate that public warehouse licensees must agree to pay all duties, interest, fines, and penalties related to stored goods. It was for this rea-

son that the customs duty package policy was also obtained by the insured from the insurance company, so as to indemnify themselves for the goods destroyed or damaged in the warehouse. Needless to say, the said Regulations make the insured duty-bound to pay all such necessary duties, fines or penalties. It is in that context that the insured had specifically stated that the insurance company may directly remit the said component of duty to the authorities, instead of remitting it to the insured. This would circumvent any unjust enrichment, towards the insured.

53. The key question here is whether the insurance claim should include the customs duty amount of Rs. 2,13,00,061.01/- as claimed by the respondent. The insurance company argued that customs duty should not be included because the Customs Act, 1962 specifies that only the importer of goods is liable to pay customs duty when they file a bill of entry.

54. The insurer anchored their stand on section 15(1)(b) of the Customs Act stating that duty rates for warehoused goods are determined when a bill of entry for home consumption is filed, and duty assessment (Section 17) only occurs when a bill of entry (Section 46) is presented. In this case, no bills of entry were filed, and no assessed goods were lost in the fire. According to the insurer, since the taxable event never happened, there is no customs duty liability. The counsel also cited section 23 of the Customs Act, which required the Assistant Commissioner of Customs to remit duty for lost or destroyed goods, before clearance.

55. However, the counsel for the claimant rightly contended that the privileges enshrined in sections 22 and 23 of the Customs Act, pertaining to abetment and remission, extend exclusively to those classified as 'importers' of insured goods. The crux of the argument revolves around the claimant's distinct position, as the claimant neither assumes the role of importer nor owner; instead, they function solely as a custodian entrusted with the goods on behalf of their clients.

56. The upshot of the above discussion is that the reports suggesting electrical short circuit as the trigger for the warehouse fire, is found to fit in with the attendant circumstances. As a corollary, the fire at the warehouse cannot be attributable to any negligent act of the insured. Moreover, the fire is found to have occurred within the insured warehouse and the appellant's plea to the contrary, is not believable. Therefore, it is a case of wrongful repudiation by the appellants. No legal infirmity is thus seen with the impugned decision favouring the respondent's insurance claim.

57. In the realm of risk and uncertainty, individuals and organisations seek solace in the bastion of insurance - a covenant forged on the bedrock of trust. Trust serves as the cornerstone, forming the essence of the insurer-insured relationship. The fundamental principle is that insurance is governed by the doctrine of *uberrimae fidei* - there must be complete good faith on the part of the insured.^[9*] The heart & soul of an insurance contract lies in the protection it accords to those who wish to be insured by it. This understanding encapsulates the foundational belief that insurance accords protection & indemnification, preserving the sanctity of trust within its clauses. Effectively, the insurer assumes a fiduciary duty to act in good faith and honour their commitment. This responsibility becomes particularly pronounced when the insured, in their actions, have not been negligent. In light of the vital role that trust plays in insurance contracts, it is important to ensure that the insurer adequately fulfils the duty that has been cast on it, by virtue of such a covenant.

[9*] MacGillivray on Insurance Law - 12th Ed., John Birds, Sweet and Maxwell (2012).]

58. Accordingly, the appeal of the Insurance Company deserves to be dismissed. But even while dismissing the appeal, to avoid any confusion, the customs duty component of the claim should, in the given event, be discharged directly to the Customs Department. All other legal conse-

quences will follow on upholding the claim of the insured against the appellants. It is ordered accordingly.

59. With the above, the appeal stands dismissed favouring the insured. The parties to bear their own cost.

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