IN THE COURT OF SH. BHUPESH KUMAR: DISTRICT JUDGE (COMMERCIAL COURTS)-02, PATIALA HOUSE COURTS, NEW DELHI

CS (Comm) No. 231/24

M/s Himalaya Communication Pvt. Ltd.
Through its authorized representative Pramod Kumar,
having its registered office at :
70/A-10, Rama Marg, Najafgarh Road,
New Delhi-110015.

……… Plaintiff

VERSUS

M/s New India Assurance Co. Ltd.
Vandana Building, 11 Tolstoy Marg,
New Delhi-110001.
Email : nia.310904@newindia.co.in

……….. Defendant

Date of Institution	: 05.03.2024
Date of Arguments	: 18.12.2025
Date of Judgment	: 07.01.2026

<u>JUDGMENT</u>

1. The present suit has been filed by plaintiff company M/s Himalaya Communication Pvt. Ltd. against defendant insurance Company M/s New India Assurance Co. Ltd. seeking recovery of sum of RS. 12,50,883/- alongwith interest.

2. The brief facts of the matter as emerged from the plaint are that plaintiff is a Limited Company incorporated as per provisions of the Companies Act and having its registered office at 70/A-10, Rama Marg, Najafgarh Road, New Delhi.

It has been further averred that plaintiff engaged in business of manufacturing facilities for Telecommunications cables like OFC as well as PIJF cable. The manufacturing unit of plaintiff is situated in village Katha, Opposite Kailash Vihar, Baddi, Solan, Himachal Pradesh.

It has been further submitted that defendant is nationalized insurance company and from the office of defendant at Delhi, on 24.02.2020, an insurance policy of Standard Fire and Special Perils was issued in the name of plaintiff vide policy no. 31090411190100000420 qua insuring the loss in the event of any incident / accident of fire, by defendant. It has been further submitted that plaintiff is availing the insurance services of defendant for the last more than five years and renewed it from year to year.

It has been further submitted that on 22.10.2022 a fire took place in the yard of manufacturing unit of plaintiff at about 3.15. PM. Immediately fire tenders were called and this incident was also informed to police and it was entered into general diary at Baddi, Police Station vide diary no. 42. The incident of fire was also notified to the official of defendant namely Ms. Reva Sharma. It has been further submitted that fire report of incident was issued by fire department on 23.10.2020.

Thereafter, the fire insurance claim form were submitted to defendant company alongwith claim bill. It has been further submitted that thereafter, defendant company appointed IAR Insurance Surveyors & Loss Assessors Pvt. Ltd., having its office at Netaji Subhash Place, Pitampura to inspect the spot and assess the losses. It has been further submitted that team of surveyor visited the spot and prepared the survey report. It has been further submitted that defendant was asked for salvage price of the burnt cables and the plaintiff has taken the salvage offer from two scrap dealers i.e. Kundlas Enterprises and Gupta Traders, on 01.12.2020 and 02.12.2020, who assessed the value of copper metal @ Rs.3.25 lakh and Rs.3.35 lakh, respectively, and the said reports were submitted with the defendant. It has been further submitted that surveyour of defendant sent email dated 03.11.2020 to plaintiff and asked the plaintiff to supply certain documents viz. I. Fire Brigade Report, II. Claim Form duly filled and signed, Claim Form duly signed alongwith supporting documents, IV. Repair Estimate of the Damaged cables, V. Invoices of the Affected Cables, VI. Service Engineer Report mentioning nature, extent and cause of damage, VII. Profit and Loss Account as on date of Loss, VIII. Audited Balance Sheet for last three Financial Years certified by CA, IX. Detail od nature of Work, X Details of the purpose for which cable is used, XI. All Credits availed on account of GST and XII. Salvage offer of the damaged amount. The plaintiff has submitted all these documents vide letter dated 10.12.2020 with estimated cost of damaged cable as Rs.17,37,499/-.

It has been further submitted that even thereafter, the defendant through email dated 04.01.2021 called for certain more documents which were submitted on 05.01.2021. The documents submitted were claim form duly filled and signed and claim bills duly signed alongwith documents. It has been further submitted that again vide email dated 13.07.2021 the defendant has requisited for certain more documents such as claim bill duly signed along with supporting documents, purchase invoices of the affected cables etc. and vide correspondence dated 17.07.2021 the plaintiff has replied the same by mentioning that claim bill duly signed was already submitted however, again submitted revised claim bill duly singed alongwith the supporting documents, purchase invoice as well as cost supporting documents affecting the costing of damaged cables/claim bills were attached alongwith the claim bill etc.

It has been further submitted that vide correspondence dated 20.09.2021 the plaintiff in satisfaction of queries of defendant, enclosed the documents which cost of PIJF Cable. It has been further submitted that on 27.09.2021 defendant sent draft assessment sheet of subject with net payable claim amount of Rs.12,50,883/- and plaintiff consented for the said amount on 28.09.2021.

It has been further submitted that on further queries of defendant, plaintiff again enclosed the costing of PIJF Cable Stock, costing of OFC 24F, costing of HDPE pipe, provisional Balance Sheet from 01/04/2020 to 31/10/2020, summary of closing stock as on 31/10/2020.

It has been further submitted that on 06.01.2022, the defendant again asked for the clarification regarding documents as claim assessed by defendant was less than the amount of damages. Thereafter, certain more documents were supplied by plaintiff at the instance of defendant. However, the defendant vide addendum report no. IAR-2010-14528 dated 01.02.2022 informed the plaintiff that final claim amount as gross loss assessed by agent/surveyor to Rs.79,272/-. On 12.03.2022 final assessment of Rs.56,336/- were assessed against the claim satisfied. However, plaintiff vide email dated 15.03.2022 rejected the same. It has been further submitted that plaintiff accepted the said amount under protest, but the same has not been released so far. It has been further submitted that the amount assessed by defendant is wrong as earlier the defendant had assessed the damages to the tune of Rs.12,50,883/-. *Inter alia*, on the basis of these submissions, prayer has been made to decree the suit in favor of plaintiff and against defendant.

3. The defendant has contested the suit by filing written statement, wherein, inter alia, preliminary objections have been taken that plaintiff has

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concealed the material facts that claim amount was calculated as per balance sheet proved by plaintiff and according to the same the total finished goods of Rs.1,10,212/- . It has been further submitted that plaintiff has not served the notice U/s 80 of CPC, hence,the suit is not maintainable.

It has been further submitted that no cause of action has arisen within the territorial jurisdiction of this Court as such this Court has got no territorial jurisdiction to entertain the present matter.

On merits, the status of plaintiff as well as defendant company were not disputed. It is also not disputed that manufacturing unit of plaintiff is situated in Baddi, Himachal Pradesh. It was denied that as per insurance policy issued to plaintiff, the entire stock material i.e. stock and stock in progress lying at Baddi Plant is covered. The fact that plaintiff has obtained policy of Standard Fire and Special Perils from defendant @ Rs.5,77,728/- as premium was not disputed. It has been further submitted that plaintiff has not placed on record to prove that plaintiff has notified the alleged loss to the defendant immediately.

The fact of appointment and visit of surveyor at spot and that report was submitted by surveyor has not been disputed. It was denied that value of copper metal was offered as Rs. 3.25 lakh by any of the trader. The fact that correspondence took place between plaintiff and defendant, and that defendant has called upon plaintiff to furnish requisite documents has not been disputed. It was denied that estimate cost of damaged cable was Rs.17,37,499/-. It was denied that defendant sent assessment sheet mentioned as net payable much less as Rs.12,50,883/-. It was denied that plaintiff has furnished true and correct facts to the defendant. It has been again submitted that as per provisional balance sheet and summary of closing stock dated 31.10.2020, all finished goods were of Rs.1,10,212/-. It has been further

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Digitally signed by Bhupesh kumar Date: 2026.01.07 16:47:03 +0530 submitted that amount of claim was reduced to Rs.56,336/-. *Inter alia,* on the basis of these submissions, prayer has been made to dismiss the suit.

4. Replication to the written statement was filed by the plaintiff, wherein, the averments made in written statement have been generally denied and those made in the plaint have been reiterated and reaffirmed.

5. On the basis of pleadings of parties, following issues were framed by my Ld. Predecessor Court, on 27.11.2024 :

1. Whether the plaintiff is entitled for the recovery of the suit amount, as claimed? OPP
2. Whether the plaintiff is entitled for interest on the suit amount and if so, at what rate and for what period? OPP
3. Whether the plaintiff is guilty for suppression of material facts? OPD
4. Whether this Court has no territorial jurisdiction to entertain and try the present suit? OPD
5. Any other relief, if any?

6. After framing of issues, the matter was referred to the Ld. Local Commissioner, by my Ld. Predecessor Court for the purpose of recording evidence of parties.

The plaintiff has examined its AR/Director Mr. Pramod Kumar as PW-1. He has deposed on the similar lines to that of the contents of plaint and has relied upon documents exhibited as Ex.PW1/A to Ex.PW1/Y. The witness was cross-examined at length by Ld. Counsel for defendant, however, his cross-examination shall be considered at the time of appreciation of evidence. PE was closed.

7. The defendant company has examined Ms. Ambika Dutt Sharma, authorized signatory of IAR Group i.e. Corporate Insurance Surveyor firm

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appointed by the defendant as DW-1. She has filed the addendum report dated 01.02.2022 alongwith photographs, balance sheets from 2018 to 2020, closing stock summary dated 31.10.2020 as Ex.DW1/1 (Colly.). The witness was cross-examined at length by Ld. Counsel for plaintiff, however, his cross-examination shall be considered at the time of appreciation of evidence.

8. DW-2 Ms. Archana Soni is Dy. Manager of defendant company. She has lead her evidence by way of affidavit Ex.DW2/A, wherein, she has generally deposed on the lines of written statement. This witness was also cross-examined at length by Ld. Counsel for plaintiff, however, her cross-examination shall also be considered at the time of appreciation of evidence. DE was closed.

9. I have heard the arguments of Ms. Chanchal Kumar, Ld. Counsel for plaintiff and Mr. Pulkit Chaudhary, Ld. counsel for defendant besides going through the material available on record.

10. My issue-wise findings are as under :

First of all issue no.4 is taken up being legal issue.

Issue no. 4. Whether this Court has no territorial jurisdiction to entertain and try the present suit? OPD

The onus to prove this issue was upon defendant. But no arguments were advanced by Ld. counsel for defendant on this aspect neither any written submissions were made in support of this issue. But because it is a legal issue, it has been considered on the basis of material on record.

From perusal of record, it is found that the insurance policy Ex.PW1/C was issued by defendant from the jurisdiction of this Court, though the insur-

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ance policy was purchased by plaintiff for his factory at Baddi, Solan, Himachal Pradesh. But since insurance policy has been issued by the defendant from the territorial jurisdiction of this Court, hence, it is found that part of cause of action arose within the territorial jurisdiction of this Court. Hence, this Court has got territorial jurisdiction to entertain and adjudicate the present suit. This issue stand decided in favor of plaintiff and against defendant.

11. Issue no. 1 & 3 are taken up together being intermingled.

Issue no. 1. Whether the plaintiff is entitled for the recovery of the suit amount, as claimed? OPP

Issue no. 3. Whether the plaintiff is guilty for suppression of material facts? OPD

The onus to prove issue no.1 was upon plaintiff and issue no.3 was upon defendant.

Ld. counsel for plaintiff has submitted that the plaintiff has examined Mr. Pramod Kumar as PW-1. He has lead his evidence by way of affidavit and this witness has proved on record all the material documents. It is further submitted that this witness has categorically stated to the effect that plaintiff has purchased the insurance policies from defendant for finished and unfinished stocks etc. for its manufacturing unit at Baddi, Solan, Himachal Pradesh. It is further submitted that from testimony of this witness it is apparent that fire took place in the said unit and certain stock lying therein was destroyed during the validity of said policy.

It is further submitted that this witness has further proved on record salvage reports, one issued by M/s Kundlas Enterprise for Rs.3.25 lakh and another by M/s Gupta Traders for Rs.3.35 lakh, as Ex.PW1/G (Colly.). It is further submitted that this witness has further deposed that initially on the basis of surveyor report, the defendant assessed the value of destroyed material / stock as Rs.12,50,883/-, but the said amount was not paid and thereafter defendant arbitrarily reduced the insurance claim to the tune of Rs.56,336/-. It is further submitted that value of material destroyed in fire incident was much more than the said amount and defendant arbitrarily not paid the genuine claim amount. It is further submitted that this witness was cross examined at length but his testimony on all main points remained unrebutted. On the basis of these submissions, it has been submitted that claim of plaintiff is genuine.

On the other hand, Ld. counsel for defendant has vehemently submitted that in the initial information of fire incident provided by plaintiff to fire department was qua finished goods only. This reflects from Ex.PW1/E vide which prayer has been made by plaintiff company to fire officer for providing fire incident report. It is further submitted that however, as per account statement of plaintiff as on 22.10.2020 finished goods worth Rs.1,10,212/- were in stock. It is further submitted that however, the plaintiff has made claim of sum of Rs.17,37,499/- which is not in consonance of the stock report where the finished goods have been mentioned as of Rs.1,10,212/-. It is further submitted that though surveyor has assessed the value of goods to the tune of Rs.12,50,883/- in report dated 27.09.2021 Ex.PW1/M. But thereafter when stock register of plaintiff was perused, it was found that as on 22.10.2020 finished goods of Rs.1,10,212/- were lying at the spot, hence, on the basis of stock register and necessary deductions, the value assessed by the surveyor was reduced and total payable amount came to Rs.56,336/-. It has been further submitted that the plaintiff is guilty of suppressing material facts from the Court.

12. Heard. Material perused.

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It is admitted fact that plaintiff was holder of Standard Fire and Special Perils policy Ex.PW1/C of defendant company. It is also undisputed that on 22.10.2020 at about 3.15 PM, fire incident took place in the yard of manufacturing unit of plaintiff. The fact that on information received from plaintiff, fire brigade came into action and controlled the fire, reflects from Ex.PW1/E i.e. fire incident report, copy of general diary dated 22.10.2020 at PS, Baddi, Himachal Pradesh. It is also not disputed that fire incident took place during existence of insurance policy period i.e. 24.02.2020 to 23.02.2021 as incident took place on 22.10.2020. The plaintiff has claimed a sum of Rs.17,37,499/- as part of Ex.PW1/F, not been disputed. Further the salvage offer issued by Kundlas Enterprises and Gupta Traders as Rs.3.25 lakh as per Ex.PW1/G (colly.), is not disputed.

The main controversy between both parties is that as per plaintiff, finished and semi-finished material was destroyed during fire incident.

On the other hand, defendant claims that as per initial information provided by plaintiff to fire department, only finished goods were destroyed and as per stock register the finished goods as on 22.10.2020 lying at the factory of plaintiff were worth Rs.1,10,212/- .

In this regard, material has been perused and it is found that as per letter dated 22.10.2020 Ex.PW1/E issued by plaintiff to fire department, fire broke out in finished goods yard. It is also not disputed that as per stock register / account statement, as on 22.10.2020 finished goods worth Rs.1,10,212/- were lying with plaintiff. To this extent the contentions of Ld. Counsel for defendant are found to be correct.

Now the question arises, whether the claim of plaintiff can be limited to the finished goods only, on the basis of first information provided to the fire department qua incident of fire of finished goods and whether the plaintiff is

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entitled for the insurance amount to the extent of finished goods worth Rs.1,10,212/- as mentioned in stock register.

On this aspect, first of all salvage offer price report issued by M/s Kundlas Enterprises dated 01.12.2020 for sum of Rs.3.25 lakh and another salvage offer price report dated 02.12.2020 issued by Gupta Traders for sum of Rs.3.35 lakh have been considered. As matter of fact, PW-1 has proved both these reports on record as Ex.PW1/G. Both there reports were furnished by plaintiff to defendant to Assistant Manager, Operations, IAR Group on 10.12.2020 vide Ex.PW1/I. As matter of fact, PW-1 was not cross examined at all in respect to salvage reports Ex.PW1/G. Even no suggestion was put to this witness in respect to genuineness of both these reports. Hence, no reasonable ground has been found to doubt the salvage reports Ex.PW1/Y.

Now the question arises if the salvage of material on spot was found to be of Rs.3.25 lakh or Rs.3.35 lakh as per reports Ex.PW1/G, then how it can be assumed that finished material of Rs.1,10,212/- was in stock.

Further, Assistant Manager Operation has informed the plaintiff vide mail Ex.PW1/M to the effect that surveyor has assessed the total loss of Rs.18,35,243/- and after deducting 10% dead stock amount, salvage etc. the net payable amount was mentioned as Rs.12,50,883/-.

In the insurance claim incidents, the surveyor appointed by insurance company to assess the damage etc. play an important role because he is the only person who visit the spot and prepare its survey report on the basis of spot inspection.

In the present matter, the surveyor report was not accepted by defendant company which reflects from addendum report Ex.PW1/Q which shows that net payable amount was assessed as Rs.79,272/-.

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Before proceeding ahead, here it is necessary to reproduce the relevant portion of addendum report Ex.PW1/Q, which is as under :

> *"This is further to our submitted report with ref. no. IAR-2010-14528 dated 30.09.2021 Now based upon recent observation/Information we have observed that the stock as claimed was on account of Finished Goods, further as per provisional balance sheet we found that in total Finished Goods of Rs. 1,10,212/- were available as on the date of loss and Closing Stock summary provided by the Insured. Thus we are now reassessing the loss considering closing stock as per provisional balance sheet being damaged/burnt as insured could not substantiate and clarify the reason for depicting closing stock valued at INR 1,10,212/ whereas claimed loss was earlier for finished stock valued INR 1835243 and accordingly we have considered our earlier assessment of loss.*"

From careful scrutiny of addendum report, it is found that it has been prepared afresh on the basis of observation, information and balance sheets etc. But as matter of fact, there is nothing in the report as to why the claim assessed by the surveyor vide Ex.PW1/M was discarded. In respect to surveyor report, Hon'ble Supreme Court in case Sri Venkateswara Syndicate vs Oriental Insurance Company, (2009) 8 SCC 507, has inter aila, held as under :-

> *There is no disputing the fact that the surveyor/surveyors are appointed by the insurance company under the provisions of the Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section' the insurance company cannot go on appointing surveyors one after another so as to get a tailor-made report to the satisfaction of the officer concerned of the insurance company: if for any reason, the report of the surveyors is not acceptable, the insurer has to give valid reason for not accepting the report.*

In the matter in hand, the surveyor who has furnished the report Ex.PW1/G was on the basis of survey. But there is nothing no cogent material on record as to why the said report of surveyor was discarded.

The plaintiff has also brought on record copy of email dated 06.1.2022 Ex. PW1/P wherein, inter alia, it has been mentioned that semi finished goods were destroyed on account of fire.

Again from careful scrutiny of cross-examination of PW-1, it is found that this witness was not cross examined at all in respect to this document and even no suggestion was put that semi finished goods were not destroyed.

No doubt, in the initial information to the fire department, it was mentioned that there is fire in finished goods yard. But the said information is 22.10.2020 i.e. same day when fire took place and it can not be ruled out that in chaos of fire, the complete information might have not been communicated to fire department. Further, the defendant has brought on record the photographs of the burnt cables as part of Ex.DW1/1.

Considering the entire facts and circumstances, it is found that not only finished goods, but semi finished goods were also destroyed in said incident of fire.

The plaintiff has claimed the insurance claim of Rs.12,50,883/-, in the present suit. However, the plaintiff has made insurance claim of Rs.18,35,252.21 vide Ex.PW1/F, but has limited the claim to Rs.12,50,883/- i.e. amount assessed by the surveyor vide Ex.PW1/M. The surveyor has deducted 10% dead stock amount, salvage of Rs.3.35 lakh, adjusted stock etc. from the loss of Rs.18,35,243/- and assessed the net amount payable to plaintiff as Rs.12,50,883/-. No good ground is found to doubt the said claim as assessed by the surveyor and claimed by the plaintiff, in the present suit. Hence, it is found that plaintiff is entitled for sum of Rs.12,50,883/- from defendant.

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Before parting-away, it is necessary to mention that there is no justified reason / material on record which suggest that plaintiff has concealed anything from the defendant. Both issues stand decided in favor of plaintiff and against defendant.

13. **<u>Issue no.2. Whether the plaintiff is entitled for interest on the suit amount and if so, at what rate and for what period? OPP</u>**

The onus to prove this issue was on the plaintiff.

The plaintiff has claimed pendente lite and future interest @ 24% per annum, which is found to be on much higher side. Considering the entire facts and circumstances, it is found that interest @10% per annum from the date of filing of suit till its realization would be sufficient to meet the ends of justice.

14. **Relief.**

In the light of above discussion, the suit of the plaintiff is decreed to the tune of Rs.12,50,883/- along with interest @10% per annum from date of filing of the suit till its realization, in favor of plaintiff M/s Himalaya Communication Pvt. Ltd. and against the defendant M/s New India Assurance Co. Ltd. along with cost of Rs. 30,000/- which includes court fee, legal fee and other expenses incurred by the plaintiff in the present suit (here it is made clear that plaintiff shall not claim any interest on the cost).

Decree sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

Dictated and announced
on 07th January, 2026.

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(Bhupesh Kumar)
District Judge (Commercial Courts)-02
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