

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8689 OF 2013

M/S. U.P. COOPERATIVE FEDERATION LTD.

APPELLANT(S)

VERSUS

NATIONAL INSURANCE CO.LTD. & ANR.

RESPONDENT(S)

O R D E R

Heard learned counsel for the appellant as also learned counsel for the respondents and perused the appeal papers.

Insofar as the damage that is said to have occurred due to failure of the compressor in the cold storage belonging to the appellant during the subsistence of the policy for the period 07.04.1997 to 06.11.1997, the same is not in issue. The only question which was to be considered by the National Consumer Disputes Redressal Commission ('NCDRC' for short) while deciding the claim was with regard to the quantum of loss suffered by the appellant.

In that regard, it is not in dispute that the stock to which reference is made is the Potatoes which were stored in the cold storage. The said potatoes were kept in the cold storage by the farmers and if at all any claim is made by the appellant, ultimately the same is to be passed on to the farmers. In that background, the perusal of the judgment passed by the NCDRC more particularly the consideration as found in paragraph 11 of the

judgment would indicate that the NCDRC was also constrained to take a decision based on the over all facts since as indicated by the NCDRC it was placed in a piquant situation since the Surveyor had not assessed the actual damage.

In a normal circumstance, the proper assessment would be based on the actual quantity of the potatoes that had been stored and had been destroyed due to the mishap. In that light, the loss suffered was to be assessed. As noted from the communication addressed by the appellant to the Insurance Company and the communication by the Surveyor to the appellant, it would disclose that though details were sought, the same was not available before the Surveyor.

However, presently the appellant has brought to the notice of this Court through Annexure P-12 filed alongwith this appeal, the details of the claim made against the appellant herein by the farmers by raising claim before the Consumer Forum in various proceedings. The claim as made by the farmers and the contention put forth by the appellant herein before the forum concerned, would also be a basis to take note of the actual quantity that had been passed on by the farmers to the appellant herein to store in the cold storage which would be an indication ultimately to arrive at the conclusion.

Therefore, at this juncture, the appropriate course for us would be to set aside the judgment of the NCDRC and restore the

complaint to the file of the NCDRC. In the said remanded proceedings, the appellant herein would have the opportunity of bringing forth the records relating to the claim preferred by the farmers against them in the various fora and indicate the actual quantum for which the claim has been made therein so as to relate it to the stock which was available and destroyed.

The respondents herein would also have the opportunity to take note of the same and put forth their contentions before the NCDRC with regard to the said claim made therein, whereupon the the NCDRC would ultimately determine the quantum and arrive at its conclusion one way or the other in accordance with law. Therefore, in order to provide such opportunity to the parties and keeping open all contentions of the parties, the order impugned dated 04.01.2012 passed by the NCDRC is set aside. The matter is remitted to the NCDRC to restore the original petition NO. 128 of 2000 on Board and proceed further to consider in the manner as indicated above.

Since both the parties are represented by their counsel, they shall now appear before the NCDRC on 22.09.2023 at 11.00 a.m. and obtain instructions from the NCDRC for further appearance without expecting notice to be issued from the NCDRC.

Thereafter, the NCDRC may regulate its proceedings and dispose of the same in accordance with law, as expeditiously as possible.

The appeal is, accordingly, disposed of.

.....J.
[A.S. BOPANNA]

.....J.
[PRASHANT KUMAR MISHRA]

NEW DELHI;
AUGUST 16, 2023

ITEM NO.105

COURT NO.4

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.8689/2013

M/S. U.P. COOPERATIVE FEDERATION LTD.

Appellant(s)

VERSUS

NATIONAL INSURANCE CO.LTD. . & ANR.

Respondent(s)

Date : 16-08-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Appellant(s) Mr. Aldanish Rein, AOR

For Respondent(s) Ms. Meenakshi Midha, Adv.
Mr. Garv Singh, Adv.
Ms. Samiksha Gupta, Adv.
Mr. Chander Shekhar Ashri, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of signed order.

Pending application (s) shall also stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)