

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5459 OF 2013

ASSAM BROOK LTD

Appellant(s)

VERSUS

UNITED INDIA INSURANCE CO. LTD & ANR.

Respondent(s)

O R D E R

Heard the learned senior counsel for the appellant as also the learned counsel for the respondent-insurance company and perused the appeal papers.

The brief facts to be noted is that the appellant herein had insured the factory which admittedly was a silent risk factory and the policy was issued for the periods 1.05.2000 to 30.04.2001. Earlier to the said period also, the insurance policy was being renewed from time to time on payment of the appropriate premium. When this was the position, a fire incident took place in the factory on 15.04.2001. The appellant herein lodged a claim with the respondent no. 1 amounting to Rs. 56,85,000/-. The surveyor named M/s Captain Krishnan and Company were appointed by the respondent no. 1 to inspect the factory. The claim had not been processed for quite some time and as such the appellant herein approached the National Consumer Disputes Redressal Commission, New Delhi (NCDRC for short) in OP No. 63 of 2003 contending deficiency of service on the part of respondents with regard to the claim made. In the said proceedings, the respondents herein filed their version and through

the same, disputed the claim put forth by the appellant. It is on that basis the matter was thereafter proceeded and the NCDRC has ultimately passed the order dated 14.05.2013 granting only a sum of Rs. 3,42,500/- with interest at 12% p.a. and Rs. 2,00,000/- as compensation.

Though we have heard the learned senior counsel as also the learned counsel for the respondent at some length, we note that the issue which arises for consideration at the outset, at this stage, is as to whether the NCDRC in the present facts and circumstances of the case was justified in merely reckoning the survey report regarding valuation which has been placed before it and thereafter arriving at its conclusion, holding it as proved and not referring to any other material.

Limited to this aspect, the examination of the order passed by the NCDRC would disclose that the NCDRC has arrived at the conclusion that the report of the surveyor regarding valuation cannot be ignored and it stands proved. Insofar as the fire accident having occurred and the damage suffered, there is no serious dispute. Only issue was with regard to valuation which was to be determined with the survey report and the materials available on record. To that extent we note that though M/s Captain Krishnan and Company were appointed as the surveyor and the report had been submitted to the insurance company which was brought before the NCDRC and the entire reliance has been on the same, no person representing M/s Captain Krishnan and Company has been examined or the affidavit has been filed before the NCDRC on behalf of the surveyor. The only witness who was examined by filing an affidavit

is Shri Sushovan Sen who is an officer of the company. To the evidence tendered by Shri Sushovan Sen an interrogatory has been filed and in that regard the question no. 6 which was raised by the appellant herein has been taken note of by the NCDRC and has arrived at the conclusion that the said interrogatory alone could not be sufficient to dispute the report submitted by the surveyor.

Having considered this aspect of the matter, though we are clear that the strict rules of evidence would not be applicable to the proceedings before NCDRC, the fact remains that the proof of the document relied on, to dispute or repudiate the claim ought to have been proved in accordance with law. As already noted, no person representing M/s Captain Krishnan and Company has been examined or the affidavit been filed. If that be the position the author of the document, namely the survey report regarding valuation was not examined to bring on record in accordance with law. Therefore, though the document was brought on record the contents of the document was not proved nor was there an opportunity for the appellant to controvert the same regarding valuation. If that be the position the content could not have been taken note of merely because certain interrogatories were not put to Shri Sushovan Sen. He had been examined, but in his reply to the interrogatory has stated that he has not visited the Tea Estate. Further, what is also to be noted is that in the absence of there being an affidavit from the surveyor, the interrogatories in any event could not have been filed by the appellant herein.

If that be the position where the survey report regarding valuation which had been brought on record was not proved in

accordance with law and the initial burden had not been discharged by the respondent insurance company, the non-raising of interrogatory alone could not have been taken as a drawback on the part of the appellant herein to rely entirely on the survey report and to arrive at a conclusion without referring to other aspects.

At this stage we make it clear, that we are not expressing any opinion on the correctness or otherwise of the survey report. We are only indicating that the NCDRC while taking that aspect into consideration, on noting the survey report regarding valuation had failed to notice that it had not been proved in accordance with law and there was no opportunity to the appellant to controvert. Hence the NCDRC could have also referred to the other evidence available on record and an analysis could have been made.

However, in the present case, since the survey report has been the sole basis and entire reliance was on the same, we are of the opinion that the conclusion as ultimately reached by the NCDRC cannot be accepted at this stage. Therefore the appropriate course would be to set aside the judgment passed by the NCDRC, restore the complaint in Original Petition no. 63 of 2003 to the file of the NCDRC whereupon the NCDRC may provide opportunity to the parties to tender evidence/file affidavits and thereafter arrive at its conclusion, one way or the other, in accordance with law after allowing the parties to prove the documents available on record in accordance with law.

Accordingly, the order dated 14.05.2013 is set aside. The Original Petition No. 63 of 2003 is restored to the file of the NCDRC. Considering that the claim is of the year 2001, we request

the NCDRC to consider and dispose of the matter as expeditiously as possible. The parties shall appear before the NCDRC on 29.03.2023, as the first date without issuance of fresh notice. A copy of this order be dispatched by the Registry of this Court to the Registry of the NCDRC. The NCDRC may thereafter regulate the proceedings. All contentions of the parties are left open to be urged before the NCDRC.

The appeal is accordingly disposed of.

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

....., J
[J.B. PARDIWALA]

NEW DELHI,
MARCH 02, 2023

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.5459/2013

ASSAM BROOK LTD

Appellant(s)

VERSUS

UNITED INDIA INSURANCE CO. LTD & ANR.

Respondent(s)

(IA No. 68616/2022 - CLARIFICATION/DIRECTION)

Date : 02-03-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Mr. Nakul Dewan, Sr. Adv.
Ms. Nooreen Sarna, Adv.
Mr. Abhijeet Sinha, AOR
Mr. Sathvik Chandrasekhar, Adv.
Mr. Sarthak Gaurav, Adv.

For Respondent(s) Mr. Rajesh Kumar Gupta, AOR

Ms. Tatini Basi, AOR
Mr. Kumar Shashank, Adv.

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

The civil appeal is disposed of in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(KRITIKA TIWARI)
SENIOR PERSONAL ASSISTANT(DIPTI KHURANA)
ASSISTANT REGISTRAR

(Signed order is placed on file)