

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

CIVIL APPEAL NO. 8577 OF 2011

M/S. NIYATI INDUSTRIES LTD.

APPELLANT(S)

VERSUS

M/S. NATIONAL INSURANCE CO. LTD.

RESPONDENT(S)

J U D G M E N T

Heard learned counsel for the parties and perused the appeal papers.

The appellant herein was before the National Consumer Disputes Redressal Commission (for short 'NCDRC') seeking payment of the insured amount in respect of the Wind Turbine Generator (WTG). The damage as claimed by the appellant was at Rs.1,82,00,000/- (Rupees one Crore Eighty Two Lakhs).

The NCDRC having taken into consideration the rival contentions as also its earlier order whereby a fresh Surveyor Report was secured has ultimately awarded the amount of Rs.20,93,426/-. The appellant claiming to be aggrieved by the same insofar as the quantum of the amount is before this Court.

In the light of the contentions urged by the learned counsel, we have perused the order impugned passed by the NCDRC. A perusal of the same discloses that insofar as the applicability of the policy and the loss suffered there is no

dispute but what is required to be noted is the quantum. The NCDRC by its earlier order dated 27.03.2008 had directed that the fresh report of the Surveyor be furnished. It is in that light the NCDRC has taken note of the report and has awarded the amount. In that regard, we note the report which was relied upon by the NCDRC is at Annexure A-12 dated 06.11.2008. A perusal of the report would indicate that the surveyor while assessing the loss had referred to the amount at Rs.22,70,000/- and deducted the depreciation of Rs.90,550/-. Further the salvage cost of Rs.86,024/- is also deducted. Hence, the total loss has been assessed at Rs.20,93,426/-.

Having noted the Report, we are of the prima facie opinion that the same does not indicate sufficient details on the face of it though it may be a fact that the Surveyor could have taken note of all aspects and retained the documents in a separate file since the report indicates that it is based on the available documents. Be that as it may, since the same does not indicate the details, we have thought it fit to refer to the Surveyor Report which had been relied upon by the appellant which is at Annexure A-5. A perusal of the same would indicate that the private Surveyor of the appellant had taken note of the various aspects which required consideration to arrive at a loss and has quantified the amount at Rs.49,03,000/- by referring to different components as stated in the report.

In that view of the matter, in a normal circumstance it would have been appropriate for this Court to remit the matter to the NCDRC to keep in view these documents, call for evidence from

the parties and thereafter assess the actual damage. However, taking note that the damage had occurred as far back as on 20.05.1997, at this juncture we do not find it necessary to do so for the reason that even if it was remanded to the NCDRC, since we have noted that second Surveyor's Report does not contain details on remand, it would have become necessary for the NCDRC in turn to secure a fresh report which at this distant point of time will not be justified.

Therefore, taking note of all aspects and also the nature of the damage suffered and the cost of installation to put an end to the controversy, we deem it appropriate to assess the damage at Rs.30,00,000/- (rupees thirty lakhs) keeping in view both the reports under our consideration and by striking a balance.

Accordingly, we modify the order dated 01.02.2011 passed by the NCDRC and hold that the appellant is entitled to receive a sum of Rs.30,00,000/- with interest as ordered by the NCDRC. The said amount shall be paid by the respondent-Insurance Company to the appellant within a period of two months from the date of receipt of a copy of this judgment.

The appeal is, accordingly, disposed of.

Pending application(s) shall also stand disposed of.

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

.....J.
[M.M. SUNDRESH]

NEW DELHI;
JULY 20, 2023

ITEM NO.101

COURT NO.7

SECTION XVII-A

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. 8577/2011

M/S NIYATI INDUSTRIES LTD.

Appellant(s)

VERSUS

M/S NATIONAL INSURANCE CO. LTD.

Respondent(s)

Date : 20-07-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s) Mr. L.K.Singh, Adv.
Mr. Atishi Dipankar, AOR

For Respondent(s) Ms. Hetu Arora Sethi, AOR
Ms. Lalit Mohini Bhat, Adv.
Ms. Saumya Tandon, Adv.
Mr. Anirudh Bhat, Adv.

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

The appeal is disposed of in terms of signed judgment

Pending application (s) shall also stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(Signed judgment is placed on the file)

(DIPTI KHURANA)
ASSISTANT REGISTRAR