

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.5827 OF 2013

M/S SUSWANI TRADERS

Appellant(s)

VERSUS

ORIENTAL INSURANCE CO. LTD. & ORS.

Respondent(s)

O R D E R

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

2. The appellant is, before this Court, assailing the order dated 20.03.2012 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "NCDRC"), wherein the NCDRC has allowed only the partial claim of the appellant, holding that the entitlement would be to the sum of Rs.16,82,130/-. Hence, since a sum of Rs.12,07,997/- has been paid, the balance payable in a sum of Rs.4,74,133/- with interest @ 9% has been ordered.

3. The fact in issue is that the appellant owns four godowns, to which, according to the appellant, separate insurance policies have been taken. The present claim is in respect of the godown No.1 owned by the appellant, which is near Priya Market / Hotel VIP Kahilipara, which is

covered under the Policy No.160/2000. The stocks covered under the said policy is to the extent of Rs.30 lakhs. The stock is of spices.

4. During the subsistence of the policy, a fire accident occurred on 17.10.2000 at 9.30 a.m. It is in that light, the appellant lodged the claim to the extent of the policy amount of Rs.30 lakhs, since, according to the appellant, the stocks available at that point of time was to the extent of Rs.32 lakhs.

5. The respondents in their response to the claim as put forth by the appellant herein before the NCDRC had contended that the claim as made would not be sustainable and even though the surveyor had rendered his report, keeping in view the stock as had been maintained, the Chartered Accountant had submitted his report and as such the claim was admitted only to the said extent, as indicated in the report amounting to Rs.12,07,997/-. Hence the said amount was paid.

6. The question for consideration herein is with regard to the actual quantum of the amount, the reimbursement of which is required to be made by the respondents to the appellant.

7. From the joint report submitted by the surveyors, the loss was assessed at Rs.28,14,500/-. However, as already noted, the Chartered Accountant had indicated the amount @ Rs.12,07,997/-. In that background when the consideration

was made by the NCDRC, the NCDRC having referred to the Survey Report as also the report of the Chartered Accountant, Mr. B.R. Poddar, NCDRC has rendered a categorical finding that the report of the Chartered Accountant would not be reliable inasmuch as the report of the Joint Surveyors was more scientific and proper.

8. It is in that light, at this juncture, we are of the opinion that the Joint Survey Report, which is rendered in the instant case would override the report submitted by the Chartered Accountant. The NCDRC on having reached such conclusion, has, however, without awarding the very amount, which has been indicated in the Surveyors Report has proceeded to further take note of the contention put forth that the "average clause" needs to be worked out and accordingly has arrived at the conclusion that since the stock shown was to the extent of Rs.52,10,956/- and after appropriate reduction from the total of the amount for which the insurance coverage was obtained, has arrived at the conclusion that the amount would be only the sum of Rs.16,82,130/-.

9. Though, the learned counsel for the respondents would vociferously seek to support the finding recorded by the NCDRC to the said extent by referring in detail to Clause 10 in the insurance policy relating to the "average clause", at the outset, we note that the Joint Surveyors also being aware of such clause contained in the policy had

indicated that the same would not apply in the instant case. We are also of the opinion that in the instant facts and circumstances, the said "average clause" has no application. Firstly, in the instant facts, we notice that though the appellant had owned four godowns, the details as available in the document at Annexure A-4, namely, the facts noticed by the Joint Surveyors would refer to the Policy Nos.160/2k, 159/2k, 30/2k and 161/2k in respect of the four godowns owned by the appellant. If that be the position, each of the godown had a separate policy and the fire accident had occurred only in the godown No.1, which had Policy No.160/2K. When the claim is under a separate and distinct policy, the "average clause" does not apply.

10. If that be the position, we are of the opinion that in the instant facts, the reduction as made by the NCDRC after taking into consideration the validity of the final survey report would not be justified. In that circumstance, we are of the opinion that the amount as arrived at by the Joint Surveyors assessed at Rs.28,14,500/-, which is less than the limit to which the policy had been obtained, i.e., Rs.30 lakhs, is the amount payable. Since already a sum of Rs.12,07,997/- has been paid, the said sum shall be deducted and the balance amount of Rs.16,06,503/- shall be paid with interest @ 9% per annum within six weeks from the date of receipt of the copy of this order.

The Civil Appeal is partly allowed in terms of the above.

Pending applications, if any, also stand disposed of.

.....J.
(A.S. BOPANNA)

.....J.
(PRASHANT KUMAR MISHRA)

New Delhi;
August 31, 2023.

ITEM NO.104

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
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).5827/2013

M/S SUSWANI TRADERS

Appellant(s)

VERSUS

ORIENTAL INSURANCE CO. LTD. & ORS.

Respondent(s)

(IA No. 3/2013 - GRANT OF INTERIM RELIEF)

Date : 31-08-2023 This matter 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. Himanshu Shekhar, AOR
Mr. M L Lahoty, Adv.
Mr. Paban K. Sharma, Adv.
Mr. Anchit Sripat, Adv.
Mr. Pranab Kumar Nayak, Adv.
Mr. Arvind Kumar, Adv.

For Respondent(s) Mr. Manish Pratap Singh, Adv.
Mr. Pratik R. Bombarde, AOR

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

The Civil Appeal is partly allowed in terms of the
signed order.

Pending applications, if any, also stand disposed of.

(RAVI ARORA)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(signed order is placed on the file)