

Karnavati Veneers Pvt. Ltd. Vs. New India Assurance Company Ltd. and Ors.

Civil Appeal No(s). 3893 of 2013

2023-01-01 | Rastogi, J.

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Full judgment text

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[Civil Appeal No(s). 3893 of 2013]

Rastogi, J.

1. The instant appeal is directed against the judgment dated 3rd September, 2012 passed by the National Consumer Disputes Redressal Commission(hereinafter being referred to as the "National Commission") affirming the repudiation claim of the appellant by letter dated 11th September, 2007.

2. The facts from which the controversy arises are that the Appellant-complainant is the private company which was engaged in the manufacture of veneers from the woods. The appellant took a standard fire and special perils policy(hereinafter being referred to as the "policy") from the respondentThe New India Assurance Company Limited in the year 2001 which was renewed from time to time and the cover was renewed to the extent of Rs. 1,20,00,000/(Rupees One Crore Twenty Lakhs) from 7th October, 2006 to 6th October, 2007.

It has come on record that with effect from 11th July, 2006, as per orders passed by Forest Department, the factory was sealed and manufacturing process was stopped. Consequent upon that, the power was also disconnected from 18th August, 2006 having no manufacturing activity thereafter. Unfortunately, devastating fire took place on 20th October, 2006 in the factory premises in which the appellant suffered huge loss.

In consequence thereto, the appellant submitted claim under the policy but that came to be repudiated by the respondent by its communication dated 11th September, 2007 on the premise that the appellant has failed to submit the required documents which is in breach of condition no. 6(b) of the policy.

3. Letter dated 11th September, 2007 pursuant to which the claim was repudiated by the respondent Insurance Company is reproduced as under:

11th September 2007

To

Dear Sirs,

"Re: Policy no. 212103/11/06/11/00001152 Claim no: 212103/11/06/11/90000017 Dt. Of loss: 20.10.2006

With reference to the above claim we have to state that your claim for damages due to alleged fire occurred in the factory on 20.10.2006. M/s. A.M. Patel Surveyors Pvt. Ltd. was appointed to assess the loss.

M/s. A.M. Patel Surveyors Pvt. Ltd. had written several letters for the compliance for the requirements/clarifications/documents from time to time. At least the surveyors released their report on 01.06.2007 on the basis of available papers/documents/information.

We have also issued a final notice to you on 12.07.2007 to comply with the requirement/documents/information asked by the surveyor but you have not submitted the documents/requirements/information as required by the surveyors.

Surveyors have specifically mentioned in their reply dt. 9th August 2007 that they are not satisfied with the compliance from the insured's end. Nonsubmission of required documents is a breach of policy condition no. 6(b) of Standard Fire & Special Perils policy which reads as under:

"The Insured shall also at all times at his own expenses produce, procure and give to the company all such further particulars, plans, specification books, vouchers, invoices, duplicates or copies thereof, documents,

investigation reports(internal/external), proofs and information with respect to the claim and the origin and cause of the loss and the circumstances under which the loss or damage occurred, and any matter touching the liability or the amount of the liability of the company as may be reasonably required by or on behalf of the company together with a declaration on oath or in other legal form of the truth of the claim and of any matters connected therewith."

Looking to the above facts the competent authority has decided to repudiate your claim which please note.

Thanking you,

Yours faithfully,

BRANCH MANAGER CC TO; GANDHINAGAR DO CC TO: AHMEDABAD R.O."

4. It will be apposite to refer at this stage that Surveyor of the respondent Company, on instructions, examined the loss/damage which took place due to fire on 20th October, 2006 and after a physical site inspection and detailed survey, submitted its report dated 1st June, 2007 and arrived at the conclusion that the total damage which the appellant has suffered for the fire which took place on 20th October, 2006 was for a total sum of Rs. 21,76,524/.

5. The Surveyor's report was not disputed by either of the party. Although the appellant has got the damages/loss assessed by its own Surveyor who submitted his report on 16th October, 2007 after making spot verification in reference to fire which took place on 20th October, 2006 and assessed the damages to the tune of Rs.86 Lakhs but as there was no evidence available with the appellant on record, the appellant had restricted to the Surveyor's report appointed by the respondent Company who submitted its report on 1st June, 2007.

6. The repudiation was challenged by the appellant by filing its claim petition before the Gujarat State Consumer Disputes Redressal Commission(hereinafter being referred to as the "State Commission") by filing of a Consumer Complaint No. 39 of 2007 that came to be dismissed by the State Commission by an Order dated 16th January, 2012 on the premise that the appellant failed to furnish the required documents as desired by the respondent Company and accordingly the claim has been rightly repudiated in terms of Clause 6(b) of the policy.

7. The State Commission also took note of the fact that the factory was at the edge of the village and there was no residential area around. The theory of Diwali fire being the cause of the factory fire appears to be suspicious but no such suspicion in reference to the fire which took place on 20th October, 2006 was ever indicated by the Surveyor appointed by the respondent Company who submitted its report dated 1st June, 2007 of which reference has been made.

8. On appeal being preferred before the National Commission, without examining the material on record, after reiterating the suspicion observed by the State Commission, the National Commission under its impugned judgment dated 3rd September, 2012 dismissed the appeal which is the subject matter of challenge in appeal before us.

9. Learned counsel for the appellant submits that M/s. A.M. Patel Surveyors Pvt. Ltd. was appointed by the respondent Company who had examined in extenso the loss/damage which took place due to fire on 20th October, 2006, and proceeded on the basis of preliminary survey carried out on 21st October, 2006 and after taking into consideration the physical inspection of the site and the material available on record made an assessment of the loss/damage suffered by the appellant to the tune of Rs. 21,76,524/and no evidence was placed even by the respondent Company in rebuttal to question the finding recorded by the Surveyor in its report dated 1st June, 2007.

In the given circumstances, the suspicion which was recorded by the State Commission in reference to the fire which took place on the day of Diwali on 20th October, 2006 in the factory premises was completely without any factual foundation.

10. Learned counsel further submits that repudiation has taken place on the premise that the insured has failed to submit the required documents which, according to the Company, was in breach of condition no. 6(b) of the policy as being indicated in the order of letter of repudiation dated 11th September, 2007 but it is unsustainable in law.

11. Per contra, learned counsel for the respondents, while supporting the finding returned by the National Commission in the impugned judgment submits that indisputedly from the material which has come on record, on the directions of the Court, the factory was closed on 11th July, 2006 and consequent upon that, the power was disconnected on 18th August, 2006 and there was no manufacturing at the time when fire took place on 20th October, 2006 and just after 13 days of the commencement of the Insurance policy, with effect from 7th October 2006, fire occurred on 20th October, 2006.

This made a suspicion which was recorded by the State Commission in its Order and affirmed by the National Commission under the impugned judgment. Merely because there was a Surveyor's report dated 1st June, 2007 who was appointed by the respondent Company who gave a report that the loss was suffered, in the given circumstances, the repudiation was valid and justified and after being affirmed at two stages needs no interference of this Court.

12. We have heard learned counsel for the parties and with their assistance perused the material available on record.

13. It is not disputed that the appellant took fire insurance policy, in the first instance in 2001 and has renewed it from time to time and the cover risk of Rs. 1,20,00,000/was renewed from 7th October, 2006 to 6th October 2007 and after its renewal, devastating fire took place in the factory on 20th October, 2006 in which the appellant suffered huge losses.

14. It is also not disputed that the appellant has never put any claim in the last 6 to 7 years during the above period and when the policy was renewed from 7th October, 2006 to 6th October, 2007, unfortunately, the devastating fire took place on 20th October, 2006 for unknown reasons.

15. It is also not disputed that M/s. A.M. Patel Surveyors Pvt. Ltd. which was appointed as a surveyor by the respondent Company has extensively examined the site physically and after taking into consideration the relevant record made available by the appellant (insured), estimated the loss/damage which took place due to fire on 20th October, 2006 of Rs. 21,76,524/and the respondent has repudiated the claim of the appellant not on the premise that the Surveyor's report dated 1st July, 2007 is not acceptable to the respondent Company but on account of nonsubmission of the required documents which was a breach of clause 6(b) of the policy as indicated by the Company in its repudiation letter dated 11th September, 2007.

16. In our considered view, invoking condition no. 6(b) of the policy for repudiation dated 11th September, 2007 was unsustainable in law for the reason that clause 6(b) only desires to submit necessary document for the purpose of assessment of claim regarding the loss/damages caused due to the fire which took place.

Whatever the material documents available with the insured were indisputedly made available to the Surveyor who has made its own physical inspection in reference to the loss which took place due to fire on 20th October, 2006 and submitted its report on 1st June, 2007. Once that assessment has been made regarding the loss/damage which took place due to fire dated 20th October, 2006 and that was not disputed by the respondent Company, repudiating the claim invoking clause 6(b) of the policy, in our considered view, was unfair and is not legally sustainable.

17. Consequently, the appeal deserves to succeed and is accordingly allowed. The order passed by the National Commission dated 3rd September, 2012 is set aside. The respondent Company is directed to make the payment of Rs. 21,76,524/as assessed by the Surveyor along with interest @ 8% per annum from the date of the Surveyor's report dated 1st June, 2007 to the appellant until its actual payment.

18. The respondent Company shall make necessary compliance of the Order of this Court within two months. No costs.

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

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