2023 INSC 538

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3673 OF 2015

M/s Super Label Mfg. Co. ….Appellant(s)

Versus

New India Assurance Company Limited…. Respondent(s)

J U D G M E N T

A.S. Bopanna, J.

1. The appellant is a registered partnership firm engaged in the business of printing high technology labels used as adhesive labels mainly by Drug Manufacturers and Other Companies on their packing material. In order to carry on such business, the appellant had imported highly sophisticated and costly machinery and had installed the same in their premises.

Among the said machinery that was installed, it also included the 'Aquaflex' brand of machinery from Canada and 'Gallus-Arsoma' from Switzerland, which are sophisticated printing machinery. In order to insure the said machinery against any damage and loss, the appellant had secured a 'Standard Fire and Special Perils' Policy from the respondent insurance company. The said policy was for a total cover of Rs. 3,35,30,000/- (Rupees Three Crores Thirty-Five Lakhs Thirty Thousand only) and was valid for the period 15.05.2003 to 30.08.2004.

2. When this was the position, as per the case of the appellant, there was a fire mishap in the factory on 28.02.2004 at about 7.50 AM. The fire had damaged and destroyed certain portions of the factory which included the plant and machinery, building, raw material and finished products. The appellant, therefore, invoked the policy and filed a claim with the respondent insurance company for a sum of Rs.3,02,75,000/- (Rupees Three Crores Two Lakh Seventy-Five Thousand only). The appellant had also informed M/s Loss Prevention

Association of India Ltd. and requested them to undertake an investigation.

3. As per procedure the insurance company appointed a surveyor, M/s Prabha Associates, Mumbai to assess the loss. The said surveyors were required to submit a report in not more than six months as per the regulations under the Insurance Regulatory and Development Authority. The surveyor conducted the inspection of the premises several times and, at the instance of the surveyor, the appellant also called for an Engineer from the manufacturers in Switzerland to physically inspect the machine and to tender his opinion. In this regard, the appellant had also to incur expenses of about Rs.4,86,665/- (Rupees Four Lakh Eighty-Six Thousand Six Hundred Sixty-Five only). The appellant contends, though the surveyor admitted the loss to the tune of Rs.1,81,35,810/- (Rupees One Crore Eighty-One Lakhs Thirty-Five Thousand Eight Hundred Ten only) and the assessment of loss was enhanced further based on the letter dated 13.09.2004 and 07.10.2004, on

submission of the report the respondents limited the reimbursement to Rs.16,15,606/- (Rupees Sixteen Lakh Fifteen Thousand Six Hundred and Six Only) by sending a voucher dated 16.05.2005. The appellant declined to accept the same and instead, filed a consumer complaint before the National Consumer Disputes Redressal Commission (for short, 'NCDRC') claiming a sum of Rs.5,20,91,724/- (Rupees Five Crores Twenty Lakhs Ninety-One Thousand Seven Hundred Twenty-Four only) including the amount of Rs.2,26,61,376/- (Rupees Two Crores Twenty-Six Lakhs Sixty-One Thousand Three Hundred Seventy-Six only) which was the amount assessed as a loss by the surveyor and also the interest payable to the various banks.

4. The respondents filed their written statement disputing the claim put forth by the appellant. According to the respondent, the amount of Rs.16,15,606/- (Rupees Sixteen Lakhs Fifteen Thousand Six Hundred and Six only) offered by them was as assessed by the surveyor, and as such the same would be the full and

final settlement of the claim by the appellant. It is alleged by the respondent that the appellant had not cooperated with the surveyors at the time of the assessment being made by the surveyor. It is their case that in respect of the imported machines, the local representative of the manufacturers were unable to technically prove the damage to the machinery since they had no technical expertise or knowledge to attend to the same. The engineer of M/s Gallus who visited from abroad declared the machine to be a total loss based on the photographs and had not stated categorically that the machine could not be repaired. The respondents contended that the Engineer could not explain as to how the damage had occurred due to fire. In effect, the respondents had disputed the reports tendered by the experts but had sought to rely on the report of the surveyor appointed by them and that of M/s. Material Technology Development Centre (for short, 'MTDC'). In that context, they sought to justify the amount of Rs.16,19,209/- (Rupees Sixteen Lakhs Nineteen Thousand Two Hundred and Nine only)

offered by them. Insofar as the claim and the assessment of loss to the extent of Rs.2,26,61,376/- (Rupees Two Crore Twenty-Six Lakhs Sixty-One Thousand Three Hundred and Seventy-Six only) it was contended that it is unsubstantiated.

5. In the background of the contentions, the NCDRC has taken into consideration the surveyor's report and based on the same has considered the aspect relating to the heavy rusting of the machinery and concentrated on as to whether the rusting within 4 to 5 hours is technically feasible. In this regard, the NCDRC has referred to the opinion in the website 'Wikipedia' with regard to corrosion, as explained therein and has based its decision on the same to arrive at the conclusion that the rusting to the machinery had taken place over a number of years and not due to one incident of fire and the water sprayed for its extinguishment. In that view, the NCDRC has not given credence to the contention of the appellant that the surveyor had earlier assessed the loss at Rs.2,26,61,376/- (Rupees Two Crores Twenty-Six

Lakhs Sixty-One Thousand Three Hundred Seventy-Six only) but on the other hand accepted the contention of the respondents that the appellant is entitled to the sum of Rs.16,19,209/- (Rupees Sixteen Lakhs Nineteen Thousand Two Hundred and Nine only) as offered by them. The NCDRC, therefore, disposed of the complaint through its order dated 24.02.2015 limiting the relief to the said sum of Rs.16,19,209/- (Rupees Sixteen Lakhs Nineteen Thousand Two Hundred and Nine only) with interest at 12 per cent per annum. The appellant therefore claiming to be aggrieved is before this Court in this appeal.

6. We have elaborately heard Mr. Arunabh Chowdhury, learned senior advocate for the appellant and Mr. S.L. Gupta, learned counsel for the respondent and perused the appeal papers including the order dated 24.02.2015 passed by the NCDRC which is impugned herein.

7. At the outset, it is necessary to note that insofar as the respondent having issued the 'Standard Fire and

Special Perils' Policy which was valid for the period 15.05.2003 to 30.08.2004 covering the damages up to Rs. 3,35,30,000/- (Rupees Three Crores Thirty-Five Lakhs Thirty Thousand only) is the accepted position. The fact that during the validity of the policy, a fire accident had occurred on 28.02.2004 is also undisputed. The fire being the cause for having resulted in certain loss which is covered under the policy for reimbursement also cannot be disputed. The very fact that the respondents have quantified the loss and offered to pay the sum of Rs.16,19,209/- (Rupees Sixteen Lakhs Nineteen Thousand Two Hundred and Nine only) which according to them was the loss/damage to the plant and machinery and other articles would indicate that the only issue which was to be determined by the NCDRC and now by this Court is with regard to the extent of damage caused and the amount of compensation therefore, to be paid and reimbursed by the respondent insurance company under the policy, within the amount of coverage provided therein.

8. The report dated 28.03.2005 of M/s Prabha Associates, the surveyor appointed by the respondent insurance company shows that on the visit made on 28.02.2004, it records that the fire brigade vehicles had arrived at 8.15 A.M. and had doused the fire using water jets till 10.30 A.M. In this regard, it also records that water was sprayed all over the place which caused damage to the machineries, than the damage that was caused by the fire itself. The observation recorded by the surveyor is that the 'Aquaflex' printing press located below the cables was found affected. Further the 'Gallus' Printing Machine, 'Spengler' machine and A.V. Flexo plate counter were all water affected. It was also observed in the report that the water marks were found on all the machines and metal rollers on 'Gallus' and 'Aquaflex' machine which was rusted due to the water being sprayed. In the report, it was also indicated that the probable cause of fire is short circuit and it was extinguished by the fire brigade by spraying water on all the machines located in the premises. It is observed that,

when they visited the premises, all the iron parts were rusted to varying degrees with regard to the 'Gallus' machine and that there was water on mechanical and electric parts located on the operations side of the machine. The rear side of the machine was found intact. It was therefore concluded that the rusting was due to the water being sprayed.

9. As regards 'Aquaflex' machine, it was indicated that the machine was located very close to the source of fire and it was found that the plastic knobs had partly melted; the electrical wirings had burnt and the main control panel was void of water marks. Pursuant to such report there was an exchange of correspondence between the appellant and the surveyor wherein further details were furnished relating to effort made by the appellant towards the restoration of the machinery and M/s Graphic Technology Inc. having informed the appellant through the communication dated 17.04.2004 that the cost of repairing the machine will exceed the reasonable limit and may not be able to guarantee optimum printing

quality in spite of repairs as the metal deformation on the main frame cannot be reverted. The very opening of the machine requiring additional parts was also highlighted. It is in that background, having taken note of this aspect of the matter the surveyor who had on 06.09.2004 made an assessment of Rs.1,81,35,810/- (Rupees One Crores Eighty-One Lakhs Thirty-Five Thousand Eight Hundred Ten only) and had sent for acceptance of the insured, namely the appellant so as to finalise the report, on further exchange of correspondence, the assessment of damage was revised.

10. The respondent, in that background, also sought for a report from the Loss Prevention Association of India Ltd., which on examination by visiting the site on 12.03.2004 along with the Divisional Manager and Development Officer, apart from suggesting remedial measures had noted with regard to considering the bill of damage to the electric cables etc. It was noted that two printing machines were found partly damaged due to heat, smoke and fire fighting water. But, observation was

however made that heavy rusting was technically not feasible within the time span of 4 to 5 hours under conditions of fire and its extinguishment. The respondent therefore taking into consideration the said reports had limited the reimbursement to the extent as indicated above.

11. While taking note of this aspect, what is also to be kept in view is the report submitted by M/s Gallus/Heidelberg India Pvt. Ltd. pursuant to the visit made on 29.02.2004 within a few hours of the fire accident. The said report indicated that the machine was total loss and not repairable with reasonable costs. Subsequently the Engineer who flew from Switzerland also visited the site on 05.10.2004. As per the report dated 06.10.2004, the machine was extensively damaged as a result of fire and could neither be switched on, nor be overhauled/repaired at the site. He was also of the opinion that the machine would have to be dismantled in order to inspect the damage and if any replacement is required it would be highly expensive. The said report

was no doubt available before the surveyor and surveyor had raised certain queries with regard to the print precision and as to why the repairs cannot be carried out in India. M/s Heidelberg India Pvt. Ltd. submitted its reply on 05.01.2005 indicating that the premises was gutted by fire and the medium used to extinguish the fire was water. As such heavy film of rust had formed over the heated steel component like plate and impression cylinders, activation mechanism, machine sliding surfaces, bearings at various locations throughout the length and breadth of the press. It was indicated in technical terms with regard to the machine not being rectifiable.

12. As noted earlier, the respondent had also secured reports from MTDC subsequent to the report of M/s Heidelberg. MTDC vide its report dated 06.01.2005 observed that heavy rusting is not technically feasible within the time span of 4 to 5 hours under conditions of fire and its extinguishment. It was indicated, technically they could not confirm significant amount of rusting

within 4 to 5 hours because of fire and its extinguishment as valid.

13. The appellant on the other hand sought the assistance of Indian Institute of Technology, Powai to secure a report in the background of the existing report including that of MTDC. The IIT, Powai through its report dated 12.08.2006 observed that the simulation of the conditions to test the feasibility of rusting within 4 to 5 hours was not proper and cannot be considered as reliable. The report of MTDC suggesting that rusting existed prior to break out of fire was commented upon and was indicated that it was misinterpretation on their own observations. The Indian Institute of Technology (IIT), Powai in their report had also indicated that the seven conditions necessary for rusting and corrosion did in fact exist. In that light, the report suggested that the rusting and corrosion of machine occurred on account of the fire accident. It was suggested that the surveyors report is not scientific and that it is inconclusive.

14. Having noted the various reports that had been secured at various stages, insofar as the fact that the assessment by a surveyor is a requirement to arrive at a conclusion to assess the loss is the accepted position. However, as against the report of the surveyor appointed by the insurance company if there is any other material on record, the same cannot be ignored but is also required to be noted for the purpose of settlement of claim. In this regard, learned senior counsel for the appellant has relied on the decision of this Court in ***National Insurance Company Ltd. Vs. Hareshwar Enterprises (P) Ltd. and Others*** (2021) SCC Online SC 628 wherein, *inter alia* it is observed as hereunder:-

> "12. In the said decision, it is no doubt held that though the assessment of loss by an approved surveyor is a prerequisite for payment or settlement of the claim, the surveyor report is not the last and final word. It is not that sacrosanct that it cannot be departed from and it is not conclusive. The approved surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured. On the said proposition, we are certain that there can be no quarrel. The surveyor's report certainly can be taken note as a piece of evidence until more reliable evidence is brought on record to rebut the contents of the surveyor's report."

15. In that background, in the instant facts where no oral evidence has been tendered by the parties and ultimately the consideration is based on the reports which are available on record, the nature of the reports and the manner in which the fire accident had occurred and the situation leading to the claim is to be assessed in an objective manner by the adjudicatory forum. In order to buttress his contentions in this regard, the learned senior counsel has referred to the decision in the case of ***New India Assurance Company Limited Vs. Zuari Industries Limited and Others*** (2009) 9 SCC 70 wherein this Court having referred to the earlier decision has arrived at the conclusion that the chain of events is to be taken note while considering the claim for damages. In this regard, it is stated therein as hereunder:-

> "14. Apparently there is no direct decision of this Court on this point as to the meaning of proximate cause, but there are decisions of foreign courts, and the predominant view appears to be that the proximate cause is not the cause which is nearest in time or place but the active and efficient cause that sets in motion a train or chain of events which brings about the ultimate result without the intervention of any other force working from an independent source.

16. Thus, in Lynn Gas and Electric Co. v. Meriden Fire Insurance Co. the Supreme Court of Massachusetts was concerned with a case where a fire occurred in the wire tower of the plaintiff's building, through which the wires of electric lighting were carried from the building. The fire was speedily extinguished, without contact with other parts of the building and contents, and with slight damage to the tower or its contents. However, in a part of the building remote from the fire and untouched thereby, there occurred a disruption by centrifugal force of the flywheel of the engine and their pulleys connected therewith, and by this disruption the plaintiff's building and machinery were damaged to a large extent.

17. It was held in Lynn Gas and Electric Co. that the proximate cause was not the cause nearest in time or place, and it may operate through successive instruments, as an article at the end of a chain may be moved by a force applied to the other end. The question always is: was there an unbroken connection between the wrongful act and the injury, a continuous operation? In other words, did the facts constitute a continuous succession of events, so linked together as to make a natural whole, or there was some new and independent cause intervening between the wrong and the injury?

22. In the present case, it is evident from the chain of events that the fire was the efficient and active cause of the damage. Had the fire not occurred, the damage also would not have occurred and there was no intervening agency which was an independent source of the damage. Hence we cannot agree with the conclusion of the surveyors that the fire was not the cause of the damage to the machinery of the claimant. Moreover, in General Assurance Society Ltd. v. Chandmull Jain it was observed by a Constitution Bench of this Court that in case of ambiguity in a contract of insurance the ambiguity should be resolved in favour of the claimant and against the insurance company."

16. In the above backdrop, in the instant case we note that the entire consideration made by the respondent before admitting only a portion of the claim and the ultimate consideration made by the NCDRC appears to be on the narrow issue with regard to the corrosion of the machinery and in that regard as to whether the corrosion can happen within a short duration of 4 to 5 hours. In our opinion, such consideration in the instant facts was misdirected and therefore resulted in the wrong conclusion.

17. We note that in the case on hand, the policy in question is a 'Standard Fire and Special Perils' Policy which is available at Annexures P-2 to P-5. The policy includes the coverage in respect of destruction or damage due to fire, save the exceptions provided therein. The fact that in the instant case the fire accident had occurred during the subsistence of the policy and that such accident was accidental and had caused damage to the property of the appellants including to the machinery in question is not in dispute. The photographs relating to

the machines along with report of the surveyor would indicate that there is rusting on the machinery. The fact that the said machinery is highly sophisticated imported machinery for precision printing cannot be disputed. In such situation, when, due to such accidental fire and to extinguish such fire the assistance of the fire brigade was called for and even as per the report of the surveyor the fire brigade had sprayed water and such other fire extinguishing material over the machinery which was placed in the room which caught fire and the fire brigade has made effort between 8.15 am to 10.30 am, the damage to the machinery has occurred. From the report of the experts it is indicated that the machinery was beyond repair keeping in view the precision work to be performed with the said machinery and there was no guarantee that even if an attempt is made to repair the same after opening the machine, it would give good results.

18. Per contra the fact remains that the respondent has not tendered any evidence to indicate that the same

machinery in fact is being used by the appellants subsequent to the fire accident either in the same manner in which it was being used prior to the fire accident or being used after repairs. Further except for the MTDC assuming that the corrosion has happened over a period of time, all other reports suggest that the corrosion has happened due to the spraying of water to extinguish the fire. The fact that the appellant was a going concern as on the date of the fire accident is not in dispute. Further, the surveyors report in any event does not suggest that the machineries were not in use as on the relevant date. On the other hand, the appellants had contended that the very same machines were being used for printing the labels immediately prior to the fire accident and there was no complaint with regard to the quality of printed labels from its customers. The respondents have not placed any contrary material to controvert the said position. In such situation, we are of the opinion that the emphasis in a fact of the present nature to arrive at the conclusion as to whether the

corrosion could happen within a time period of 4 to 5 hours and in that regard, the NCDRC considering that aspect based only on the definition of corrosion in general terms is not justified.

19. In the overall assessment of the instant case, when the accidental fire on 28.02.2004 is the accepted position and in the very report of the surveyor dated 28.03.2005 recording the nature of the damage to the machinery is also the accepted position, a narrow construction as made by the NCDRC is unacceptable. On the other hand, the chain of events will lead to the conclusion the fire accident has caused the damage.

20. If that be the position, the issue would be with regard to the extent to which the claim of the appellant is required to be accepted and the respondent be directed to reimburse the same. In this regard, though the claim is made by the appellant for the sum of Rs.5,20,91,724/- (Rupees Five Crores Twenty Lakhs Ninety-One Thousand Seven Hundred Twenty-Four only), the learned senior counsel for the appellant would indicate that the

appellant would presently limit the claim to Rs.2,26,61,376/- (Rupees Two Crores Twenty-Six Lakhs Sixty-One Thousand Three Hundred Seventy-Six only). In that background, if the nature of assessment made by the surveyor at the first instance is taken into consideration, the amount indicated therein was in a sum of Rs.1,81,35,810/- (Rupees One Crores Eighty-One Lakhs Thirty-Five Thousand Eight Hundred Ten only). However on the exchange of correspondence between surveyor and the appellant who brought on record additional material before the surveyor to indicate that the machinery cannot be repaired, the amount assessed was Rs.2,32,02,000/- (Rupees Two Crores Thirty Two Lakhs Two Thousand only).

21. Therefore, if all these aspects are taken into consideration, the claim limited by the appellant at this juncture is the actual loss suffered by the appellant. We are therefore of the opinion that the appellant would be entitled to the amount of Rs.2,26,61,376/- (Rupees Two Crores Twenty-Six Lakhs Sixty-One Thousand Three

Hundred Seventy-Six only) minus the sum of Rs.16,19,209/- (Rupees Sixteen Lakhs Nineteen Thousand Two Hundred and Nine only) which was earlier offered by the Insurance Company and was received without prejudice during the pendency of the proceedings, with interest if any that has been received. The balance amount of Rs. 2,10,42,167/- (Rupees Two Crores Ten Lakhs Forty-Two Thousand One Hundred Sixty-Seven only) shall be payable by the respondent with interest at 6 per cent per annum from the date of the complaint filed before the NCDRC. The same shall be paid within 8 weeks from the date of receipt of a copy of this judgment.

22. The appeal is accordingly allowed in part.

23. Pending application, if any, stands disposed of.

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

.....J.
(DIPANKAR DATTA)

New Delhi;
May 16, 2023