The New India Assurance Co. Ltd. vs Sri Buchiyyamma Rice Mill on 21 January, 2020

Bench: D.Y. Chandrachud, Ajay Rastogi

CA 504/2020

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Re

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 504 of 2020
Arising out of SLP(C) No 15430 of 2019

The New India Assurance Co. Ltd. …Appe

Versus

Sri Buchiyyamma Rice Mill and Anr. …Resp

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal arises from a judgment of the National Consumer Disputes Redressal Commission1 dated 4 February 2019, by which the decision of the State Consumer Disputes Redressal Commission2 was reversed and the insurer was di- rected to pay a sum of Rs 29,23,503 together with interest at the rate of nine per cent per annum from the date of repudiation of claim i.e. 15 October 2007. 1"NCDRC" 2"SCDRC" 13:17:10 IST Reason:

3 The first respondent has a rice mill situated in East Godavari District of Andhra Pradesh. The claim of the first respondent was in terms of three standard fire and special perils insurance policies, to cover specified risks in respect of plant and machinery, the building, the godowns, stock of rice, paddy, and the boiling units in the year 2004-2005. On 19 April 2005, the first respondent reported that while the rice mill was in operation, a lorry which was in the process of reversing, collided with the boiler unit, as a result of which the boiler unit collapsed in its en- tirety together with sixteen storage tanks including a paddy bin and an elevator. The damage was estimated at Rs 76 lakhs. A First Information Report was lodged on 21 April 2005, and a telegraphic intimation was furnished to the appellant on the same day. Initially, the appellant deputed Mr V Satya Sai Baba, an insurance surveyor to conduct a preliminary survey of the damage. The report of the prelimi- nary survey was

submitted on 25 April 2005 wherein, it was stated that it was un- likely that the incident had taken place in the manner in which the insured had claimed. The survey report indicated several reasons in support of these findings, which are extracted below:

> "1. According to the information given by the lorry driver of ADB7047 while he is reversing the lorry towards the paddy boiling unit he suddenly heard some noise and jumped from the lorry and observed the collapsing of the paddy boiling unit.
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> 2. After observing the collapsed paddy boiling unit and alleged impact truck ADB7047 jointly the following observations were clearly observed.

a. The alleged impact truck rear portion collapsed boiling unit structures are having reasonable distance, which means there is no direct impact of alleged truck and structures. Photo no 10 shows the clear picture.

b. A huge MS sheet of the paddy boiling bin is hanging in between the alleged truck and collapsed structure.

c. No damages bending or twisting of the back portion of the body of the alleged impact vehicle were found and the body is in good condition.

3. The alleged impact truck was found far away from the structure. Hence the structure collapsed due to alleged impact by truck is to be thoroughly investigated. The same was informed immediately to the insurer.

4. Based on collapsed structure observations I found the boiling unit columns are flatten like compressed 's' and not collapsed unevenly. After observing this type of collapse, which might be occurred only during structural failure cases. Hence a structural expert opinion is also required in order to ascertain the real cause of damage. This information was also informed to the insurer immediately.

5. The undersigned observed the insured premises of boiling unit area. The majority of the operations carried from other side of alleged impact truck location. The clear axes of loading, unloading and other operations are carrying to boiling unit from that side only. The present alleged impact truck found location was found to be not accessible for the above operation.

6. The insured boiling unit was originally designed for 8 bins and extended to 16 bins during 2004 ending. This extension work was carried without proper balancing the structure at full load, which might be the one of the cause of failure of boiling unit structure.

7. Total paddy boiling unit structure including tanks was collapsed.

8. All boiling tanks were with paddy under process at the time of collapse." (Emphasis supplied) 4 The preliminary surveyor had opined that it would be appropriate if a struc- tural expert was called

upon to ascertain the real cause of damage. Consequently, a report was submitted to the insurer on 25 November 2006, by Professor K Ram- babu of Andhra University College of Engineering, Department of Civil Engineer- ing, Visakhapatnam. The report of the structural expert indicated that (i) there was no external impact noted on any of the failed columns; (ii) the storage capacity of the system had been breached; (iii) the incident was as a result of exceeding the load carrying capacity of the column section resulting in the collapse of the entire paddy boiling structure. The appellant deputed M/s Surya Teja Associates in order to investigate into the matter. In their report dated 8 December 2006, which was replete with photographs, the investigator arrived at the finding that though the boiling mill was erected in 1999 with a 32 tons capacity, at the time of collapse, the mill was overloaded to the extent of 184.5 tons. An Insurance Regulatory Development Authority3 licenced surveyor, Mr V Abbu Rao was also deputed by the insurer to carry out the survey and make an assessment of the losses. The surveyor submitted a final survey report dated 29 June 2007. Based on an evaluation of the nature of damage, the surveyor noted that (i) no external impact or damage to the failed columns had been noted; (ii) the MS sheet of the paddy bin was hanging in between the vehicle and the collapsed structure which belied the claim that the body of boiling unit had collapsed as a result of collision with the lorry. The surveyor concluded with the finding that the boiling tank structure had collapsed due to overload and not due to the impact of a collision with a lorry. 3 “IRDA” 5 Based on the report of the surveyor, the insurer repudiated the claim on 15 October 2007. This led to the institution of a consumer complaint before the SCDRC. The SCDRC dismissed the complaint on 16 March 2012. In arriving at this finding, the SCDRC relied upon the following circumstances:

> (i) In the telegraphic communication addressed on 19 April 2005 by the insured to the insurer, there was merely a reference to the accident without any details of an alleged collision with a lorry;
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> (ii) The appellant’s complaint was lodged at 9 pm on 29 April 2005, more than two days after the damage to the unit;
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> (iii) If the lorry had collided with the boiler unit with such a great impact as claimed, there would have been extensive damage to the vehicle, but no evidence of any damage to the vehicle had been produced;
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> (iv) The insured had not produced any material evidence to support the plea that injuries had been caused to a worker at the site;
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> (v) Though the incident is alleged to have been videographed, no material evidence had been produced; and
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> (vi) The report of the insurance company surveyor (RW 3) as well as of the Professor in the Department of Civil Engineering (RW 4) indicated that the damage had been caused not as a result of the external impact of a vehicular collision but because the weight of the mill was beyond the load carrying capacity of the column section. The SCDRC also relied on the report of the Chief Investigator (RW 5), who had found that

at the time of the incident, the mill was loaded to the extent of 184.5 tons of paddy as against its original capacity of 32 tons.

6 The above findings of the SCDRC have been reversed by the NCDRC. In doing so, the NCDRC has come to the conclusion that (i) the report of the surveyor was submitted nearly one and half years after the incident; and (ii) the second survey report was submitted beyond a period of two years. This according to the NCDRC was in breach of the Insurance Regulatory and Development Authority of India (Protection of Policyholders' Interests) Regulations 2002, more particularly, Regulation 9, which prescribes a period of thirty days for completion of the survey. Relying on the report of the Inspector of the Factories Department, the NCDRC awarded the respondent's claim in the amount of Rs 29,23,503 together with interest.

7 In assailing the judgment of the NCDRC, Mr K K Bhat, learned counsel appearing on behalf of the appellant submitted that there was a fundamental misconception on the part of the NCDRC in coming to its conclusion. The first survey which was conducted was in the nature of a preliminary survey. It was submitted that the inspection took place on 19 April 2005 at 3 pm, soon after the incident was reported, and a report was submitted within less than a week thereafter on 25 April 2005. A further report was obtained from the structural expert at the Department of Civil Engineering, Andhra University College of Engineering, since the preliminary survey had set out the need for obtaining a structural opinion. The Chief Investigator submitted his report on 8 December 2006 and the final survey report itself was submitted on 29 June 2007. The final survey report which had been submitted was also of a surveyor who had inspected the site on 21 April 2005. Learned counsel while relying upon the decision of this Court in Sri Venkateswara Syndicate v Oriental Insurance Company Limited and Another4, submitted that in the present case the insurer had valid reasons for obtaining a preliminary report after which a structural opinion and the report of an investigator was sought. It was urged that the final survey report did not arrive at a position at variance with the conclusion of the earlier reports. Hence, this is not a case where the insurer has appointed a succession of surveyors merely for the purpose of obtaining a favourable opinion. On the contrary, all the reports which had been submitted to the insurer are consistent. This Court has in the above judgment clarified that there is no prohibition per se on more than one surveyor being appointed, though this cannot be done as a matter of routine only to obtain a favourable opinion.

8 On the other hand supporting the judgment of the NCDRC, Ms K Radha, learned counsel appearing on behalf of the respondent submitted that the survey reports which were obtained by the insurer were after a considerable lapse of time. The delay which has taken place in the submission of the reports would substantially dilute their evidentiary value. Hence, it was urged that the NCDRC 4 (2009) 8 SCC 507 had taken a cogent view of the matter in affirming the claim of the insured in terms of the three insurance policies.

9 The rival submissions fall for consideration.

10 In order to adjudicate upon the dispute, it is relevant to refer to Section 64- UM(2) of the Insurance Act 1938:

> "64-UM. (2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as 'approved surveyor or loss assessor'):
>
> Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor.
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> (3) The Authority may, at any time, in respect of any claim of the nature referred to in sub-section (2), call for an independent report from any other approved surveyor or loss assessor specified by him and such surveyor or loss assessor shall furnish such report to the Authority within such time as may be specified by the Authority or if no time-limit has been specified by him within a reasonable time and the cost of, or incidental to, such report shall be borne by the insurer.
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> (4) The Authority may, on receipt of a report referred to in sub-

section (3), issue such directions as he may consider necessary with regard to the settlement of the claim including any direction to settle a claim at a figure less than, or more than, that at which it is proposed to settle it or it was settled and the insurer shall be bound to comply with such directions:

> Provided that where the Authority issues a direction for settling a claim at a figure lower than that at which it has already been settled, the insurer shall be deemed to comply with such direction if he satisfies the Authority that all reasonable steps, with due regard to the question whether the expenditure involved is not disproportionate to the amount required to be recovered, have been taken with due dispatch by him:
>
> Provided further that no direction for the payment of a lesser sum shall be made where the amount of the claim has already been paid and the Authority is of opinion that the recovery of the amount paid in excess would cause undue hardship to the insured:
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> Provided also that nothing in this section shall relieve the insurer from any liability, civil or criminal, to which he would have been subject but for the provisions of this sub-section."

11 Section 64 UM (1) of the Insurance Act 1938, speaks of licensing of surveyors and loss assessors. In the present case, we are not concerned with sub-section (1). Sub-section (2) mandates that no

claim in respect of a loss which has occurred in India and requiring to be paid in an amount equal to or exceeding Rs 20,000 in value on any policy of insurance shall be admitted for payment, unless the insurer obtains a report of a surveyor or loss assessor who holds a license issued under sub-section (1) of Section 64 UM. Sub-section (3) empowers IRDA with the power to obtain an independent report from any other surveyor in respect of a claim of the nature referred to in sub-section (2). Sub-section (4) envisages that the regulatory authority may issue such directions as it may consider necessary on receipt of the report referred to in sub-section (3). The proviso to sub-section (2) reserves to the insurer the right to pay or settle the claim for an amount different from the amount assessed by the surveyor or loss assessor.

12 The impugned judgment of the NCDRC has incorrectly analysed the basis by the insurer for the appointment of surveyors for the purpose of inspection and assessment. The record to which we have adverted to earlier would indicate that immediately upon receipt of an intimation of the incident, the insurer initially appointed a surveyor to submit a preliminary survey report. The inspection was carried out on 19 April 2005 close on the heels of the incident. The report of the preliminary surveyor found serious anomalies in the claim of the insured in regard to the genesis of the incident. It was on the suggestion of the surveyor that the appellant obtained an opinion from a structural expert from the Department of Civil Engineering, Andhra University College of Engineering. The insurer thereafter proceeded to obtain the opinion of an investigator on 8 December 2006, and eventually, a final survey report was submitted on 29 June 2007. The purpose of the final survey was to determine, on the basis of the material which had emerged during the course of an inspection the cause of the incident, and to assess the extent of damage and loss.

13 In Sri Venkateswara Syndicate (supra), the issue before this Court was whether the insurer can appoint successive surveyors for getting the loss and damage assessed before settling the claim of the insured. The two judge Bench while explaining the purpose of a report of the surveyor observed thus:

> "31. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assesses the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured." (Emphasis supplied) This Court held that the report of a surveyor must be given due importance and that there should be sufficient grounds for explaining a disagreement with an assessment made by a report of the surveyor. Yet at the same time, under Section 64-UM(2) of the Insurance Act 1938, it is not open to the insurer to merely appoint a succession of surveyors with a view to obtain a tailor-made report. It is open to the insurer to appoint another surveyor for valid reasons bearing on the deficiencies found in the survey report and the reasons which must be indicated by the insurer. In this backdrop, the two judge Bench while holding that that there is no absolute

prohibition on the insurer appointing more than one surveyor observed thus:

> "33. Scheme of Section 64-UM, particularly of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint the second surveyor or surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of surveyor/surveyors. There is no prohibition in the Insurance Act for appointment of second surveyor by the insurance company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first surveyor and the need to appoint second surveyor." ...

"35. In our considered view, the Insurance Act only mandates that while settling a claim, assistance of a surveyor should be taken but it does not go further and say that the insurer would be bound by whatever the surveyor has assessed or quantified; if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured." (Emphasis supplied) 14 While determining whether the appointment of a second or successive surveyor is justified, one must take into consideration the necessity of doing so and it must be weighed in the context of relevant facts and circumstances including the deficiencies or omissions in the report of the first surveyor. Each case must be independently considered based on relevant facts and circumstances. There ought to be cogent reasons for appointing a second surveyor. 15 At this point, we may take note of a two judge Bench decision of this Court in New India Assurance Company Limited v Protection Manufacturers Private Limited5, where a submission was made that under Section 64-UM of the Insurance Act 1938, prior to the appointment of a subsequent surveyor, the insurer ought to have gone to the Regulatory Authority and under sub-section (3), it was for the Regulatory Authority to call for an independent report from any other 5 2010 7 SCC 386 surveyor. It was argued that the subsequent report of the surveyor must be disregarded on the above ground. This Court made a passing reference to the submission and accepted the contention. However, the facts of the above case are distinguishable from the present case. In the above case, the insurance company appointed another surveyor, who based on a cursory investigation determined the damages suffered by the insured in an amount close to the assessment made out by the insurer. This Court disregarded the subsequent report describing it as a tailor-made report, motivated and intended to benefit the insurer. Significantly, in the present case all the survey reports have spoken in one voice. The theory of the insured that the collapse of the entire boiler unit of the mill was due to the impact of a collision with a reversing lorry is belied by the cogent reasons which form the basis of the repudiation of the claim by the insurer. As a matter of fact, it is significant that in the first intimation by the insured of the incident, there was no reference to an alleged collision of the boiler unit with the lorry. This fact was noticed by the SCDRC. That apart, it is evident from the survey reports that the column section did not contain any evidence of an impact damage that would be sustained by collision with a lorry. The lorry had evidently suffered no damage at all, something that would have

been unlikely if there was an impact with the boiler unit with such a high force. These reasons were the foundation of the order of the SCDRC.

16 In the present case, as we have noted, the process which was followed by the insurer was not designed to obtain a report which would adopt a position adverse to the claim of the insured. There exist no mala fides on part of the insurer. On the contrary, it is evident from the record that the reports which have been relied upon maintained a consistent line of reasoning in regard to the nature and genesis of the incident. In this backdrop, we are of the view that the NCDRC has not acted reasonably in overturning the considered decision of the SCDRC. Cogent reasons were given by the SCDRC for rejecting the claim of deficiency of service on the part of the insurer. On the basis of the material which has emerged from the record, we find the opinion of the SCDRC to be correct. The view which has been taken by the NCDRC is not consistent with the statement of legal position as contained in the judgment of this Court in Sri Venkateswara Syndicate (supra) and is contrary to the material evidence on the record. 17 For the above reasons, we allow the appeal and set aside the impugned judgment of the NCDRC dated 4 February 2019. The consumer complaint filed by the respondent shall accordingly stand dismissed. There shall be no order as to costs.

……J. [Dr Dhananjaya Y Chandrachud] .....J. [Ajay Rastogi] New Delhi;

January 21, 2020

ITEM NO.15 COURT NO.8 SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

THE NEW INDIA ASSURANCE CO. LTD. Appellant(s)

VERSUS

SRI BUCHIYYAMMA RICE MILL & ANR. Respondent(s)

Date : 21-01-2020 This appeal was called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE AJAY RASTOGI For Appellant(s) Mr. K.K. Bhat, Adv.

Mr. Ranjan Kumar Pandey, AOR

For Respondent(s) Mrs. K. Radha, Adv.

Mr. K. Maruthi Rao, Adv.
Mrs. Anjani Aiyagari, AOR

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

(Chetan Kumar)
A.R.-cum-P.S.

(Saroj Kumari Gaur)
Court Master

(Signed reportable judgment is placed on the file)