

Polymat India P. Ltd. & Anr vs National Insurance Co. Ltd. & Ors on 1 December, 2004

Author: A.K. Mathur

Bench: A.K. Mathur

CASE NO.:

Appeal (civil) 4366 of 1999

PETITIONER:

Polymat India P. Ltd. & Anr.

RESPONDENT:

National Insurance Co. Ltd. & Ors.

DATE OF JUDGMENT: 01/12/2004

BENCH:

B.N. Agrawa & A.K. Mathur

JUDGMENT:

J U D G M E N T With (C.A. No. 6063/1999) National Insurance Co.Ltd.

Versus Polymat India P. Ltd. & Anr.

A.K. MATHUR, J.

Both the appeals arise against the order passed by the National Consumer Disputes Redressal Commission, New Delhi. One Civil Appeal No. 4366/1999 is filed by the Polymat India Pvt. Ltd. and the other Civil Appeal No. 6063/1999 is filed by the National Insurance Company Ltd. & Ors. against the order passed by the National Consumer Disputes Redressal Commission, New Delhi on 27th May, 1999 in the Original Petition No. 204 of 1994.

Since both the appeals raise common question of law and arise out of the same order, they are disposed of by the common order.

Brief facts of the case are as under:

That the Original Petition was filed by the Complainant M/s Polymat India Pvt. Ltd. & Anr. as a consequence of its claim under 2 fire policies bearing No. 101600/3101669/o in respect of Building, machinery and accessories and furniture and other contents and the other bearing No. 101600/3101670/o regarding stocks and used/burn lubricating oil and refined oil in its factory premises consequent upon

a fire being repudiated by the Insurance Company, Opposite Party No. 1. The insured Polymat India Pvt. Ltd. is a factory measuring 251'x 150' and is bounded by 7' high brick wall on South and Chain-link fencing on the North, East and West Sides. Inside the factory premises the Complainant had a shed measuring 101' x 41' constructed of brick wall with asbestos sheets louvers at upper and asbestos sheets roofing on tubular frame structure. Attached to the South side of the shed was a lean-to structure measuring about 85' x 25' and constructed of brick walls and roofing on tubular frame. The construction was divided into several rooms housing the office, quality control laboratory, workshop-cum-rest room and store room for tools and equipment. These rooms had their opening inside the shed. In the said factory a Dove-tail batch type acid and clay treatment process for refining the used/burnt lubricating oil was undertaken. The raw material for the process was the burnt and used lubricating oil which was received in barrels and stored in the open yard. Apart from that, oil was also brought in and unloaded into used oil pits. The finished product i.e. refined lubricating oil was either being loaded into oil tankers or being filled in drums. In the part of the plant which was in open the centrifugation, settling and decantation, dehydration, condensation of lighter volatile impurities, acid treatment and condensation of volatile matters were being conducted. The part of the operation which was carried on inside the shed were the less hazardous process like clay treatment and neutralization, filtration and centrifugation, oil blending etc. In that shed two Thermic Fluid Heaters, one oil fired boiler and one water softening plant were also installed. At the material time, all these plants and machinery and materials were covered by the two fire insurance policies. In the said policies the banker of the claimant was also one of the beneficiaries. The said two policies were of dated 19th and 20th March, 1992. It was alleged that in 1992 the bankers were changed by the Complainant from Grindlays Bank, Chowringhee Branch, Calcutta to Allahabad Bank, Camac Street Branch, Calcutta and all the fixed assets were mortgaged by the Complainant in favour of the West Bengal Financial Corporation to secure the loans received by the Complainant No. 1. All the fixed assets, stocks and stocks-in-process of the Complainant remained insured with the New India Assurance Co. upto 19th/20th March, 1992. But after the change of the bankers from Grindlays Bank to Allahabad Bank the Complainant also changed their insurer from the New India Assurance Co. Ltd. to National Insurance Co. Ltd.. It is also pointed out that the Development Officer of the National Insurance Co. Ltd. one Mr. Sandip Guha brought two proposal forms for fire insurance on or about 17th March, 1992 and got those signed by the Complainant in blank. He also took with him photocopies of the previous policies issued by New India Assurance Co. Ltd. It is further alleged that the premises of the Complainant were inspected by the said Development Officer and after inspection, the rates of premium were fixed. The premium which was demanded by the Opposite Party No. 1 being Rs. 12,012/- and Rs. 3,890/- respectively which was paid by the Complainant. In the said policies the location of the property was mentioned as "factory-cum-godown and office premises", though there was no godown in the factory premises. Thereafter on 13th January 1993 the said factory premises and the entire building, furniture, fixtures and fittings, stocks in

process and other material lying outside factory shed were completely destroyed in fire. The insurance company appointed one Shri S.N.M. Consultants as the Surveyors. The Surveyors visited the premises and conducted an inspection. The complainant supplied all information sought by the surveyors. The complainant was informed by the surveyors that they had been instructed by the opposite parties not to assess loss to the plant and machinery, furniture, fixtures and fittings and civil structure outside the covered shed and building and all that plant and machinery which were lying installed in the open part of the factory premises were not allowed to be covered by the insurance. Therefore, the Surveyors only assessed the losses inside the covered area. The Surveyors were also informed that they were supposed to assess the loss inside the covered area only. The complainant from the very beginning requested the Insurer to amend the policies as there was no godown within the precincts of the factory premises and all goods lying inside the plant and outside the plant should be insured. But no response was received from the Insurance Company. Even the Surveyors report was not made available to the complainant despite repeated requests. Therefore, the present claim was filed before the National Consumer Disputes Redressal Commission. It was also alleged that Insurance Company did not decide despite the insured complainant continued to incur losses of interest on the outstandings of Allahabad Bank and the West Bengal Financial Corporation. It is alleged that release of part payment on account of payment of atleast 75% of whatever had been assessed by the Surveyors was also not released. Ultimately on July, 1994, Complainant received a letter dated 1st July, 1994 claiming the two fire policies for a sum of Rs. 19,95,432.75 and Rs.9,242.28 respectively i.e. Rs. 20,04,675/- after deduction therefrom a sum of Rs. 19,224/- as 'penal premium' being the difference of premium between Class-I and Class II construction for three years and two vouchers for signatures of the Complainant with the direction to send further cheque for a sum of Rs 4239/-, which was also paid. It was alleged that these two vouchers were signed by the complainant without prejudice to its claim for the balance and returned to the insurer-Opposite Parties. The complainant demanded the details of deduction from its claim and received a statement of accounts but no reasons were given for this deduction. The Surveyors assessed the loss at Rs. 48,73,095/- only but the reasons for reducing this amount to Rs. 20,23,899/- which was not even 50% of the loss assessed by the Surveyors. The complainant claimed a sum of Rs. 58,20,161/- under the said two policies . But the surveyors assessed the loss at Rs. 48,73,095/-. It is alleged that inspite of this, the opposite parties even upto the date of filing of the complaint had not paid even the reduced amount of Rs. 20,04,675/- minus Rs. 19,224/- which they had originally offered under the two policies. When the matter could not be sorted out then the complainant filed the present claim before the National Forum. Respondents filed a response to the present complaint that they had settled the claim at a little over Rs. 20 lakhs as a non-standard claim because under the policy the premises was described as of 1st class construction. The Insurance Company refuted the other allegations and explained that they disallowed the claim relating to plant and machinery outside the covered area installed outside the building and had also not considered the claim of

the goods i.e. the drums of oil lying in the open within the factory precincts. It is also contended that the complainant was not kept in dark about the basis of settlement. It was also urged that regarding queries of the Complainant, a letter dated 12th August, 1994 was sent giving details to the complainant, which was received by the complainant on 31st August, 1994. In this background., National Commission examined that whether the claim of complainant is justified or not. The Commission after considering the matter took view that the factory premises includes the plant & machinery and goods inside the shed and outside the shed are covered under both fire policies. The commission relied on the definition of the factory as given in the Factory Act 1948.

It was also observed that as per the guidelines in settling the claims 75% of loss should have been settled. No basis or reasons were given as to why original claim was not settled at 75% of loss as determined by the Surveyor which was not disputed. It was also observed that dilatory approach adopted by Insurance Company resulted in harassment to complainant and he had to suffer additional interest liability from time to time by the financial institutions and it was also observed that the assessee is entitled to 75% of the claim assessed by the surveyors i.e. 75% of Rs. 48,73,095.75, which comes to Rs. 36,54,821.25 and interest was levied @ 18% per annum commencing from two months after the receipt of the Surveyor's report till the date of payment and also imposed the cost of Rs. 10,000/-. Aggrieved against this order, both these appeals were filed, one by Insurance Company and the other by M/s Polymat India, hence both are disposed of by the common order.

The first and foremost question for consideration is, as per the terms of the policy whether all the goods which are lying within the shed or outside the shed are covered under the policy or not. In Policy No. 101600/3101670/0 under heading 'Property to be insured' which reads as under:-

"Stock in trade or merchandise consisting Rs. 15,00,000/-. (A ground plan of the premises may please be sketched in the space provided showing also Adjoining and/or adjacent property within 15M (50ft) therefrom."

Clause 8 of the Policy which is relevant for our purpose reads as under:

"Are there any goods stored in the open, or is there is kutchra shed or timber built or thatched roof building with 15M (50ft.) or the property No to which this proposal applied? If so, please give details."

In the original policy, the expression used was "Factory- cum-Godown-cum-Office".

In another Policy also in similar query No. 8, a similar answer was given that is in negative.

The answer of the insured complainant was in negative that no goods are stored in open, or in kutcha shed or timber built or thatched roof building within 15M (50ft.) of the property to which proposal applies. In short that goods lying outside plant are not insured.

Therefore, the question is when the complainant themselves has given the answer in negative to the aforesaid queries in both the policies, whether the complainant is entitled to the benefit of loss occasioned to him on the goods lying outside the factory premises in the open.

It may also be relevant to mention here that after the proposal form was received by the complainant and they immediately requested by a letter on 20th April 1992 to National Insurance Co. pointing out certain discrepancies in both the policies and requested to carry out corrections in both the policies, i.e., request for incorporating the name of the Allahabad Bank, Camac Street, Calcutta as mortgagee along with West Bengal Financial Corporation, secondly, the coverage of plant and machinery inside or outside the building and the coverage for stock and stock in process and lastly the expression 'Godown cum factory' be deleted as there is no 'godown'. Letter dated 20th April, 1992 reads as under:

"Polymat India Pvt. Ltd.

1/B , D.L. Khan Road Calcutta 700 027 20th April 1992 The National Insurance Co. Ltd.

Calcutta Division XVIII, 6, Lyons Range, Calcutta 700 001 Sub.: Correction in Policy No. 101600/3101669/o(BMC) Policy No. 101600/3101670/o (SSP) Dear Sir, With reference to the captioned two policies delivered through your Development Officer, Mr. Guha, please note the following discrepancies which please amend and oblige.

1. Policy No. 101600/3101669/o (BMC)

a) Besides West Bengal Financial Corporation, the Allahabad Bank, Camac Street Branch is also interested as Mortgagee in respect of our entire building: plant machinery & equipments; and furniture, fittings & fixtures.

b) In the last paragraph, the item nos. should be 1,2 & 5 and 1,2 & 4.

c) Besides Plant & Machinery installed in Open Yard/in Building, item 2 should also include Laboratory Equipment, Stores, Spares, etc lying anywhere in our Factory Complex (inside and/or outside the Building).

2. Policy No. 101600/3101670/o (SSP) The coverage required is for Stock and Stock in Process, i.e., all types of raw materials & chemicals; stocks undergoing any process and the semi finished/finished stock- inside or outside the building but within our factory compound (as hypothecated to the Allahabad Bank). It may be noted that in the Policy the sum of Rs.15,00,000/- is wrongly stated against item 4 instead of item

3. (We have no Godown in our Factory Compound).

Please made necessary change in both the Policies on above stated basis. Please also send us photocopies of the two proposal forms which we had handed over to your Mr. Guha on 17th March, 1992- signed blank by our representative Shri Sidheswar Chakraborty so that you could fill in the queries of those two proposal forms on the basis of expiring policies of New India Assurance Company Ltd., in appropriate manner.

Thanking you, Yours faithfully For Polymat India (P) Ltd.

Sd/-

(Rita Jhavar)
Manager: Finance & Accounts
CC: The Allahabad Bank --for information
 Camac Street Branch
 3C, Camac Street
 Calcitta 700 016"

These three amendments were suggested by the aforesaid communication. The Insurance Company by the communication dated 23rd April, 1992 agreed to only amendement to the extent of the name of the Bank, namely, Allahabad Bank as maortgagee and no further amendment was made in the original Policies. This was also confirmed by the evidence of sole witness Shri Samaresh Sarkar, Divisional Manager produced by the Insurance Company in evidence before the National Forum. No evidence was led by the complainant before the National Forum. Therefore, the question is how the correspondence and documents produced by both the parties are to be construed. But unfortunately the National Commission did not consider all these aspects and immediately rushed to direct to pay 75% of the loss assessed by the surveyors.

Now, the question whether the expression "Factory-cum- Godown" includes all plant & machinery and all goods lying within the boundary wall of the factory, was covered under both the Policies.

The expression "Factory" has been defined under Section 2(m) of the Factories act which reads as under:

"Factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, -

but does not include a mine subject to the operation of the Mines Act, 1952, a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place."

The factory has also been defined in the Law Lexicon:

"A building or buildings with plant for the manufacture of goods."

The word 'factory' unless specially defined by statute, is always used in connection with the place where some kind of manufacturing process is carried on. The activity of exhibiting films does not fall within the definition of factory contained in the Factories Act."

Factory means any premises, including the precincts thereof, in any part of which a manufacturing process is carried on. The expression 'premises' including the precincts thereof' takes within its connotation not merely the building but the open area or the compound about that particular building. S.T. Trading Co. Vs. Union of India, AIR 1966 Guj. 116, 125 (Employees Provident Funds Act (19 of 1952), S 2(g)."

So far as the definition of factory is concerned as given in Factories Act, it shows that where the manufacturing process is undertaken, that means the manufacturing process which is undertaken within the plants. This does not cover the outside area of plant. But each definition has to be construed in the context in which it is used. Loosely the expression, 'factory' may include the whole premises of factory. But each expression has to be given the meaning in the context where it occurs. The expression "Factory-cum-Godown" has to be read in the present context with the other conditions which appear in the Policy document. In fact the Clause 8 which has been reproduced above, specifically made reference that whether the goods are stored in open or there is kuccha shed or timber built or thatched roof building within 15M (50ft.) of the property to which this proposal applies? If so, give the details. But no detail was given and it was answered in negative. Therefore, what was sought to be insured was plant and machinery. It is admitted that there was no godown. Therefore, it is clear that goods lying outside the plant were not insured. Had the intention of the parties been otherwise then they would have answered query No. 8 in positive terms with details. But it was answered in negative. Therefore, the documents have to be construed in the manner it is presented and we cannot give a different interpretation dehors the context. Both the parties have executed the contract and complainant made a disclosure to query No.8 categorically in negative that no goods are lying in open or in Kaccha shed. That shows that the goods lying in covered area were only insured and none else.

In this connection, a reference may be made to series of decisions of this Court wherein it has been held that duty of the Court to interpret the document of contract as was understood between the parties.. In the case of General Assurance Society Ltd. Vs. Chandmull Jain reported in 1966 (3) SCR 500 at pages 509-510, it was observed as under:

"In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not

made it themselves."

Similarly, in the case of Oriental Insurance Co. Ltd. Vs. Samayanallur Primary Agricultural Co-op. Bank reported in (1999) 8 SCC 543- Para 3 at page 546-f, it was observed as under:

"The insurance policy has to be construed having reference only to the stipulations contained in it and no artificial farfetched meaning could be given to the words appearing in it."

Therefore, the terms of the contract have to be construed strictly without altering the nature of the contract as it may affect the interest of parties adversely.

In this connection, it may also be relevant to mention here that when this proposal was approved the same was sent to the complainant and the complainant wanted some amendments in both policies i.e. coverage of goods lying outside plant including the expression factory cum- godown as there was no godown in existence but those amendments were not agreed to by the insurance company, they only agreed to make amendment of incorporation of name of the Bank, i.e., Allahabad Bank in the Policy. When the terms of the contract have been reduced in writing it cannot be changed without the mutual agreement by way of both the parties. In the present case, they did not agree for amendment of the policies, if the complainant was vigilant and wanted this expression to be deleted he should have prosecuted the matter seriously or repudiated the Policy. The only defence pleaded was that they were assured orally but no evidence was led by complainant. On the contrary, suggestion was denied by single witness produced by the Insurance Company before National Forum.

In this connection, our attention was invited to decision of this Court in the case of United India Insurance Co. Ltd. Vs. M. K. J. Corporation reported in (1996) 6 SCC 428 wherein it was observed as under:

" ..After the completion of the contract, no material alteration can be made in its terms except by mutual consent."

Therefore, in the present case when the proposal was sought to be amended and it was only agreed to by the Insurance company to the extent substituting the Bank i.e. Allahabad Bank and the other amendments were not agreed by the Insurance Company, the complainant had a choice to repudiate the insurance policy or to obtain a proper declaration. But the complainant did not pursue the matter further, it is to be blamed itself for this.

Therefore, after construing the terms of the contract it transpires that the intention between the parties was to cover the plant and machinery which were lying in the factory, i.e., in the covered area and in the shed and not the goods which were lying outside the covered area. Therefore the order of the Commission directing the payment of 75% of the assessment made by the Surveyor of the goods which were lying inside and outside the factory was not correct approach on the part of the Commission. The Commission should have examined the matter in detail in terms of the policy and

the relevant documents bearing on the subject. This was not done. Therefore, we have no hesitation to say that what was sought to be covered by both the Policies was only plant and machinery in shed and not the goods which were lying outside the plant and shed.

Next question is whether the reduction of the amount by insurance company under various heads is justified or not? We have gone through the reasons given by the Insurance Company for reducing the amount and we are of the opinion that the reasons given by the Insurance Company appear to be reasonable and justified which read as under:-

"1. Though surveyor assessed the total loss on building as Rs. 5,52,049/- but while computing we only accepted Rs. 4,97,049/- as the balance amount of Rs. 55,000/- is assessment relating to the portion which is not inside the building.

2. Regarding plant and machinery though the surveyor assessed Rs. 24,61,757/- but we considered Rs. 14,97,651/- and rest Rs. 9,64,106/- was related to the assessment of the plant and machinery installed outside the building.

3. Regarding assessment of furniture, fixture and fittings though you mentioned that the surveyor assessed Rs. 1,76,820/- but it did not appear true according to the survey report the surveyor assessed only Rs. 1,55,820/-. But we could consider to the tune of Rs. 87,320/- as the business amount of Rs. 68,500/- was related to the portion kept outside the building.

Under SSP Policy though the surveyor assessed Rs. 16,17,212/- but we could consider only (i) Hydraulic Oil (630 litres) amounting to Rs.11,100/- and (ii) H.S.D. in barrel (1081 litres) amounting to Rs. 2624/- aggregating to Rs. 13,724/- and rest of the items assessed by surveyor were beyond the scope of cover and not within the purview of the policy."

Therefore, on this account also we do not find any merit to interfere in the matter.

The next question is with regard to award of interest. As per the guidelines laid down, the Insurance Company had to settle the claim within two months of the Surveyor's Report. The reason for delay has been explained. Since the fire took place on 13th January, 1993, the Insurance Company appointed the Surveyor and Surveyor sent his report. dated November 5, 1993 which was received by the appellant on November 9, 1993. Since there was some discrepancies in the survey report, the Insurance Company vide their letter dated December 14, 1993 sought clarification from the surveyors which was replied on 22.4.94 by the Surveyors. The Insurance Company after that took the decision and informed the claimant vide their letter dated 1.7.94 for approval of the claim for Rs. 20,23,899/- under both the policies. Therefore, it was submitted that almost within stipulated time the intimation was sent to them, as such the levy of interest @ 18% by the Commission is not justified.

We are satisfied that the action taken by the Insurance Co. was within reasonable time. Therefore, it cannot be saddled with a high rate of interest @ 18%. However Insurance Companies should have speed up disposal of claims in order to inspire greater confidence in them. Be that as it may, since the amount was received by the claimant in 1994, therefore, levy of interest @ 18% does not appear to be justified. Hence, we set aside the order awarding interest @ 18% per annum. Similarly a levy of cost of litigation of Rs. 10,000/- also does not appear to be justified in the present case as in view of our finding above. Hence, we allow the C.A. No. 6063/1999 filed by National Insurance Company and set aside the order of the Commission.

Polymat India Pvt. Ltd.. (C.A. No. 4366/99) have also filed appeal against the same order and their grievance is Commission ought to have granted entire loss assessed by Surveyors instead of 75% & interest should have been awarded from the date of loss. Since, we have examined the whole matter in detail, we are satisfied that claimant is not entitled to be compensated loss as claimed by them. Hence, we do not find any merit in this appeal and the same is dismissed with no orders as to costs.