

M/S OSWAL PLASTIC INDUSTRIES

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v.

MANAGER, LEGAL DEPTT. N.A.I.C.O. LTD.

(Civil Appeal No. 83 of 2023)

JANUARY 13, 2023

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[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Insurance – In case of damage of the plant and machinery due to fire, whether the complainant entitled to reinstatement value or depreciated value under insurance policy – Appellant subscribed to a Fire & Perils policy – A fire broke out and the surveyor assessed the loss at Rs.29,17,500/- on reinstatement value and Rs.12,60,000/- on depreciated value – Insurance company despite the reports of the surveyor, repudiated the claim – State Commission relying on the surveyor report, awarded Rs.29,17,500/- with 9% interest from the date of repudiation observing entitlement on reinstatement value – NCDRC set aside the order of State Commission and awarded Rs.12,60,000/- along with 7% interest observing entitlement to depreciated value – On appeal, held: As per clause 9 of the insurance policy, the complainant shall be entitled to reinstatement value and not depreciated value – The report of the surveyor would be relevant to consider the sum required to reinstate or repair – NCDRC has mis-interpreted and mis-read the clause 9 – NCDRC erred in holding that insurance company is liable to pay depreciated value only – Order of the NCDRC set aside – The order passed by the State Commission restored.

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Allowing the appeal, the Court

HELD: 1. Considering second part of Clause 9 of the insurance policy, in case company is unable to reinstate or repair the property insured, the insurance company shall be liable to pay such sum as would be requisite to reinstate or repair such property if the same could lawfully be reinstated to its former condition. For the aforesaid purpose, the report of surveyor would be relevant evidence to consider the sum required to reinstate or repair. Therefore, as per second part of Clause 9 of Section 2 of the policy, the complainant shall be entitled to the reinstatement value and not the depreciated value. The NCDRC has mis-interpreted and mis-read the Clause 9. The NCDRC has seriously erred in observing and holding that the insurance company shall

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- A be liable to pay the depreciated value only and not the reinstatement value. The State Commission was absolutely justified in awarding the reinstatement value. The impugned judgment and order passed by the NCDRC awarding the depreciated value and not the reinstatement value is unsustainable. The impugned judgment and order passed by the
- B NCDRC is hereby quashed and set aside. The order passed by the State Commission is hereby restored. The complainant shall be entitled to Rs. 29,17,500/- being the reinstatement value with interest @ 7% from the date of order of the State Commission. [Paras 5.2 and 6][990-C-G]

- C *Canara Bank vs. United India Insurance Company Limited and Ors.*, 2020 (3) SCC 455 : [2020] 7 SCR 498 – referred to.

Case Law Reference

[2020] 7 SCR 498 referred to Para 3.4

- D 2023. CIVIL APPELLATE JURISDICTION : Civil Appeal No.83 of 2023.

From the Judgment and Order dated 20.02.2019 of the National Consumer Dispute Redressal Commission, New Delhi in First Appeal No.207 of 2015.

- E Jay Savla, Sr. Adv., Dhananjay Garg, Abhishek Garg, D. K. Garg, Akhil Dehlan, Sanjay Chhabra, Advs. for the Appellant.

Amit Kumar Singh, Mrs. K Enatoli Sema, Ms. Chubalemla Chang, Prang Newmai, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- F 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.02.2019, passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the NCDRC) in First Appeal No. 207/2015, by which the NCDRC has set aside the order passed by the State Consumer Disputes Redressal Commission, Punjab (hereinafter referred to as the State Commission) and has modified the same to the extent that the insurance company
- G shall be liable to pay only Rs. 12,60,000/- instead of Rs. 29,17,500/-, the original complainant has preferred the present appeal.

- H 2. That the appellant herein obtained Standard Fire and Special Perils Policy with effect from 02.07.2009. The sum insured was Rs. 2.50 crores. According to the appellant, the policy was on reinstatement value. The policy was enhanced to Rs. 4.50 crores. That during the

validity period of policy i.e., on 17.10.2009 fire broke out in the factory premises resulting into loss of material, stock, and machinery of the value of Rs. 76,64,000/-. The surveyor appointed by the insurance company observed/assessed as such the loss on reinstatement value basis at Rs. 29,17,500/- and on depreciated value at Rs. 12,60,000/-. The insurance company despite the reports of the surveyor and investigator repudiated the claim. The appellant herein – original complainant filed the complaint before the State Commission, *inter-alia*, seeking a claim of Rs. 76,64,000/- together with interest. It was the case on behalf of the complainant that the complainant had purchased the machinery to replace the damaged machinery at the cost of Rs. 1,34,07,836/-. The State Commission vide order dated 10.11.2014 relying upon the surveyor report and the loss assessed by the surveyor on the basis of the reinstatement value awarded a sum of Rs. 29,17,500/- together with 9% interest from the date of repudiation letter dated 28.10.2010. The State Commission also awarded Rs. 1 lakh as compensation and Rs. 11,000/- as litigation expenses. At this stage, it is required to be noted that though the original complaint was for Rs. 76,64,000/-, however, in view of surveyor report and on reinstatement value determined at Rs. 29,17,500/-, the State Commission awarded Rs. 29,17,500/- being reinstatement value. The order passed by the State Commission was the subject matter of appeal by the insurance company before the NCDRC. By the impugned judgment and order, the NCDRC has allowed the said appeal and has modified the order passed by the State Commission awarding Rs. 12,60,000/- along with interest @ 7% from Rs. 29,17,500/- by observing that the complainant shall be entitled to the depreciated value and not the reinstatement value. The NCDRC also set aside the award of compensation of Rs. 1 lakh.

2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the NCDRC awarding Rs. 12,60,000/- only instead of Rs. 29,17,500/- i.e., awarding depreciated value and not the reinstatement value, the original complainant has preferred the present appeal.

3. Shri Jay Savla, learned Senior Advocate appearing on behalf of the appellant herein – original complainant has vehemently submitted that the impugned judgment and order passed by the NCDRC awarding depreciated value and not the reinstatement value is just contrary to Clause 9 of Section 2 of the insurance policy.

3.1 It is submitted that as such the surveyor assessed the loss on reinstatement basis at Rs. 29,17,500/-. It is submitted that therefore, as such the repudiation was rightly held to be improper.

A 3.2 It is submitted that as such the complainant had purchased the new machinery in view of five machines being gutted in fire and therefore, the State Commission was absolutely justified in awarding Rs. 29,17,500/- being reinstatement value on the basis of the surveyor report.

B 3.3 Relying upon Clause 9 of Section 2 of the policy, it is vehemently submitted that the complainant shall be entitled to the reinstatement value. It is submitted that the NCDRC has wrongly reduced the claim to Rs. 12,60,000/- by mis-interpreting Clause 9 of Section 2 of the policy. It is submitted that as such the said clause 9 shall not have any relevance. It is submitted that it only gives option to the insurance company to reinstate or replace the damaged/destroyed property. It is submitted that as the company has not reinstated the property, the clause itself was not applicable.

C 3.4 It is submitted that as observed and held by this Court in the case of **Canara Bank Vs. United India Insurance Company Limited and Ors.; 2020 (3) SCC 455**, provisions of the policy must be read and interpreted in such a manner so as to give effect to the reasonable expectations of all the parties. It is submitted that it is further held that coverage provisions should be interpreted broadly and if there is any ambiguity, the same should be resolved in favour of the insured.

D 3.5 Making the above submissions and relying upon the above decision, it is prayed to allow the present appeal by quashing and setting aside the impugned judgment and order passed by the NCDRC and to restore the order passed by the State Commission.

E 4. Present appeal is vehemently opposed by the learned counsel appearing on behalf of the insurance company.

F 4.1 It is submitted that in the facts and circumstances of the case and on true interpretation of Clause 9 of Section 2 of the insurance policy, the NCDRC has not committed any error in awarding the depreciated value and not awarding the reinstatement value as claimed by the complainant.

G 4.2 It is submitted that as rightly observed by the NCDRC that the goods insured were to be replaced on “as is basis” i.e., if the machinery is an old machinery, it is to be replaced by an old machinery and therefore, as the actual reinstatement has not been done by the complainant or by the insurance company and the money is to be paid to the insured on reinstatement basis, one has to find out the value of the machinery on replacement basis i.e., the value of the old machinery, which can be calculated only through deducting the value of the depreciation from the current value of the machinery.

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4.3 Making the above submissions, it is prayed to dismiss the present appeal. A

5. The short question which is posed for consideration of this Court is whether in the facts and circumstances of the case and on true interpretation of relevant clause of insurance policy, in case of damage of the plant and machinery due to fire, the complainant shall be entitled to the reinstatement value or the depreciated value? B

5.1 While dealing with the aforesaid issue, relevant clause 9 of Section 2 of the policy is required to be considered, which reads as under: -

“9. If the Company at its option, reinstate or replace the property damaged or destroyed, or any part thereof, instead of paying the amount of the loss or damage, or join with any other Company or Insurer(s) in so doing the Company shall not be bound to reinstate exactly or completely but only as circumstances permit and in reasonably sufficient manner, and in no case shall the Company be bound to expend more in reinstatement than it would have cost to reinstate such property as it was at the time of the occurrence of such loss or damage nor more than the sum insured by the Company thereon. If the Company so elect to reinstate or replace any property the insured shall at his own expense furnish the Company with such plans, specifications, measurements, quantities and such other particulars as the Company may require, and no acts done or caused to be done, by the Company with a view to reinstatement or replacement shall be deemed an election by the Company to reinstate or replace. C D E

If in any case the Company shall be unable to reinstate or repair the property hereby insured, because of any municipal or other regulations in force affecting the alignment of streets or the construction of buildings or otherwise, the Company shall, in every such case, only be liable to pay such sum as would be requisite to reinstate or repair such property if the same could lawfully be reinstated to its former condition.” F

5.2 On true interpretation and on fair reading of above clause, firstly the option is given to the insurance company to reinstate or replace property damaged or destroyed instead of paying the amount of loss or damage. If the insurance company exercises the option of reinstatement or replaces the property damaged, the company shall not be bound to reinstate completely or partly but only as circumstances permit and in reasonably sufficient manner, and in no case shall the company be bound to expend more in reinstatement than it would have cost to reinstate G H

- A such property as it was at the time of the occurrence of such loss or damage not more than the sum insured by the company thereon. However, in any case the company is unable to reinstate or repair the property insured, because of any municipal or other regulations in force affecting the alignment of streets or the construction of buildings or **OTHERWISE**, in that case, the company shall be liable to pay such
- B sum as would be requisite to reinstate or repair such property if the same could lawfully be reinstated to its former condition. Present is the case dealing with second eventuality, namely, the company was unable to reinstate or repair the property. The surveyor in its report determined the loss on the basis of reinstatement value at Rs. 29,17,500/- and on the basis of depreciated value at Rs. 12,60,000/-. Though, the complainant
- C claimed Rs. 76,64,000/- being the value of the new machinery, however, as rightly observed by the State Commission as well as the NCDRC, the complainant shall not be entitled to the said amount. However, at the same time considering second part of Clause 9 reproduced hereinabove, in case company is unable to reinstate or repair the property insured, the insurance company shall be liable to pay such sum as would be requisite
- D to reinstate or repair such property if the same could lawfully be reinstated to its former condition. For the aforesaid purpose, the report of surveyor would be relevant evidence to consider the sum required to reinstate or repair. Therefore, as per second part of Clause 9 of Section 2 of the policy, the complainant shall be entitled to the reinstatement value and not the depreciated value. The NCDRC has mis-interpreted and mis-read
- E the Clause 9. The NCDRC has seriously erred in observing and holding that the insurance company shall be liable to pay the depreciated value only and not the reinstatement value. The State Commission was absolutely justified in awarding the reinstatement value. The impugned judgment and order passed by the NCDRC awarding the depreciated value and not the reinstatement value is unsustainable for the reasons
- F stated hereinabove.

6. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the NCDRC is hereby quashed and set aside. The order passed by the State Commission is hereby restored. The complainant shall be entitled
- G to Rs. 29,17,500/- being the reinstatement value with interest @ 7% from the date of order of the State Commission i.e., 10.11.2014 till the actual payment. The present appeal is accordingly allowed. No costs.