2025 INSC 1271

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3806 OF 2020

ORION CONMERX PVT. LTD. ..... APPELLANT

VERSUS

NATIONAL INSURANCE CO. LTD. .....RESPONDENT

WITH

CIVIL APPEAL NO. 3855 OF 2020

J U D G M E N T

MANMOHAN, J.

1. Cross Appeals have been filed challenging the order dated 10th August 2020 passed by National Consumer Disputes Redressal Commission (herein after referred to as the 'National Commission'), wherein the consumer complaint No.248 of 2012 filed by M/s Orion Conmerx Pvt. Ltd. (hereinafter referred to as 'Insured') was partly allowed and it was held by the National Commission that the Surveyor '*had not proved that the fire was not accidental*' and that the documents provided by the Insured, namely, reports of the Bank Auditor, Architect and Chartered Accountant were adequate to assess the loss caused. Further, the National Commission held that the assessment of the loss at Rs.61,39,539/- by the Surveyor was rightly done taking into account the material lost in the fire and the documentary evidence (after the exclusion of furniture, fittings and fixtures, as they were not insured) and the said amount was directed

to be paid with simple interest @ 9% per annum, with effect from the date of repudiation of the claim till realization, by the National Insurance Co. Ltd. (hereinafter referred to as 'Insurance Company') to the Insured within eight weeks.

ARGUMENTS ON BEHALF OF THE INSURANCE COMPANY

2. At the outset, Ms. Shantha Devi Raman, learned counsel for the Insurance Company submitted that the Insurance Company had given cogent reasons for repudiation of the claim raised by the Insured, inasmuch as, the Insurance Company had rightly stated vide letter dated 14th June, 2011 that the nature of damage did not support the manifestation of an occurrence which could reasonably and otherwise sustainably be concluded as an occurrence within the terms and conditions of the Insurance Company's policies.

3. She stated that the preliminary Surveyor, after visiting the premises, had concluded that circumstantial evidence indicated electrical short circuiting as the most probable cause of fire. She contended that the role of preliminary Surveyor was only to inspect the spot immediately after the loss.

4. Ms. Shantha Devi Raman, learned counsel for the Insurance Company further stated that the final Surveyor, after a more detailed investigation, had concluded that *'after removal of all the debris has resulted in a finding, which precludes the possibility of an accidental ignition of electrical origin.'* She stated that the final Surveyor had observed in paragraph 11 of the Report dated 30th March, 2011 that the electrical short circuit as a probable cause stood readily

denied in view of the fact that the walls and roof right above the electrical fitting had been spared almost completely and that the debris after the occurrence at the location immediately adjoining the fitting were also not supporting the possibility of an electrical source of ignition having had its seat there and then spread out to the other materials. She stated that the final Surveyor had pointed out that even thin plastic sheets and accessories such as buttons were intact. Thus, according to her, final Surveyor had clearly opined that an electrical short circuit could not have been the source of the fire. Therefore, she stated that the final Surveyor had concluded that based on the physical examination undertaken by him, no accidental fire had occurred and that available evidence showed manifestation of multiple sources of fire.

5. She contended that the Insured had not pleaded anything specific to contradict this or to disprove the findings of the final Surveyor that fire was not accidental. She stated that the Insured had only raised few interrogatories on ventilation to the final Surveyor and CW-1 had deposed in his affidavit about the same but had failed to show the correlation or implication of the same on his finding about the fire incident. Moreover, she contended that the Insured had not led evidence of any forensic expert or independent witness disproving the report of final Surveyor.

6. Consequently, according to her, as the final Surveyor had not concluded that the fire was accidental, the Insured was not entitled to any compensation under the fire policies.

7. She also emphasised that the preliminary Surveyor and the final Surveyor in their reports dated 07th October 2010 and 30th March 2011 had stated that there is no coverage available for '*FFF*' (i.e. furniture, fixtures and fittings) under any of the fire policies.

8. She further stated that the Insured in its complaint had not specifically pleaded as to what was the basis for claiming an amount of Rs.3,30,93,678/- (amount as per prayer in complaint) or to substantiate the quantity/unit of stocks lost or its unit value and therefore, there was no calculation available on record to contradict the calculation made by the final Surveyor. She pointed out that the Insured had sought the claim amount (while raising the claim with Insurance Company) of Rs.3,51,52,412/- under the following six heads:-

CLAIM PARTICULARS	***CLAIM AMOUNTS***
Stocks	*Rs.2,65,75,647/-*
Furniture and Fittings	*Rs.3,53,893/-*
Building	*Rs.19,98,853/-*
Plant and Machinery	*Rs.21,12,069/-*
Showroom	*Rs.25,00,000/-*
Electrical Fittings	*Rs.16,11,950/-*
TOTAL	***Rs.3,51,52,412/-***

9. According to her, the five claims of the Insured (other than claim for stock) rested on the Report of M/s AURA, Architects & Designers, which, vide Report dated 11th October, 2010 had estimated loss on account of Civil works to be Rs.19,98,853/-; on account of furniture and fittings to be Rs.3,53,893/-; on account of Plant and Machinery to be Rs.21,12,069/-; on account of construction and interior design of showroom to be Rs.25,00,000/- and Rs.16,11,950/- on

account of Electrical works amounting to a total of Rs.85,76,765/- only. However, according to her, after perusal of the evidence affidavit of Mr. Rakesh Ahuja, Proprietor of M/s AURA, it was clear that they were all estimates and the architect had not physically visited the premises but had issued his report on the basis of discussion held with the Insured and that this estimate had not been substantiated with any reasoning or document. Further, the architect had not considered the depreciation and non-coverage of 'FFF' (i.e. furniture, fixtures and fittings) under the policy.

10. She stated that the claim of the Insured with regard to stocks rested on the report of Tarun Gandhi & Co., Chartered Accountants, which concluded that after analysis of the average stock computed on the basis of stock statements, the stock before the date of the fire and stock on the date of the fire, the stock lost on account of fire, the sales tax return and the audited balance sheet, the total loss on account of fire was Rs.2,45,16,913/-. However, after perusal of the evidence affidavit of Mr. Tarun Gandhi, Partner, it was clear that the Chartered Accountant had not physically visited the premises and that his estimate was based on approximation and was on the basis of the trend and not substantiated with the units or rates.

11. She stated that the Insured had also relied on the stock statement, as on 31st July 2010, submitted to their bankers, Canara Bank and had led the evidence of one Mr. Amit Singh from the bank. She contended that as per the stock valuation report submitted to Canara Bank, which was part of evidence affidavit of Mr.

Amit Singh, Manager, Canara Bank, samples lying with the Insured had been excluded from the total stock value and the reason of the exclusion was that '*these are sample pieces and not for sale and hence cannot be included*.' She, however, stated that while filing its claim, the Insured had included the cost of sample pieces.

12. She contended that the Insured relied on the generalised findings of M/s AURA pertaining to furniture, fittings, building, plant and machinery, showroom and electrical fittings, without any evidence to substantiate their findings and M/s Tarun Gandhi for stocks, without substantiating the basis or proof of their analyses and hence, both were unreliable and could not be a piece of evidence to contradict the detailed report of the final Surveyor. She stated that the Insured had attached a table of cancellation of orders and divided the claim of Rs.2,65,75,647/- into Rs.1,72,88,452/- as against cancelled orders, Rs.50,02,698/- as against accessories and Rs.42,84,497/- as against samples. She contended that this table had been created by the Insured with the assumption that all its products were finished products, however, it cannot be accepted when it is not supported with evidence. She emphasised that cancellation of orders does not prove actual loss.

13. She submitted that the Insured claimed that they had provided documents which constituted 5855 (five thousand eight hundred fifty five) pages, however, except the final Surveyor, no one else had perused the documents in detail and conducted a proper physical inspection of the premises. The Insured had not filed

even a single document before the National Commission or before this Court to show the exact number of units damaged/burnt, whether they were finished products or WIP or raw material etc., and what were the corresponding rates of each item. Hence, according to her, the Insured, being the complainant, had failed to file base documents and discharge the onus of proof.

14. In support of her submissions and contentions, she relied upon the following judgments:-

A. ***Khatema Fibres Limited Vs. New India Assurance Company Limited and Another, (2023) 15 SCC 327,*** wherein it has been held as under:-

> "*32. It is true that even any inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or which has been undertaken to be performed pursuant to a contract, will fall within the definition of the expression "deficiency". But to come within the said parameter, the appellant should be able to establish : (i) either that the Surveyor did not comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as specified by the regulations made under the Act, in terms of Section 64-UM(1-A) of the Insurance Act, 1938, as it stood then; or (ii) that the insurer acted arbitrarily in rejecting the whole or a part of the surveyor's report in exercise of the discretion available under the proviso to Section 64-UM(2) of the Insurance Act, 1938.*
>
> *xxx xxx xxx*
>
> *38. A consumer forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor's report to forensic examination of its anatomy, just as a civil court could do. Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop."*

B. ***Industrial Promotion and Investment Corporation of Orissa Limited Vs. New India Assurance Company Limited and Another, (2016) 15 SCC 315,*** wherein it has been held as under:-

> "*12. This Court in General Assurance Society Ltd. v. Chandmull Jain, (1966) 3 SCR 500 : AIR 1966 SC 1644] held that there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e. good faith on the part of the insured and the contract is likely to be construed contra proferentes i.e. against the company in case of ambiguity or doubt. It was further held in the said judgment that the duty of the Court is to interpret the words in which the contract is expressed by the parties and it is not for the Court to make a new contract, however reasonable.*"

C. ***United India Insurance Company Limited Vs. Hyundai Engineering and Construction Company Limited and Others, (2024) 6 SCC 310,*** wherein it has been held as under:-

> "*34. At the outset, the experts concerned were never examined before NCDRC. Further, these reports were not based on site-inspection. They are all theoretical in nature….*
>
> *35. A similar approach was adopted by the other experts. On the other hand, the surveyor has examined himself and adduced documents. Further, there is sufficient evidence to indicate that the surveyor has made site visits and the proof of that was part of the pleadings filed before us.*"

15. She contended that the final Surveyor, while concluding his report dated 30th March 2011 despite calculating net assessed losses for all claims, had erroneously directed payment of gross loss amounting to Rs.61,39,539/-. She emphasised that the gross amount included profit element and did not consider depreciation and salvage. Consequently, while not admitting any liability, she

alternatively submitted that the National Commission ought to have awarded the net amount of Rs.44,35,174/- instead of the gross amount of Rs.61,39,539/-.

ARGUMENTS ON BEHALF OF THE INSURED

16. Mr. Ramesh Singh, learned senior counsel for the Insured stated that the fire which took place on 25th September, 2010 at 8:30 a.m. was a result of an accident, namely, short circuit as is clear from Preliminary Surveyor Report at para 5.5 and police investigation report based on the complaint dated 25th September, 2010, inasmuch as, it records '*on the basis of the letter/report the matter has been found of accidental fire'*.

17. According to him, regarding the cause/source of fire, the final Surveyor's report was inconclusive. He contended that the final Surveyor's finding on the origin/source of fire was flawed as it had failed to consider ventilation which was a critical factor for determination of fire origin and its behavior.

18. He stated that during the financial year 2010-2011 (year of fire damage) up to the date of fire i.e. 25th September 2010, the Insured had recorded a sales turnover of Rs. 26,26,95,194/- with additional export incentive of Rs.1,80,70,106/- amounting to a turnover of approximately Rs. 28 crores and the total sales turnover during the said financial year amounted to Rs. 42 crores (inclusive of export incentive of about Rs. 2.5 crores).

19. He pointed out that statutory stock audit had been conducted by Canara Bank's panel auditor M/s Gupta & Bagaria between 27th August 2010 and 30th August 2010 who certified that the total stock of approximately Rs. 24.46 crores

were held by the Insured out of which raw materials and consumables accounted for Rs. 14.65 crores, work in progress for Rs. 6.35 crores and finished goods for Rs. 6.35 crores approximately. He clarified that samples have no marketable value for bank and hence were excluded by the bank from total stock in its valuation report.

20. He emphasised that due to fire, considerable damage had taken place to the building structure, plant and machinery, furniture and fixture, electrical fittings, stock of raw material, semi-finished and finished goods and showroom.

21. He stated that except for the claim of stocks (i.e. insofar as other five heads of claims were concerned), the difference in the amount claimed and agreed to by the Surveyor was essentially on account of furniture, fittings and fixtures not being considered on the basis that none of the fire policies covered the said category. He pointed out that Rs.54,31,076/- was towards furniture, fixtures and fittings. He contended that the Surveyor's view on furniture and fittings was a clear error, inasmuch as, the Policy No.360901/11/103400000092 under the head *"Description of Risk"* clearly provided for "FFF" which means furniture, fittings and fixtures.

22. He contended that the Insured is entitled to the claim of Rs.3,30,93,678/- and accordingly, the amount of Rs.61,39,539/- determined by the Surveyor was incorrect.

23. He stated that while assessing the claim for stocks, the following documents were asked for by the final Surveyor which were duly submitted by the Insured:-

a. Cost sheets show required raw material to produce the finished goods and also show the prices of the raw materials for finalization of price of final product.

b. Purchase orders and purchase bills showing the purchases of raw materials to produce the finished goods.

c. Outward Inward registers showing date-wise entries of items, quantity, value along with party name, including the raw material movement.

d. Stock movement details which included month-wise closing and opening balance for raw material, leather and accessories.

e. 'Production Movement Records' showing production logs of Insured pursuant to the receipt of orders placed upon it. Same duly reflected the production being done by Insured towards meeting the orders.

f. Stock statement for the last six months showing stock statements of raw material (accessories), raw material (leather), WIP and finished goods.

g. VAT returns.

h. Balance sheets as well as profit and loss account for the last three years at 31.03.2008, 31.03.2009 and 31.03.2010.

i. Total loss details as per which the item wise detail of goods damaged along with its quantity, value and location were provided i.e. goods at production floor, production store, WIP store, finished goods production store, samples at showroom and finished goods garments at ground floor.

j. Details of orders and emails regarding cancellation of orders were also relied upon. The said document showed the details of orders buyer-wise/ description-wise/ quantity-wise and value-wise.

24. He stated that the stock details not only showed that the value of the total stock at the premises where the fire incident took place was approximately Rs.19 crores but also gave the breakup quantity-wise as well as value of the said items. This, according to him, corroborates the figures in the cost sheet and stock statement.

25. According to him, all the above documents shared with the final Surveyor were contemporaneous documents maintained by the Insured in the usual course of business.

26. He stated that apart from the aforesaid preliminary evidence, the affidavit of Mr. Tarun Gandhi, Partner of M/s Tarun Gandhi & Co. enclosing a detailed report dated 05th January 2012 was also relied upon. The said report, according to him, was admissible in terms of Section 65(g) of the India Evidence Act, 1872.

27. He further stated that the loss of Rs.2,45,16,913/- against loss of stock had been duly proved/established by the Insured. He pointed out that the value of stock had been independently proved by placing on record costs of various items (finished WIP, raw material) which were lying on the first floor and the ground floor that got damaged because of fire as well as use of water to douse the fire and the quantity of such items in the said two places.

28. Mr. Ramesh Singh contended that the amount of Rs.29,93,850/- assessed by the final Surveyor towards the net loss of stock was clearly wrong as it considered only the value of identifiable/recognizable goods i.e. the goods which were damaged because of water and completely left out the unidentifiable/unrecognizable goods i.e. the goods which were damaged on account of fire. He emphasised that photographs showing the damage caused due to fire were shared with the final Surveyor.

29. Mr. Ramesh Singh clarified that the cost of each item of stock had been determined on the basis of cost sheets of various items which were shared with the Surveyor.

30. He emphasised that the Surveyor had arbitrarily awarded a uniform compensation of Rs.450/- for each damaged item of identifiable/recognizable stock irrespective of the fact whether it was a leather belt or leather jacket or polyester lining. He further stated that when an explanation was sought from the Surveyor regarding the said figure, the same was once again met with evasive reply.

31. He lastly pointed out that the National Commission ordered for compensation to the Insured in the form of simple interest @ 9 % p.a., with effect from the date of repudiation of the claim till realization. He submitted that in the absence of agreement between the parties regarding payment of interest or quantum of interest, the Insured was entitled to enhanced interest and that too from three months from the date of incident.

REASONING

PRINCIPLES GOVERNING 'FIRE INSURANCE'

32. Having heard learned counsel for the parties, this Court is of the view that fire insurance is a strategic tool for risk management, asset protection and economic resilience. Fire insurance policy does not prevent fire – but it cushions the financial impact when it occurs. Keeping in view the importance of the concept of fire insurance, it is important to outline the principles governing the same.

33. It is settled law that the contract of fire insurance is a contract to indemnify the Insured against loss by fire. The expression '*fire*' signifies the cause of the loss and in order to determine whether in a particular case the loss is caused by fire, the following rules generally apply:-

a) There must be an actual fire; hence mere heating or fermentation will not be sufficient to render the insurers liable for loss occasioned thereby.

b) There must be something on fire which ought not to have been on fire.

c) There must be something in the nature of an accident, but a fire occasioned by the wilful act of a third person without the consent of the Insured, is to be regarded as accidental for the purpose of this rule.

If these requisites are satisfied, any loss attributable to the fire, whether by actual burning or otherwise, is within the contract.

34. The object of the contract is to protect the Insured against loss occasioned by fire. The fire must be accidental. The dictionary meaning of the expression '*accidental*' is a '*happening occurring unexpectedly or by chance*'. Consequently, damage from a deliberately set fire will not be covered. To carry out the investigation, therefore, beyond the cause of the loss and to cast upon the Insured the burden of establishing that the cause of the fire itself was covered by his contract, would largely defeat this object.

35. The cause of fire, however, becomes material where the circumstances of the case are open to suspicion, and seem to indicate that it would be contrary to the principle of good faith (doctrine of uberrima fides) inherent in the contract to permit the Insured to recover. Accordingly, the cause of fire becomes material in cases where the fire is occasioned not by negligence but by the wilful act of Insured himself or of someone acting with his privity or consent. In such a case, his conduct, coupled with the making of a claim, is a fraud upon the insurers and

he cannot enforce his claim against them. (See: *The Law Relating to Fire Insurance by A.W. Baker Welford and W.W. Otter-Barry Fourth Edition*).

36. This Court in ***New India Assurance Company Limited and Others vs. Mudit Roadways, (2024) 3 SCC 193*** has held, '***the precise cause of a fire**, whether attributed to a short-circuit or any alternative factor, **remains immaterial, provided the claimant is not the instigator of the fire***'. The said judgment categorically holds that the precise cause of fire is immaterial provided the Insured is not the instigator of the fire. This judgment underscores the importance of insurers' duty to act in good faith and honour its commitment to the Insured.

37. Consequently, this Court is of the opinion that once it is established that the loss is due to fire and there is no allegation/finding of fraud or that the Insured is the instigator of the fire, the cause of fire is immaterial and it will have to be assumed and presumed that the fire is accidental and falls within the ambit and scope of fire policy.

IN THE PRESENT CASE, THE INCIDENT IS AN ACCIDENTAL FIRE

38. The term and condition of one of the fire policies, in the present case, is reproduced hereinbelow:-

> "*THE COMPANY AGREES, (Subject to the Conditions and Exclusions contained herein or endorsed or otherwise expressed hereon) that if after payment of the premium the Property insured described in the said Schedule or any part of such Property be destroyed or damaged by any of the perils specified hereunder during the period of insurance named in the said schedule or of any subsequent period in respect of which the Insured shall have paid and the Company shall have accepted the*

premium required for the renewal of the policy, the Company shall pay to the Insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof:

> I. *Fire excluding destruction or damage caused to the property insured by*
>
> a) *i) its own fermentation, natural heating or spontaneous combustion.*
>
> *ii) its undergoing any heating or drying process.*
>
> b) *burning of property ensured by order of any Public Authority.*
>
> II. *Lightning*
>
> III. *Explosion/Implosion Excluding loss, destruction of a damage….*"

39. The aforesaid fire policy does not state that no liability will accrue upon the insurer till the exact cause of fire is proved.

40. In the present case, actual fire damage is proved by police investigation report based on complaint dated 25th September 2010, preliminary Surveyor's report, photographs of fire, fire claim form and reports of M/s AURA, Architects & Designers and Tarun Gandhi & Co., Chartered Accountants.

41. The final Surveyor's conclusion that the fire is not accidental is not correct, as there is no reasoning in the final Surveyor's report as to why the fire is not accidental. This Court is of the view that the final Surveyor's report has only found that electric short circuit is not the sole source and that there were three independent sources/seats/pools of fire. But the said finding cannot lead to the conclusion that the fire in question is not accidental. This is more so, when the

final Surveyor in its report has neither concluded that the incident of fire falls within the exception/exclusion clause of the fire policies nor fraud, negligence or intentional damage by the Insured. In fact, the final Surveyor's report is not conclusive with regard to the cause of fire and there is no finding leave alone any conclusion in the final Surveyor's report that the Insured caused the fire. Accordingly, this Court is of the view that in the present case, the incident of fire is an accidental fire and is an occurrence which reasonably and otherwise is an occurrence within the terms and conditions of the Insurance policies.

42. Consequently, this Court is of the opinion that the basis for rejecting the claim by the final Surveyor and Insurance Company is contrary to record, untenable in law and suffers from arbitrariness and perversity.

43. Even otherwise, this Court is of the opinion that the National Commission's view on this issue is well considered and cogent and does not call for any interference.

POLICIES PROVIDE FOR COVERAGE OF 'FFF' WHICH CAN ONLY MEAN FURNITURE, FIXTURES AND FITTINGS

44. This Court agrees with the contention of Mr.Ramesh Singh, learned senior counsel for the Insured that the difference in the amount claimed and granted by the Surveyor qua five claims (i.e. other than stocks) is essentially on account of furniture, fixtures and fittings not being considered on the ground that none of the policies covered the said category. This view on furniture, fixtures and fittings is a clear error, inasmuch as, the policy No.360901/11/10/3400000092 under the

head "*Description of Risk*" clearly provides for '*FFF*' which can only mean furniture, fixtures and fittings.

45. On the meaning of '*FFF*' in the fire policies, the Surveyor has given an evasive reply in his answer to interrogatories. The said answers are reproduced hereinbelow:-

> "*8(a) On what basis you say that the furniture and fittings are not covered when the same are explicitly covered under the policy?*
>
> *Ans. Based on the description or the absence of the same in the policy contract.*
>
> *8(b) What is the meaning of the words "FFF" used in the policy?*
> *Ans. The question calls for an argumentative reply.*
>
> *8(c) Do the words "FFF" used in the policy not mean Furniture, Fittings and Fixtures?*
>
> *Ans. The question calls for an argumentative reply.*
>
> *8(d) If no, what do they stand for? (Please specify on the basis of past precedents)?*
> *Ans. The question calls for an argumentative reply...*"

46. Further, the National Commission's finding that '*assessment for furniture, fixtures and fittings has been rightly excluded….as no premium had been paid for the same'* is contrary to record. Even the learned counsel for the Insurance company did not defend the impugned order on the said ground.

47. It is also settled law that coverage provisions should be interpreted broadly and in case of ambiguity, it is to be resolved in favour of the Insured. This Court in ***Canara Bank vs. United India Insurance Company Limited and Others, (2020) 3 SCC 455*** has held as under:-

> *"22. **The principles relating to interpretation of insurance policies are well settled** and not in dispute. At the same time, the 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 including the insured and the beneficiaries. It is also well settled that coverage provisions should be interpreted broadly and if there is any ambiguity, the same should be resolved in favour of the insured. On the other hand, the exclusion clauses must be read narrowly. The policy and its components must be read as a whole and given a meaning which furthers the expectations of the parties and also the business realities. According to us, the entire policy should be understood and examined in such a manner and when that is done, the interpretation becomes a commercially sensible interpretation."***

(emphasis supplied)

48. Consequently, this Court is of the view that the policies provide for coverage of 'FFF' which can only mean furniture, fixtures and fittings and the Insured is entitled to the amounts claimed under the heads of Building, Plant and Machinery, Showroom, Electric fittings, furniture and fixtures.

INSURED HAS SUBSTANTIATED ITS CLAIMS FOR LOSS OF STOCK WITH REASONS AND CONTEMPORANEOUS DOCUMENTS MAINTAINED IN THE REGULAR COURSE OF BUSINESS

49. This Court finds that the purchase orders and emails regarding cancellation of orders contain the details of orders buyer-wise/description-wise/quantity-wise and value-wise.

50. Insofar as the quantity of the products damaged/destroyed in the fire are concerned, the closing balance figures of such items are reflected in stock movement detail and stock statement as on 24th September, 2010 of the unit where the fire incident took place for the two floors, namely, ground floor and first floor. The same was relied upon and shared with the Surveyor.

51. From the documents on record, it is apparent that the companies who had cancelled their orders included Levis Strauss (India) Pvt. Ltd., Benetton India Pvt. Ltd., Gap inc, Tommy Hilfiger Europe BV, J. Crew, Mexx Europe BV, Tempe and Wilson Leather amongst others. The total value of the damaged goods that were in the process of being manufactured/produced as per the orders of the Companies was Rs.1,72,88,452/- (at the exchange of 1 US = Rs.44) out of total loss of Rs.2,65,75,647/-.

52. Further, the Insurance Company's argument that cancellation of orders does not prove the actual loss is erroneous as figures given in calculation sheet indicating the cancelled orders are supported with the following contemporaneous documents maintained in the regular course of business:-

a. Stock details till 24.09.2010 (25.09.2010 being the date of fire) showing date-wise/period-wise opening and closing stock along with description of goods i.e. finished/WIP, raw material (accessories) etc. quantity, rate and value.

b. Cost sheets.

c. Stock statement showing period-wise, including period from 01.09.2010 to 24.09.2010 (25.09.2010 being date of fire) stock (WIP, finished goods and finished goods samples) with opening and closing quantity, in and out quantity along with unit, rate and value.

d. Date-wise production movement.

e. Copies of orders placed by various customers on Insured which were cancelled due to fire.

53. This Court randomly tested the veracity of five figures given in the said list of cancelled orders against the backup/primary evidence/documents. No discrepancy was found, except in one instance, namely, Serial No. 32, wherein the quantity ordered figure is shown to be less than quantity cancelled. This was found on account of the fact that the production of said product was more than what was ordered. This figure is corroborated by contemporaneous documents like production movement records and stock details at three locations.

54. This Court agrees with the contention of the Insured that the purpose of valuation done by the bank is different, inasmuch as, for the Insured the samples are of value, but not to the bank. Destruction of samples on account of fire caused loss to the Insured, who had to arrange for replacement of the samples.

55. The Insured has also produced production logs, which showcase daily production of items, including finished goods and the goods at the advance stage of production. The Insured has raised claim not on the basis of the order value but rather on the basis of the stock actually lying at the unit against the said orders, which substantiates genuineness of Insured's claim.

56. Consequently, in the present case, actual loss has been proved by the Insured by producing the '*base documents*', which are clearly relevant and admissible in terms of Section 34 of the Indian Evidence Act, 1872.

57. Moreover, the final Surveyor has not dealt with the 5,855 (five thousand eight hundred fifty five) pages' documents provided to him by the Insured and has erroneously recorded in his report that "*till date insured have not submitted any reasonable or correlatable documentary evidence in support of the quantum and thereby the value of the claim*". Consequently, the Insurance Company's contention that there was no basis for claiming an amount of Rs.3,30,93,678/- as compensation is contrary to record inasmuch as the Insured has substantiated its claims with reasons and contemporaneous documents.

58. Not only have the cost sheets been completely ignored by the final Surveyor, but also an average uniform per unit price of Rs.450/- has been arbitrarily assigned for ascertaining Insured's insurance liability towards stock irrespective of the nature of the stock (i.e. whether the damaged item was a leather jacket or a leather belt or a polyester lining etc.).

59. This Court is further of the view that the Insurance Company's insistence that officers of M/s AURA and/or M/s Tarun Gandhi & Company should have physically visited the premises is a red herring, inasmuch as, all that could have been ascertained by the physical visit is the cause of fire and factum of goods having been damaged by fire and water. Insofar as the quantity and value of the goods lost by fire and water is concerned, the same could not have been accurately ascertained by mere physical visit; instead, what was more reliable were various documents and evidence maintained by the Insured in normal course of business.

That is precisely the reason why all such documents were asked for by the Surveyor and were supplied by the Insured.

60. This Court also finds that the Insured has, while assessing loss, reduced the amount of assessed loss from Rs.2.65 crores to Rs.2.45 crores to exclude the profit elements and overvalued stock. The relevant portion of the report of M/s Tarun Gandhi & Co. Chartered Accountants is reproduced herein below:-

> "*(iii) We certify and Report that the Loss of 2.65 crore shown in the profit & loss A/C of the Company includes the Profit element and some overvalued stock and therefore the Assessed loss computed by us comes to Rs.2.45 crore subject to a marginal variation of 1% to 2%.*"

61. Further, the *sine qua non* for calculation of depreciation is the age of machinery and the accepted rate of depreciation for the products. Without specifying these two ingredients, the Surveyor could not have assessed depreciation – as has been done in the present case. The salvage as assessed by the Surveyor for stock is misconceived as the products in question are leather products which are worthless in the event they are damaged by fire and/or water. Consequently, this Court is of the view that in the present case, the Insured has only claimed net loss and not gross loss.

62. Keeping in view the aforesaid, this Court is of the view that even according to the tests stipulated in the judgments cited by the Insurance Company, the irresistible conclusion is that the final Surveyor has not only misdirected itself in law, but has adopted a perverse approach, inasmuch as, no reason has been given for discarding the Cost Sheet for each item maintained in regular course of business and that too when the Cost Sheet tallies with all other primary documents

like purchase orders. Further, the final Surveyor's recommendation to award an average unit price of Rs.450/- for each item of identifiable stock/product is deeply flawed as it neither takes into account the value of non-identifiable goods (i.e. goods that had been charred in the fire) nor does it take into account the nature of the stock (i.e. whether a leather jacket or a leather bag or a leather belt or a polyester lining etc.) for determining its value.

CONCLUSION

63. Keeping in view the aforesaid as well as the fact that the objective of the fire insurance policy is to restore the policyholder to the financial position before the loss, the appeal filed by the Insurance Company is dismissed and the appeal filed by the Insured is allowed, except that simple interest is allowed @ 6% per annum from three months from the date of the incident till the date of payment.

……..……………….J.
[DIPANKAR DATTA]

……………….J.
[MANMOHAN]

New Delhi;
October 30, 2025