

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2075 OF 2017

(Against the Order dated 21/02/2017 in Complaint No. 21/2012 of the State Commission
Karnataka)

1. ORIENTAL INSURANCE CO. LTD.

THROUGH ITS DULY CONSTITUTED ATTORNEY, CHIEF
MANAGER, ORIENTAL INSURANCE CO. LTD. HEAD
OFFICE, ORIENTAL HOUSE, AAF ALI ROAD.

NEW DELHI-110001

.....Appellant(s)

Versus

1. M/S. BUILDMET FIBRES PVT. LTD.

REP. BY ITS MANAGING DIRECTOR, S. RAMAKRISHNA.
S/O. SELVA GANAPATHI. R/O. 41-42, KIADB INDUSTRIAL
AREA.

DODDABALLAPURE-561203

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

FOR THE APPELLANT : MR. ABHISHEK GOLA, ADVOCATE
MR. ANSHUL KUMAR, ADVOCATE

FOR THE RESPONDENT : MR. NIKHIL SWAMI, ADVOCATE

Dated : 06 June 2024

ORDER

1. Heard Mr. Abhishek Gola, Advocate, for the appellant and Mr. Nikhil Swami, Advocate, for the respondent.

2. Above appeal has been filed against the order of State Consumer Disputes Redressal Commission, Karnataka, dated 21.02.2017, partly allowing CC/21/2012 and holding that the complainant was entitled to Rs.3785924/- under the policy No.423301/11/2011/129 dated 09.06.2010 issued by the OP Insurance Company with interest @9% per annum from the date of complaint till the date of realisation, as the insurance claim.

3. M/s Buildmet Fibres Private Limited (the respondent) filed CC/21/2012, for directing the appellant to make the payment of (i) Rs.3785924/- under Policy bearing No.423301/11/2011/129 dated 09.06.2010 as insurance claims; (ii) Rs.62450/- for each day from 10.06.2010, the date of fire till 09.11.2010, the date of starting the work once again as loss of production; (iii) Rs.5000/- per day as compensation for inconvenience, frustration and mental agony suffered by the complainant; and (iv) any other relief deemed fit and proper.

4. The complainant stated that the complainant was a company, engaged in manufacturing Polypropylene Oven Sacks Bags and like products, from its factory i.e. Unit II situated at Plot No.13, 14, 15 at KIADB Industrial Area, Antharasanahalli, II Phase, near

Sairam Rice Mill, Tumkur-572106. All trading transaction is made at his registered office. In its Unit II they manufacture semi-finished goods and send back to its registered office for further process and all the books of accounts are maintained at its registered office. The complainant obtained Standard Fire and Special Perils Policy No.423301/11/2011/129, from Oriental Insurance Company Limited for the period of 09.06.2010 to 08.06.2011 of its above Unit-II at Plot No.13, 14, 15 at KIADB Industrial Area, for a sum of Rs.4500000/- for Plant & Machinery, Rs.2000000/- for Furniture Fixture & Fittings and Rs.1000000/- for Electrical Installation. On 10.06.2010 at 22:00 hours fire occurred due electrical short circuit at Unit II mentioned above. The complainant informed Fire Brigade Office, Tumkur, from where Fire Brigade was sent who doused the fire. The complainant also informed Police Station Rural, Tamkur. In this fire incident Plant & Machinery worth Rs.3310924/- Furniture worth Rs.2000000/- and Electrical Fittings worth Rs.275000/- were burnt. The complainant intimated the incident of fire and loss to the opposite party on 11.06.2010. The opposite party appointed M/s. R.A. Rajagopal, Chartered Engineers, Bangalore as the surveyor. The surveyor visited the spot on 15.06.2010, inspected and verified the burnt machinery, furniture and fixtures, took its photographs and prepared inventory. In spite of repeated request the surveyor did not visit the factory premises Unit II at the time of removal of the debris. After removal of the debris, the complainant assessed the loss according to its books of account and submitted its claim of Rs.3785924/- on 26.10.2010. The surveyor wrote letters time to time and took further details about the fire accident, which were replied and explained. The required documents were supplied but the surveyor did not acknowledge. Then these documents were again sent through courier on 20.07.2010, 04.10.2010 and 09.11.2010 to the office of the surveyor. Total business transactions are within purview of Section 44 AB of Income Tax Act, 1961 and subject to audit. The complainant filed Audit Report of its account and balance sheet submitted by a Chartered Accountant. The surveyor submitted its survey report dated 07.06.2011 without supplying its copy to the complainant. The opposite party vide letter dated 15.07.2011, repudiated the claim on the ground that no information was provided regarding fire incident dated 06.06.2010 at the time of taking policy on 09.06.2010 which was a concealment of material fact and the damage occurred on 09.06.2010 was not verified. The complainant has supplied all information and documents as required by the surveyor. The surveyor report was not supplied to the complainant as such, they had no opportunity to give their explanation. The surveyor overlooked the request for removal of debris, as such, removal of debris was delayed unreasonably and reinstatement of machinery etc. could take place and work was restarted on 09.11.2010. During this period the complainant suffered business loss of Rs.62450/- per day. Repudiation of the claim was illegal. On these allegations, the complaint was filed.

5. The appellant contested the complaint and filed its written version stating that the complainant had taken Standard Fire & Special Perils Policy No.484 from Oriental Insurance Co. Ltd., Koramangala, Bangalore in respect of Buildmet Fibres Private Limited for the period of 11.01.2010 to 10.01.2011. The location of the risk was Buildmet Fibres Pvt. Ltd. at 41 & 42, KIADB, Industrial Area, Doddaballapura. Block description was Godown and the Risk description was Plastic Goods Manufacturing (excluding foam plastic) and various cover-wise details are enumerated in the policy. Standard Fire and Special Perils Policy No.423301/11/2011/129 was procured from the office at Peenya Industrial Estate Bangalore, Oriental Insurance Company Limited for the period of 09.06.2010 to 08.06.2011 of Unit-II at Plot No.13, 14, 15 at KIADB Industrial Area, for a sum of Rs.4500000/- for Plant &

Machinery, Rs.200000/- for Furniture Fixture & Fittings and Rs.1000000/- for Electrical Installation. The complainant submitted the fire insurance claim on 10.06.2010 under Policy No.484 of Rs.12500000/- in respect of fire incident dated 06.06.2010 at various locations and loss of stock of materials, semi-finished goods and finished goods. The complainant submitted fire insurance claim form on 26.10.2010 under Policy No.129 for Rs.3785924/-, in respect of loss of machinery, furniture and fixtures due to fire dated 10.06.2010 at Unit-II at Plot No.13, 14, 15 at KIADB Industrial Area, contending that there was a fire accident due to electrical short circuit on 10.06.2010. It is pertinent to note that Fire insurance claim of two policies of insurance were clubbed in respect of two events. The opposite party appointed a surveyor in respect of insurance claim under Policy No.129. As the fire allegedly occurred on the next day of issuing policy, the surveyor recommended to obtain an investigation report. The opposite party, therefore appointed Shyamravi Associates as an Investigator, who investigated the matter and submitted its report dated 18.12.2010 stating that on 06.06.2010 and 10.06.2010, fire broke out damaging the entire plant & machinery, furniture & fixture, stocks and building at Plot No.13, 14, 15 at KIADB Industrial Area. The Insured informed the police about the incident on 16.06.2010 i.e. after six days of last incident. The Insured had taken Plot No.13, 14, 15 at KIADB Industrial Area on lease from M/s. Indauto Filter (Polimer Division) and Factory Licence was also in its name. As such the Insured had no insurable interest and the claim was not admissible. After conducting survey, the surveyor submitted its report dated 07.06.2011, stating that although fire occurred on 06.06.2010 but this incident was not disclosed at the time of taking Policy No.129 on 09.06.2010 from the office at Peenya Industrial Estate, Bangalore. The Insured was not able to clearly establish the ownership of the damaged assets and insurable interest in it. The claim was grossly exaggerated. The information regarding previous fire accident occurred on 06.06.2010 was not provided to us at the time of taking the policy with us and material facts have not been disclosed to us. The claim for the damages that reportedly occurred on 10.06.2010 could not be substantiated by the supporting documents. The ownership of the damaged assets and the insurable interest could not be clearly established. The surveyor vide letters dated 16.06.2010 and 22.09.2010 demanded the papers relating to title of the damaged machinery which were not provided. The complainant wrote letter dated 11.08.2011 stating that the machinery damaged due to fire incident on 10.06.2010, were kept aside at the factory compound for the inspection by the surveyor as the surveyor did not come therefore it were disposed of. The complaint is liable to be dismissed.

6. State Commission, after hearing the parties, by the impugned order dated 21.02.2017, held that as there was fire accident on 06.06.2010 at about 03.45 pm, when the complainant approached for other policy for Unit II Plot No.13, 14, 15 at KIADB Industrial Area to branch office Koramangala, who had issued Policy No.484, it advised to take policy from other branch as such Policy No.129 was taken from the office at Peenya Industrial Estate, Bangalore. The complainant supplied Invoices (Ex-R-4 to R-5) relating to damaged machinery to the surveyor but the surveyor failed to assess the loss. Ledger Extracts (Ex-P-13 and P-14) disclosed the value of the plant and machinery to Rs.63671822/- and the claim was not exaggerated. The surveyor verified the damaged machinery, furniture and fixture as such repudiation of the claim was not proper. On these finding the complaint was partly allowed and order as stated above has been passed. Hence this appeal has been filed by the Insurer.

7. I have considered the arguments of the parties and examined the record. The complainant took Standard Fire & Special Perils Policy No.484 from Oriental Insurance Co. Ltd., Koramangala, Bangalore in respect of Buildmet Fibres Pvt. Ltd. at 41 & 42, KIADB, Industrial Area, Doddaballapura for the period of 11.01.2010 to 10.01.2011. The fire occurred at this location on 06.06.2010 and the complainant informed the appellant about the fire incident and loss on 07.06.2010 and submitted its insurance claim for Rs.12500000/- on 10.06.2010 under Policy No.484. The complainant took Standard Fire and Special Perils Policy No.423301/11/2011/129, from the office at Peenya Industrial Estate Bangalore, Oriental Insurance Company Limited for the period of 09.06.2010 to 08.06.2011 of Unit-II at Plot No.13, 14, 15 at KIADB Industrial Area, for a sum of Rs.4500000/- for Plant & Machinery, Rs.200000/- for Furniture Fixture & Fittings and Rs.1000000/- for Electrical Installation. The fire allegedly occurred on 10.06.2010. The complainant informed the opposite party about the fire incident on 11.06.2010. The opposite party appointed M/s. R.A. Rajagopal, Chartered Engineers, Bangalore as the surveyor. The surveyor visited the spot on 15.06.2010, inspected and verified the burnt machinery, furniture and fixture, took its photographs and prepared inventory. The complainant submitted insurance claim form on 26.10.2010 for Rs.3785924/-(which includes Rs.3310924/- for the machinery) under Policy No.129, in respect of loss of machinery, furniture and fixtures due to fire on 10.06.2010 at Unit-II at Plot No.13, 14, 15 at KIADB Industrial Area.

8. The complainant, vide letter dated 20.09.2010, informed the surveyor that the Directors of Buildmet Fibres Pvt. Ltd. and Trans Asia Pvt. Ltd. were same except for one Director. When the factory at Tumkur started in November, 2009, the machinery of Trans Asia Pvt. Ltd. were shifted to Buildmet Fibres Pvt. Ltd. The complainant, vide letter dated 09.11.2010, supplied Invoice No.HRM/0809/089 dated 07.07.2008 of M/s. Stitchman for purchase of 4 numbers of UDDR machine (Ex-P-9) of total Rs.410040/-, Invoice No.000583 dated 24.02.2009 of Teraoka Limited for purchase of Electronic Weighing Machine (Ex-P-7) of Rs.36661/- and Invoice No.000583 dated 25.02.2009 of M/s. Dilip Material Handling Equipment for purchase of Hydraulic Power Pack (Ex-P-5) of Rs.74036/-. Apart from it the complainant has filed one Invoice dated 31.12.2008 of Hand Pallet Truck (Ex-P-6) of Rs.15270/- and Tax Invoice dated 01.08.2009 of Heavy Duty Electronic Platform Scale (Ex-P-8) of Rs.25792/-. Total value of these Invoices is Rs.561736/- In the Claim Form dated 26.10.2010, the complainant claimed Rs.3310924/- towards loss of the machinery. For UDDR machine, the complainant claimed Rs.862752/-, while the Invoice (Ex-P-9) was of Rs.410040/-. None of the Invoices tally with the amount claimed in the claim form. The surveyor, in its survey report dated 07.06.2011, found that although fire occurred on 06.06.2010 but this incident was not disclosed at the time of taking Policy No.129 on 09.06.2010 to the office at Peenya Industrial Estate, Bangalore, from where the policy was taken. The Insured was not able to establish the ownership of the damaged assets and insurable interest in it as this premises belonged to M/s. Indauto Filter (Polimer Division) and Factory Licence was also in its name. The claim was grossly exaggerated.

9. The appellant after considering the Investigator report, the survey report and the documents supplied by the respondent, repudiated the claim vide letter dated 15.07.2011 on the ground that information regarding previous fire incident occurred on 06.06.2010 was not provided at the time of taking the policy No.129 and material facts have not been disclosed to us. The claim for the damages, occurred on 10.06.2010 (wrongly typed as 09.06.2010)

could not be substantiated by the supporting documents. The ownership of the damaged assets and the insurable interest could not be clearly established.

10. State Commission, in the impugned judgment dated 21.02.2017, held that ownership of the damaged machinery was proved from the Invoices (Ex-R-4 and R-5) and Ledger Extracts Ex-P-13, P-14 and P-19 as such repudiation of the insurance claim was illegal. So far as Ledger Extracts are concerned, various entries of "Journal" have been shown in it. In the Ledger Account of 01.04.2008 to 31.03.2008 also Rs.410040/- for Stitchman UDDR was shown while the claim was for Rs.862752/-. None of the amounts as claimed in Claim Form tallied either with the amount of the Invoice or with the Ledger Account entry. The surveyor examined the damaged machinery and the invoices and found that invoices were not related to the damaged machinery. In such circumstances, the findings of the surveyor in the survey report dated 07.06.2011 that the Insured had no insurable interest on the date of incident and the claim was exaggerated and findings of the appellant in repudiation letter dated 15.07.2011 that the claim for the damages that reportedly occurred on 10.06.2010 could not be substantiated by the supporting documents and the ownership of the damaged assets and the insurable interest could not be clearly established, do not suffer from any illegality. State Commission, has merely referred the Invoices but failed to record any finding that what was value of these invoices and whether the machineries in the invoices were located at Unit-II at Plot No.13, 14, 15 at KIADB Industrial Area. It is not denied that the complainant has its other factory at 41 & 42, KIADB, Industrial Area, Doddaballapura, which is covered under Policy No.484. The fire occurred at this location on 06.06.2010 and the complaint submitted its insurance claim for Rs.12500000/- on 10.06.2010.

11. The counsel for the appellant relied upon the judgment of Supreme Court in **Khatema Fibre Limited Vs. New India Insurance Company Limited, 2021 SCC OnLine SC 818**, holding that 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 vitiates by arbitrariness, then the jurisdiction of the consumer forum to go further would stopped.

The counsel for the respondent relied upon the judgments in **New India Assurance Company Limited Vs. Pradeep Kumar (2009) 7 SCC 787**, in which, it has been held that the report of the surveyor is not sacrosanct.

In the light of the principle laid down by the Supreme Court, State Commission was required to objectively examine the evidence on record to ignore the surveyor report, which was not done by State Commission. As found above that the respondent had failed to prove its title over the machinery of Rs.3310924/- as claimed. Invoices were only of Rs.862752/-. None of the amounts as claimed in Claim Form tallied either with the amount of the Invoice or with the Ledger Account entry. Exaggeration of the claim was fully proved. In such circumstances, the whole claim was liable to be repudiated under clause-8 of the General Terms and Condition of Standard Fire and Special Perils Policy. The repudiation letter does not suffer from any illegality. The order of State Commission is illegal and liable to be set aside.

ORDER

In view of aforesaid discussions, the appeal is allowed. The order of State Consumer Disputes Redressal Commission, Karnataka, dated 21.02.2017, allowing CC/21/2012 is set aside. CC/21/2012 is dismissed.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER