

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1196 OF 2018

(Against the Order dated 11/12/2017 in Complaint No. 46/2012 of the State Commission
Orissa)

1. ORIENTAL INSURANCE CO. LTD.

ORIENTAL HOUSE, A-25/27, ASAF ALI ROAD,
NEW DELHI 110002

.....Appellant(s)

Versus

1. M/S. HIND METALS & INDUSTRIES (P) LTD.

GURUDWARA ROAD, P.O. BARBIL

KEONJHAR

ODISHA 758035

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER, MEMBER

FOR THE APPELLANT :

Dated : 14 November 2024

ORDER

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

HON'BLE DR. SADHNA SHANKER, MEMBER

For the Appellant Mr Amandeep Singh, Advocate (VC)

and Mr Manu Pratap Singh, Advocate

For the Respondent Mr Uma Kant Misra and Ms Prabhati Nayak,

Advocates

ORDER

PER SUBHASH CHANDRA

1. This appeal under Section 19 the Consumer Protection Act, 1986 (in short, the “Act”) is directed against the order dated 11.12.2012 of the Odisha State Consumer Disputes Redressal Commission, Cuttack (in short, ‘the State Commission’) in Complaint no. 46 of 2012 allowing the complaint and directing the appellant to pay the respondent Rs 52,87,720/- with interest @10% per annum from 18.05.2009, the date of claim, till realization with litigation cost of Rs 20,000/- within one month failing which with interest @ 12% p.a.
2. We have heard the learned counsel for the parties and perused the records. The delay of 164 days in the filing of the appeal was considered in light of the application seeking condonation of the delay. For the reasons stated therein, the delay was condoned in the interest of justice.
3. The relevant facts of the case, in brief, are that the appellant had insured the appellant, who is a private limited company engaged in the production of ferro alloys at its unit situated at Kharagprasad, Meramundali, Dhenkanal, Odisha. A Standard Fire and Special Perils Policy (Material damage), (in short, the ‘Policy’) for Rs 10,90,18,182/- against premium of Rs 2,26,778/- for the period 06.04.2009 to 05.04.2010 was sanctioned by the appellant. On 18.05.2009 (6.15 am) an explosion was reported by the respondent in the 7.5 furnace causing extensive damage to the furnace which resulted in the ejection of the material violently. On being informed the same day, appellant deputed B.P. Mohanty as Preliminary Surveyor who visited the site on 19.06.2009 and 27.06.09 and after seeking various documents submitted a report based on which the appellant appointed S.K.Das as the Loss Assessor and Surveyor. On 21.07.2009 a claim for loss was submitted by the respondent, who also undertook repairs amounting to Rs 73,36,456/- ostensibly as per consent of the preliminary surveyor (B.P. Mohanty). The site was inspected by S.K.Das, Surveyor on 16.09.2009 and documents were sought from the respondent and examined, including documents supplied to the Preliminary Surveyor, and Furnace Log Sheets for 11.05.2009 to 28.05.2009. On 07.09.2011 the respondent sent a Legal Notice alleging deficiency in service as the claim had not been settled. It thereafter filed CC 46/2012 before the State Commission. This complaint was decided in favour of the complainant/respondent on contest and is impugned before us.
4. On behalf of the appellant it was argued that the State Commission had erred in holding the respondent was a ‘complainant’ under the Act, in not considering that the complaint was barred by limitation and for suppression of material facts regarding the incident leading to the claim. According to the appellant, the damage to the furnace was not occasioned by an explosion but could be due to either a chemical process operation or the lowering of electrodes leading to rise in temperature resulting in crack in the refractory lining of the furnace and bulge in the furnace. It was contended that this was not due to any ‘explosion’ but rather due to negligence and latches on part of the respondent/complainant. It was denied that any permission for undertaking repairs to the furnace had been given either by it or its surveyor and that the second surveyor found the furnace ready for operations during inspection. It was stated that the loss of Rs 70,00,000/- claimed by the respondent to have been concluded by the surveyor was incorrect as the Surveyor’s Final Report had assessed the loss as Rs 52,87,720/-. However, no liability was attached on the appellant (insurer) and

therefore no deficiency in service was acknowledged. It was contended that as there was no cause of action, the report of the surveyor be accepted. It was also averred that the report of a Surveyor approved by the IRDA was required to be accepted as per IRDA Guidelines.

5. *Per contra*, the contention of the respondents is that the appellant delayed the finalization of the claim under a valid insurance Policy beyond the period stipulated by the IRDA Guidelines and therefore the appellant was liable to honour the claim. It was contended that the respondent had provided all documents and furnished all the information to the Preliminary and the Main Surveyors. However, despite this and the submission of the final survey report estimating the loss as Rs 52,87,720/- after adjustment of net adjusted loss, the insurance claim was not settled. It was argued that the Surveyor's Report confirmed the occurrence of an explosion and extensive damage to the furnace. Denial of claim was argued to be contrary to the contractual obligations of the appellant. The repudiation of the claim vide letter dated 13.09.2010 was challenged on the ground that the insurance company had estimated the claim at Rs 52,87,720/-. The order of the State Commission was contended to be in order.

6. As per the impugned order the State Commission has held as under:

8. The preliminary surveyor Mr BP Mohanty who visited the site immediately after the incident found that the adjoining area of the furnace was scattered with mixed charges and the area was not accessible due to heat. The molten materials were there inside the furnace and could not be leaked out due to its strong metallic shell and the lining materials around. On the other hand, the final surveyor appears not to have taken into consideration the opinion of the preliminary surveyor. Though the preliminary surveyor found that the adjoining area of the surface furnace was scattered with mixed charges, the opinion given by the final surveyor that there was no eruption in the furnace and even if it is assumed that there was eruption in the furnace, ejecting charged material upward cannot be termed as explosion. **It is an admitted fact that there was eruption and charged materials from the furnace came out in upward direction for which the charged materials were found scattered in the adjoining area of the furnace.** According to the final surveyor, it is a case of premature failure of refractory lining resulting in penetration of molten materials through the bottom refractory consequently coming in contact with the bottom steel shell and heating up red hot and then bulging. **We fail to understand as to how the final surveyor could not reconcile that the opinion of the preliminary surveyor that he found mixed charged materials scattered around the adjoining area of the furnace.** There was no eruption of charge in an upward direction then the charged material can be thrown out of furnace. Opinion of the final surveyor is taken into consideration that the cause is due to premature failure of the refractory lining then molten material will not erupt out of furnace and it will only flow towards the bottom of the furnace. **We feel that final surveyor has not opined correctly. There must be some explosion/implosion in the furnace for which there was eruption of charged molten materials to an upward direction and also towards the bottom of the furnace resulting in scattering of mixed charge around the furnace and also bulging of the bottom plate of the furnace. Due to the aforesaid reasons, the opinion of the final surveyor with regard to non-explosion inside the furnace is not acceptable. We find that there was either explosion/implosion in the furnace**

for which the incident occurred. We reject the opinion of the final surveyor with regard to the fact that there was no explosion/ implosion inside the furnace. We hold that there was either explosion in the furnace for which there was eruption of charged materials in upward direction and also towards the bottom of the furnace due to failure of the refractory lining.

9. In the aforesaid circumstances, we hold that on 8.5.2009 at about 6:15 AM there was explosion/implosion in 7.5 AMB furnace of the plant of the complainant.

10. **We feel that the repudiation of the claim by the opposite party alleging that the incident occurred due to negligence and latches on the part of the complainant is not based on reasons. The complainant is liable to get compensation for the loss sustained by him.**

11. On perusal of the final surveyor's report it is found that he has estimated the loss to the tune of Rs 52,87,720/- and this amount should be given to the complainant.

[Emphasis added]

7. Appellant relied upon the following judgments:

(i) *National Insurance Co. Ltd. Vs. Hareshwar*, MANU/SC/0544/2021

(ii) *Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr.*,
MANU/SC/1500/2009

(iii) *Sikka Papers Ltd. Vs. National Insurance Co. Ltd.*, MANU/SC/0907/2009

(iv) *United India Insurance Co. Ltd. & Ors. Vs. Roshanlal Oil Mills Ltd. & Ors.*,
MANU/SC/1862/1999

(v) *National Insurance Co. Ltd. Vs. Winner Chorates (P) Ltd.*,
MANU/SC/0378/2003

(vi) *Shiv Glass Work Co. Ltd. Vs. National Insurance Co. Ltd.*,
MANU/CF/0708/2012

Appellant has essentially argued that the surveyor's report be considered in light of the statutory requirement under the Insurance Act, 1938.

8. Respondent has relied upon the judgment of the Hon'ble Supreme Court in *New India Assurance Co. Ltd. Vs. Zuari Industries Ltd. and Ors.*, Civil Appeal No. 4436 of 2004 dated

01.09.2009, (2009) 9 SCC 70 to contend that the proximate cause of the damage is to be the deciding factor as it had been held that as long as there is a fire which caused the damage, the claim is maintainable. Reliance was also placed on ***Oriental Insurance Co. Ltd. Vs M/s Silk Point, Assam & Anr.***, Writ Appeal No. 83 of 2013 dated 12.03.2014, AIR 2014 GAUHATI 73 to argue that “*The fact that the fire was occasioned by negligence does not exempt the insurer from liability ...*”. Respondent also relied upon ***Shyam Ferro Alloys Ltd. Vs New India Assurance Co. Ltd. & Ors.***, in CC No. 23 of 2007 dated 30.12.2022 wherein the repudiation of a claim of loss due to fire was on the ground that the insured had not taken adequate care and precaution in operating a transformer and the claim was partly allowed on the ground that Regulation 9 of the IRDA (Protection of Policy Holders Interest) Regulation, 2002 required settlement of claim within 6 months from the date of intimation of loss and that beyond this period insurer was liable to pay interest @ 2% above the market rate.

9. From the foregoing, it is evident that the fundamental issue in the matter is whether the cause of loss to the furnace was the explosion which is a covered risk or whether it was a case of premature failure of refractory lining resulting in penetration of charged material/molten metal through the bottom resulting in the steel shell of the furnace getting heated to red heat and consequently bulging.

10. The claim of the respondent is that the explosion caused the molten slag/charged material to be vertically expelled and fall around the furnace. It is also contended that the Preliminary Surveyor acknowledged that there was evidence of charged materials around the furnace after the incident. The cause of the incident as determined by the Main Surveyor is contested by the respondent. According to the second Surveyor, however, the cause of the incident was negligence on part of the respondent in maintaining the furnace and that it was due to either a chemical process operation or the lowering of electrodes leading to rise in temperature leading to a crack in the refractory lining of the furnace and resulting in the bulge in the furnace. The reliance of the Surveyor on the log sheet of the furnace which does not contain any reference to any explosion, cannot be faulted. The State Commission has held the petitioner liable for the claim of insurance on the ground that the explosion or implosion resulted in the upward eruption of the molten charged material and also downward towards the bottom of the furnace.

11. The appointment of a surveyor certified by the IRDA is mandated as an essential requirement under Section 64 UM of the Insurance Act, 1938. The report of such a surveyor has to be considered to be the basis for the acceptance or repudiation of any claim under a Policy as held by the Hon’ble Supreme Court in ***Sri Venkateswara Syndicate*** (supra). Although the Hon’ble Supreme Court has held in ***New India Assurance Co. Ltd. Vs. Pradeep Kumar***, (2009) 7 SCC 787, that a report of the surveyor is not so sacrosanct that it cannot be departed from, in the instant case the petitioner has not been able to establish the report to be perverse or arbitrary. The mere fact of the charged material being found around the furnace does not in itself establish the fact of explosion as claimed by the respondent. The damage to the refractory lining of the furnace and the bulge has also not been disputed. The reliance of the respondent on ***M/s Silk Point, Assam & Anr.*** (supra) and ***Zuari Industries Ltd. & Ors.*** (supra) cannot be accepted as the ratio in these cases is entirely different and relate to cases of fire which is not the issue in the present matter. As regards the reliance on ***Shyam Ferro Alloys Ltd.*** (supra) to contend that Regulation 9 of IRDA Guidelines on Protection of Policy Holder’s Interest Regulation, 2002 applies in the instant case, it is

apparent that the issue of the 2% interest over the market rate would apply only in case the claim was allowed. Hence, the reliance on this judgment is of no avail to the respondent.

12. The conclusion of the State Commission that there was both an explosion and an implosion is not based on any evidence-based reasoning and can therefore concluded to be based on surmise and conjecture. In the absence of the Surveyor's Report not being established to be arbitrary or perverse based on cogent evidence on the record, it cannot be ignored or brushed aside. The State Commission has clearly fallen in error in holding to the contrary. We are therefore not persuaded by the findings of the State Commission.

13. In view of the foregoing, this first appeal is liable to succeed and is accordingly allowed. The order of the State Commission is set aside. In the circumstances of the case, there shall be no order as to costs. Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**