IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

L.P.A. No.1837 of 2016 (O&M)
DATE OF DECISION : 20.9.2016

National Insurance Company Ltd. APPELLANT

versus

Sunil Kumar and another RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present:- Shri Paul S.Saini, Advocate for the appellant.

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned Single Judge dated 22.7.2016.

The appellant, an Insurance Company, disputed the claim of the insurer who had approached the Permanent Lok Adalat for Public Utility Services urging it to grant him the insured value of Rs.607948/-.

The insurer had pressed for the insurance amount as complete loss of the stock from his shop i.e. 550 tins of Gokul Soya oil which was stolen from his premises resulting in the lodging of F.I.R. No.864, dated 31.12.2012 under Sections 457/380 I.P.C. at Police Station City, Jind.

Upon receiving the intimation from the insured, the appellant/Insurance Company appointed a Surveyor who assessed the loss of Rs.593900/-, but paid Rs.431112/- after applying the “average clause” on the premise that the Surveyor had mentioned in his report that on verification of actual stock in the godown, he had found the total stocks at the time of theft to the tune of

Rs.43.50 lacs from which he deducted 5% for allowance of old and slow moving stocks and assessed the value of stocks in godown at risk to Rs.41.33 lacs. Since the sum insured by respondent No.1 while taking the policy was taken as Rs.30 lacs whereas the stocks on the date of theft were assessed by the Surveyor as Rs.41.33 lacs, therefore there was an under-insurance and as per the policy terms and conditions, the claim was adjusted by the Surveyor with the under-insurance factor @ 27.41% of the loss assessed by him, which was assessed by him to Rs.593900/-. The Surveyor therefore, deducted the amount of Rs.162788/- of the assessed amount being under-insurance and recommended the amount for the payment of the claim as Rs.431112/-.

The Permanent Lok Adalat noticed that the claim was for the actual loss of Rs.648477/- as per the stock register while the Surveyor had only assessed Rs.593900/- who made further deductions thereon and allowed a sum of Rs.431112/- only. The Lok Adalat went on to grant Rs.593900/- as assessed by the Surveyor + Rs.14948/- as fee paid by the petitioner to the Surveyor as there was complete loss of his stocks.

Learned counsel for the appellant contends that the Insurance Company would be entitled to invoke the clause of insurance as it is a part of the contract to which both the parties are bound. The Surveyor reported that the insurer had not submitted complete details and value of the stocks lying in his shop to make the deductions. A perusal of the report of the Surveyor indicates that the insurer had submitted details of stocks in his godown as Rs.28.5 lacs from where the theft had taken place. But absolutely no justification has been offered for making the deduction when the theft and the total loss of the stocks was admitted by him to arrive at a conclusion of Rs.593900/-. In fact, the amount was ascertained as Rs.625158/- by him but deduction at the rate of 5% was made for allowance of old and slow moving stocks amounting to Rs.31258/-.

In our opinion , the Insurance Company was wrong in pegging down the claim to Rs.431112/-.

Reliance has been placed on a judgment of the Hon'ble Supreme Court in **Sikka Papers Limited v. National Insurance Company Ltd and others** III (2009) CPJ 90 (SC), but the facts of that case are totally different as in that case, the machinery had been purchased for a bigger amount, but insurance was done by proclaiming the value of a lesser amount. Thus, the Hon'ble Supreme Court justified the deduction of amount undervaluing of the claim for insurance. It was thus, a case where under-evaluation factor was determinable. In the instant case, the stock of soya oil was stored in a godown which was insured. Evidently, this is an item which would be continuously undergoing a change by the inflow and outflow of the stocks in the course of transactions. It was never expected to be stationery so as to conclude that the insured worth had been under-valued. On a given day, the theft of 550 tins of soya oil was established as a matter of fact and verified by the Surveyor. If that be so, then the insured would certainly be entitled to the actual value of the loss which has been granted by the learned Single Judge and therefore, we do not find any reason to interfere the finding of the learned Single Judge. The appeal is dismissed.

We had intended to impose costs of Rs.50,000/- on the Insurance Company for its approach in evading its liability and contesting the same without any reasonable justification, but in the given set of circumstances, we restrain our hands.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

September 20, 2016
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No