IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.569 of 2012 (O&M)
Date of Decision: March 22nd, 2016

The New India Assurance Co.Ltd., Bombay & another

...Appellants

Versus

M/s Guru Nanak Industries Devigarh, Tehsil and District Patiala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Ashwani Talwar, Advocate, for the appellants.

Mr.Mayank Mathur, Advocate, for respondent Nos.1 & 3.

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AMIT RAWAL, J. (Oral)

The appellant-New India Assurance Company Limited is aggrieved of the concurrent findings of fact and law, whereby the suit for recovery of ₹29,95,663/- along with interest @ 6% per annum on the decretal amount from the date of institution of the suit till recovery, has been decreed.

Mr.Ashwani Talwar, learned counsel appearing on behalf of the appellant-defendants submits that the alleged fire incident, dated 8.10.1995 was managed by the respondent-plaintiffs. In fact, there was no loss of the goods, in essence no goods were lying in the premises. The previous two surveyors, i.e., spot investigator and the other surveyor had not inspected the records, much less referred to the account books, which necessitated the Company to appoint Shri Harjit Singh surveyor on 14.3.1996, who further deputed Inspector DW-3 T.N.Sharma, who submitted his report dated 25.3.1996 and on the basis of the aforementioned report, it was found that the fire was due to electric fault and the claim was repudiated on 10.8.2001. The Lower Appellate Court, much less the trial Court have not referred to the statement of DW-3 T.N.Sharma and, therefore, there is illegality and perversity in the impugned judgments and decrees. In support of his contentions, he relies upon the judgment of the Hon'ble Supreme Court rendered in **Sri Venkateswara Syndicate Versus Oriental Insurance Company Ltd. and Anr., 2009(4) R.C.R. (Civil) 872** to contend that the Insurance Company, as per the provisions of Section 64-UM(2), (3) and (4) of Insurance Act, 1938, is competent to appoint second surveyor in case the first surveyor has not conducted the survey by referring account books, much less record. He has also relied upon the judgment of the Hon'ble Supreme Court rendered in **New India Assurance Co.Ltd. Versus Pradeep Kumar, 2010 (1) PLR 626** to contend that the surveyor's report is not binding, much less cannot be sacrosanct. The claim has to be proved independently. It is in these circumstances, the claim was repudiated and, thus, urges this Court to formulate the substantial questions of law as culled out in the grounds of appeal.

Mr.Mayank Mathur, learned counsel appearing on behalf of respondent Nos.1 and 3 submits that unfortunately the fire broke out on 8.10.1995. The matter was referred to the Insurance Company, which appointed Navdeep Choudhary as spot surveyor. The fire was brought under control by the fire brigade after putting strenuous efforts and ultimately M/s

Mittal's Surveyors was appointed, who submitted the report Ex.P2 dated 8.12.1995 within a period of 12 months from the date of incident and assessed the loss as ordered by the Courts below. As per the report of the surveyor, it was found that the stock was hypothecated with the Bank and the register maintained by the Bank was also brought on record to show the custody of the stock was with the Bank. A joint inspection was also done on 14.10.1995 by the officers of the Insurance Company and a compromise was arrived vide Ex.PW12/3, wherein the Chief Manager of the Insurance Company and the respondent-plaintiffs agreed for an amount of ₹30.00 lacs. However, during the cross-examination, he feigned ignorance of his signatures on the said letter. No cause of action, much less occasion arose for the Insurance Company to depute the retired Police Inspector as a surveyor vide order dated 14.3.1996, who, without authority from the Insurance Company appointed the Electrical Inspector DW-3 T.N.Sharma, who, in unequivocal terms admitted that he had made the inspection somewhere in the month of February, 1996 and no notice was given to the Company or to the respondent-plaintiffs before the inspection. He further submits that even as per the report of the Electrical Inspector, it was found that the old wires were replaced and new electric wires had been installed and, therefore, there was no need to assess the loss whether the fire actually occurred on account of the electric fault or not. Both the Courts below have examined the evidence threadbare and formed an opinion and gave a verdict against the appellant-defendants and yet they have chosen to file the appeal, in essence the respondent-plaintiffs have been deprived of the benefit of insurance for a considerable period of more than a decade and, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that it is a classical case where the respondent-plaintiffs have been dragged into litigation for more than a decade and have not been able to enjoy the fruits of the premium paid for the purpose of getting the goods insured. It is also found that while entertaining the claim of the genuine and effected party, the Insurance Company has been acting as a shylock. No doubt, the report of the surveyor is not sacrosanct and not binding, but each and every case has to be examined independently as to whether the report of the surveyor was based upon the spot inspection, much less whether the fire had broken out or not. The report of Mittal's surveyor clinches the issue vis-a-vis the cause of the fire, much less the loss sustained as the site plans Ex.P3 and Ex.P4 were taken into custody. In **Sri Venkateswara Syndicate's case (supra)**, it has been held that where the surveyor appointed does not refer to the account books, the Insurance Company is well within its right to appoint second surveyor. However, the facts of the cited case are different from this case as in the present case, the previous Mittal's Surveyor had not inspected the spot. No explanation, much less reason has come forth in appointing the retired Police Inspector as a surveyor, who has further without any authority from the Insurance Company availed the services of DW-3 T.N.Sharma, who has no privity with the Insurance Company. The Officers of the Insurance Company, after making the investigation, agreed to certain amounts, but resiled from the same. It is an act of truncation, whereby DW-2 K.B.Gupta, Manager of the appellant-company denied his signatures on Ex.PW12/R dated 14.10.1995. In fact, the Insurance Company was under legal obligation to pay the losses assessed by the surveyors. The idea of getting the insurance is to have redressal of the grievance of the affected party as early as possible, but not in the manner and mode as has been noticed above.

Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgments and decrees of both the Courts below, much less no substantial question of law arises for determination. There is no merit in the appeal The same is accordingly dismissed.

I also impose costs of ₹20,000/- upon the appellant-Insurance Company, to be recovered from the officer, who had chosen to file the appeal, to be deducted from his salary in accordance with law.

The decretal amount lying deposited before the trial Court is ordered to be released to the respondent-plaintiffs within a period of one month from the date of receipt of certified copy of this order.

March 22nd, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**