

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 528/2016**

% **15th November, 2018**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Ms. Shantha Devi Raman and
Mr. Abhishek, Advocates
(9868101409)

versus

M/S MMD ENTERPRISES THR. ITS PROP. & ANR.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/insurance company impugning the Judgment of the trial court dated 30.03.2016 by which the trial court has decreed the suit for recovery of moneys filed by the respondents/plaintiffs on account of loss caused due to fire and which was covered by the insurance policy issued by the

appellant/defendant. A money decree has been passed for a sum of Rs. 3,53,724/- alongwith interest at 18% per annum. It may be noted that admittedly the policy was for insurance of goods upto Rs. 75,00,000/- and the figure of Rs. 3,53,724/- is the value of the goods which was assessed by the surveyor of the appellant/defendant itself, and the suit has accordingly been decreed not for the amount of Rs. 10,14,648/- as prayed along-with interest, but only for a sum of Rs. 3,53,724/- with interest.

2. I need not narrate the facts in detail because the admitted position of facts is that the respondents/plaintiffs had insured their goods with the appellant/defendant for the value of Rs. 75,00,000/-. The goods in question belonging to the respondents/plaintiffs (and which really is plaintiff no. 2, one Mr. Manik Dawar, the sole proprietor), were soft toys, artificial flowers, artificial plants, furniture etc. These goods were imported by the respondent/plaintiff. Also, it is not in dispute that the policy was with respect to the second floor of the premises bearing no. WZ-442, Madhipur Village, New Delhi where the goods were stored. The fire took place wherein the entire property bearing no. WZ-442 was gutted including the second floor

where the insured goods were stored. A surveyor was appointed by the appellant/defendant being M/s Associated Surveyors and Consultants. The claim of the respondents/plaintiffs was that various books showing stocks were destroyed in the fire, however certain unaudited balance sheets were given by the respondents/plaintiffs to the surveyor, and consequently, the surveyor assessed the loss for a sum of Rs. 3,53,724 /-. This loss assessed is as per Clause 12.02 of the Surveyor's Report, and which has been reproduced in the impugned judgment as under:-

Loss assessed was worked out in detail as under:-

Clause 12.02:

The loss assessment is as under:-

			<i>Amount (Rs)</i>
			6181679.45
<i>Total value of the stocks as per Trading Account</i>			
<i>Less: Saves Stock at Other Locations:</i>			
(i)	<i>At 61A, Cycle Market, Jhandewalan Extn, New Delhi</i>	<i>1051924.08</i>	
(ii)	<i>At 61A, Cycle Market, Jhandewalan Extn, New Delhi</i>	<i>100798.55</i>	
(iii)	<i>At 62B, Cycle Market, Jhandewalan Extn, New Delhi</i>	<i>482551.22</i>	
(iv)	<i>At 77B, Cycle Market, Jhandewalan Extn, New Delhi</i>	<i>247840.00</i>	
(v)	<i>At 76B, Cycle Market, Jhandewalan Extn, New Delhi</i>	<i>492891.15</i>	

(vi)	At 76A, Cycle Market, Jhandewalan Extn, New Delhi	13466.76	
(vii)	At WZ-431, Madipur, N. Delhi.	107250.00	3403909.76
Value of Stock WZ-442 (GF, FF & SF), Madipur, N. Delhi			2777769.69
Less Stock at affected but uncovered locations			
(viii)	At WZ-442, (GF), Madipur, New Delhi		2197329.22
			580440.47
	At WZ-442 (FF) 30% of Stock at WZ-442 (FF & SF) Madipur, New Delhi		174132.14
	Net Value of stock at WZ-442(SF) Madipur, N.D		406308.33
	Less: Cost of Deed & Obsolete stock @ 5%		20315.42
	Value of the stocks of M/s. MMD Enterprises at 2 nd Floor, WZ-442, Madipur, New Delhi		385992.91
	Less: Salvage @ 2% (Lump Sum)		7719.86
	Net Assessed Loss with VAT		378273.05
	Less; VAT @ 4%		14549.00
			363724.05
	Less: Policy Deductible		10000.00
	Net Assessed Loss with VAT		353724.05
	Or, Say Rs.353,724/-		

3(i). Learned counsel for the appellant/defendant argued that the trial court has committed an error in decreeing the suit because the respondent/plaintiff admitted in his cross-examination that he was the owner of various firms with other family members, and that there was

a mixing of goods of all the three firms in all the three floors of the building WZ-442, and therefore it is argued that once there is no demarcation of the goods of the respondent/plaintiff, hence the suit could not have been decreed.

3(ii). I cannot agree with this argument urged on behalf of the appellant/defendant because the issue is not that there were goods of other firms which were also stored in the premises covered by the insurance policy but the issue is as to whether the goods were in fact found stored in the premises which were insured, and which goods were gutted in the fire in the premises on 11.07.2005. The surveyor appointed by the appellant/defendant itself has assessed the loss of the goods belonging to the respondents/plaintiffs at the figure of Rs. 3,53,724/-. Therefore, once there is an insurance policy, and further the insured goods belonging to the respondents/plaintiffs which were destroyed in the fire were found in the premises and have been assessed at a sum of Rs. 3,53,724/-, then the respondents/plaintiffs had to be compensated for this amount. It is not as if the appellant/defendant/insurance company is compensating the respondents/plaintiffs for goods which did not belong to the

respondents/plaintiffs and were not covered under the insurance policy i.e. merely because other goods of other firms were stored on the second floor of property bearing no. WZ-442, it cannot mean that the surveyor has wrongly assessed, and as per his assessment, goods of the respondents/plaintiffs of the value of Rs. 3,53,724/- were lying in the premises and the same were insured. In my opinion, therefore there is no illegality in the impugned judgment decreeing the suit for the sum of Rs. 3,53,724/-.

4(i). Learned counsel for the appellant/defendant is, however, justified in arguing that the trial court has committed an illegality in granting a very high rate of interest *pendente lite* and future at 18% per annum. It is argued that the Supreme Court has held in a catena of judgments that in view of the fall of the rate of interest, over the last two decades, courts must refrain from granting high rates of interest. These judgments of the Supreme Court are ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC***

700, Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy, 2007 (2) SCC 720 & State of Rajasthan v. Ferro Concrete Construction Pvt. Ltd (2009) 12 SCC 1.

4(ii). Accordingly, I reduce the rate of interest granted by the trial court, for *pendente lite* and future period till payment, to 9% per annum simple instead of 18% per annum simple granted by the trial court.

5. The appellant/defendant had deposited the entire decretal amount in this Court which is lying in a fixed deposit. The Registry of this Court will now calculate the decretal amount being Rs. 3,53,724/- with interest thereon at 9% per annum from 16.03.2011 till the amount was deposited in this Court as this amount is the liability of the appellant/defendant to the respondent/plaintiff under this judgment. On this amount, so determined, whatever interest has accrued as the same is lying in a fixed deposit, such accrued interest will be the entitlement of the respondents/plaintiffs. The balance amount existing, beyond this amount of Rs. 3,53,724/- along-with interest @ 9% per annum simple till the date of deposit in this court, will be refunded back to the appellant/defendant along-with interest accrued thereon i.e.

it is clarified that whatever amount is now due and payable to the appellant/defendant since the same is deposited in this Court and earning interest, the interest accrued on this balance amount repayable to the appellant/defendant, will be paid to the appellant/defendant.

6. In view of the aforesaid discussion, the appeal is accordingly partially allowed by reducing the rate of interest but otherwise dismissed by sustaining the impugned judgment. Parties are left to bear their own costs.

NOVEMBER 15, 2018/ib

VALMIKI J. MEHTA, J