IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19130 Of 2021
(Through hybrid mode)

The New India Assurance Co. Ltd. .... ***Petitioner***

Mr. G.P.Dutta, Advocate

-versus-

M/S. Jyoti Enterprises and another .... ***Opposite Parties***

Mr. Pradosh Kumar Das, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
18.04.2022

Order No.
03.

1. Mr. Dutta, learned advocate appears on behalf of petitioner-insurer. He submits, impugned is award dated 18th March, 2021 made by the Insurance Ombudsman, directing payment on Standard Fire and Special Perils Policy taken for period 23rd July, 2018 to 22nd July, 2019 by opposite party no.1. He submits, case before the ombudsman was same as the case dealt with by award dated 6th February, 2020. In the earlier case too, the insured was a proprietor dealing in ice cream. Due to devastation caused by super cyclone 'Fani', there was power outage. The ice cream deteriorated. The insured had not taken add-on cover for accidental power failure consequent to damage at the premises of power station due to an insured peril or change in temperature arising out of loss or damage to the cold storage

machinery in the insured's premises. In the earlier award, the ombudsman found that the consequence of the super cyclone was power outage, not covered by add-on cover on payment of additional premium. However, the same authority in similar facts, awarded payment on the same policy. He submits, the award be set aside and quashed.

2. None appears on behalf of opposite party no.1, though counter has been filed.

3. On query from Court Mr. Dutta refers to self contained note at page 17 of the writ petition, which was before the ombudsman and considered for passing impugned award. He relies on points 4 and 5 in the note, reproduced below.

> *"4. On a careful study of condition and exclusion of the policy and survey report, the competent authority understand above mention Loss/Damage to Cold Storage is caused by change of temperature, which is not covered under the policy. It is not a directly loss due to FANI and the loss is not covered as mentioned in General Exclusion '6'.*
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> *5. In Fire Tariff there is provision to additionally cover the exclusion as ADD-on covers by paying additional premium to included "Deterioration of Stock in cold storage premises due to (A) accidental power failure consequent to damage at the premises of power station due to an insured peril. (Add on 1003). (B) Change of temperature arising out of loss or damage to the cold storage machineries in the insured premises due to*

operation (Add on 1004) not included. The policy is issued with Add-on cover of only earthquake."

4. On further query from Court he submits, the earlier award dated 6th February, 2020 was accepted by the insured as his client did not get any information of challenge thereto.

5. It appears to be an admitted position that the power outage was caused by super cyclone 'Fani'. In this case the insured (opposite party no.1) tried to mitigate the situation by operating Diesel Generator (DG) but could not maintain the temperature to keep the ice cream from deteriorating. It is also an admitted position that the policy covered super cyclone as a peril. However, petitioner's case is that the super cyclone did not directly cause the deterioration. It happened because there was change in temperature in the freezers, the machines themselves not having been damaged by the super cyclone.

6. The additional covers are twofold. First is deterioration of stock in cold storage premises due to accidental power failure consequent to damage at the premises of the power station due to an insured peril. An accident happens either unintentionally, by negligence or because of error. The happening of a super cyclone and consequent damage at the power station cannot be said to be caused by accident. The power supply was running but got hit by the super cyclone. In the premises, it

appears that the consequence of the insured having suffered deterioration of the stock by reason of disruption in the power supply can be attributed to the super cyclone and not accident in the power supplier's power station. The detoriation and loss suffered was covered by the peril insured against. The other add-on cover relates to change of temperature arising out of loss or damage to the cold storage machinery. There was no loss or damage to the cold storage machinery in this case, as appearing from impugned award.

7. Court finds that the ombudsman had recorded the facts, circumstances and contentions of parties and thereafter passed the award. The authority, in passing the award, cannot be said to have done so in violation of the principles of natural justice or that the award is perverse.

8. The writ petition is dismissed.

(Arindam Sinha)
Judge

Prasant