



C.S.No.747 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.01.2022

PRONOUNCING ORDERS ON : 11.01.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit No.747 of 2012
(Comm.Suits)

Refex Industries Limited
Rep.by its Managing Director
Mr.Anil Jain
No.67, Bazullah Road
T.Nagar
Chennai 600 017.

.. Plaintiff

(Amended as per Order dated 02.12.2021 on
Memo in CS.No.747 of 2012)

.vs.

United India Insurance Company Ltd.,
No.6, 2nd Floor
Nungambakkam High Road
Nungambakkam
Chennai 600 034.

..Defendant

Prayer: Civil Suit has been filed under Order VII, Rule 1 of the C.P.C. Read with Order IV Rule 1 of Original Side Rules, pleased to pass a judgment and decree as under:-



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a) Director the Defendant to pay to the Plaintiff, a sum of Rs.4,84,93,052/- with interest thereon at the rate of 18% per annum from the date of plaint until the date of realisation in full; and

b) direct the defendant to bear the cost of the proceedings.

For Plaintiff : Mr.Srinath Sridevan
Mr.T.K.Bhaskar

For Defendant : Mr.M.B.Raghavan

J U D G M E N T

The Plaintiff has filed the instant suit seeking for a direction to direct the defendant to pay to the plaintiff, a sum of Rs.4,84,93,052/- with interest thereon at the rate of 18% per annum from the date of plaint until the date of realisation in full. The plaintiff further prays for a direction to direct the defendant to bear the cost of the proceedings.

Case of the Plaintiff:

2.The plaintiff is a Company incorporated under the Companies Act, involved in the business of sale and refilling of refrigerant gases. The plaintiff states that



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during the course of its business, the plaintiff stored large quantities of refrigerant gases, such as Tetrafluoroethane (R134a). The plaintiff's factory is situated in Thandalam Village and the tanks storing these gases are located therein. The plaintiff states that the value of refrigerant gas is very high and hence decided to insure the factory against any risk arising out of or in the course of the operation. The plaintiff claims that during the course of initial discussion with the defendant Company, the officials of the defendant Company told the plaintiff that unless they take a Standard Fire and Special Perils Policy, any damages arising due to the loss of the refrigerant gas would not be covered. It was for this reason that the plaintiff chose the Standard Fire and Special Perils Policy, which is more expensive than a simple machinery policy. The plaintiff then undertook a Standard Fire and Special Peril Policy from the defendant vide policy No. 010202/11/10/11/00000237. This policy covered the plaintiff's factory for the period from 9-1-2011 to 8-1-2012. The plaintiff claims that all premiums were fully paid.

3. The plaintiff states that the tank storing R134a was nearly full containing 90,899 Kg and that the total cost of this gas comes to Rs.4,29,49,777/- and on 03-01-2012, there was a sudden explosion which resulted in failure of the valve and consequent loss of entire gas stored in the tank. The plaintiff claims that the explosion was of such a nature that the sound was heard in the local village up to 1 Km radius. The plaintiff intimated the local police and the defendant Company immediately. The plaintiff states that the local Village Panchayat President also wrote a letter to the plaintiff Company asking for the nature of the incident based on the complaint from the locals.



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4.At this juncture, the defendant Company nominated M/s. Meticulous Surveyors Pvt. Ltd., as the surveyor to examine the loss suffered by the plaintiff. The surveyor visited the site on 04-01-2012. Thereafter, the plaintiff submitted the claim form on 27-02-12. The plaintiff further states that upon receipt of the surveyor's report, various inconsistencies were found and a detailed objection to the same was also given to the defendant on 16-03-2012.

5.The grievance of the plaintiff is that on 09-04-2012, the defendant repudiated the entire claim made by the plaintiff based on a report from IIT, Madras and as per the report of IIT, Madras there was no explosion at all and there was only a gradual loss of gas from the tank due to breakage of safety valve. The plaintiff states that according to the defendant, the damage caused was due to normal wear and tear and this was not covered under the policy. Since the defendant repudiated the policy, the plaintiff has filed the present suit to recover the loss suffered by the plaintiff.

Case of the Defendant:

6.The defendant is an insurance Company. The defendant states that the plaintiff insured various assets of their refilling plant including Compound wall, Building, Storage tanks, Plant and Machinery, Stocks of refrigerant gas, etc., under Standard fire and Special Perils Policy for Rs.38 crores. The defendant states that a claim for Rs.4,29,49,777/- for loss of 90,899 Kg of R134a gas from storage tank due to one of the insured perils under the policy, viz 'Explosion' on 03-01-2012, was made by the plaintiff.



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7.The defendant states that the plaintiff has totally failed to prove any explosion. Rather, the defendant claims that there was neither any explosion nor even the possibility of an explosion but a mere breakage of the valve which is not covered by the policy. Thereby the defendant has totally refuted the claim made by the plaintiff.

8. Based on the above pleadings, the following issues were framed by this Court:

(i) Whether there was an explosion of the storage tank number 1 at the plaintiff's premises on 03-01-2012 ?

(ii) Whether the surveyor's report dated 5-3-2012 is correct ?

(iii) Whether the defendant's repudiation of the policy claim is valid ?

iv. Whether the incident falls within one of the exclusions in the policy ?

v. Whether any fresh inspection was conducted on 22-3-2012 in the presence of the plaintiff ?

vi. Whether the accident dated 3-12-2012 was caused exclusively by wear and tear, corrosion or fatigue ?

vii. Whether the plaintiff is entitled to damage as prayed for? and ;

viii. To what other reliefs, the plaintiff is entitled to?

9.The suit was pending before the regular Court and was transferred to the file of the Commercial Division. The Commercial Division determined jurisdiction by an



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order dated 9.1.2020. Pursuant to the same, the suit was tried before the Commercial Division.

10.The plaintiff examined PW1 to PW3 and Ex.P-1 to Ex.P-19 were marked.

The defendant examined DW1 and Ex.D-1 to Ex D-4 were marked.

11.Heard Mr.Srinath Sridevan, learned learned counsel for the Plaintiff and Mr.M.B.Raghavan, learned counsel for the Defendant.

Discussions and findings:

12.To start with issues 1, 4 and 6 will be taken up together for discussion.

The plaintiff has insured various assets of their refilling plant under Standard Fire and Special Perils Policy and the same is evident from Exhibit P-2. The period of insurance was from 09-01-2011 to 08-01-2012. A careful reading of the policy shows that the properties insured and which has been described in the schedule to the policy must be destroyed or damaged by any of the perils specified in the policy during the period of insurance and the insurance Company will pay to the insured the value of the property at the time of the happening of its destruction or the amount of such damage to the property. One of the perils that has been specified in the policy is "Explosion". It would suffice to take into consideration this peril alone since the plaintiff has made the claim on the ground of explosion in the outlet gate valve that is said to have taken place on 03-01-2012.



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13. The specific case of the plaintiff is that in the course of their business of sale and refilling of refrigerant gases, they store large quantities of refrigerant gases and one such gas that is stored is Tetrafluoroethane (R134a). According to the plaintiff R134a gas was stored in specialised tanks built specifically to withstand very high pressure. The gas is pressurised and liquified for the purpose of storage. The claim made by the plaintiff is that R134a gas to the tune of 90,899 Kg was stored in the tank during the relevant point of time and its total value is a sum of Rs.4,29,49,777.50.

14. On 03-01-2012 at about 9.00 am, the plaintiff claims that there was a sudden explosion as a result of which there was failure of the valve and consequently the entire R134a gas stored in the tank was lost. The specific claim made by the plaintiff is that there was a huge explosion which was heard in the local village up to a radius of 1Km. To substantiate that such an explosion took place on 03-01-2012, the plaintiff is relying upon the police complaint given on 04-01-2012 to the local police station marked as Exhibit P-3 and the letter that is said to have been issued by the President of the Village Panchayat on 03-01-2012 enquiring about the explosion complained by the general public and which has been marked as Exhibit P-4.

15. The plaintiff also made a claim under the policy to the defendant and the claim form has been marked as Exhibit P-6. It is clear from the claim form that the plaintiff had made a claim only for the loss of R134a gas to the tune of Rs.4,29,49,777/-. However, while filing the suit, the plaintiff has included the cost of the broken valve and



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the expenditure incurred for repairing the same. Even PW1 admits in his evidence that expect for the loss incurred towards R134a gas and valve, there was no other loss sustained by the plaintiff.

16.The insurance Company based on the claim made by the plaintiff conducted a statutory survey by appointing Meticulous Surveyors Pvt., Ltd., as the surveyor and the surveyor after conducting a survey gave a survey report which has been marked as Exhibit P-7 (Exhibit D-1). As per the survey report, there was no explosion of any nature and damage to the property had occurred while handling the operating valve of the storage tank. According to the report, the mechanical failure can be attributed only to the normal wear and tear and the damage was not due to any in-built pressure or explosion of any nature.

17.The defendant also obtained reports from IIT, Madras, Tribology India Ltd., and Micro Lab which were marked as Exhibits D-3 and D-4. These three reports basically took into consideration the report of the surveyor and also analyses was done on the broken gate valve fragments and it was opined that the fracture of the gate valve was only due to fatigue that has occurred gradually over a period of time and there was rust/corrosion that was identified in the particles and it was only a breakage of the gate valve and such a breakage did not take place due to any explosion induced by in-built pressure in the cylinder in which R134a gas was stored.



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18. PW-2 who was examined on the side of the plaintiff was an expert witness who studied the reports of the surveyor and the other reports given by the experts and came to a conclusion that there was an explosive decompression of R134a gas. According to PW-2, R134a gas liquifies rapidly and easily and it absorbs a lot of heat while turning from liquid to gas. When the gas inside the tank escapes due to catastrophic failure of the valve, it causes explosion since it causes over pressure and R134a gas mixing with high concentration of air at elevated pressure will become combustible. To substantiate this conclusion, PW-2 has also relied upon DuPont material safety data sheet. It has to be borne in mind that PW-2 did not even visit the refilling plant even once and his role confines itself to analysing the reports that were relied upon by the defendant company.

19. The defendant has refuted the claim made by the plaintiff by categorically stating that there was no explosion or a possibility of explosion in the refilling plant belonging to the plaintiff and the gas had escaped only due to the breakage of the valve which is not covered by the policy. For this purpose, the defendant has relied upon the general exclusion clause under the policy. In view of the specific stand taken by the defendant, the burden of proof and the onus of proof is upon the plaintiff to prove at least through preponderance of probabilities that an explosion took place in the refilling plant and as a result of the same R134a gas escaped and consequently loss was sustained by the plaintiff. For this purpose, it will be relevant to take note of the judgement of the Hon'ble Supreme Court in **Bajaj Alliance general**



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insurance and Znother ltd .v State of Madhya Pradesh reported in **2020 SCC OnLine**

SC401 and the relevant paragraphs are extracted hereunder:

42. *In Rhesa Shipping Co SA v Edmunds*, the plaintiff's cargo ship sank in clam weather in the Mediterranean Sea. The plaintiff sought to recover damages under two identical marine insurance policies that covered loses incurred by perils of the sea. While discussing the burden of proof on the plaintiff to prove it's case, Lord Brandon, speaking for the house of lords held:

"In approaching this question, it is important that two matters should be borne constantly in mind. The first matter is that the burden of proving, on a balance of probabilities, that the ship was lost by perils of the sea, is and remains throughout on the shipowners. Although it is open to underwriters to suggest and seek to prove some other cause of loss, against which the ship was not insured, there is no obligation on them to do so. Moreover, if they chose to do so, there is no obligation on them to prove, even on a balance of probabilities, the truth of their alternative case.

The second matter is that it is always open to a court, even after the kind of prolonged inquiry with a mass of expert evidence which took place in this case, to conclude, at the end of the day, that the proximate cause of the ship's loss, even on a balance of probabilities, remains in doubt, with the consequence that the shipowners have failed to discharge the burden of proof which lay upon them.

It requires a judge of first instance, before he finds that a particular event occurred, to be satisfied on the evidence that it is more likely to have occurred than not. If such a concludes, on a whole series of cogent grounds, that the occurrence of an event is extremely improbable, a finding by him that it is nevertheless more likely to have occurred than not, does not accord with common sense. This is especially so when it is open to the judge to say simply that the evidence leaves him in doubt whether



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the event occurred or not, and that the party on whom the burden of proving that the event occurred lies has therefore failed to discharge such burden"

43. For the respondent to prove its case, a mere assertion that the loss incurred during the course of transit is not sufficient. The burden of proof lies on the respondent to show that the loss incurred was covered within the terms of the policy and that on a balance of probabilities there existed a proximate cause between the loss incurred and the helicopter being in transit. The respondent has adduced no evidence to support its case.

20. This Court has to see if the plaintiff has substantiated the theory of explosion through oral and/or documentary evidence. Insofar as the standard Fire and Special Perils policy is concerned, it has to be construed as a commercial contract and therefore unless the claimant proves that the loss was sustained due to the peril, there is no scope for burdening the insurance Company to pay the liability. The policy cannot be stretched or interpreted so as to widen the liability of the insurance Company. The law on this issue is too well settled and it will suffice to take note of the relevant citations relied upon by the learned counsel for the defendant in this regard. For proper appreciation, the relevant citations are extracted hereunder:

- a. Oriental v Sony Cheriyan* reported in 1996 SCC 451**
- b. Polymat v National* reported in 2005 9 SCC 174**
- c. Deokar Exports v New India* reported in 2008 14 SCC 598**
- d. Vikram Greentech v New India* reported in 2009 5 SCC 599**
- e. ECGC v Garg Sons* reported in 2014 1 SCC 686**
- f. Industrial Promotions & Investments Corpn. V New India***



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reported in 2016 15 SCC 315.

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21.It is important to note that the *causa causans* for the claim will be 'explosion'. The reason for such an explosion may not be really material and it can be due to improper use of the valve or due to wear and tear or due to fatigue/corrosion. Even if the breakage as attempted to be projected by the defendant was as a result of explosion, it will be covered under the policy. In short it is enough if the plaintiff makes out a case for 'explosion' and the liability on the part of the insurance Company to make good the loss automatically follows.

22.It is an admitted case that not a single eye witness was examined on the side of the plaintiff to substantiate their claim of explosion. The explosion is said to have taken place at 9 AM on 03-01-2012 inside the refilling plant and surprisingly not a single employee has been examined in this regard. It is claimed by the plaintiff that there was a huge noise at the time of the explosion which was heard within a radius of 1 Km from the explosion site. Not a single person who heard the explosion of such intensity was examined on the side of the plaintiff. In short, for reasons best known to the plaintiff, the best evidence that could have been let in by the plaintiff was withheld and this Court has to necessarily take an adverse inference in this regard.

23.PW-1 and PW-3 who were examined on the side of the plaintiffs', at the best can be termed only as hearsay witnesses. This Court will now assess the evidence that was let in by these witnesses. PW1 was the Managing Director of the plaintiff



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Company. This witness is a commerce graduate and he does not have any technical qualification. This witness specifically states that he was not present at the plant when the alleged explosion took place. PW-1 also specifically states that the plaintiff Company has not conducted any technical study about the damage to the valve or obtained any report. He says that the explosion had taken place due to excess pressure and this version is more of the personal opinion of PW-1 and it is not based on any survey or study. Exhibit P-5 which was a letter dated 10-01-2012 issued by the plaintiff to the insurance Company reads as if the storage tank pressure was continuously monitored and there was a standard operating procedure to disconnect the filling process if there is increase or drop in pressure at the time of filling the gas in the cylinder. It is also stated that all the valves and pipelines are designed to tolerate triple the excess pressure of the safety valve pop outs. This letter gives an impression that the safety mechanism was very much in place to handle any increase or drop of pressure in the cylinder and it was also continuously monitored. Ultimately the letter ends up by stating that the tank bottom valve blast happened due to unknown cause.

24.It is also relevant to take note of Exhibit D-2 which is also a letter dated 10-01-2012 issued to the defendant Company wherein it has been mentioned that the tank valve has broken suddenly and as a result of the same the refrigerant gas leaked out of the tank and thereby the Company incurred loss.

25.The safety features that were pointed out in Exhibit P-5 also finds



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mention in the report of the surveyor marked as Exhibit P-7. If such safety features are

available and the valves and pipes are designed to tolerate triple the pressure, the minimum that is expected on the side of the plaintiff Company is to have engaged the services of some expert to make a study and substantiate their claim of increase in pressure and get a report. In the absence of the same, the mere *ipse dixit* on the side of the plaintiff that there was an increase in pressure which resulted in explosion, remains to be an empty statement without any substance.

26. The plaintiff Company has lost a substantial amount of nearly rupees 4.2 crores due to the loss of R134a gas. When such a huge loss has occurred, the minimum that is expected of a company is to investigate and identify the cause and take necessary corrective measures to prevent any future recurrence. Surprisingly this was never done by the plaintiff and this conduct on the part of the plaintiff is quite curious.

27. The theory that has been put forth by the plaintiff is that there was an increase in pressure which resulted in explosion. If really there was any such increase in pressure, it would have been recorded in the relevant records maintained in the factory. Such records are expected to be maintained in industries like that of the plaintiff since they are dealing with compressed refrigerant gases in a cylinder and the increase or drop in pressure is continuously monitored. No such data has been made available before the court. At least the plaintiff company should have come up with the oral evidence of



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some technical person or factory manager who are involved in monitoring the cylinders and for

reason best known to the plaintiff, this has not been done. There is also no evidence before this court to show that there was any malfunction in the valve.

28.PW-2 who is an expert examined on the side of the plaintiff states in his evidence that the pressure was well within limits and this statement is made in the proof affidavit. This statement of PW-2 virtually contradicts the statement made by PW-1 with regard to the theory of increase in pressure. It is therefore very clear that there is absolutely no basis to conclude that the increase in pressure caused an explosion.

29.The present discussion is focussed on the main issue as to whether there was any explosion in the storage tank. The plaintiff is not able to substantiate their theory of increase in pressure to be the cause for explosion. Therefore, the cause remains unknown if really any explosion had taken place in the refilling plant. This Court has already given a finding to the effect that explosion will be the *causa causans* and how such explosion took place will become irrelevant. It is nobody's case that any sabotage took place which resulted in the explosion/breakage of the valve and thereby the R134a gas escaped. Therefore, even if the plaintiff does not prove or substantiate their theory of in-built pressure, they will be entitled for making good their loss if they are able to prove that there was an explosion.



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30.PW-1 who is the Managing Director of the Company is not competent to speak on this aspect since admittedly he was not in the scene of occurrence nor did he hear the explosion. At the best he is only a hearsay witness.

31.PW-3 is the Village Panchayat President who is said to have issued the letter dated 03-01-2012 to the plaintiff Company and which has been marked as Exhibit P-4. PW3 has not stated anything about witnessing the explosion or hearing the explosion or visiting the plant after the incident. The letter merely states that some locals complained to her about hearing a huge explosion and an explanation was called for from the plaintiff as to what happened in the refilling plant. Surprisingly PW-3 in the proof affidavit comes up with a new theory that she heard a sound on 03-01-2012 at 9.00 am from a distance. This statement made in the proof affidavit runs contrary to the contents found in Exhibit P-4. The witness specifically states in the cross-examination that she does not know English but however in the proof affidavit an expression is used to the effect that the sound that she heard was somewhat a muffled bang. There is no way PW-3 will understand the meaning of this expression and it is an improvement made in the proof affidavit. PW-3 in her evidence states that she only signed Exhibit P-4 letter and it was actually prepared by her clerk. This Court has very serious doubts about the authenticity of the letter marked as Exhibit P-4 which sounds very artificial. If really someone has complained to PW-3 about an explosion of such intensity, it is quite



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surprising that PW-3 in her evidence does not even state as to who made this complaint and the names of those persons. As a Panchayat President, PW-3 will be knowing the names of persons in the locality and this is more so since a complaint was made for an alleged massive explosion.

32. In the considered view of this Court, the evidence of PW-1 and PW-3 does not in any way substantiate the theory of explosion that is sought to be projected by the plaintiff since they have neither witnessed nor heard the sound caused due to the explosion. Section 60 of the Indian Evidence Act, 1872 (herein after called as '**the Act**') makes it mandatory that the oral evidence must be direct in all cases. In the present case, the direct evidence would be either the witnesses having seen the explosion or heard the explosion. That is the reason why hearsay evidence is inadmissible. Both PW-1 and PW-3 at the best have only tendered hearsay evidence and that can never be taken into account while deciding the crucial issue as to whether there was any explosion in the refilling plant. This provision is the basis for the best evidence rule. In case of oral evidence, the act requires that only that person who has actually perceived something through his senses, by which it is cable of perception, should make the statement about it and no one else. In the present case the plaintiff for reasons best known did not want to let in the best evidence of at least one person who had heard this explosion during the relevant point of time. The Hon'ble Supreme Court in **Rama Paswan v state of Jharkhand** reported in **2007 Criminal Law Journal 2750** has categorically held that while weighing the evidence, the Court can take note of the fact that the best available



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evidence was not given and consequently the Court can draw an adverse inference.

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33. The theory of *res gestae* is an exception to the rule of hearsay evidence. However, even to come within the scope of *res gestae*, the witness has to satisfy the requirements of Section 6 of the Act. The hearing of a loud burst or an explosion is a fact under Section 3 of the Act. If this had been perceived through the ear by any person, he will be tendering a direct evidence satisfying the requirements of Section 60 of the Act. If PW-1 and PW-3 do not satisfy this requirement, it has to be seen if at least they are satisfying the requirements of Section 6 of the Act. To satisfy this requirement, they should have come into the sequence and formed part of the same transaction. Obviously, it has not happened in the present case and therefore, their evidence with regard to explosion in the refilling plant is completely inadmissible.

34. The next issue to be gone into is as to whether the plaintiff is able to prove the theory of explosion through circumstantial evidence by placing reliance upon the attendant circumstances. Explosion in a layman's language is understood as a loud noise and/or shattering or manifest violence besides noise. It will be relevant to take note of certain judgements cited on either side for this purpose:

*a. In the judgement in **Bolich v Provident Life & Accident Insurance Co. reported in 205 NC 43**, one of the issues involved was as to whether there was an explosion and as a result of the*



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explosion injury was caused to the plaintiff resulting in loss of sight to his right eye. The relevant portion in the judgement is extracted hereunder:

The defendant's exception to this instruction cannot be sustained. The word 'explosion' is variously used, and is not one that admits of exact definition, having no fixed or definite meaning, either in ordinary speech or in the law, 25 C. J. 178. It implies, however, a sudden expansion of a liquid substance, with the result that the gas generated by the expansion escapes with violence, usually causing aloud noise. The word as used in a policy of insurance should be construed in its popular sense, as used by ordinary men, and not in a scientific sense as used by scientific men. There was evidence at the hot water which struck the plaintiff in the face and injured his eyes was forced out of the radiator by an explosion in the auto-mobile.

It is clear from the above that while construing the word explosion as used in a policy of insurance, it should be construed in its popular sense, as used by ordinary men, and not a scientific sense. In this case there was evidence of an explosion which resulted in the hot water forced out of a radiator and which struck the right eye of the injured.

b. In Boiler inspection and Insurance Company of Canada v Sherwin-williams Company of Canada reported in [1951] 1 Loyd's Rep. 91, it was held as follows:

If this be the true view, it follows that there was no appreciable moment of time between the beginning of the ignition and the explosion. Each was a part of the same event, the ignition being the first and the



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explosion the final stage of the disaster. There was no separate fire which burnt in the room before the explosion took place. The flame or flash which the witnesses observed was the first stage of an explosion which immediately and inevitably followed. The fact that ignition, and in that sense fire, was an element in the ultimate result is not in their lordships' view destructive of the respondents' claim.

It is true that a flash or flame or fire almost inevitably plays a part in many combustion explosions. But it does not follow that injury from the subsequent explosion is to be attributed to fire. The old flint lock musket required a flash in the pan to ignite the powder and drive out the bullet, but death due to the penetration by the bullet would not naturally be described as death by fire.

c.In AegisElectrical v Continental Guarantee reported in 2007 EWHC 1762 it was held as follows:

79. I am not persuaded that there was any explosion at the DIAR unit on 6th Nov, 2001. In the end, the question is perhaps much one of impression. To my mind the word connotes violence and manifest violence of a kind which has not been shown to have been present in this case, and it connotes a shattering destruction which too is absent. There is no evidence of any blast damage or other significant damage outside the reactor. I have concluded that, although the noise associated with the rupture would have been marked, it is not dramatic. There is no evidence of any puncture to the wall of the reactor other than a clean 4 inch tear at one point on the wall of the reactor, the area of which, I calculate on the imprecise assumption that the diameter of the vessel was 12'6" for its whole height, was some 3,250 square feet.



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80. *This conclusion seems to me consistent with the decision and judgement of Mr. Justice Staughton in Commonwealth Smelting Ltd v Guardian Royal Exchange Insurance [1984] 2 Lloyd's Reports 608 and the judgements of court of appeal, [1986] 1 Lloyd's Reports 121, upholding his decision. In that case, a piece of machinery called as blower was destroyed when its steel impeller and casing shattered into bits, making large holes in the walls of the building that housed it. Mr. Justice Staughton identified at (p.612) a characteristic of an explosion that it is i) a violent event, ii) a noisy event, and iii) an event "caused by a very rapid chemical or nuclear reaction, or the bursting out of gas or vapour under pressure." I am not persuaded that the event in this case had the first two qualities to the extent characteristic of an explosion. I do not understand that Lord Justice Parker (with whose judgement the other members of the court of appeal agreed) adopted a significantly different approach from Mr. Justice Staughton to interpreting the term 'explosion' Lord Justice Parker (at p.126) said that, 'it is, I think, conceivable that one might say that some of the damage... was at any rate contributed to by an explosion, namely the explosion of the air from its confinement within the casing, the casing having been shattered by the entirely independent operation of the failure of the impeller'. That observation was made in the context of a case where the violence of the event was obvious and of an appeal where the principal criticism of Mr. Justice Staughton was (see loc cit p.125) "that he adopted a dictionary meaning of the word which was more a scientific meaning than a popular meaning, and that he went behind what was the obvious manifestation, which was one of an explosion, to look at the cause which lay behind the explosion."*

d. In Commonwealth Smelting v Guardian Royal reported 1986 WL 408379 it was held as follows:



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*It is apparent that the word 'explosion' may have different shades of meaning according to its context. Thus Mr. Adams and Mr. Westlake both perceived an explosion. It seems to me that they used the word correctly for the purpose of relating to others or to the court what they saw and heard that night. They were using it in the sense of Oxford English Dictionary meaning or Wild meaning. But I am concerned with the meaning of the word as one of the perils covered by a policy of insurance. In that context it is proper to pay more attention to the cause of a particular event than to what it looks or sounds like to an observer some yards away. The perils in a policy of insurance are, after all, an attempt to define certain causes of loss. Furthermore, the two policies in this case used the word 'explosion' in conjunction with fire and lighting. In *Young v Sun Alliance and London insurance limited* [1977] 1 WLR 104, the court of appeal held that the word 'flood' in a policy of insurance should be construed in the light of its association with 'storm' and 'tempest'. I adopt that approach, although I am not sure that it gives more than minimal assistance in the present case. it seems to me that the word 'explosion' is used in these policies to denote the kind of catastrophe described in Webster, 1961 and Encyclopaedia Britannica: an event that that is violent, noisy and are caused by a very rapid chemical or nuclear reaction, or the bursting out of gas or vapour under pressure. The damage and destruction in this case were not so caused, or at any rate explosion in that sense was not the predominant cause; it was centrifugal disintegration. Accordingly, the claim fails.*

35. It is clear from all the above judgements that an explosion must be understood to denote some violence or shattering destruction or significant damage. An



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explosion should not be equated with a mere breakage. In the present case, explosion is made as one of the perils under the insurance policy for claiming reimbursement for the loss sustained due to explosion. It is true that it is not always necessary that there should be a flame or a flash to substantiate an explosion. It is also true that if the breakage of the valve had taken place due to the explosion, even then it will be covered under the policy.

36.This Court had already held that there was no direct evidence on the side of the plaintiff to prove the explosion. Insofar as the circumstantial evidence is concerned, what is available is the photographs, reports and evidence of PW-2 and DW-1. In the present case, PW-1 has admitted that except for the broken valve and the R134a gas, no other loss was incurred by the plaintiff. Therefore, it is quite obvious that there was no shattering or manifest violence which resulted out of the alleged explosion. The photographs which have been marked along with the survey report shows that there are several pieces of the valve lying beneath the valve and it is quite surprising that there is no visible impact of an explosion which is said to have been heard up to a radius of 1 Km from the refilling plant. In other words, there is no semblance of any such huge explosion that is claimed to have taken place on 03-01-2012 at 9.00 am. It is also surprising that there is no damage that could be seen anywhere around the valve. PW-1 in his evidence admits that no repairs were needed or effected either to the tank or any other equipment such as the pipes after the incident. If the explosion had happened at the intensity with which it is projected, it is quite surprising that even the



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pipes have not moved out of their alignment. Under such circumstances, it becomes necessary to look into the survey report and the evidence of PW-2 and DW-1 to understand if there is any material to substantiate the theory of explosion.

37. This Court will take up the survey report marked as Exhibit P-7 (D-2) for consideration and the evidence of DW-1. In the survey report there is an apparent mistake as if the date of damage took place on 30-12-2011. The date mentioned in the report is an apparent mistake and that by itself does not completely discredit the report. In the report, the surveyor has mentioned that he made an inspection in the site and also enquired the employees of the plaintiff Company. According to the surveyor, the plant had several safety features and none of the equipment showed any abnormality so as to cause an explosion. The surveyor further states that in the scene of occurrence, several pieces of valve were lying beneath the valve itself and according to the surveyor it was only a breakage of valve which resulted in the pieces of the valve being available under the valve. The surveyor also makes reference to Exhibit D-2 which also states that there was breakage of valve when the valve was opened for filling the refrigerant gas on 03-01-2012. Whoever gave the letter Exhibit D-2 to the surveyor was not examined on the side of the plaintiff and therefore this Court has to necessarily go by what is stated in the letter and understand the meaning.

38. The learned counsel for the plaintiff wanted to discredit the survey report and the evidence of DW-1 on the ground that the surveyor has mentioned in the



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evidence that the valve pieces were collected on 22-03-2012 and whereas the reports that were obtained from Micro Lab, Tribology India Ltd. and IIT, Madras showed that the samples of the broken valve pieces were sent even before 22-03-2012. Therefore, according to the learned counsel for the plaintiff, the surveyor was corresponding with

these institutions even prior to 22-03-2012 and the nature of correspondence that took place was never revealed. In short, according to the learned counsel for the plaintiff, the reports obtained from IIT, Madras, Tribology and Micro Lab were influenced by the correspondences that the surveyor had sent even before the broken valve pieces were sent for analysis. This Court will take the objection made by the learned counsel for the plaintiff as valid and for the purpose of argument, disregard the reports marked as Exhibit D-3 and D-4. This by itself will not lead to completely disregarding the survey report given by DW-1. The concept of *falsus in uno, falsus in omnibus* has no application in India. Therefore, the doubt raised on the reports collected and marked as Exhibits D-3 and D-4, cannot completely make the entire evidence of DW-1 false.

39. It is a fact that the surveyor visited the site at the earliest point of time and he made enquiries from the employees of the plaintiff company and he has also prepared a report along with photographs. All this has not been disputed on the side of the plaintiff. Therefore, these materials can be relied upon to decipher as to whether there is any indication pointing towards explosion in the site.



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40.The survey report was submitted on 05-03-2012 and the conclusion of valve breakage made by the surveyor is in line with the letter given by the head operations of the plaintiff Company marked as Exhibit D-2. PW-1 in the course of cross-examination admits that the surveyor came to the plant and made the enquiries and the letter dated 10-01-2012 was given by the head of the commercial operations. The surveyor in order to substantiate his finding has given reasons in his report and this report is accompanied by photographs taken in the scene of occurrence and also showing the facilities available in the plant.

41.It must be borne in mind that the survey report always forms the basis for determining the insurance claim made by the insured. It is a statutory duty that is performed by a surveyor and hence some weightage must be given to the report. It will be relevant to rely upon the judgement of the Hon'ble Supreme Court in ***Sri Venkateswara Syndicate v oriental*** reported in **20098 SCC 507** wherein, the Hon'ble Supreme Court went into the scope of Section 64-UM of the Insurance Act, 1938, and held as follows:

30. The insurance regulatory authority ('IRDA', for short) has formulated the insurance surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000, which regulate the licensing and the work of surveyors. These regulations stipulate that the surveyor shall investigate, manage, quantify, validate and



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deal with losses arising from any contingency and carry out the work with competence, objectivity and professional integrity by strictly adhering to the regulations.

31. the assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of loss suffered by the insured.

32. There is no disputing the fact that the surveyor/surveyors are appointed by the insurance company under the provisions of the insurance act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add that, under this section the insurance company cannot go on appointing surveyors one after another so as to get a tailor made report to the satisfaction of the officer concerned of the insurance company; if for any



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reason, the report of the surveyors is not acceptable, the insurer has to give valid reason for not accepting the report.

42.Keeping in mind the above principle enunciated by the Hon'ble supreme court, this court finds that the surveyor's report marked as Exhibit D-1 and the evidence of DW-1 cogently explain as to why it is only a case of breakage of valve and not an explosion which resulted in the R134a gas escape from the cylinder.

43.This Court will now go into the evidence of PW-2. This witness was examined as an expert on the side of the plaintiff. Admittedly this witness has not even visited the site or spoken with any of the officials belonging to the plaintiff Company and he has given his opinion only based on the plaint documents that were furnished to him. A careful reading of the evidence of this witness shows that most of his findings are based on the impression that he has gathered by going through the documents. For instance, this witness in his proof affidavit states that both the sides have admitted that the valve has shattered. This position was never admitted by the insurance company and it is not known as to how this witness came to such a conclusion. During cross-examination, he states that the shattering of the valve is only his impression and there is no such mention in the survey report. Further this witness questions the surveyor's report wherein it is found that the pipe carrying R134a gas is a cast iron pipe. This witness states that it is unlikely that the pipe would have been made of cast metal and it would be either electric resistance welded or seamless. This observation is made even without



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making an inspection in the plant. This observation runs contrary to the evidence of PW-1 wherein PW-1 states that the valve damaged is a cast iron industrial valve. Similarly, this witness states that the common ground of both the parties was that the gas escaped due to catastrophic failure of the valve. The defendant never took this stand and the only stand taken by the defendant was that there was breakage of valve.

44. PW-1 in his evidence was attempting to project the theory of increase in pressure as a cause for the explosion. Whereas PW-2 in his evidence states that the pressure at which the gas was stored was well below the pressure prescribed. When this witness was cross-examined about his knowledge of the entire plant of the plaintiff, he states that the documents given to him does not mention about the design of the plaintiff's plant and he is not aware of the layout of the plaintiff's plant and how and through what materials the tank in question is connected to all the other equipment. When this witness (PW-2) was cross-examined about the broken pieces of the valve found below the valve, this witness gives the following answer:

"It is true that the surveyor has stated in his report about breakage of pipe when operating the valve, being informed to him by the operators. It is true that I have not discussed in my affidavit anything about this aspect of the matter. If somebody who was present in the plant at the time of incident states that the valve broke when being operated, I will accept the same. I could not have seen Ex. D2, as it was not part of the documents mentioned in para 3 of my affidavit. I had no



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occasion to study what evidence of explosion was available at the plant”.

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45. The learned counsel for the plaintiff pointed out to the evidence of PW-2 and submitted that the pressure at which R134a gas has to be stored is 1.38 megapascal. By pointing out to this observation, the learned counsel submitted that the atmospheric pressure is 101 kilopascal which is equivalent to 0.101 megapascal and the R134a gas is ten times the atmospheric pressure. Therefore, when this gas escapes, it will escape with force and consequently it explodes while coming out of the cylinder. To substantiate this submission, the learned counsel also pointed out to the evidence of DW-1 where this witness admits that R134a gas was stored at higher than atmospheric pressure. While the court decides as to whether there was an explosion in this case, it cannot be decided merely based on theories. There must be some solid material available either by direct or circumstantial evidence to conclude that there was an explosion. Such conclusion cannot be arrived at on assumptions and presumptions. This court certainly cannot come to a conclusion that there was an explosion in the plant based on the evidence of PW-2 and the entire evidence of PW-2 is more out of the impression gathered by him and it is all theoretical, speculative and superficial. The so-called expert evidence of PW-2 on the side of the plaintiff does not in any manner help the case of the plaintiff to establish their theory of explosion.

46. In the considered view of this Court, the plaintiff has not established even by preponderance of probabilities that the gas escaped from the cylinder due to



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explosion. On an overall consideration of the case of the plaintiff, this court gets an impression that the plaintiff had actually attempted to make a mountain out of a molehill. The plaintiff projected a case as if there was a huge explosion which was heard up to 1 km radius. The learned counsel for the plaintiff during the course of his arguments probably realised that much did not turn out with this stand taken by the plaintiff. The reason is not far to seek. If an explosion of this magnitude had taken place, it would have been very easy for the plaintiff to have established their theory of explosion. Not one witness was examined on the side of the plaintiff who has either seen the incident or heard the explosion. Therefore, in the course of arguments, the learned counsel for the plaintiff brought down the tenor of the explosion and wanted this court to ascertain or find out such an explosion from the available materials. The learned counsel for the plaintiff was desperately trying to explain the science behind the R134a gas, atmospheric pressure, pascal law, etc. All this sounds impressive if one were to look at the theoretical basis. That does not in any way help the court to assume, based on theoretical assertions that there was an explosion.

47. In order to come to a conclusion that a fact is proved, this Court has to apply the test as provided under Section 3 of the Act. A fact is said to be proved when after considering the evidence and the circumstances, the Court either believes the fact to exist or considers its existence so probable that a prudent man under the circumstances of the particular case will act upon the supposition that the fact exists. In short, to prove something is to demonstrate that a fact or state of affairs exists.



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48. Keeping the above test in mind, if the present case is assessed and the evidence available is appreciated, this court is not able to come to a conclusion that an explosion took place in the refilling plant and as a result of the same, the R134a gas escaped from the cylinder. The learned counsel for the plaintiff was repeatedly attacking the surveyor's report and the evidence of DW-1 and also the reports marked as Exhibits D-3 and D-4. Unfortunately, this exercise was undertaken even without the plaintiff proving their case. It is trite law that the plaintiff can never succeed by poking holes on the case of the defendant. The plaintiff came up with a specific case of explosion and therefore, the burden of proof was on the plaintiff to first establish their case. The plaintiff also wanted to specifically establish the fact of explosion. Therefore, the onus of proof also lies on the plaintiff to prove this fact. The same is abundantly clear under Section 101 of the Act. If the plaintiff fails to discharge this burden, they are bound to fail in the suit and how so ever bad is the case of the defendant, it will not in any way come to the aid of the case of the plaintiff. On a cumulative reading of the facts and circumstances of the case and the evidence available on record, this court comes to a conclusion that the theory of explosion has not been proved by the plaintiff and the finding of the surveyor to the effect that there was only a breakage of valve as a result of which the gas escaped from the cylinder, stands reasoning. The issues 1,4 and 6 are answered accordingly.



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49.In view of the above findings, this Court holds that there is no ground to disregard the surveyor's report dated 05-03-2012 and the 2nd issue is answered accordingly.

50.In view of the findings given to Issue Nos. 1, 4 and 6, this Court finds that the repudiation of the policy by the defendant is valid. The 3rd issue is answered accordingly.

51.In view of all the above findings, there is no requirement to go into the 5th issue and render a finding.

52.The result of all the above findings takes this case to an unescapable conclusion that there are absolutely no merits in this case and the plaintiff is not entitled for the reliefs claimed in the suit and the suit deserves to be dismissed. Considering the facts and circumstances of the case, the plaintiff is directed to pay costs of a sum of Rs.1,00,000/- [Rupees one lakh] to the 1st defendant. Consequently, connected miscellaneous petition is closed.

11.01.2022

Internet: Yes
Index : Yes



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List of Witness examined on the side of the Plaintiff:-

Mr.Anil Jain - PW-1

Mr.Shreedhar M.Chitanvis - PW-2

Mrs.Praveena - PW-3

List of Witness examined on the side of the Defendant:-

M.K.Muthuvelu - DW-1

List of the Exhibits marked on the side of the Plaintiff:-

<u>Sl. Nos.</u>	<u>Exhibits</u>	<u>Description of documents</u>
1.	Ex.P.1	Board resolution dated 27.02.2012
2.	Ex.P2	Original Insurance Policy dated 09.01.2011.
3.	Ex.P3	Original letter dated 04.01.2012 from the plaintiff to the Inspector of Police.
4.	Ex.P.4	Letter dated 03.01.2012.
5.	Ex.P.5	Photocopy of letter dated 10.01.2012 from the plaintiff to the defendant.
6.	Ex.P.6	Copy of the claim form dated 27.02.2012 from the plaintiff to the defendant.
7.	Ex.P.7	Photocopy of surveyor's report dated 05.03.2012.
8.	Ex.P.8	Copy of addendum to surveyor's report dated 12.03.2012.
9.	Ex.P.9	Office copy of the letter dated 16.03.2012 from the plaintiff to the defendant.
10.	Ex.P.10	Print out of e-mail dated 09.04.2012 from the defendant to the plaintiff.
11.	Ex.P11	Copy of letter dated 07.05.2012 from the plaintiff to the



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<u>Sl. Nos.</u>	<u>Exhibits</u>	<u>Description of documents</u>
		defendant.
12.	Ex.P12	Copy of letter dated 14.05.2012 from the plaintiff to the defendant.
13.	Ex.P13	Copy of letter dated 09.08.2012 from the plaintiff to the defendant.

<u>Sl. Nos.</u>	<u>Exhibits</u>	<u>Description of documents</u>
14.	Ex.P.14	Photocopy of letter dated 03.01.2012 from the plaintiff to State Bank of India.
15.	Ex.P-15	Cover
16.	Ex.P-16	E-mail from Anil Jain to Srinivasan
17.	Ex.P-17	E-mail from Mr.Tanaji Patel – attacking daily chats
18.	Ex.P-18	ID card of A.Praveena Annamalai
19.	Ex.P-19	Photocopy of Ration card of A.Praveena.

List of the Exhibits marked on the side of the Defendants:- --

<u>Sl. Nos.</u>	<u>Exhibits</u>	<u>Description of documents</u>
1.	Ex.D-1	Original Surveyor Report of M/s.Meticulous Surveyors Private Limited, dated 05.03.2012.



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<u>Sl. Nos.</u>	<u>Exhibits</u>	<u>Description of documents</u>
2.	Ex.D-2	Letter from plaintiff to defendant dated 10.01.2012.
3.	Ex.D-3	Original Report of IIT Chennai dated 30.03.2012
4.	Ex.D-4	Original Micro Lab Report dated 21.03.2012.
5.	Ex.D-5	Certified copy of Tribology India Report

N.ANAND VENKATESH, J.

KP

Pre-Delivery Judgment in
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