IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.Nos.282 & 283 of 2018

1.The New India Assurance Company Ltd.
rep. by its Divisional Manager,
Divisional Officer:710300,
No.603, Anna Salai,
Chennai-6.

2.The New India Assurance Company Ltd.,
rep. by its Regional Manager,
2nd Floor, B-Block "Mac Milan House",
No.21, Pattulos Road,
Chennai-6. .. Appellants in both the appeals

Vs.

M/s.OPG Energy (P) Ltd.,
Rep. by its General Manager,
No.117, P.S.Sivasamy Salai,
Mylapore, Chennai-4. .. Respondent in O.S.A. No.282 of 2018

M/s.Swiss Park Vanijya (P) Ltd.,
rep. by its General Manager,
No.167, St. Marry's Road,
Alwarpet, Chennai-18. .. Respondent in O.S.A. No.283 of 2018

Prayer in both the appeals : Original Side Appeals filed under Order XXXVI Rule 1/11 of O.S. Rules r/w Clause 15 of Letters Patent against the Judgment and Decree dated 03.01.2018 in C.S. Nos.856 & 857 of 2013.

For Appellants in both the appeals : Mr.V.Ganesan

For Respondents in both the appeals: Mr.Vinodkumar

COMMON JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

These Original Side Appeals have been filed by the New India Assurance Company Ltd. questioning the correctness of the reasonings given by the learned Single Judge in rejecting the repudiation made by the Insurance Company for the payment of claim amounts.

2.Learned counsel appearing for the Insurance Company/ appellants submitted that when the policies covers only the risk of damage having been caused by storm, the respondents were not able to prove that on the date of the alleged occurrence, there was storm, cyclone, typhoon, tempest, hurricane, tornado, flood or inundation etc. Though the area in which the factory of the respondents situate had experienced bad weather during May 2012, there was no severe cyclonic storm as alleged by the respondents. Relying upon the Beaufort Wind Force Scale, learned counsel appearing for the appellants argued that the velocity of the wind has been reported only at 32 km per hour even according to the IMD report and therefore, there was neither storm nor hurricane in the area of the respondents on 13.05.2012 and there is no survey report to show that there was a shortage of production of electricity immediately after the alleged accident.

2.1.Therefore, written statement has been filed by the appellants stating that the suits suffer from want of jurisdiction as this Court does not have jurisdiction to try the cases; there is no severe cyclonic storm with hurricane wind, rain and lightening in and around the factory area on 13.05.2012; there is no evidence to show that owing to storm the insured property, being solar panels and other materials, were badly damaged and that the solar panels were thrown away and got spread over within the premises of the factory area; weather report issued by the Meteorological Department is an evidence to show that cyclonic storm took place in and around the respondents' factory on the said dates and on the alleged date of loss, the wind speed was reported only at 32 km/h and on the consecutive days, not exceeding 14 km/h and the rainfall was also insignificant; as per Beaufort Wind Force Scale, an empirical measure that relates to wind speed, storm could be described when the wind speed is between 89-102 km/h and there was violent storm when the wind speed is between 103-117 km/h. and therefore, even as per the weather report issued by the Meteorological Department, the speed of the wind on the relevant date was only 32 km/h. Since the policies cover only the risk of damage being caused by storm and not due to fresh breeze, there was no storm, typhoon, flood etc. on the alleged date of occurrence; as per terminologies and glossary published by Indian Meteorological Department, cyclonic storm has been defined as 'intense low pressure system' represented on a synoptic chart by more than four closed isobars at 2hPa interval; the surveyor deputed by the appellants, upon investigation in the premises of the respondents, had found out that the solar panels have been damaged in transit during October-November 2011; if the storm would have taken place as alleged by the respondents, the tables of the entire power plant could have been uprooted and the whole 1,15,000 solar panels would have been damaged. Thus, the alleged loss is not due to storm, but, due to the damage caused to the solar panels in transit and hence, the respondents' claim is nothing but bogus.

2.2.Learned counsel appearing for the appellants further submitted that the surveyor had suggested to collect the damaged solar panels, which were spread across the premises of the factory and keep them at the site of the factory for his verification. However, no damaged panels were available at the place, where they were alleged to have been damaged and the damaged solar panels chart provided to the Surveyor were totally mis-matched with the physical verification and the quantity mentioned was not available for inspection. Further, the percentage claimed was hardly 1.21% of the total number of panels and they were spread across the plant and in such manner, the damage cannot be attributed to any storm. If the damage had taken place due to storm, it would indicate a clear pattern, which was completely absent in the instant cases. Since the claim for damages to solar panel itself is not found sustainable, as a natural corollary, the alleged claim arising under the Business Interruption Policy becomes inadmissible and there is no drop in generation of power, either before or after the alleged incident. Learned counsel appearing for the appellants further submitted that the respondents have not carried out the replacement of the damaged solar panels even as on 26.11.2012, when the Surveyor had visited the respondents' factory for inspection for the second time. Therefore, the respondents have misconstrued and mis-conceived the scope and purview of the policy document. Hence, the allegation of the respondents that the appellants denied their claim as illegal, arbitrary and unjustified is untenable. Since the respondents are attempting to make good the loss that might have been caused to the solar panels due to other reasons and that the damage having not been caused due to any one of the factors covered by the policy, the appellants Insurance Company cannot be made liable. Without considering these aspects, after framing issues, the learned Single Judge, based on Ex.P4/weather report issued by the Meteorological Department, Jaipur dated 02.07.2012 and Ex.P6/photographs of the final loss assessment report of Surveyor dated 12.01.2013, came to the conclusion that the appellants are liable to accept the amount quoted by the Surveyor in his report marked as Ex.P6 and decreed the suits for the sum of Rs.72,05,559/- and Rs.19,49,994/- with interest at 9% per annum. Therefore, the same are liable to be set aside.

2.3.With regard to the jurisdiction to try the cases before this Court, learned counsel appearing for the appellants submitted that though the insurance policies have been issued in Chennai, the jurisdiction to try the cases do not vest with this Court and the cause of action for the suits has wholly arisen outside the jurisdiction of this Court, namely, the loss or damage said to have caused to the insurer, was occurred only in Jodhpur District, State of Rajasthan.

3.Opposing the above submission made by the learned counsel appearing for the appellants, learned counsel appearing for the respondents submitted that the respondents are manufacturers of Power generating from Solar Energy and supplying power to its customers including Central Government and State Government undertakings, who obtained Fire and Special Perils Policy (Material Damage) Nos.710300111101000000135 and 710300111101000000134 and Business Interruption (Fire) Policy Nos.710300111105000000002 and 710300111105000000003 concurrently from the first appellant covering the risk on 5 MW Solar Power plant inclusive of Solar panels installed at the plant, transformer cables, electrical equipments and other miscellaneous assets, civil works on plant, machinery and building against the loss/damage caused by Fire, Lightening, Explosion/ Implosion, Bush Fire, Missile testing operations, Impact damage due to rail, road vehicle or animal, Aircraft damages, Bursting/Overflowing of water tanks/Pipes/Apparatus, Sprinkler Leakage, Storm, Cyclone, Typhoon, Hurricane, Tornado flood and Inundation, riot, strike, malicious damage, earthquake for the property located at Bap Village, Phalodi Taluk and Tinwari Village, Tehsil Osian, Jodhpur District in the State of Rajasthan respectively. Learned counsel appearing for the respondents further submitted that the period of insurance commences from 29.02.2012 to 27.02.2013 and the sum insured were Rs.78,00,00,000/- (Rupees Seventy Eight Crores) and Rs.75,00,00,000/- (Rupees Seventy Five Crores) respectively and the respondents have paid premium of Rs.1,56,006/- and Rs.1,50,008/- in consideration of risk accepted by the first appellant and the sum of Rs.32,959/- and Rs.32,960/- in business interruption (Fire) Policy and that the first appellant issued Fire policy alone subject to the reinstatement value clause and they have also issued consequential loss (Fire) Policy covering Gross profit of Rs.12,00,00,000/- with Indemnity period of 6 months commencing from 29.02.2012 to 27.02.2013 with exclusion of 14 days and the risk covered are as per Standard Fire and Special Perils Policy and that the appellants agrees to pay the loss/damage be destroyed or damaged by the perils covered under the Fire policy and/or interrupted or interfered with.

3.1.Learned counsel appearing for the respondents further submitted that the appellants also agree to pay the respondents under Consequential Loss (Fire) Policy that if any building or other property or any part thereof used by the insured at the premises for the purpose of Business, be destroyed or damaged by the perils covered under the fire policy and the business carried on by the insured at the premises be in consequence thereof interrupted or interfered with, then the Company will pay the insured in respect of each item, namely, the amount of loss resulting from such interruption or interference in accordance with the provision contained therein. While so, on 13.05.2012, "Severe Cyclonic Storm" with Hurricane wind and rain and lightening has been occurred in and around the factory area from 00:50 to 02:10, 20:35 to 23:35 hours IST and continued on the following days accompanied by rain, Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation (STFI Cover). As a result, the insured property namely, Solar Panels and other materials were badly damaged and thin sheets of solar panels thrown away, were erected on the table and spread over within the premises of factory area. Learned counsel appearing for the respondents also submitted that the weather report issued by the office of the Director of India Meteorological Department (IMD), Jaipur Station dated 02.07.2012 for the period from 11.05.2012 to 16.05.2012 is an evidence to show that the cyclonic storm took place in and around the respondents' factory on various dates and the said occurrence had also been reported in local newspaper. Since the same was duly reported to the first appellant requesting him to register a claim in the claim register and depute a Surveyor to assess extent of loss suffered due to damage caused to the insured property by STFI perils, the Surveyor had visited the factory on 29.05.2012 and conducted preliminary survey at the factory and submitted his report directly to the insurer without giving a copy of the preliminary survey report to the respondents. Thereafter, the Surveyor suggested the respondents' Manager to collect all the damaged Solar Panels, which were spread over within the premises of factory and keep them at the site of factory for his verification. Accordingly, the respondents, by engaging a technical staff, collected all the damaged Solar Panels and other materials from the factory area and kept on the site of factory. Again on 26.11.2012, the Surveyor came to the factory and verified the damaged materials and advised the respondents to submit a claim bill/estimate of loss suffered due to the damaged caused to the insured property by STFI perils. Accordingly, the respondents had imported new solar panels from abroad and replaced all damaged solar panels to workable condition and submitted actual loss for Rs.1,16,68,921/- and Rs.58,64,642/- under Fire and Special Peril Policy and the sum of Rs.23,79,150/- and Rs.21,66,037/- under Business Interruption (Fire) Policy.

3.2.Learned counsel appearing for the respondents further submitted that since the second appellant misconstrued the scope of policy and legal definition of 'Storm' defined in the dictionary, the reasons stated by the second appellant are wrong and contrary to the facts of the case. Moreover, the appellants did not consider the weather report issued by the Office of the Director of Meteorological Department, Jaipur. Since the reasons stated by the second appellant are not supported by the legal evidence except on the observation of Surveyor, the rejection of the claim by the second appellant is unjust and unfair. Though the cause of loss has already been reported by the Surveyor, who has given his report stating the damages to the solar panels due to strong wind and the Surveyor has also submitted his final assessment report on the basis of the self assessment of loss assessed by the respondents/Insured and the same was taken into consideration by the Surveyor, the second appellant has not properly appreciated the legal definition of Storm defined in the law dictionary and General Clause Act. Therefore, the respondents are liable to indemnify the insured to the extent of actual loss suffered by them in view of risk covered under the Fire Policy and it is an obligation on the part of the appellants to settle the claim of the respondents, as the insured properties were extensively damaged due to STFI Perils covered under the Policies. Further, the occurrence took place during the period of insurance and the occurrence of loss due to storm was supported by legal evidence such as weather report, photographs and also bills and invoices.

3.3.Learned counsel appearing for the respondents further submitted that since all the efforts of the respondents' in recovering the amount of compensation from the appellants went in vain and the appellants have failed and neglected to pay the amount of claim of insured, in spite of respondents' legal notice to the appellants, the respondents are constrained to approach this Court to recover the compensation of Rs.1,40,48,071/- and Rs.80,30,679/- and the sum of Rs.25,28,640/- and Rs.14,45,508/- towards interest, which totally comes to Rs.1,65,76,711/- and Rs.94,76,187/- respectively payable to the respondents arising out of Contract of Insurance by instituting the suits. When the Insurance Company, accepting the request of the respondents, has appointed the Surveyor, who is none other than the officer of the Insurance company, assessed the loss at Rs.72,05,559/- and Rs.19,49,994/- and the same have also been accepted by the learned Single Judge as the amount payable to the respondents, the contentions made by the learned counsel appearing for the appellants and the grounds raised in these appeals filed by the Insurance company challenging the correctness of the findings and the conclusion reached by the learned Single Judge are wholly un-acceptable and un-justifiable. Therefore, the same are liable to be dismissed.

3.4.With regard to the jurisdiction to try the cases before this Court, learned counsel appearing for the appellants submitted that since the cause of action for the suits arose in Chennai and the policies were issued in Chennai and the appellants have carried on business in Chennai within the jurisdiction of this Court, the respondents have come to this Court with the above suits.

4.Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

5.It is the case of the respondents plaintiffs that on 13.05.2012, a “Severe Cyclonic Storm” with Hurricane wind, rain and lightening occurred in and and around the factory area from 00:50 to 02:10, 20:35 to 23:35 hours IST and continued on the following days accompanied by rain, Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation (STFI Cover). As a result, the insured property, namely, Solar Panels and other materials were badly damaged and thin sheets of solar panels thrown away due to storm, were erected on the table and spread over within the premises of the factory area of the respondents. Learned counsel appearing for the appellants also submitted that the weather report issued by the office of the Director of India Meteorological Department (IMD), Jaipur Station dated 02.07.2012 for the period from 11.05.2012 to 16.05.2012 is an evidence to show that the cyclonic storm took place in and around the respondents' factory on various dates and the said occurrence had also been reported in local newspaper. In this regard, on 26.11.2012, the Surveyor came to the respondents' factory and verified the damaged materials and advised them to submit a claim bill/estimate of loss suffered due to damaged caused to the insured property by STFI perils. Despite the same, the appellants have not come forward to pay the amount of claim of insured. Since the cause of action for the suits arose in Chennai, the policies were issued in Chennai and the appellants were carried on business in Chennai, within the jurisdiction of this Court, the respondents have come to this Court to recover the compensation of Rs.1,40,48,071/- and Rs.80,30,679/- and the sum of Rs.25,28,640/- and Rs.14,45,508/- towards interest, which totally comes to Rs.1,65,76,711/- and Rs.94,76,187/- respectively payable to the respondents.

6.It is the case of the appellants that when the policies covered only the risk of damage having been caused by storm, the respondents were not able to prove that on the date of alleged occurrence there was storm, cyclone, typhoon, tempest, hurricane, tornado, flood or inundation etc. Though the area in which the factory of the respondents situated had experienced bad weather during May 2012, there was no severe cyclonic storm as alleged by the respondents. When the velocity of the wind has been reported only at 32 km per hour even according to the IMD report and there was no survey report to show that there was shortage of production of electricity immediately after the alleged accident, there was neither storm nor hurricane in the area of the respondents on 13.05.2012 as alleged by them. Though the insurance policy has been issued in Chennai, the jurisdiction to try the cases do not vest with this Court. When the cause of action, being loss or damage to the insurer, had occurred in Jodhpur District, State of Rajasthan, the suits suffer from want of jurisdiction as this Court does not have any jurisdiction to try the cases. Thus, the alleged loss is not due to storm, but due to damage caused to the solar panels in transit and hence, the respondents' claim is nothing but bogus.

7.On the above pleadings, this Court had framed the following issues and on the side of the respondents, marked Exs.P1 to P12 and examined one witness, namely, Sudhir Singhi as P.W.1 and on the side the appellants, marked Exs.D1 and Ex.D2 and examined one witness, namely, Vijaykumar Sadanand Saokar as D.W.1.:

'1.Whether the plaintiffs is entitled to the suit claim with interest?
2.Whether this Court has got jurisdiction to try the suit?
3.Whether the alleged loss is due to cyclonic storm?
4.Whether the claim of the plaintiffs on Business Interruption Policy is admissible?
5.Whether the rejection of the policy claims by the defendant is valid?'

8.In this regard, in order to reach a logical conclusion, this Court frames the following questions:

'1.Whether there was a severe cyclonic storm on 13.05.2012?
2.Whether the respondents are entitled to file the suits before this Court as the appellants have raised the plea of want of jurisdiction of this Court to try these suits?
3.Whether the rejection of the policies made by the appellants was valid?'

9.It is not in dispute that a severe cyclonic storm had occurred on 13.05.2012 accompanied by a Hurricane wind, rain and lightening, in and around the factory premises and continued on the following dates accompanied by rain, Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation (STFI

Cover) and as a result, the insured properties, namely, Solar Panels and other materials were badly damaged. When Ex.P4/weather report issued by the office of the Director of India, Meteorological Department, dated 02.07.2012, Jaipur Station for the period from 11.05.2012 to 16.05.2012 and the local newspaper report would confirm that there was a severe cyclonic storm on 13.05.2012 in and around the factory area of the respondents and the Insurance Company, accepting the request of the respondents, has appointed the Surveyor, who is none other than the officer of the Insurance company, assessed the loss at Rs.72,05,559/- and Rs.19,49,994/-, we are of the view that there was a severe cyclonic storm on 13.05.2012. Moreover, the New Webster's Dictionary defines 'storm' as “a disturbance of normal condition of the atmosphere, manifesting itself by winds at an unusual force or direction, often accompanied by rain, snow, hail, thunder and lightening are flying sand or dust. Therefore, the first question is answered accordingly.

10.Anticipating the risk, the respondents have obtained Fire and Special Perils Policy and Business Interruption Policy from the appellants covering the risk at 5 MW solar power plant inclusive of solar panels installed at the plant, transformer cables, electrical equipments and other miscellaneous assets, civil works on plant, machinery and building against the loss/damage caused by Fire, Lightening, Explosion/ Implosion, Bush Fire, Missile testing operations, Impact damage due to rail, road, vehicle or animal, Aircraft damages, Bursting/Overflowing of water tanks/Pipes/Apparatus, Sprinkler Leakage, Storm, Cyclone, Typhoon, Hurricane, Tornado flood and Inundation, riot, strike, malicious damage, earthquake for the property located at Bap Village, Phalodi Taluk and Tinwari Village, Tehsil Osian, Jodhpur District in the State of Rajasthan respectively. The appellants also accepting the risk, issued the Fire and Special Perils Policy (Material Damage) Nos.71030011110100000135 and 71030011110100000134 and Business Interruption (Fire) Policy Nos.71030011110500000002 and 71030011110500000003 to the respondents. When the risk has been covered as per the above policies, the respondents, having suffered the severe cyclonic storm causing huge damage to the solar panels and other materials, are entitled to make a claim before the appellants. Since they are failed and neglected to pay the amount of claim of insured, the respondents have come to this Court by filing the above suits. As the registered office of the respondents is situated at Chennai and the policies were issued in Chennai, the entire cause of action has rightly arisen within the jurisdiction of this Court at Chennai and therefore, the respondents have rightly come before this Court. Therefore, the second question is answered accordingly.

11.While coming to the third question namely, whether rejection of the policies made by the appellants was valid, it could be seen from the two material evidences namely, Ex.P4/the weather report issued by the office of the Director of India, Meteorological Department, dated 02.07.2012, Jaipur Station for the period from 11.05.2012 to 16.05.2012 and the local newspaper report that on 13.05.2012, "Severe Cyclonic Storm" with Hurricane wind and rain and lightening has been occurred in and around the factory area from 00:50 to 02:10, 20:35 to 23:35 hours IST and continued on the following days accompanied by rain, Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation (STFI Cover). As a result, the insured property namely, Solar Panels and other materials were badly damaged and thin sheets of solar panels thrown away, were erected on the table and spread over within the premises of factory area. Since the same was duly reported to the first appellant requesting him to register a claim in the claim register and depute a Surveyor to assess the extent of loss suffered due to damage caused to the insured property by STFI perils, the Surveyor had visited the factory on 29.05.2012 and conducted preliminary survey at the factory and submitted his report directly to the insurer, without giving a copy of the preliminary survey report to the respondents. Thereafter, the Surveyor suggested the respondents' Manager to collect all the damaged Solar Panels, which were spread over within the premises of factory and keep them at the site of factory for his verification. Accordingly, the respondents, by engaging a technical staff, collected all the damaged Solar Panels and other materials from the factory area and kept on the site of factory. Again on 26.11.2012, the Surveyor came to the factory and verified the damaged materials and advised the respondents to submit a claim bill/estimate of loss suffered due to the damaged caused to the insured property by STFI perils. Ex.P6/Series are the photocopies of the final loss assessment report of Surveyor dated 12.01.2013. When the appellants, accepting the risk, issued the Fire and Special Perils Policy (Material Damage) Nos.71030011110100000135 and 71030011110100000134 and Business Interruption (Fire) Policy Nos.71030011110500000002 and 71030011110500000003 to the respondents and their own Surveyor, deputed by the appellants, assessing the final loss, has given his assessment report dated 12.01.2013, the rejection of the policies made by the appellants was not valid. Therefore, the third question is answered accordingly.

12.Though an argument made by the learned counsel for the appellants before us is that Ex.P4/weather report issued by the Meteorological Department, Jaipur dated 02.07.2012 is against the terms of the Insurance policy and the same could not be accepted, Ex.P2/series of Standard Fire and Special Perils

Policy bearing Policy No.71030011110100000135 dated 08.03.2012 and Ex.P3/series of business interruption (Fire Policy) bearing No.71030011110500000002 dated 13.03.2012 showing the period of insurance from 29.02.2012 to 27.02.2013, at no point of time, has specified the default committed by the respondents.

13.Since there is no error or infirmity in the judgment passed by the learned Single Judge and the appellants have erroneously rejected the claim of the respondents, we are of the considered view that these appeals are liable to be dismissed with costs of Rs.50,000/- each payable to the respondents. Accordingly, these appeals are dismissed with costs of Rs.50,000/- each payable by the appellant to the respondents.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

vga

To

The Sub Assistant Registrar,
Original Side, High Court, Chennai-104.

+2ccs to Mr.Vinodkumar, Advocate SR.No.62, 63

+2ccs to Mr.Asok Rajaraaman, Advocate SR.No.85, 86

O.S.A.Nos.282 & 283 of 2018

PVS(CO)
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