# IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved On | 28.02.2024 |
|---|---|
| Pronounced On | 14.06.2024 |

CORAM :

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

Arb.O.P.(Com.Div.)No.93 of 2023
and
Application Nos.1288 and 4224 of 2023

M/s.National Insurance Company Limited,
TIDEL Park Branch,
TIDEL Park,
No.4, Rajiv Gandhi Salai,
Taramani, Chennai – 600 113. ... Petitioner

vs.

M/s.Springfeel Polyurethane Foams (P) Limited,
No.51/2A, Kelambakkam – Vandalur Road,
Puddupakkam,
Tamil Nadu – 603 103. ... Respondent

Prayer: Original Petition is filed under Section 34 (2-A) of the Arbitration and Conciliation Act, 1996, to set aside the arbitral final award dated 30.09.2022, passed by the Arbitral Tribunal in its entirety and direct the respondent to pay the costs.

For Petitioner : Mr.J.Michael Visuvasam

For Respondent : Mr.Thriyambak J Kannan

**ORDER**

The Insurance Company has filed this Original Petition under Section 34 (2-A) of the Arbitration and Conciliation Act, 1996 against the Award dated 30.09.2022.

2. By the Impugned Award, the Arbitral Tribunal has awarded a sum of **Rs.67,38,947/-** to the respondent/claimant as against a claim for a sum of **Rs.1,62,81,866/-**. The dispute before the Arbitral Tribunal arose under a policy taken out for a Standard Fire and Special Perils Policy of Insurance effective from **01.04.2015** to **31.03.2016**. The date of issuance of the Policy is stated to be **08.04.2015**. The Policy states as under:-

> *"IN WITNESS WHEREOF, the undersigned being duly authorized hereunto set his / her hand at the office address mentioned above, this 08 April 2015. This schedule, the attached policy, the clauses, the endorsements and policy wordings as available in the website www.nationalinsuranceindia.com shall be read together as one contract and any word or expression to which the specific meaning has been attached in any part of this policy or of the schedule shall bear the same meaning wherever it may appear. It is warranted that IN CASE OF DISHONOUR OF THE PREMIUM CHEQUE, THIS DOCUMENT STANDS AUTOMATICALLY CANCELLED 'AB-INITIO' "*

3. It appears that the respondent has been taking policy from the

petitioner right from 2004-2005 which was being renewed from time to time, which is a subject matter of the dispute before the Arbitral Tribunal. The basis of valuation in the Policy issued for the period between 01.04.2015 and 31.03.2016 is Market Value Basis. The sum assured under Basic Cover is Rs.33,30,00,000/-. The petitioner paid an insurance premium for a total sum of Rs.7,95,555/- inclusion of service tax of Rs.87,514/-.

4. The respondent had paid premium of Rs.7,95,555/- inclusive of the service tax to cover a risk for a sum of Rs.33,30,00,000/- for its plant & machinery (both imported and indigenous) as detailed below:-

| Details for Location Number: 1 Name : 51/2A, Kelambakkam – Vandalur Road | |
|---|---|
| Occupancy | Foam Rubber Manufacturing |
| STFI Deletion | No |
| RSMD Deletion | No |
| Past Claims Experience Ratio | NA |
| Silent Risk | No |
| Storage during silent period | No |

| Excess Details for Location Number : 1 Name : 51/2A, Kelambakkam – Vandalur Road | | | | |
|---|---|---|---|---|
| Excess Description | Percentage | Basis | Minimum | Maximum |

| | | | | |
|---|---|---|---|---|
| Excess for Acts of God Perils claims | 5 | Claims | Rs.25,000/- | NA |
| Excess for other than Acts of God Perils claims | 5 | Flat | Rs.25,000/- | Rs.25,000/- |
| Excess for Terrorism claims | 0.5 | Sum Insured | Rs.1,00,000/- | NA |

| *Schedule of Properties Covered in Location Number: 1* | | | | | | |
|---|---|---|---|---|---|---|
| **Block Name and Description** | **Type of Property** | **Type of Construction** | **Sprinkler Disc** | **FEA Disc** | **Sum Insured** | **Escalation Percentage** |
| Building at Kelambakkam -Vandalur Road | Building (including Plinth & Foundation) | Pucca | No | NA | Rs.8,00,00,000.00 | 10 |
| Import | Plant & Machinery | Pucca | No | NA | Rs.16,50,00,000.00 | 10 |
| Indigenous | Plant & Machinery | Pucca | No | NA | Rs.2,80,00,000.00 | 10 |
| Raw materials, Stock in Process and finished stocks at the premises | Stocks in process | Pucca | No | NA | Rs.6,00,00,000.00 | NA |

| Details of Additional Covers opted for Location Number : 1 | | |
|---|---|---|
| Cover Name | Description | Sum Insured / Limit |
| Spontaneous Combustion | Raw materials stock in process, and finished stocks at the premises | Rs.6,00,00,000/- |
| Earthquake (Fire & Shock) | NA | Rs.33,30,00,000/- |
| Terrorism | 0.5% of claim amount subject to minimum of | Rs.33,30,00,000/- |

| | | |
|---|---|---|
| | Rs.1,00,000/- | |

5. The respondent appears to have been all along issued with Policy from 2004-2005, where the Basis of Valuation of risk appears to have been 'Reinstatement Value'. However, from the year 2013-2014 onwards that appear to have been a slight change.

6.In the policies that were issued to the respondent by the petitioner for the period between 01.04.2013 and 31.03.2014 and thereafter, the basis of valuation of risk was altered to "Market Value Basis".

7. The subject Policy issued on 08.04.2015 for the period between 01.04.2015 and 31.03.2016, clearly states that the Basis of Valuation as "Market Value Basis".

8.The difference between "Market Value Basis" and "Reinstatement Value Basis" has been explained by the counsels for the petitioner and the respondent as follows:-

| Market Value Basis | Reinstatement Value Basis |
|---|---|
| Under the fire policy, claims are settled on the basis of the Market Value of the insured property immediately before the fire. The market value is the Sum Insured: The Market Value is arrived at strictly according to the principle of indemnity that is by taking into account maintenance methods, wear and tear, etc. | Reinstatement value is the value which the damaged property can be reinstated or replaced by a new property of the same kind, without applying any deducting towards usage, maintenance, etc., The Reinstatement policy is issued only in respect of buildings, plant and machinery, furniture, fixture and fittings only and not on Stocks. |
| Market Value Basis means, for insurance purposes, the present cost of construction of similar building, and applying due deductions therefrom for the number of years the affected item has been put to use, the quality of maintenance, etc., Similarly for plant and machinery, market value is arrived at by applying deductions towards age, usage, wear and tear, etc., from the current replacement costs. | Under the Reinstatement Value Policy, the payment to be made is the cost of reinstatement of the building or the cost of replacement of the machinery to a condition equal to but not better or more extensive than its condition when new. Thus under this policy it is possible to recover the cost of replacement of the damaged property by new property but of the same kind. |
| In all these cases, deduction refer to actual intrinsic physical depreciation and not the depreciation rates used for accounting purposes or for the purposes of income tax to arrive at the book value or written down value in the books of accounts. | The Reinstatement Value policy differs from the Market Value policy, in the basis of fixing the Sum Insured and settlement of claims. |
| To summarize, Market Value is the value which the insured item would have fetched if the same has to be sold in the market in "as is where is" basis prior to the damage. | Under a Reinstatement policy, the sum Insured as agreed between the two parties, viz., the Insurer and the Insured is as on the date of inception of the cover. |
| Fire insurance policies in India are basically on Market Value Basis. The Regulations in India Provide a dispensation whereby the normal market value basis policy can be converted into a reinstatement value basis policy (RIV) by attaching the RIV Clause. | |

9. The respondent had lodged a compliant on 08.03.2016 regarding the fire accident and on the same day and thereafter lodged a claim on 10.03.2016 stating that the respondent was entitled to compensation on the 'Reinstatement Value Basis' and only on **09.03.2016,** the respondent became aware that in the Policy issued on **08.04.2015**, the Basis of Valuation was given as "Market Value Basis" and not "Reinstatement Value Basis". It was stated that the respondent was always under the impression that the Basis of Valuation under the Policy issued on 08.04.2015 was on "Reinstatement Value Basis".

10. Under these circumstances, the respondent made a claim for a sum of Rs.4,82,19,368/- + GST amounting for a total sum of Rs.5,15,99,855/-. Later, vide letter dated 21.11.2010, the respondent made a final claim for Rs.5,08,25,942/-.

11. The petitioner-Insurance Company had itself asked the Surveyor together two alternate calculation based on both types of valuation *i.e.,* "Market Value Basis" and "Reinstatement Value Basis".

12. The said Surveyor gave first Interim Report dated 27.03.2016

and second Interim Report dated 14.06.2017 followed by a Final Report dated 30.03.2018.

13. In the Final Report dated 30.03.2018, the Surveyor has stated as follows:-

*The adequacy of the Buildings has been tabulated in annexure – X35.*

*With all these inputs the summary of the loss after adjusting the salvage values etc. has been tabulated in annexure – X32 and X36.*

| | |
|---|---|
| ***Assessed loss on RIV basis (inclusive of CVD and Additional duty) (net of all adjustments) (annexure – X32 A)*** | ***Rs.4,17,86,266/-*** |
| ***Assessed loss on RIV basis (exclusive of CVD and Additional duty) (net of all adjustments) (annexure – X32)*** | **Rs.4,06,87,053/-** |
| ***Assessed loss on Market value basis (inclusive of CVD and Additional duty) (net of all adjustments) (annexure – X36)*** | **Rs.3,70,28,311/-** |
| **Assessed loss on Market value basis (exclusive of CVD and Additional duty) (net of all adjustments) (annexure – X36 A)** | **Rs.3,55,58,208/-** |

*All other warranties laid down in the policy have been complied with.*

***The Insured has been appraised of the assessment.***

*Issued without prejudice and subject to the terms and conditions and warranties of the insurance policy."*

In the said Report, it has been stated that fire broke out due to spontaneous combustion.

14. Thereafter, on 28.02.2019 based on the aforesaid report, the petitioner settled a sum of **Rs.3,19,37,503/-** to the respondent as against the total claim for a sum of **Rs.5,08,25,942/-** after restricting the claim for debris removal at 1% of the claim amount and disallowing fire-fighting equipment amount, since furniture, fittings and fixtures were not covered and is not subject to designation of property clause. CENVAT and Additional Duty towards loss to imported plant and machinery was also disallowed.

15. The respondent received the said sum of **Rs.3,19,37,503/-** under protest and claimed that the loss ought to have been settled on 'Reinstatement Value Basis' and not on the 'Market Value Basis'.

16. Being dissatisfied with the settlement of the claim by the petitioner on the **'Market Value Basis'** instead of **'Reinstatement Value Basis'**, the respondent had invoked the Arbitration Clause in Condition No.13 of the Fire Insurance Policy.

17. It is in this background, the respondent filed a Claim Petition

before the Arbitral Tribunal, which was constituted pursuant to order passed in O.P.No.755 of 2019.

18. The Claim Statement that was filed before the Arbitral Tribunal by the respondent was for a sum of **Rs.1,62,81,865/-** being the balance of claim due in respect of the fire loss on 08.03.2016 along with interest at 18% per annum on the said sum from the date of loss till the date of payment in full. The respondent also prayed for interest at 18% on the settled amount of Rs.3,19,37,503/- that was paid on 28.02.2019, from the date of loss, *i.e.* from 08.03.2016 till 28.02.2019.

19. As against the claim for a sum of **Rs.1,62,81,865/-,** the Arbitral Tribunal has awarded sum of **Rs.67,38,947/-** to the respondent together with further interest and cost as detailed below:-

| ***Item*** | ***Amount*** |
|---|---|
| *Principal (Refer table under Paragraph 78)* | Rs.67,38,947/- |
| *Interest on Rs.3,19,37,503/- from 01.05.2018 till 02.03.2019* | Rs.20,08,125/- |
| Interest on Rs.67,38,947/- from 01.05.2018 till 30.09.2022 | Rs.22,33,546/- |
| Costs | Rs.9,00,000/- |
| | Rs.1,18,80,618/- |

20. Before the Arbitral Tribunal, the following issues were framed:-

*i. Whether the Claimant is entitled for* *compensation of their claim on RIV basis?*

ii. *Whether the excess adopted by the Respondent in arriving at the loss is correct?*

iii. *Whether the loss assessed by the surveyor is correct?*

iv. *Whether the amount offered by the Respondent is correct, if not, what is the amount to be paid?*

v. *Whether the Claimant is entitled to interest and if so, at what rate and for what period?*

vi. *To what costs and / or other reliefs?*

21. The learned counsel for the petitioner submitted that the Arbitral Tribunal traversed beyond the scope of the Contract of Fire Insurance which was to Indemnify the loss on 'Market Value Basis' and had directed the petitioner herein to pay amount on 'Reinstatement Value Basis', contrary to the terms of the Contract of Fire Insurance and gravely erred in granting reliefs to the respondent.

22. The learned counsel for the petitioner submitted that the Arbitral Tribunal had offered a feeble justification of 'remedying the errors' to go beyond the scope of indemnity provided under the Fire Insurance Policy which is patently illegal and had resulted re-writing the Contract of Insurance.

23. The learned counsel for the petitioner submitted that the Arbitral Tribunal unjustly assumed without any basis that just because there was an

error with regard to the Policy excess clause in the Policy, held that the basis of indemnity specified on the face of the Policy as one on 'Market Value Basis' was also erroneous and it ought to be on 'Reinstatement Value Basis'.

24. The learned counsel for the petitioner submitted that the Arbitral Tribunal failed to give a serious thought to the fact that the preceding four years before the loss, the Fire Insurance Policies were issued only on 'Market Value Basis' and not otherwise.

25. The learned counsel for the petitioner submitted that the Arbitral Tribunal overlooked the fact that the respondent had raised a dispute with regard to the nature of Policy issued, only after the fire loss that occurred on 08.03.2016, when for four consecutive years preceding the date of loss, the Fire Insurance Policies were issued only on 'Market Value Basis'.

26. The learned counsel for the petitioner submitted that the Arbitral Tribunal cannot find fault with the petitioner seeking the Insurance Surveyor to provide assessment both on 'Market Value Basis' and 'Reinstatement Value Basis', when the option of granting indemnity

explicitly vested with the petitioner under the terms of the Policy of Insurance.

27. The learned counsel for the petitioner submitted that the Arbitral Tribunal had based its decision that the Policy of Insurance issued was on 'Reinstatement Value Basis' holding that the petitioner was unable to dispute the same with the Surveyor, which is based on a mere assumptions and not backed by any proof.

28. The learned counsel for the petitioner submitted that the Arbitral Tribunal patently erred in considering the loss at **Rs.4,07,12,053/-** by placing reliance on the Insurance Survey Report assessment on 'Reinstatement Value Basis', without even appreciating the fact that fire-fighting equipment amounting to **Rs.17,03,696/-** was not payable under the Policy, since the said Policy does not cover furniture, fittings and fixtures and is not subject to designation of property clause.

29. The learned counsel for the petitioner submitted that the debris removal also can be only 1% of the Claim amount. Hence, a sum of Rs.7,98,850/- was also disallowed by the petitioner, which was recommended in the Surveyor's Report on Reinstatement Value Basis.

30. The learned counsel for the petitioner submitted that the Arbitral Tribunal was therefore not justified in considering the Fire Policy of Insurance as one issued on 'Reinstatement Value Basis' to award a further sum of **Rs.67,38,947/-** and interest at the rate of 7.5% per annum from 01.05.2018 till 30.09.2022 it being quantified at Rs.22,33,546/-.

31. The learned counsel for the petitioner further submitted that the Arbitral Tribunal was not justified in granting a sum of **Rs.20,08,125/-**, being the interest at the rate of 7.5% per annum for the period between 01.05.2018 and 02.03.2019, on the sum of Rs.3,19,37,503/- which was already settled by the petitioner and also cost of Arbitration proceedings at Rs.9,00,000/-.

32. The learned counsel for the petitioner also submitted that the impugned Award of the Arbitral Tribunal is contrary to the Contract of Insurance and grants indemnity on 'Reinstatement Value Basis' completely traversing beyond the scope of the Contract and is liable to be set aside by this Court for its patent illegality and also the same being in contravention of the fundamental policy of Indian Law on Contract of Insurance and

therefore, the Arbitral Award dated 30.09.2022 passed by the Arbitral Tribunal has to be set aside in its entirety.

33. It is submitted by the learned counsel for the respondent that a bare perusal of the Insurance Policies availed by the respondent from the petitioner will evidence the fact that the Policy was meant to be on 'Reinstatement Value Basis'. The respondent had admittedly preferred an insurance claim in the year 2008, which was on 'Reinstatement Value Basis'. There is no document on record to show that any request emanated from the respondent for a change in basis of the Policy to 'Market Value Basis'. It is submitted that upon every renewal, the sum insured stood revised based on the gross block due to the fact that the insurance was on 'Reinstatement Value Basis'. Further, the letters enclosing the cheque for payment of premium had specifically stated the insurance to be on 'Reinstatement Value Basis.

34. The learned counsel for the respondent submitted that admittedly, the petitioner had requested the Surveyor to undertake valuation under both 'Market Value Basis' and 'Reinstatement Value Basis'. The learned counsel for the respondent submitted that if the Policy

was on "Market Value Basis', there was no need for the petitioner to ask the Surveyor to undertake valuations both on "Market Value Basis" and "Reinstatement Value Basis". It is submitted that only in "Reinstatement Value Basis", an assessment on both types is undertaken.

35. The learned counsel for the respondent submitted that upon the defect in the Policy being pointed out to the Officials of the petitioner, the Officials of the petitioner acknowledged the mistake in the Policy. The respondent was assured that the defect would be cured with the concurrence of the Higher Officials.

36. The respondent was further informed that although the Surveyor had completed the assessment on "Reinstatement Value Basis", the petitioner required the Surveyor to hold the submission of the Report until concurrence of the Head Office. However, the communications between the Regional Office and the Head Office of the petitioner was not produced. Further, the claim of the petitioner that its case would be prejudiced upon production of the communication, indicates the culpability of the petitioner.

37. The learned counsel for the respondent submitted that the petitioner selectively chose to rectify the defect in the Policy regarding Policy excess and not chose to make any rectification of the defect concerning the very basis of valuation. The petitioner had by way of letter dated 25.07.2018 stated that the Policy had an excess of 5%. The email is reproduced below:-

> *"Being our client for more than a decade and as evident from the policies issued by us so far, you are well aware, that the minimum excess applicable in Indian market for the policies having sum insured above Rs.10 crore and upto INR Rs.1500 crore is 5% of claim amount subject to minimum of INR 25,000/-. Therefore, it is clear that the policy excess appearing in the policy were wrongly printed due to a software bug. As the SFSP policy excess cannot differ from the above for the subject policy, we have passed an endorsement to incorporate the correct excess for the whole policy period.*
>
> *It is not out of place to mention that the previous fire claim that you lodged was also subject to this excess as indicated above."*

38. The learned counsel for the respondent submitted that on the one hand, the petitioner resorted to a perusal of previous Policies to ascertain the intent of the parties on Policy excess and on the other hand, the petitioner refused to acknowledge that the previous Policies had clearly

contained a Reinstatement clause. The petitioner cannot rely on past Policies to infer the intent of parties and make a change to the Policy contents after the insurable event and just before settlement of claim, not extending likewise approach to the valuation clause.

39. The learned counsel for the respondent submitted that the software bug had caused errors in the Policy is an admitted fact. That being the case, the petitioner ought to have given due acknowledgement of the defect in the valuation clause due to the software bug. It is reiterated that the previous Policies relied upon by the petitioner contain a 'Reinstatement Value Basis" Clause. Therefore, the error in the valuation clause in the Policy ought to have been rectified by the petitioner. The argument of the petitioner that each Policy is standalone is without any merit whatsoever. A mere perusal of the policies would make it apparent that there is a 'General/Common Information change' provision setting out changes from previous policies. It is not the case therein that the basis of valuation has been changed to 'Market Value".

40. In respect of the contentions of the petitioner on interest portion

of the Impugned Award, the learned counsel for the respondent submitted that the finding of the Tribunal is based on the IRDAI (Protection of Policyholders Interests) Regulations. The Impugned Award notes that the insurance claims ought to be settled within six months failing which an interest at 2% over Bank rate is to be granted. Therefore, the grant of interest for the period of delay after reinstatement and submission of final bill is correct and justified under law.

41. The learned counsel for the respondent also submitted that the Arbitral Tribunal has taken an interpretation that is entirely possible and the mutual intent of the parties was for the valuation to be a 'Reinstatement Value Basis' is a possible and plausible view. It is submitted that a Court cannot substitute its view in place of the view of the learned Arbitrator. Court doesn't sit in appeal from an Arbitral Award.

42. It is submitted by the learned counsel for the respondent that as long as the Arbitral Tribunal has taken a possible view which may be a plausible view, merely because another view is possible, no interference is called for. In this regard, the learned counsel for the respondent placed

reliance on the following cases:-

(i) **Atlanta Limited** vs. **Union of India**, (2022) 3 SCC 739

(ii) **Delhi Airport Metro Express Pvt Ltd.** vs. **Delhi Metro Rail Corporation Limited**, (2022) 1 SCC 131

(iii) **Welspun Specialty Solutions Limited** vs. **Oil and Natural Gas Corporation Limited**, (2022) 2 SCC 382.

43. I have considered the arguments advanced by the learned counsel for the petitioner/Insurance Company and the learned counsel for the respondent/claimant.

44. The narration of facts above makes it clear that the petitioner was issued with a policy for the period between 01.04.2015 and 31.03.2016 by the petitioner, wherein the basis of valuation has been given as 'Market Value Basis'.

45. On the other hand, the Tribunal has awarded amounts to the respondent/claimant based on the 'Reinstatement Value'. The final report that was given by the Surveyor on 30.03.2018 has merely given the calculations/compensation to be paid both under 'Market Value Basis' and

'Reinstatement Value Basis'.

46. However, the amount that can be awarded to the respondent can be only based on the express terms of the Insurance Policy for the period in dispute. As mentioned elsewhere in the discussion from 13.02.2014 onwards, the policy that had been issued by the petitioner to the respondent was with 'Reinstatement Value' as the basis for valuation of risk.

47. An Arbitral Tribunal cannot overlook the express terms of the policy and thereby, either award excess amount or deny the amounts, which are legitimately due to the claimant. If it does, it would be violating Section 28(3) of the Arbitration and Conciliation Act, 1996 and in which case such an awards would be construed to be patently illegal as held by the Hon'ble Supreme Court in ***Ssangyong Engineering and Construction Co.Ltd., Vs. National Highway Authority of India*** reported in ***(2019) 15 SCC 131*** and rest of the other decisions, which have followed the aforesaid decision of the Hon'ble Supreme Court.

48. In my view, the award passed by the Arbitral Tribunal is not

sustainable on account of patent illegality and is therefore liable to be set aside under Section 34(2-A) of the Arbitration and Conciliation Act, 1996.

49. In fine, this Arbitration Original Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No
Neutral Citation : Yes/No
rgm/smn2/mm

14.06.2024

**C.SARAVANAN, J.**
rgm/smn2/mm

Arb.O.P.(Com.Div.)No.93 of 2023

14.06.2024