IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-9141-2014 (O & M)
Date of decision: 24.09.2024

ORIENTAL INSURANCE COMP LTD ......Petitioner

VERSUS

RAJNISH KUMAR ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. R.K. Bashamboo, Advocate
for the petitioner.

None for respondent No.1.

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VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the Award dated 05.02.2014 passed by the Permanent Lok Adalat (Public Utility Services), Ambala whereby the application preferred by the respondent-applicant has been partly allowed and the petitioner-Insurance Company had been directed to pay an amount of Rs. 5,60,000/- i.e. (Rs. 7,00,000/- minus 20%) alongwith interest @ 9% per annum on the amount of Rs. 269040/-, from the date of petition till the date of actual payment.

2. Briefly summarized the facts of the present case are that the respondent-applicant is engaged in the business of food grains, pulses, rice and Karyana goods under the name and style of M/s R.K. Brothers in Shop

No. 4222, Dal Mandi, Ambala Cantt. and is sole proprietor of the said firm which is having godowns in different areas of Ambala Cantt. i.e. Godown No. 751/13 at Sikligar Mohalla; Godown No. 4221, 4222/A at Dal Mandi, and Godown No. 3754/3755 at Chuna Chowk, Ambala Cantt. The respondent-applicant had got all the aforesaid godowns and stock lying therein insured with the petitioner Insurance company for damage against flood and fire etc. under Policy No. 261100/11/2011/142 with effect from 06.06.2010 to 05.06.2011 for a sum of Rs. 20,00,000/- on all stocks. The respondent-applicant was also availing a C/C Limit against the said stock lying in the godowns as well as the shop from the Bank. There was however a heavy flood in the area on 06.07.2010 due to which the shops and godowns of the respondent-applicant were inundated to the extent of 4 ft. for a duration of more than 30 hours. The same caused huge loss to the stock lying in the said shop and godowns. The respondent-applicant accordingly lodged a claim with the petitioner-Insurance company for indemnifying the said loss. The petitioner-Insurance company deputed one Pankaj Goel of 'Pankaj Goel and Associates' as Surveyor on 08.07.2010 to assess the loss. He inspected the godowns on 08.07.2010 itself, during flood, and conducted preliminary survey and had also taken photographs of the site. He had taken details of the entire stocks lying in the godowns in respect of various items together with their weight, quantity and quality. After taking various documents, the Surveyor assessed the loss at Rs. 20,00,000/- and submitted his report to the petitioner-Insurance Company alongwith all documents and the photographs attached thereto. He had visited the spot and conducted the survey even on 09.07.2010, 10.07.2010 and 11.07.2010 and had satisfied himself about the actual quantity of the stock damaged during the course of floods as well as due to fermentation; infestation and germination. The stocks also started emanating foul smell and the administration as well as the residents started pressing hard for removal of the said stocks and to destroy the same. The report had however already been submitted by the aforesaid Surveyor on 25.09.2010 giving details of the loss pertaining to the quantity and weight of each item that was found damaged. It is submitted that he was, however, not authorized to submit a final report in this regard. It was further averred in the claim that instead of settling the claim of the respondent-applicant, on the basis of the aforesaid report received by the petitioner-Insurance company, it appointed another Surveyor namely 'M/s Consolidated Surveyor Pvt. Ltd. Chandigarh' to assess the loss on the basis of the survey report submitted by Pankaj Goel. The abovesaid surveyor valued the stocks found damaged/affected by the flood to the tune of Rs. 12,40,772/- and the said report was submitted by it on 08.02.2011. It reported the damaged value of the stock at Rs. 4,00,428.55/- and net loss at Rs. 3,25,248.10/-. It was averred that the above said Surveyor i.e. M/s Consolidated Surveyor Pvt. Ltd. Chandigarh had never visited the shops and godowns and had never seen the damaged stocks and that the valuation was done by them solely at their own level without any spot inspection and in the absence of any verifiable data. The entire evidence collected earlier by Pankaj Goel was never referred to in the said report. Nonetheless, the petitioner-Insurance company was still not satisfied with the report of

M/s Consolidated Surveyor Pvt. Ltd. Chandigarh and appointed another Surveyor i.e. 'M/s Kumar Raj and Associates' of Ambala City who also submitted their report and assessed the loss at Rs. 2,69,040/- vide report dated 04.03.2011 and that too without having paid any visit to the shop and godowns or verifying the record and documents appended by the respondent-applicant to reflect the damage caused to the stock. The petitioner Insurance Company thereafter offered to pay the amount of Rs. 2,69,040/- but only on the respondent-applicant submitting a full and final satisfaction with the petitioner-Insurance Company. On his refusal to accept the said amount towards full and final settlement of his claims, even the said amount was also not disbursed. The respondent-applicant accordingly preferred an application under Section 22-C of the Legal Services Authorities Act, 1987 for adjudication of his claim and against the decision taken by the petitioner company. The claim of Rs. 12,40,772/- was claimed in the application.

3. The petitioner Insurance Company entered its appearance through and filed its reply wherein it defended the assessment of loss to the tune of Rs. 2,69, 040/- and averred that various letters had been sent to the respondent-applicant to accept the said amount but the same has not been accepted by him. It was also averred that the respondent-applicant concealed the true facts and that the claim had been unnecessarily exaggerated to fleece the Insurance Company for payment of a loss that had never been suffered. The petitioner Insurance Company although did not dispute the report submitted by Pankaj Goel dated 25.09.2010, however, it

was said that the said report was not a final assessment and it was merely in the nature of a recommendation. The same was accordingly not binding. It was also averred that it was for the said reason that final determination of the actual loss suffered by the respondent-applicant had been undertaken. A detailed report was hence submitted later by the third Surveyor informing about the glaring facts missed by the second Surveyor i.e. M/s Consolidated Surveyor Pvt. Ltd.

4. Efforts were made for amicably resolving the said issue but no amicable resolution could be arrived at whereupon adjudication under Section 22 –C (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), Ambala.

5. Parties led their respective evidence and on consideration of the evidence and the documents led by the parties, the Permanent Lok Adalat (Public Utility Services), Ambala recorded as under:-

> *"We have heard the arguments from learned counsel for the parties.*
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> *Preliminary survey was conducted by Mr. Pankaj Goel. His report on the file is Ex R1. If we go through the report of this surveyor stock of the value of Rs.20063871/- was lying in one shop and three godowns of the applicant and he wanted to conclude as if the entire stock so lying in these four premises was damaged in the floods. This surveyor, did not give the exact amount payable to the applicant for the reasons that according to him the value of the stock was Rs.2006387/- and the insurance was of Rs.20 Lacs only and accordingly the average clause was to be applied. Matter was then referred by the, insurer to Consolidated Surveyor. Total value of the damaged*

stock as per the report was as per Annexure-A. This Annexure-A was not found attached with report Ex R2. When that fact was pointed out to the Ld. Counsel for the respondent he had moved an application seeking permission to place on record that Annexure Mark-A. That application was not objected by the Ld. Counsel for the applicant and Mark A was thus allowed to be placed on the files as part of the report Ex R2. Mark-A is the list of looses in the entire premises the valuation of that stock has also been mentioned in this report end this total comes to Rs.1240772/-.

Though in the petition it was alleged by petitioner that the entire stock was damaged and he should be given the insured value of Rs. 20 Lacs but at the stage of arguments, Ld. Counsel for the applicant Sh. Umesh Mittal has conceded that the loss suffered by the applicant in the flood cannot be taken over and above Rs.1240772/- That was not the end of the matter.

This surveyor against the damaged stocks claimed by the applicant to be Rs.1240772/- had given his assessment to the tune of Rs.400428.55/- and further deducted 10% on account of variation of rates + 5% dead stock + 5% policy excess and net loss assessed was Rs.325248/- He has not given the reason why he was allowing lessor quantity and lessor amount than the one claimed by the applicant on account of damage. He has nowhere stated in his report On Annexure-A even that the entire stock claimed by the applicant had not been damaged which was for the amount of Rs.1240772/- & what was damaged was some smaller stock of smaller value and that was of Rs.400428.55/-. There was no chance, whatsoever, of actual inspection of the stock by this surveyor because before the survey was actually made by him; stock had already been removed from the said premises. M/s Pankaj Goel in his report *had stated that he had supervised the actual removal/destruction of the stock up to substantial value.*

The insurer was even then not satisfied with the report of the Consolidated Surveyor and it had appointed yet other surveyor M/s Kumar Raj and Associates of which, the proprietor, is R.K.Bhola. His report on the file is Ex R3. As per his own admission this surveyor had examined the complete file of M/s R.K.Brothers and had discussed about the loss suffered by him with the insured and the report was made by him after taking into account of the observations and verification thus made by him.

He had reduced the amount of net loss to Rs. 283200/-by applying average clause & further deducted 5% as per policy clause & assessed net loss Rs.269040/-.

This surveyor had also seen the photographs attached with the survey report and also balance sheet of the insured. According to him, the closing balance of the stocks last year as per balance sheet was Rs.2006387/- and according to this surveyor sale voucher no.4 of 02.07.2010 for the amount of Rs.411450/- was issued after the date of loss of the applicant and accordingly as per his opinion the closing stock on the date of loss should be considered to be Rs.2417837/- instead of Rs 2006387/-. He had then said in the report that sum insured having been Rs.20 Lacs and the stocks lying therein being, more than of that amount i.e. Rs 2417837/- average clause was to be made applicable. Determination of this point whether the opinion so arrived at by R.K.Bhola was right or wrong is not material because of the reason that Ld Counsel for the applicant at the stage of arguments is confining his claim to Rs. 1240772/- and not to the entire insured amount of the goods which was Rs.20 Lacs.

We also do not have any specific reason to differ *with the version of the applicant that entire damaged stocks was to the extent of Rs. 1240772/- or with the opinion of the surveyor that it should be Rs. 325248.10/- (second surveyor) or Rs. 269040/- (Third surveyor). One thing is clear that the surveyor has not given any specific reason as to why he was giving claim of the lessor quantity than claimed by the applicant, He was supposed to have written something at least to show that the loss possibly could not be of the entire stock of which the loss was being claimed by the applicant but he has written nothing whatsoever. Take for example as regards marvel tea mentioned at s.no:15; the claim was for 131 pkts. for the value of Rs.5868/- but nothing was given against that by respondent. Similarly against column no.14 sambar masala claim was of 18 pkt and the value of Rs.504/- and claim was given only for the amount of Rs.364/-.*

We have no reason to reject the version of the applicant in its entirety that the loss suffered by him was to the tune of Rs.1240772/- but this list displayed in Mark-A is of the entire stock that was lying in the premises of the applicant and that fact has been conceded by the Ld. Counsel for the applicant before us. We cannot believe that the entire stock of so much value and quantity lying in the premises will be allowed to be damaged in the flood water by the applicant. Any reasonable person caught in such situation will make every attempt to save the articles, whatsoever, he can with all the difficulties which he may face at that time The version of the applicant in this context was that the intensity of flood water was such that he could not reach-the premises for a long span of 48 hours and accordingly he could not save any article. The 2nd surveyor has stated that he had inspected the premises and had discussed the things with the insured. The marking of the flood water on the walls showed as it was of the level of two feet and that fact has not been *rebutted by the applicant in any manner, whatsoever. If the water is up to the level of two feet and the bags of food stuffs are lying in heaps it cannot be assumed that the entire bags so placed will be damaged/spoiled in the flood water. Insurer has not given any-reason as to why surveyors one after the other were appointed by it. When the report was given by the 1st surveyor Pankaj Goel some reason should have been given for the appointment of the 2nd surveyor and when the report was given by the 2nd surveyor yet some reason must have been given for the appointment of the 3rd surveyor. It appears as if the insurer wanted that some surveyor should come to reduce its liability for the payment of compensation.*

Argument was raised by the Ld. Counsel for the applicant and the applicant also present with him that if one gunny bag of dal is spoiled in the flood water; that dal in the gunny bag will expand and will cause the other bags of dal lying over it to fall on the ground and the result will be that the entire bags will be damaged. This argument may be correct up to some extent but cannot be accepted in its entirety. There is no valid/solid reason to accept or reject the version of the applicant but in the peculiar facts and circumstances of the Case and overall view of the, facts placed before us and report of the 2nd surveyor and that of the 3rd surveyor; instead of the claimed amount of Rs.1240772/- we feel that the amount of Rs.7 Lacs be awarded in lump sum to the applicant minus 20% on account of possible variation in the rate and quantity, dead stock and policy excess as deducted in the report submitted by Consolidated Surveyors Pvt. Ltd.

It is a matter of concern that even the amount of Rs.269040/- which was payable on the basis of the report of the 3rd Surveyor was not paid by the insurer to the insured until and unless insured give: discharge voucher. Even at the stage *when conciliation proceedings were held on 06.11.2012 Sh. Abhas Topo, Administrative Officer who was present on behalf of the insurance company was asked as to why that amount of Rs.269040/- was not paid to the petitioner without forcing him to give the discharge voucher but Administrative Officer after having consulted his superiors telephonically had said that it was not possible to disburse the aforesaid amount even unless and until the petitioner was ready to give the discharge voucher accepting that amount as full & final settlement of the Claim. The result is that insurer have earned the interest on this amount of Rs 269040/- and insured was deprived of the use of that amount Interest of the amount of Rs.269040/- out of the total awarded amount will be paid by the insurer to the insured at the rate of 9% per annum. Award is passed directing the insurer to pay, the amount of Rs.560000/- i.e. (Rs. 7,00,000/- minus 20%) along with interest @ 9% on the amount of Rs.269040/- from the date of petition till the date of payment within a period of one month from today, failing which interest @ 9% per annum will also be payable on the amount of Rs.5,60,000/- minus Rs.269040/- i.e. Rs.290960/-."*

6. Aggrieved of the aforesaid Award dated 05.02.2014, the present writ petition has been filed.

7. Learned Counsel for the petitioner has vehemently argued that the Permanent Lok Adalat (Public Utility Services), Ambala fell in an error in failing to appreciate that a detailed enquiry had been conducted by the Surveyors and an assessment was undertaken by them. The damages had been duly ascertained and eventually the loss was assessed at Rs. 2,69,040/-. The petitioner Insurance Company offered to make the said payment and had been ready and willing to resolve the same. He contends that much

emphasis and reliance has been placed by the Permanent Lok Adalat (Public Utility Services), Ambala on the report submitted by Pankaj Goel notwithstanding that he only carried out a preliminary Survey and was not authorized to submit a final report making recommendations. The second Surveyor i.e. the M/s Consolidated Surveyor Pvt. Ltd. had assessed the loss at approximately Rs. 4 lakhs but various discrepancies and shortcomings were noticed due to which the third Surveyor was deputed. The entire material, documents as well as the evaluation criteria had been followed while assessing the loss suffered by the respondent-applicant, at Rs. 2,69,040/- . He vehemently argues that the Permanent Lok Adalat (Public Utility Services), Ambala did not care to look into the reasoning given in the said final assessment report and has arbitrarily determined the gross value of the stock damaged at Rs. 7 lakhs and has applied a 20% cut on the same so as to assess the final amount at Rs. 5,60,000/-. It is submitted that the determination of the value of the loss assessed at Rs. 7 lakhs was arbitrary and is not borne out from any evidence on record. He submits that no reasons have been given by the Permanent Lok Adalat (Public Utility Services), Ambala as to why the reports submitted by the Surveyors appointed by the petitioner have been discarded and that in the absence of any objective evidence adduced before the Permanent Lok Adalat (Public Utility Services), Ambala, the determination of loss at Rs. 7 lakhs was arbitrary and unreasonable.

8. I have heard learned Counsel appearing on behalf of the petitioner at length and have gone through the documents appended

alongwith the present writ petition.

9. While testing the argument advanced by the Counsel for the petitioner with the reasons given by the Permanent Lok Adalat (Public Utility Services), it is established that the Permanent Lok Adalat took note of all the three different reports that were submitted by the different Surveyors. It was also noticed that the value of the stock reported by the first Surveyor i.e. Pankaj Goel was to the tune of Rs. 24 lakhs but it was also reported that the stock had been insured for a value of Rs. 20 lakhs. On assessment, the damage reported by Pankaj Goel was Rs. 12 lakhs. The second Surveyor who, as the per the petitioner-Insurance Company itself was authorized to make an assessment of the loss, assessed the same at Rs. 4 lakhs. It was also noticed by the Permanent Lok Adalat that without assigning reasons, the petitioner-Insurance company did not accept the report of the second Surveyor or establish as to what differences were originally noticed but still went on to authorize a third Surveyor, who reduced the loss still further. It is also noticed that none of the second and third Surveyors had visited the spot or conducted physical verification. Besides, the reports were submitted in September, 2010; February, 2011 and March, 2011 which were much after the floods. It was in the said background that the Permanent Lok Adalat came to a conclusion that it would not be possible for it to take note of any of the said reports. Hence it devised a formula for ascertaining the loss by an appropriate consideration of three different reports by the Surveyor appointed by the petitioner-Insurance Company itself. On the basis whereof, it had felt that an amount of Rs. 7 lakhs, to be awarded in lumpsum, was fair

compensation for the loss that may have been occasioned. A 20% deduction on account of possible variation was also imposed to offset any apprehensions. Thus the amount finally derived at was Rs. 5,60,000/-. The petitioner-Insurance company had itself assessed the loss at Rs. 2,69,040/-. The differential amount was accordingly ordered to be paid alongwith the amount already assessed. It was noticed that the conduct of the petitioner-Insurance Company in not releasing the admitted liability unless a full and final satisfaction certificate was submitted by the respondent-applicant was uncalled for and that they could not have insisted upon the submission of full and final satisfaction certificate as a pre-condition to the breach of its admitted liability and thus burdened the petitioner-Insurance company with interest liability for having retained the said money.

10. Having gone through the documents, I find that the reports at the behest of the petitioner-Insurance company are themselves conflicting and that there is huge variation in the figures/losses that have been reported by the Surveyors appointed by the petitioner-Insurance company itself. The variation in assessed loss is from Rs. 2,69,000/- to Rs. 12,00,000/- approximately. If an average of all three reports is taken, the same would work out to Rs. 6.30 lakhs approximately while the final amount awarded is still cover under the given circumstances, no mathematical procedure or formula could have been adopted for carrying out accounting calculations. The insurance Surveyors have not been subjected to the test of cross-examination due to which the methodology worked out and the applicable principles, on the basis whereof the said loss had been assessed could not be

determined.

11. Section 22 (D) of the Legal Services Authorities Act, 1987 guides the Permanent Lok Adalat in adjudicating the matters placed before it according to the principles of natural justice, fairness, equity, objectivity and other principles of justice. While applying the mean of all the three reports reporting the loss, the damage would work out to approx. Rs. 7 lakhs, as has been accepted by the Permanent Lok Adalat. The interest of the petitioner-Insurance Company has further been protected by allowing a 20% deduction as a possible variation.

12. I find that the aforesaid view adopted by the Permanent Lok Adalat (Public Utility Services) cannot be said to be inequitable or unjust and do not find it appropriate at this juncture to interfere with the said Award which is otherwise guided by the above said principles. The present writ petition is accordingly dismissed. The Award dated 05.02.2014 passed in case No. 162 titled as *"Rajesh Kumar versus the Oriental Insurance Company ltd."* is upheld.

13. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)

SEPTEMBER 24, 2024 **JUDGE**

Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No