IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Reserved on : 01.05.2025
Pronounced on : 31.07.2025

1. RSA-146-2017 (O&M)

United India Insurance Company Ltd. ..... Appellant

versus

Aagosh Polyfoams Pvt. Ltd. ..... Respondents

2. RSA-147-2017 (O&M)

United India Insurance Company Ltd. ..... Appellant

versus

Aagosh Polyfoams Pvt. Ltd. ..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Anupam Gupta, Senior Advocate with
Mr. Sukhpal Singh, Advocate
for the appellant.

Mr. Sunil Chadha, Senior Advocate with
Ms. Taanvi Dhull, Advocate
for the respondent.

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PANKAJ JAIN, J.

1. By way of instant judgment, I intend to dispose off the aforesaid captioned two appeals arising out of the same judgment. With the consent of learned counsel for the parties, RSA No.146 of 2017 is taken as a lead case.

2. Defendant is in second appeal.

3. Plaintiff filed suit for recovery of Rs.1 crore on account of insurance claim. As per plaintiff it is a company registered under the Companies Act, 1956. It is engaged in manufacturing Polyurethane Foam since 1981. There was a fire in the premises of the plaintiff on 20.01.1999. The stocks including raw materials (chemical) finished goods, semi-finished goods and packing materials, plant and machinery and building of the plaintiff company got insured with the appellant vide policy dated 31.12.1999. Cover note was also issued on the same day after the officials of the defendant-insurance company inspected the premises in question and verified the stocks, plant and machinery, and condition of the building. Plaintiff claims to have paid premium of Rs.57,606/-. As per the cover note, plant and machinery of the plaintiff company was valued at Rs.30 lacs, building at Rs.45 lacs and stocks at Rs.50 lacs. The aforesaid three items were accordingly insured for a total sum of Rs.1,25,00,000/- on payment of premium.

4. As per plaintiff, factory premises was again engulfed in fire on 07.04.2000 at 6.30/7.00 p.m. The insurer appointed surveyor to assess the actual loss. The surveyor visited the factory premises on the next day i.e. 08.04.2000. The loss in the premises was photographed by the surveyor. The plaintiff company submitted claim bill on 13.04.2000. Again surveyor inspected the premises on 15.04.2000. On 18.04.2000, list of plant and machinery destroyed was submitted to the surveyor. As per plaintiff, there were two machines in the premises i.e. vertical cutting machine and circular cutting machine which were imported from M/s.

Hyma Denmark in the year 1988-1989. After fire of 20.01.1999, the original machines were destroyed and new machines were installed which were of Indian make. The said two machines were destroyed in the fire incident on 07.04.2000. Plaintiff claimed that he is entitled to recover a sum of 84.72 lacs as claimed for the loss in the fire. However, defendant wrongfully repudiated the claim of the plaintiff referring to condition No.1 and 8 of the policy without giving any detail. Plaintiff thus, prayed for recovery of Rs.1 core along with interest.

5. Suit was contested by the defendant. Insurance policy and the payment of premium stands admitted. It was claimed that the amounts mentioned in the cover note were to the extent of risk covered and not as per the actual value of the items. It was further claimed that the bills provided by the plaintiff to show reinstallation of vertical cutting machine and circular cutting machine after first incident of fire were found to be fake. The claim was thus, rightly repudiated considering the report of the surveyors and the other evidence. Defendant contested the claim of the plaintiff of having reinstated the machinery which was damaged in the fire incident in January, 1999.

6. On the basis of the pleadings, Trial Court framed following issues:-

> *"(1) Whether the plaintiff is entitled for recovery of Rs. 1 crore alongwith interest @ 12% p.a. from the date of decree till realization? OPP*
>
> *(2) Whether the suit is bad for non-joinder of the necessary parties as Punjab and Sind Bank was not impleaded as party? OPD*
>
> *(3) Whether the plaintiff has no locus stand? OPD*

(4) Whether the suit is barred by limitation? OPD

(5) Relief?

7. Trial Court found that the claim of the insured was not genuine. Trial Court held that S.K. Jain, Director of plaintiff company played foul in forging the documents in respect of purchase of circular cutting machine and vertical cutting machine and declined the claim of the insurer to the said extent. However, decreed the suit filed by the plaintiff to the extent of Rs.56,73,531.32.

8. Defendant preferred appeal. Plaintiff filed cross objections. The Lower Appellate Court while returning the finding on issue No.1 held that the defendant failed to establish that the alleged fire was result of foul play on behalf of respondent-plaintiff to dis-entitled him from being indemnified under the insurance policy covernote Ex.P-6. The Lower Appellate Court while maintaining the judgment and decree passed by the Courts below, dismissed the appeal preferred by the defendant and allowed the cross objections preferred by the plaintiff partly to the extent that he was held entitled to the interest @ 9% per annum as against 6% interest granted by the Trial Court and modified the decree. Defendant has filed instant two appeals. One against dismissal of appeal and the other against partial acceptance of cross objections by the Lower Appellate Court.

9. Learned counsel appearing for the appellant-defendant submits that once both the Courts below found that the bills submitted by the plaintiff qua purchase of machines were not genuine, the Courts below ought not have interfered in the repudiation of the claim. Mr. Gupta

raises plea invoking doctrine of *uberrimae fidei*. He submits that the contract of insurance is based upon good faith. Once it has been proved on record that the insured submitted fake bills to support exaggerated claim, whole of the claim needs to be repudiated as a fraudulent claim. He relies upon judgment rendered by English Court in ***Manifest Shipping Co. Ltd. vs. Uni-Polaris Shipping Co. Ltd. and others*** reported as ***[2001] 1 All England Reporter 743 (popularly known as the Star Sea case)***. He submits that making of a fraudulent claim by the insured would entitle the insurer to avoid the contract. The fraud being fundamentally inconsistent with the bargain and the continuation of the contractual relationship between the insurer and the insured, the claim based upon fraudulent bills has to be rejected and thus repudiation of claim by the insurer cannot be faulted.

10. *Per contra*, Mr. Sunil Chadha, senior counsel for the plaintiff-respondent submits that the repudiation of the claim by the insurance company is based upon surveyor's report. Though the report of the surveyor has been tendered in evidence, but the same cannot be looked into for want of formal proof. Surveyor having not been examined, the report cannot be held to be proved in accordance with law. He further submits that even if for the sake of arguments, the bills are found to be not genuine as claimed by the appellant, whole of the claim of the plaintiff cannot be rejected, as the damage caused by an accidental fire stands proved and is not disputed. He thus, submits that even if the invoices submitted qua the machinery are found to be not genuine, only

claim regarding machinery can be denied as has been held by the Courts below. It cannot be a ground to repudiate whole of the claim. He further submits that the claim qua machinery has been rightly severed by the Courts below while upholding the liability of the insurance company to indemnify the insured qua loss suffered by him in fire which stands proved in accordance with law.

11. On 09.01.2025, the arguments were heard and the judgment was reserved. However, on 08.04.2025, the matter was ordered to be re-heard. The judgment referred to by Mr. Gupta i.e. ***Star Sea case (supra)*** stands further clarified by UK Supreme Court in the case of ***Versloot Dredging BV and another vs. HDI Gerling Industrie Versicherung AG and others*** reported as ***[2016] 3 WLR***, wherein fraudulent claim has been distinguished from the collateral lies and the ratio of law laid down in the case of ***Manifest Shipping Co. Ltd. (supra)*** has been held to be not applicable in the case involving collateral lies on part of insured. Both the senior counsels requested for time to go through judgment in the case of ***Versloot Dredging BV (supra)*** and address arguments.

12. Mr. Gupta has reiterated his reliance upon the ratio of law laid down in ***Star Sea case (supra)*** to submit that it is a case of fraudulent claim and not that of collateral lies and thus ***Versloot's*** case will not apply. However, Mr. Chadha has supported the judgments and decree passed by the Courts below to submit that even if the invoices submitted qua the machinery are held to be not genuine, whole of the claim cannot be repudiated and it is only the claim qua the machines which has to be

rejected.

13. I have heard counsel for the parties and have carefully gone through the records of the case.

14. Relationship of insured and insurer is not in dispute. It is also not in dispute that the insured paid premium for plant and machinery and the same got destroyed in the fire. Acceptance of premium qua plant and machinery is not in dispute. However, it is being claimed that the invoices submitted along with claim to prove purchase of machinery are fake. Both the Courts below have also found that the plaintiff could not prove the genuineness of the invoices qua purchase of plant and machinery. The said finding is not under challenge and is affirmed. The issue before this Court is:-

> (i) Whether the claim raised by the insured needs to be repudiated in whole for want for submission of fake bills qua purchase of machinery?

15. The contract of insurance being contract *uberrimae fidei,* i.e. contract of utmost good faith is an established norm. The aforesaid principle has been repeatedly invoked by Courts in India while dealing with the contract of insurance holding that material facts need to be disclosed. Reference can be made to following observations made by Supreme Court in the case of ***Satwant Kaur Sandhu vs. New India Assurance Co. Ltd. (2009) 8 SCC 316***r:-

> "18. A mediclaim policy is a non-life insurance policy meant to assure the policy holder in respect of certain expenses pertaining to injury, accidents or hospitalizations. Nonetheless, it is a contract of insurance falling in the category of contract

uberrimae fidei, meaning a contract of utmost good faith on the part of the assured. Thus, it needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not. Of course, obligation to disclose extends only to facts which are known to the applicant and not to what he ought to have known. The obligation to disclose necessarily depends upon the knowledge one possesses. His opinion of the materiality of that knowledge is of no moment. (See: *Joel v. Law Union & Crown Insurance Co.* [(1908) 2 KB 863 (CA)])

19. In *United India Insurance Co. Ltd. v. M.K.J. Corpn.* [(1996) 6 SCC 428], this Court has observed that it is a fundamental principle of insurance law that utmost faith must be observed by the contracting parties. Good faith forbids either party from non- disclosure of the facts which the party privately knows, to draw the other into a bargain, from his ignorance of that fact and his [1908] 2 K.B. 863 (1996) 6 SCC 428 believing the contrary. (Also see: *Modern Insulators Ltd. v. Oriental Insurance Co. Ltd*. [(2000) 2 SCC 734])

20. *MacGillivray* on Insurance Law (10th Edn.) has summarised the assured's duty to disclose as under:

> "...the assured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the assured but neither known nor deemed to be known by the insurer. Breach of this duty by the assured entitles the insurer to avoid the contract of insurance so long as he can show that the non-disclosure induced the making of the contract on the relevant terms."

21. Over three centuries ago, in *Carter v. Boehm* [(1558-1774) All ER Rep 183 : (1766) 3 Burr 1905], Lord Mansfield had succinctly summarised the principles necessitating a duty of disclosure by the assured, in the following words: (All ER pp. 184 H-185 I)

> "Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risqui run is really different from the risqui understood and intended to be run at the time of the agreement...The policy (2000) 2 SCC 734 (1766) 3 Burr. 1905 would be equally void against the underwriter if he concealed...Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary."

Having said so, as noted above, the next question for consideration would be as to whether factum of the said illness was a "material" fact for the purpose of a mediclaim policy and its non-disclosure was tantamount to suppression of material facts enabling the Insurance Company to repudiate its liability under the policy?

22. The term "material fact" is not defined in the Act and, therefore, it has been understood and explained by the Courts in general terms to mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or determining whether he would like to accept the risk. Any fact which goes to the root of the Contract of Insurance and has a bearing on the risk involved would be "material".

23. As stated in *Pollock and Mulla's Indian Contract and Specific Relief Acts:*

> “any fact the knowledge or ignorance of which would materially influence an insurer in making the contract

> or in estimating the degree and character of risks in fixing the rate of premium is a material fact."

24. In this regard, it would be apposite to make a reference to Regulation 2(1)(*d*) of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002, which explains the meaning of term "material". The Regulation reads thus:

> 2. *Definitions*.-In these regulations, unless the context otherwise requires,-
>
> (a)-(c)***
>
> d) 'proposal form' means a form to be filled in by the proposer for insurance, for furnishing all material information required by the insurer in respect of a risk, in order to enable the insurer to decide whether to accept or decline, to undertake the risk, and in the event of acceptance of the risk, to determine the rates, terms and conditions of a cover to be granted;
>
> Explanation.-'Material' for the purpose of these regulations shall mean and include all important, essential and relevant information in the context of underwriting the risk to be covered by the insurer."

Thus, the Regulation also defines the word "material" to mean and include all "important", "essential" and "relevant" information in the context of guiding the insurer to decide whether to undertake the risk or not.

25. The upshot of the entire discussion is that in a Contract of Insurance, any fact which would influence the mind of a prudent insurer in deciding whether to accept or not to accept the risk is a "material fact". If the proposer has knowledge of such fact, he is obliged to disclose it particularly while answering questions in the proposal form. Needless to emphasise that any inaccurate answer will entitle the insurer to repudiate his liability because there is clear presumption that any information sought for in the proposal form is material for the purpose of entering into a Contract of Insurance."

16. Similar observation has been made by Supreme Court in the case of ***Mahakali Sujatha vs The Branch Manager, Future Generali India Life Insurance Company Limited & Another, reported as 2024(8) SCC 712:-***

> "It may also be observed that insurance contracts are special contracts based on the general principles of full disclosure inasmuch as a person seeking insurance is bound to disclose all material facts relating to the risk involved. Law demands a higher standard of good faith in matters of insurance contracts which is expressed in the legal maxim ***uberrimae fidei***."

17. Underlying the importance of the principle of utmost good faith at the time of raising claim and the effect of fraudulent claims on the insurance claim raised by the insured, Lord Hobhouse in the case of ***Star Sea case (supra)*** observed as under:-

> "[62] Where an insured is found to have made a fraudulent claim upon the insurers, the insurer is obviously not liable for the fraudulent claim. But often there will have been a lesser claim which could properly have been made and which the insured, when found out, seeks to recover. The law is that the insured who has made a fraudulent claim may not recover the claim which could have been honestly made. The principle is well established and has certainly existed since the early nineteenth century (see *25 Halsbury's Laws* (4th edn) (1994 reissue) para 492; *Welford and Otter-Barry's Law relating to Fire Insurance* (4th edn, 1948) p 289 ff). This result is not dependent upon the inclusion in the contract of a term having that effect or the type of insurance; it is the consequence of a rule of law. Just as the law will not allow an insured to commit a crime and then use it as a basis for recovering an indemnity (see *Beresford v Royal Insurance Co Ltd* [1937] 2 All ER 243, [1937] 2 KB 197), so it will not allow an insured who has made a fraudulent claim to recover. The logic is simple. The

> fraudulent insured must not be allowed to think: if the fraud is successful, then I will gain; if it is unsuccessful, I will lose nothing."

18. The ratio of law laid down in ***Star sea*** case was further considered by U.K. Supreme Court in the case of ***Versloot Dredging BV (supra).*** While culling out the precise proposition canvassed in the case, Lord Sumption observed as under:-

> "1. At common law, if an insured makes a fraudulent claim on his insurer, the latter is not liable to pay the claim. In relation to contracts concluded after 12 August 2016, the rule has been restated and its other consequences defined in section 12 of the Insurance Act 2015. The question at issue on this appeal is what constitutes a fraudulent claim. This is a controversial question at common law, which the Act of 2015 does not resolve. Three possible situations may be relevant. First, the whole claim may have been fabricated. In principle the rule would apply in this situation but would add nothing to the insurer's rights. He would not in any event be liable to pay the claim. Secondly, there may be a genuine claim, the amount of which has been dishonestly exaggerated. This is the paradigm case for the application of the rule. The insurer is not liable, even for that part of the claim which was justified. Third, the entire claim may be justified, but the information given in support of it may have been dishonestly embellished, either because the insured was unaware of the strength of his case or else with a view to obtaining payment faster and with less hassle. The present appeal is concerned with embellishments of this kind. They are generally called "fraudulent devices". The expression is borrowed from a standard clause avoiding contracts of fire insurance which was widely used in the 19th and early 20th centuries. But it is archaic and hardly describes the problem. I shall use the expression collateral lies, by which I mean a lie which turns out when the facts are found to have no relevance to the insured's right to recover. The question is

whether the insurer is entitled to repudiate a claim supported by a false statement, if the statement was irrelevant, in the sense that the claim would have been equally recoverable whether it was true or false."

19. While laying down principle of materiality of the circumstance, in reference to the impact that it would have on the mind of the prudent underwriter, the Court observed as under:-

"33. There are in my opinion two reasons why this test of materiality cannot apply to lies told in the course of making a claim.

34. The first is that no impact on the mind of the prudent underwriter is required in that context. As Lord Goff said of pre-contractual disclosure in Pan Atlantic (p 517G-H), "if actual inducement is not required, materiality becomes all important." In that case, there were two competing tests of materiality: a "weak" test, which depended on whether the relevant fact would have influenced the thought processes of the hypothetical prudent underwriter, and a "strong" test which would have depended on whether it would have been decisive. Lord Goff went on to point out that it was only because the Appellate Committee thought it necessary to show that the actual underwriter was induced to accept the risk on the particular terms that the majority felt able to adopt the weak test of materiality. It is, however, difficult to see what relevance either test of materiality can have if there is no requirement of inducement. The function of materiality in the law of misrepresentation and non- disclosure is to limit the matters upon which the insurer can relevantly claim to have relied. If the insured's statements need have no actual impact on the insurer at all, why should it matter what impact it might objectively have been expected to have? Even the strong test of materiality rejected in *Pan Atlantic case*, i.e that the relevant fact must be decisive, fails to connect the misrepresentation or non-disclosure to the claim if the law does not require the actual insurer to have made any decision at all in response to

what he has been told. If the question of materiality is not to depend on the impact of the statement on the mind of the insurer, then it is difficult to see why it should depend on the merits of the claim as they appeared to be at any particular moment, as opposed to the merits of the claim as they actually were.

35. The second reason is that the insurer's assessment of a claim is of a quite different character from his assessment of a risk at the pre-contract stage. In deciding whether to accept the risk and on what terms, the insurer has a complete discretion. There are no legal standards by which his decision can be assessed. It is a pure question of judgment, which the hypothetical prudent insurer may make for good reasons or bad in his own commercial interest. Hence the critical importance of the impact of non-disclosure on his thought processes. But when deciding whether to accept a claim under an existing contract, the insurer's position is very different. He has no discretion, because he is already bound. The only question properly before him is whether to acknowledge a liability that if it exists at all exists already, whether or not he realises it. Ultimately, his assessment is simply an attempt to predict what a court would decide. In that context, the only rational test of the materiality of a lie must be based on its relevance to a court which is in a position to find the relevant facts.

36. For this reason, although a lie uttered in support of a claim need not have any adverse impact on the insurer, I consider that it must at least go to the recoverability of the claim on the true facts. By that test, the fraudulent claims rule applies to a wholly fabricated claim. It applies to an exaggerated claim. It applies even to the genuine part of an exaggerated claim if the whole is to be regarded as a single claim, as it must be. But it does not apply to a lie which the true facts, once admitted or ascertained, show to have been immaterial to the insured's right to recover. It is true that the moral character of the insured's lie is in no way mitigated by the fact that it turns out to have been unnecessary. But there are principled limits to the role which a claimant's immorality can play in defeating his

> legitimate civil claims. These limits have been applied outside the realm of insurance ever since the failure two centuries ago of Lord Mansfield's attempt to introduce a general duty of good faith in the law of contract. Ultimately, however, even the law of insurance is concerned more with controlling the impact of a breach of good faith on the risk than with the punishment of misconduct. The extension of the fraudulent claims rule to lies which are found to be irrelevant to the recoverability of the claim is a step too far. It is disproportionately harsh to the insured and goes further than any legitimate commercial interest of the insurer can justify. It leads naturally to the anomalous consequences which Popplewell J, rightly to my mind, pointed out in this case. Those anomalies are all the more remarkable for the fact that the rule has no application to collateral lies told after the commencement of legal proceedings, when experience suggests that parties are most likely to gild the lily. In my opinion, it is not the law."

20. The 3 possible situations that may arise in the matters involving claim of insurance as also canvassed in ***Versloot's case*** are:-

> 1) Where the whole claim may have been fabricated.
>
> 2) Where in a genuine claim amount has been dishonestly exaggerated (Fraudulent claim).
>
> 3) Where claim is justified but information given in support of it has been furnished dishonestly (Collateral lie)

21. The conundrum is to segregate the cases falling in IInd and IIIrd category. Quite often these two situations seem to the overlapping and similar which are hard to distinguish. Answer lies in understanding clear difference between fraudulent claim and collateral lie.

22. While explaining between fraudulent exaggerated claim and a claim supported by collateral lie, Lord Sumption observed as under:

> "In this context, there is an obvious and important difference between fraudulently exaggerated claim and a justified claim supported by collateral lies. Where a claim has been fraudulently exaggerated, the insured's dishonesty is calculated to get him something to which he is not entitled."

23. Thus the test to be applied in the present case is:

> Whether even in the absence of fake invoice qua machinery submitted by the insured, the receiver would have been liable?

In case the answer to the question is in affirmative, the fake invoice would fall within the ambit of collateral lie and not fraudulent claim.

24. Admittedly, the fire on 07.06.2000 did take place. There is no evidence that the same was result of any foul play. It is also admitted that at the time of accepting the premium, the insurance company officials visited the company premises. They assessed the value of the stocks, building and machinery. Premium qua machinery was also accepted. The risk was insured. Had the insured not submitted fake invoices, insurer was still liable to indemnify him for the loss suffered and damage caused by fire including the cost of plant and machinery assessed by insurer at the time of accepting premium. It may be a case of collateral lies and embellishment of the claim at the hands of the claimant, but cannot be said to be a case of fraudulent claim.

25. In view of above, this Court finds that the law of insurance being concerned more with controlling the impact of the breach of good

faith on the risk rather than the punishment of misconduct, the repudiation of claim at the hands of insured cannot be sustained.

26. In view of above, this Court does not find any reason to interfere in the present appeals and the same are ordered to be dismissed.

27. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

28. A photocopy of this order be placed on the file of other connected case.

(PANKAJ JAIN)
JUDGE

31.07.2025
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : Yes