IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 5712 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
		No

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THE ORIENTAL INSURANCE COMPANY LIMITED
Versus
POOJA PAPER TUBE INDUSTRIES

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Appearance:
MS KARUNA V RAHEVAR(3818) for the Appellant(s) No. 1
THAKKAR AND PAHWA ADVOCATES(1357) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 17/08/2026

JUDGMENT

1. Being aggrieved and dissatisfied with judgment and decree dated 12.05.2018 passed by learned City Civil Court, Ahmedabad in Civil suit No.4508 of 1999, the original defendant Oriental Insurance Co. Ltd. has filed this appeal under section96 of the Code of Civil Procedure, 1908 (for short **"CPC"**).

2. For convenience parties are referred as per their status before the learned Trial Court.

3. The Plaintiff/Respondent instituted the suit for the recovery of a sum of Rs.2,24,000/- (Rupees Two Lakh Twenty-Four Thousand Only) along with interest from the Defendant/Appellant, The Oriental Insurance Company Limited. Initially, an *ex-parte* decree was passed on account of the non-

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appearance of the Defendant/Appellant. However, vide order dated 26.09.2002 passed in Civil Miscellaneous Application (CMA) No. 21 of 2002, the learned Trial Court set aside the said *ex-parte* decree and restored the Civil Suit to its original file.

4. The brief facts leading to the filing of the present dispute are that the Plaintiff/Respondent is engaged in the manufacture of PTY, DTY, and POY paper tubes at Village Rajpur, Mehsana Highway, Taluka Kadi, District Mehsana, with its registered office situated at Ahmedabad. It was the case of the Plaintiff - Respondent that its stock was duly insured with the Appellant – defendant- Insurance Company for a period commencing from 12.08.1994 to 11.08.1995 against payment of a premium of Rs.2,616/-. The Appellant - Insurance Company accepted the risk upon accepting the premium and issued Policy No. 141406-11-95-00843, which *inter-alia* covered risks arising out of fire, theft, and short circuits. The said policy was issued subject to specific terms and conditions and was renewed from time to time. On 14.04.1995, an electrical short circuit allegedly occurred within the factory premises, where fire broke out and destroyed the stock stored in the godown. The local police authorities were duly informed, and the Surveyor appointed by the Appellant was also informed vide letter dated 19.04.1995. The Surveyor inspected the site and submitted his assessment report, while the police drew up a *panchnama* during the course of their investigation. Since policy purchased by the plaintiff was in force on the date of incident, plaintiff claimed and demanded amount of loss suffered due to destroy of stock by fire. The Defendant/Appellant Insurance Company contested the

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claim by filing its Written Statement at Exhibit 59, *inter-alia* denying the claim of the Plaintiff/Respondent and challenging the very maintainability of the suit. It was contended by the Appellant that the fire broke out in the factory premises solely due to the negligence and fault of the Plaintiff, thereby the Insurance Company is not liabile to pay damages. The Defendant/Appellant further contended that the suit was entirely false and frivolous, and since the incident was not covered under the strict terms and conditions of the insurance policy, the Plaintiff - Respondent was not entitled to seek any compensation from the Appellant.

5. The learned Trial Court framed the issues. In regards to issues, both the parties were permitted to lead evidence. Only plaintiff has lead oral and documentary evidence. Oriental Insurance Company Ltd. did not produce any documentary evidence and plaintiff was not cross examined.

5.1. In view of above, learned Trial Court decreed the suit to grant compensation of Rs.2 lakhs with interest at rate of 8% from the date of suit till realization of the amount.

6. Assailing the impugned judgment and decree, learned advocate Ms. Karuna Rahevar, appearing on behalf of the Appellant, submitted that the impugned judgment is legally unsustainable on two grounds. Firstly, she contended that the learned Trial Court failed to provide any reasons for assessing and awarding compensation to the tune of Rs.2,00,000/- (Rupees Two Lakh Only); the impugned judgment remains

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completely silent as to the evidence upon which the said quantum of compensation was determined. Secondly, she urged that the terms and conditions of the insurance policy, read with the Surveyor's report, clearly specify that the insured stocks were to be stored in a separate building, whereas the fire admittedly broke out within the factory premises and became reason for loss of stock.

6.1. By taking this Court through proposal for purchase of fire insurance, learned advocate Ms. Rahevar submitted that sum of Rs.5 lakhs was insured in regards to stock and stock in process and not in regards to stock in shop or godown or stock in open. It is submitted that policy covers risk of Rs.5 lakhs for stock in open and not for stock in shop or godown or stock and stock in process. Therefore, looking to these aspects, learned Trial Court committed serious error in granting compensation of Rs.2 lakhs for stock lying in godown or in close premises adjacent to factory premises.

6.2. Upon above submissions, learned advocate Ms.Rahevar submitted to allow the appeal and to quash and set aside impugned judgment and decree and to dismiss the suit.

7. Per contra, learned advocate Ms. Simran Pahwa, appearing on behalf of the Respondent, supported the impugned judgment and decree, submitting that it was passed in accordance with the law. She drew the attention of this Court to the insurance policy on record and submitted that the Plaintiff/Respondent had duly insured its 'stock and stock-in-process' for a sum of

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Rs.5,00,000/- (Rupees Five Lakh Only) as per the Proposal Form for Fire Insurance, against the payment of the requisite premium. She contended that the learned Trial Court had rightly relied upon the categorical findings in the Surveyor's report to assess and award the quantum of compensation. She further submitted that no witness was examined on behalf of the Defendant/Appellant Insurance Company to legally prove the terms and conditions of the policy, nor did the Insurance Company produce the original proposal form during the trial proceedings. It was further urged that since the Defendant/Appellant Insurance Company failed to lead any oral or documentary evidence to counter or rebut the evidence adduced by the Plaintiff/Respondent, the learned Trial Court was fully justified in decreeing the suit, and as such, the present appeal deserves to be dismissed.

8. Having heard learned advocates for the parties and perusing the impugned judgment and decree as well as record and proceedings of the case, following undisputed facts emerge :- .

(1) The Plaintiff/Respondent had purchased a Fire Insurance Policy from the Defendant/Appellant Insurance Company, providing coverage to the tune of Rs.5,00,000/- (Rupees Five Lakh Only) for its stock.
(2) The incident of fire occurred on 14.04.1995, which admittedly fell within the currency of the said insurance policy.

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(3) The Plaintiff/Respondent's factory premises and its underlying stocks were destroyed in the said fire, following which the Surveyor assessed the quantum of loss.
(4) The Defendant/Appellant Insurance Company, subsequent to the filing of its Written Statement, failed to cross-examine the Plaintiff/Respondent's witnesses or to adduce any independent oral or documentary evidence during the trial proceedings.

9. Learned Trial Court framed issues at Exh.10 which reads as under :-

"1. Whether the plaintiff proves that the insurance company is liable to pay up the
amount of Rs.2,24,000/ ?
2. Whether the plaintiff is entitled to claim the amount as prayed for with interest at the rate of 18% ?
3. What order and decree ?"

10. Learned Trial Court answered issue no.1 and 2 "in partly affirmative" and issue no.3 "as per final order".

11. Perusal of evidence on record and on re-examination, it establish that plaintiff has produced police at Exh.14, letter given to Kadi police station at Exh.15; panchanama of the site at Exh.16; plaintiff's letter dated 19.04.1995 to surveyor statement of stock given to Bank of India with whom it is hypothecated by plaintiff at Exh.18; letters received from Oriental Insurance Company at Exh.19 and 20; letter written by plaintiff to surveyor regarding fire claim at Exh.21 and other communication from

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Exh.22 to 29 and notice also.

12. The surveyor report carried by P.J.Bhatt and Company (Annexure C) at page no.24 of the paper book record following damages :-

> *"There were heavy damages to the Stocks of Raw Materials of Kraft Paper in Reel form and lying in open compound and/or godown by fire and water used in extinguishing the fire. Most of the damaged Stocks being in open compound there was heavy damaged to Kraft Paper by fire. Many were completely destroyed and burnt in fire. The fire had penetrated deep inside the paper Reel and rendered useless. Some material of damaged Stocks being made of Paper had formed into Ashes by huge fire. Some of the Reels which were lying in the godown were also badly damaged in fire and water used in Extinguishing the fire. The insured Main factory Building is detached from the godown. The fire has taken place in open compound and spread to the Stocks lying in godown which is detached from Main factory Building. The damaged Stocks was thoroughly cheeked and verified by us. The damaged Stocks being made of Kraft Paper was completely destroyed and burnt in fire.*
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> *To the best of our knowledge and information, all the warranties were complied with by the Insureds at the time of Survey. The Insureds had also got one Policy with M/s. The Oriental Insurance Co. Ltd., Branch Office No. 6 Ahmedabad vide their Policy No. 14106/11/95/00843 for Rs.5,00,000/- The loss to the same is also assessed on behalf of Insurance Company."*

13. On perusal of impugned judgment, it appears that learned advocate for Oriental Insurance company Ltd. did not bother to argue the matter. The learned Trial Court, despite having extended full and ample opportunity to the Appellant to argue the matter, proceeded to adjudicate the dispute on the basis of

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the pleadings and the Written Statement available on record. In the absolute absence of any defence evidence led by the Appellant, the learned Trial Court evaluated the evidence adduced by the Plaintiff/Respondent and, in para 15 of the impugned judgment, held as under :-

> *"15. Though there is no clear amount is stated in FIR or panchnama or surveyor report but Exh.18 is placed in Bank of India and as per statement attached on dtd.31.03.1995 finished goods or raw material including butter paper, role paper was worth Rs.16,87,666/ and the incident occurred on 14.04.1995, and on 14.04.1995 the closing stock was Rs.17,28,526/ which include finished goods, raw material of different type etc. out of which according to plaintiff stock of material burnt on 14.04.1995 worth Rs.2 lakhs. As per panchnama there are a huge burnt material was lying in factory compound and the surveyor is bound to verify and report to insurance company. Exh.21 is letter along with the annexure produced before surveyor Mr.P.J.Bhatt and company in which the plaintiff has produced copy of colour photo, electricity bill, bills and packing slip, statement of sales for the year 1994-95, statement of purchase, balance sheet, profit and loss account for the year 1992-93 and 1993-94 and stock statement and once again the plaintiff has clarified about the statement of salvage value, xerox copy of delivery slip, statement of sales, provisional profit and loss account as on 14.04.1995, statement of sound stock of goods as on 14.04.1995, copy of police report, lay out plan of unit and all this document was supplied to surveyor Mr.P.J.Bhatt and company to comply the telephonic talk. Therefore, plaintiff is entitled to get Rs.2 lakhs from defendant with interest at the rate of 8% from the date of suit till realization of amount and hence following final order is passed.*
>
> *O R D E R*
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> *1. The plaintiff application is partly allowed.*
> *2. The plaintiff is entitled to get Rs.2 lakhs as damaged value of material from defendant insurance company.*

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3. The defendant is directed to pay Rs.2 lakhs with interest at the rate of 8% from the date of suit till realization of amount.
4. The defendant has to bear their own cost as well as cost of plaintiff.
5. Decree should be drawn accordingly."

14. Since no counter-evidence was adduced by the Appellant - Insurance Company to rebut or dispel the evidence led by the Plaintiff, on perusal of surveyor report placed on record, which covers risk of stock and stock in process, insurance company is liable to pay compensation. The technical interpretation of proposal form as well as insurance policy without adducing evidence in that regards is not permissible. Nonetheless leaf of policy produce on record cover the risk of stock and stock in progress. This condition is sufficient to cover risk and liability of insurance company for risk purchased. In nutshell, learned Trial Court has rightly earmarked liability upon insurance company to pay loss suffered by plaintiff due to fire.

15. Thus, I see no reason to interfere with impugned judgment. Consequently, the first appeal stands dismissed. Interim relief granted earlier, if any, stands discontinued. Record and proceedings, if any, be send back to learned Trial Court concerned.

16. If any amount deposited pursuant to judgment and decree before this Court or before Executing Court, it shall be disbursed to the original plaintiff.

(J. C. DOSHI,J)

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