

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 359 OF 2013

1. M/S. FLOWTEX PRODUCTS,

Through its Proprietor, Shri Krishan Goyal, 8, Camac Street,
Shantiniketan Building, 6th Floor, Room No. 8,

KOLKATA - 700017.

.....Complainant(s)

Versus

1. M/S. UNITED INDIA INSURANCE CO. LTD. ,

Through its Chief Regional Manager, Himalaya House, 7th
Floor, 38-B, J. L. Nehru Road,

KOLKATA - 700001.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT

For the Complainant : Mr. S.M. Tripathi, Advocate

For the Opp.Party : Ms. Nanita Sharma, Advocate
Mr. Fareek Faroo, Advocate

Dated : 01 May 2023

ORDER

1. The present Consumer Complaint has been filed under Section 21 of the Consumer Protection Act, 1986 (for short "the Act") by M/s Flowtex Products (hereinafter referred to as the Complainant Company) against Opposite Party, i.e., United India Insurance Co. Ltd. (hereinafter referred to as Opposite Party Insurance Company).

2. The brief facts of the case are that the Complainant Company, which is engaged in the business of manufacturing of Plastic Disposable Cups, Glasses, Containers etc. in different sizes and shapes using different raw materials like plastic granules, inks, dyes, packaging materials etc., obtained a Standard Fire & Special Perils Insurance Policy bearing No. 500700/11/10/11/00000106 dated 13.7.2010 for the period 14.7.2010 to 13.7.2011 from the Opposite Party Insurance Company covering the risk of fire and allied perils for the sum insured of ₹1,00,00,000/- on factory shed buildings (without plinth), and for the sum insured of ₹3,00,00,000/- on contents viz. the Plant Machinery & Accessories, Electrical Installations, Fittings, Cables, Control Panels etc. by paying a sum of ₹64,856/- towards insurance premium to the Opposite Party Insurance Company. Unfortunately, during the currency of the Policy, on 16.4.2011, at around 3:15 AM, a serious fire broke out in the factory which could be controlled only in about 10 hours with the joint efforts of the Factory workers and the Fire Brigade with 15 odd Fire Tenders. The buildings, Plant & machinery, the Electrical Installation and the stocks including packing material were destroyed/ severely damaged by the said fire. The fire incident was immediately informed to the Opposite Party Insurance Company.

3. Vide letter dated 17.4.2011 the officer-in-charge of the Fire Station wrote to the Police Station to register an FIR as initially they presumed that certain provisions of the West Bengal Fire Service Act, 1950 were not found complied with at the insured factory. At the instance of the Fire Station, the Police Authorities from Shibpore Police Station investigated into the occurrence and concluded that the fire was

probably caused by a short-circuit. The Police reported that no foul play was detected behind the incident and nothing was removed from the factory premises, prior and after the fire incident. The Fire Brigade also submitted its Fire Report dated 28.6.2011 to the Presidency Magistrate Howrah detailing the property which was totally damaged in the fire incident. As to the cause of fire, the Fire Brigade recorded that the cause of fire could not be ascertained. A Surveyor along with Insurance Company's Chief Regional Manager Mr. P. Sarkar & Mr. A.K. Mukherjee visited the factory on 17.4.2011 and took note of the damage caused by the fire.

4. It is the case of the Complainant that as a result of the destruction caused by the fire, it had suffered a huge loss of ₹4,79,98,140/-, however, he was surprised when he received a letter dated 27.7.2012 from the Opposite Party Insurance Company denying the claim and repudiating liability under the Insurance Policy.

5. On 31.7.2012 the Complainant wrote to the Opposite Party to provide the reports upon which the denial of the claim was based. A copy each of the report of Surveyors M/s Rakesh Kapoor & Co. and the report of M/s Truth Labs was thereby provided to the Complainant. On a study of the Survey Report and also the report of M/s Truth Lab the Complainant found that both the Reports contained a large number of anomalies and inconsistencies and were biased in favour of the insurers. All the allegations made in the Reports were point by point countered in a detailed reply was sent by the Complainant to the Opposite Party Insurance Company.

6. The matter for forensic examination of the three samples drawn from the fire affected debris by the Police was sent on 26.4.2011 by the learned Judicial Magistrate to the Office of the Director-cum-Senior Chemical Examiner, Forensic Science Laboratory, Government of West Bengal, Kolkata. The Physic-Chemical examination by the said Government Laboratory revealed no trace of foreign inflammable substance like mineral oil (Petrol, Kerosene, diesel) in any of the contents of the said three samples. A copy of the said report of the Government Laboratory was sent by the Complainant to the Opposite Party Insurance Company. All the allegations made in the Surveyor Reports and the Truth Lab Report were point by point countered in a detailed reply was sent by the Complainant to the Opposite Party Insurance Company with a request to review their letter dated 05.10.2012 by which the genuine claim of the Complainant was repudiated by the Opposite Party Insurance Company, but to no avail.

7. Being aggrieved, alleging deficiency in service and unfair trade practice on the part of the Opposite Party Insurance Company, the Complainant Company has filed the present Complaint seeking following reliefs:-

“a) Direct the OP to pay a sum of ₹3,45,37,681/- being the loss of/damage to the insured property as a result of the said fire on 16.4.2011;

b) Direct the OP to pay a sum of ₹1,26,586/- towards fire-fighting expenses paid by complainant to the Fire Brigade;

c) Direct the OP to pay a sum of ₹4,00,000/- towards debris removal expenses incurred and paid by the complainant;

- d) Direct the OP to pay a sum of ₹15000/- paid by complainant as required by surveyor towards photography & videography expenses and bills provided to the surveyor;
- e) Direct the OP to pay an amount of ₹18,779/- towards salvage advertisement expenses paid as required by the surveyor
- f) Direct the OP to pay an interest @ 12% per annum on the said amount of ₹3,50,98,046/-from 16.4.2011 up to the date of this complaint and thereafter upto the date of realization
- g) Direct the OP to pay a sum of ₹500000/- towards harassment caused to the complainant in entering into avoidable correspondence and consequent expenses
- h) Direct the OP to pay the costs of this litigation.
- i) Pass any other or further relief as this Hon'ble Commission finds fit.”

8. The Opposite Party Insurance Company contested the Complaint by filing its Written Statement in which it was stated that the Complainant had falsely claimed that the Surveyor took more time to furnish the report due to any of his own faults. It was further submitted that findings of the Surveyor and the Investigator, based upon which the claim of the Complainant has been repudiated, revealed the presence of hydrocarbons as fire accelerators indicating that the fire originated from the raw material storage area on the ground floor and that the fire was not accidental but a result of some extraneous fire accelerants such as kerosene, hence indicating foul play on the part of the management of the Complainant firm. It was denied that the workers in the night shift tried to extinguish the fire with the help of fire extinguishers. It was further submitted that the fire brigade was called after almost an hour of the fire having been noticed by the workers of the Complainant, as was evident by the Fire report; Municipal Fire Services West Zone Howrah (West Bengal Fire & Emergency Services) which attended to the said fire and issued its report bearing their No. #FSE/FIRE/510/11 dated 28.06.2011 wherein, the time of receipt of call for fire was mentioned as 4:05 AM, whereas in the Complaint, the fire was claimed to have been started around 3:15 AM. It was further urged that the samples by the Complainant were drawn in complete violation of the standard procedure, as they were not collected by the Lab but someone drew the samples and took them to the lab which simply did the physical examination of the samples presented and it did not have access to spectrograph, as had been brought out by the Investigator in his report. On the other hand, the presence of Kerosene accelerants concluded by the Investigating agency was based on high and accurate level of GC analysis of the samples drawn. It was hence, submitted that the repudiation of claim was on the ground of violation of Condition 8 of the policy conditions, in as much as, the fire was deliberately started and was allowed to progress which was not possible without the involvement of the management.

9. Mr. S. M. Tripathi, learned Counsel appearing on behalf of the Complainant submitted that the Surveyors had taken 14 months' time in submitting their report although IRDA (Protection of Policyholder's Interests) Regulations 2002, in para 9(2) state that "In no case shall a surveyor take more than six months from the date of his appointment to furnish his report." Further, it was argued that, the Commissioner of Central Excise himself felt that the fire dated 16.4.2011 that engulfed the entire goods and the factory shed was beyond the control of the human being and the factory authorities were not at fault to control the fire. It was urged that M/s Cholamandalam MS General Insurance Co. Ltd., the insurers of the two Tata make Light

Commercial Vehicles which were parked inside factory premises and got burnt in the same fire, also conducted their own investigation and found the fire to be accidental and have admitted and settled the complainant's claim on 1.8.2011. Therefore, the claim of the Complainant was within the scope of Insurance Policy and yet the Opposite Party had arbitrarily denied to settle it. It was submitted that the Complainant was entitled to claim ₹3,45,37,681/- for the loss and damage to the insured property by the said fire, and further to recover fire-fighting expenses paid, the debris removal expenses, the photography/ videography expenses paid as required by the surveyor, salvage advertisement expenses and interest on the said amounts for the reason of delay in payment. In conclusion, learned Counsel for the Complainant submitted that the Opposite Party's act amounted to deficiency in services & unfair trade practice as it failed to discharge their services due to which the complainant had to face huge financial loss.

10. Per contra Ms. Ms. Nanita Sharma, learned Counsel for the Opposite Party Insurance Company reiterating the contentions raised in the Written Statement, submitted that in light of the findings of the investigator, the fire was originated in the intersection of raw material storage area and packing box storage room near the entry gate on account of use of extraneous fire accelerants such as kerosene, which was contrary to the assumption of the Complainant based on the finding of the Police that the fire was presumably caused due to a short circuit somewhere in the office area. They further submitted that the police were neither the authority nor an expert in concluding that the fire was probably caused by the short circuit. It was further submitted that the Complainant had been running the unit in loss, for years together, showing and accounting net profit in the balance sheet by way of Miscellaneous Income and was only trying to divert the attention from the facts of the actual working. It was submitted that the claim of the Complainant was repudiated on the basis of the Surveyor Report, therefore, there is no deficiency in service on their part and it was prayed that the Consumer Complaint be dismissed.

11. I have heard Mr. S. M. Tripathi, learned Counsel for the Complainant Company; Ms. Nanita Sharma, learned Counsel for the Opposite Party Insurance Company and perused the Complaint, Written Statement, the documents filed by the respective Parties and have given a thoughtful consideration to the various pleas raised by them.

12. The Surveyor appointed M/s. Truth Labs to investigate the cause of fire, which after investigation, concluded that the cause of fire was on account of use of extraneous fire accelerants such as kerosene on the basis that the ashes contained highly inflammable hydrocarbon and on the basis of circumstantial evidence assumed the possibility of involvement of Management in initiation of fire. On the basis of the forensic report and in terms of condition 8 of the Policy, according to which in case of loss / damage be occasioned by wilful act or with the connivance of the insured, the Surveyor recommended repudiation of the claim. Consequently, the Opposite Party Insurance Company repudiated the claim of the Complainant on the basis of the Surveyor Report. While drawing conclusion, the Truth Lab ignored the fact that the Complainant is engaged in manufacturing of plastic products which have highly inflammable hydrocarbon; there were number of inflammable materials available on the factory, like, kerosene for cleaning machine parts, thinner for cleaning printing ink from machine parts, reducer for printing ink, printing ink, roto oil for compressor, gear oil for gear, hydraulic oil for thermoforming machine, grease bucket for machine etc., all these have high inflammable hydrocarbon. Therefore, the finding of traces of high inflammable hydrocarbon is inevitable, in view of which, the report of the Truth Lab can be said to be based on assumption and presumption and may be issued to please its master, i.e., the Opposite Party Insurance Company. On the other hand, as per Physic-Chemical Examination Report dated 04.08.2011 issued by Forensic Science Laboratory, Government of West Bengal, an independent Government Agency, no trace of foreign inflammable substance like Mineral Oil (Petrol, Kerosene, Diesel) has been detected. From the perusal of the Police Investigation Report dated 08.07.11 issued by S.I. Shibpore Police Station, it is also clear that no foul play was detected behind the fire incident and nothing was removed from the factory premises, prior and after the fire incident. From the perusal of the Reports, i.e., Report dated 04.08.2011 issued by Forensic Science Laboratory, Government of West Bengal and Report dated 08.07.2011 issued by S.I. Shibpore Police Station, it is clear that the cause of fire was not due to use of extraneous fire accelerants such as

kerosene as is opined by M/s. Truth Lab. Report dated 04.08.2011 issued by Forensic Science Laboratory, Government of West Bengal and Report dated 08.07.2011 issued by S.I. Shibpore Police Station can be said to be more authentic being issued by competent independent Government Agencies. Moreover, the Truth Lab only on the basis of circumstantial evidence has opined the involvement of the Complainant in Fire Incident but failed to present any cogent/solid evidence to prove the contention. On the basis of the report issued by M/s. Truth Lab, the Surveyor has recommended repudiation of the Claim of the Complainant. Despite having received the copy of the Physic-Chemical Examination Report prepared by Forensic Science Laboratory, Government of West Bengal, Kolkata, according to which no trace of foreign inflammable substance like mineral oil (Petrol, Kerosene, diesel) was traced in any of the contents of the samples collected from the Complainant Factory, the Opposite Party Insurance Company relying upon the Surveyor Report repudiated the claim of the Complainant Company.

13. A reference can be made to the decision of the Hon'ble Supreme Court in "Canara Bank v. United India Insurance Co. Ltd., Reported in (2020) 3 SCC 455" in which it has been held as under:-

"17. In any event, neither in the report of M/s Truth Labs nor in the other reports by the Insurance Company is there anything to show that the insured had set the cold store on fire. Whether the fire took place by a short circuit or any other reason, as long as insured is not the person who caused the fire, the Insurance Company cannot escape its liability in terms of the insurance policy. We reject the contention of the Insurance Company that the fire was ignited by the use of kerosene and hence it is not liable."

14. Similarly, in the present case, M/s Truth Labs has failed to produce any cogent evidence to show that the insured had set the factory on fire. Rather, report of the Government Agency, i.e., Forensic Science Laboratory, Government of West Bengal also revealed no trace of foreign inflammable substance like mineral oil (Petrol, Kerosene, diesel) and Police Authorities also concluded in their Report that no foul play was detected behind the incident meaning thereby ruling out the involvement of Complainant in Fire incident. Whether the fire took place by a short circuit or any other reason, as long as the insured is not the person who caused the fire, the Insurance Company cannot escape its liability in terms of the Insurance Policy. Respectfully following the principles laid down by the Hon'ble Supreme Court in "Canara Bank vs. United India Insurance Company (supra)" the Opposite Party Insurance Company is liable to settle the claim of the Complainant Company.

15. The Surveyor's Report is not the final word and it is not binding upon the insured or insurer. A reference can be made to the Judgment passed by the Hon'ble Supreme Court in "New India Assurance Co. Ltd. v. Pradeep Kumar, (2009) 7 SCC 787" in which it has been held as under:-

"21. Section 64-UM(2) of the Act, 1938 reads:

64-UM. (2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as 'approved surveyor or loss assessor'):

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor."

The object of the aforesaid provision is that where the claim in respect of loss required to be paid by the insurer is ₹20,000 or more, the loss must first be assessed by an approved surveyor (or loss assessor) before it is admitted for payment or settlement by the insurer. The proviso appended thereto, however, makes it clear that insurer may settle the claim for the loss suffered by insured at any amount or pay to the insured any amount different from the amount assessed by the approved surveyor (or loss assessor).

22. In other words although the assessment of loss by the approved surveyor is a prerequisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured."

16. It is not in dispute that the Complainant obtained Insurance Policy bearing Policy Number 500700/11/10/11/00000106 dated 13.7.2010 from the Opposite Party Insurance Company covering the risk of fire and allied perils for the sum insured of ₹1,00,00,000/- on factory shed buildings (without plinth), and for the sum insured of ₹3,00,00,000/- on contents viz. the Plant Machinery & Accessories, Electrical Installations, Fittings, Cables, Control Panels etc. The Opposite Party Insurance Company repudiated the claim of the Complainant on the basis of the report submitted by the Surveyor without considering the Physico-chemical examination Report prepared by Forensic Science Laboratory, Government of West Bengal, Kolkata, according to which no trace of foreign inflammable substance like mineral oil (Petrol, Kerosene, diesel) was traced in any of the contents of the samples collected from the Complainant Factory, but neither challenged quantum of the claim in their repudiation letter nor pressed any arguments impugning the quantum during the final hearing. Although the Complainant had filed fire claim of ₹4,79,98,140/- with the Opposite Party Insurance Company yet the Complainant has prayed for ₹3,50,98,046/- (₹3,45,37,681/- towards loss/damage of the insured property after deducting value of salvage, + ₹1,26,586/- towards fire-fighting expenses + ₹4,00,000/- towards debris removal expenses + ₹15,000/- towards photography & videography as per instruction of Surveyor + ₹18,779/- towards salvage advertisement expenses)

17. For the reasons stated hereinabove and respectfully following the principles laid down by the Hon'ble Supreme Court in Judgments quoted above, I am of the considered view that deficiency in service on the part of the Opposite Party Insurance Company is writ large while rejecting the rightful claim of the Complainant. Consequently, the present Consumer Complaint is partly allowed and the Opposite Party Insurance Company is directed to settle the claim of the Complainant Company by paying a sum of ₹3,50,98,046/- (Rupees Three Crore Fifty Lakh Ninety Eight Thousand Forty Six Only) alongwith interest @9% p.a. from the date of lodging of the claim till realisation within 8 weeks from today, failing which the interest will increase from 9% p.a. to 12% p.a. The Opposite Party Insurance Company is also directed to pay ₹50,000/- towards cost of litigation to the Complainant.

.....J
R.K. AGRAWAL
PRESIDENT