SUPREME COURT OF INDIA

M/S HANIL ERA TEXTILES LIMITED

Vs.

ORIENTAL INSURANCE CO. LTD. & ORS.

29/11/2000

(M.J.Rao, G.G.Balakrishnan)

Appeal (civil) 1112 2000

JUDGMENT

K.G. BALAKRISHNAN, J.

The appellant is a manufacturer of cotton, polyester, woollen and viscose yarns and their blends. It is a hundred per cent export-oriented unit and has got two manufacturing mills, one engaged in the manufacture of spinning acrylic yarn (Mill A) and the other for spinning cotton yarn and various blended yarn (Mill B). Appellant started production of these yarns in 1994 and in the same year had taken 12 fire insurance policies for a total assured sum of Rs. 125.72 crores. These policies were initially valid from January 1994 to October 1995 and were later renewed from time to time. These policies covered raw materials, stocks, plant and machinery, accessories, spares, building etc. While issuing the policies, the officials of the respondent Insurance Company had visited the premises of the appellant factory and inspected machinery, building, stock etc. and the premia payable by the appellant were fixed accordingly. Mill 'B' has a Blow-room since cotton processing requires the said facility. The officials of the respondent Insurance Company inspected and verified the Blow- room and the respondent informed the appellant on 22.11.1994 that the property situated in the Blow-room in Mill 'B' attracted a higher premium of Rs. 8.9 per thousand instead of Rs. 2.5 per thousand charged earlier and accordingly an additional sum of Rs. 93,316/- was required to be paid by the appellant. The appellant paid the additional premium of Rs. 93,316/- as demanded by the respondent Insurance Company.

A major fire accident occurred in Mill 'B' on 24.12.94 destroying the stocks, machinery and building therein. Admittedly, the Blow-room was not affected by fire. The appellant immediately reported the matter to the respondent Insurance Company. The surveyors visited the Mill on 6.1.1995 to assess the extent of damage caused by the fire. Having taken several months to complete their report, the Surveyors ultimately assessed a net claim of Rs. 3,68,60,231/-, though, according to the appellant's estimate, the loss was around Rs. 7 crores.

On 24.1.95, the respondent Insurance Company informed the appellant that a sum of Rs. 49,89,463/- should be paid as additional premium as the Tariff Advisory Committee (TAC) approved type Automatic Diversion System or Co-2 Flooding System in the Chute Feeding arrangement between the Blow-room and the Carding Section was not installed in the Mill and in the absence of the fire protection system as prescribed under the TAC regulation, premium at the rate of Rs. 8.9 per thousand would be applicable to the entire factory w.e.f. 1.1.95, excluding the

raw material in godown. Subsequently, on 13.7.95, the respondent Insurance Company again addressed a letter to the appellant stating that the earlier letter for payment of Rs. 49.89,463/- was cancelled and a sum of Rs. 1,13,13,344/- was to be paid by the appellant as the entire factory building, including the Blow-room was a single communicating structure and, therefore, the premium at a higher rate of Rs. 11.73 per thousand was applicable to the entire area. This was based on the alleged inspection by the engineers of the respondent Insurance Company along with the engineers of the Tariff Advisory Committee (TAC) and the Loss Prevention Association of India Ltd. (LPA) after the date of the fire. The appellant was not agreeable to pay the additional amount so required to be paid to the respondent Insurance Company and contended that the Blow-room was segregated in all respects and the TAC approved fire- fighting equipment had been installed by the appellant. On 19.9.96, the respondent Insurance Company informed the appellant that the competent authority had approved the settlement of the fire claim for Rs. 2,94,10,834/- and an amount of Rs. 73,67,636/- was due towards customs liability. The respondent Insurance Company sought to claim a deduction of Rs. 1,20,77,614/- towards an alleged short-charged premium. Thus, on 27.11.96, the appellant received a cheque for Rs. 1,71,33,220/- out of a total claim of Rs. 3,68,60,231/-. The respondent Insurance Company required the appellant to give an undertaking for a deduction of the short- charged premium. Aggrieved by the same, the appellant preferred a complaint before the National Consumer Disputes Redressal Commission and prayed that the respondent Insurance Company be directed to pay an amount of Rs.1,23,97,036/- with 24% interest from 24.12.94 till the date of payment. The appellant also prayed for payment of interest @ 24% for the delayed payment of Rs. 1,73,33,220/- and also sought other incidental reliefs.

The respondents 1 to 4 (collectively referred to as 'the respondent Insurance Company" in the Judgment) filed a joint reply before the Commission, wherein the allegations made in the complaints were denied and it was submitted that the withholding of the sum of Rs. 1.20,77,614/- was for adequate reasons and there was no deficiency of service alleged by the complainant. It was also denied that the demand for the additional premium was an afterthought. The respondent Insurance Company further stated that the said premium had to be charged in accordance with the Fire Tariffs prescribed by the Tariff Advisory Committee, a statutory body set up under the Insurance Act, 1938, as it was obligatory for all insurance companies to charge premium in accordance therewith. For charging the Tariff premium, it was immaterial whether the fire originated in the main area and not in the Blow-room or whether the Blow-room was totally unaffected by the fire. The Fire Tariffs also provide for the manner in which the various sections of the multiple occupancy risk will be segregated from each other. It is only when the segregation is done in the manner provided for by the rules that varying rates of premium can be charged for each section of a building independently on its own merits. The premises of the appellant factory were inspected in March 1994 and the Blow-room was not operational. In view of the Tariff provisions and on the fact of non-segregation of the Blow-room from the main area, an amount of Rs. 1,13,13,344/- had to be short-charged towards premium. A copy of the report of the Government Audit Party was produced by the respondent Insurance Company before the National Commission. The respondent Insurance Company contended that the Blow-room was not segregated from the main room and, therefore, the appellant was liable to pay the additional premium.

After hearing both the sides, the Commission came to the conclusion that the enhancement of the premium was based on the application of the TAC Regulations and it was the duty of the respondent Insurance Company to have inspected and monitored the Complainant Company even prior to the incidence of fire, but that cannot be said to be a deficiency of service qua the Complainant. The respondent Insurance Company had every right to claim any shortage of premium at a later date even after the issue of the policies, if it was found due and recoverable subsequently under the TAC

Regulations. The Commission held that the appellant was not entitled to any other relief sought for in the complaint. The complaint was accordingly dismissed without costs. Aggrieved by the same, the present appeal is filed.

We heard counsel on either side elaborately. The learned senior counsel for the appellant contended that the respondent Insurance Company charged a higher rate of premium for the Blow-room, whereas the rest of the area was permitted to be insured at a lower premium and this is indicative of the fact that the Blow-room was separated and segregated from the rest of the area. The learned senior counsel for the appellant further urged that six fire-proof doors had been installed to protect the Blow-room area and, therefore, the contention of the respondent that the Blow-room and the rest of the area was a single communicating structure is not correct. The learned counsel for the respondent, on the other hand, contended that the higher rate of premium was charged in respect of the Blow-room on the assumption that the appellant would make the Blow-room a segregated portion. The respondent's counsel contended that the Blow-room started operation somewhere in April, 1994, and even though the appellant was advised to furnish the separate values of the bifurcation, the same was not furnished. Meanwhile, some of the policies became due for renewal from 1.11.1994 and the renewal was done on a provisional basis. The information relating to bifurcation was given by the appellant only on 14.11.94 and as the Insurance Company had not admitted but only assumed that the Blow- room was segregated from the rest of the area of the mill, the additional premium of Rs. 93,316/- was demanded by the respondent for insurance from 1.11.94. The contention of the respondent's counsel is that the Blow-room was segregated from the rest of the area with fireproof doors only after the incident of fire.

It was urged by the respondent's counsel that based on the recommendations of the Tariff Advisory Committee, the appellant was asked to pay the additional premium of Rs. 1,13,13,344/- as according to the respondent Insurance Company, the appellant should have observed the TAC approved type of Automatic Diversion System or Co-2 Flooding system in the Chute Feeding arrangement between the Blow-room and the Carding Section, but this was not done by the appellant prior to the occurrence of the fire and the Blow-room was not segregated from the rest of the area. Therefore, the additional premium of Rs.1,13,13,344/- was liable to be paid by the appellant.

In this case, it is not disputed that the appellant had valid insurance policies during the period when the fire occurred in the Mill. According to the appellant, the loss suffered by the appellant was around Rs.7 crores. However, the independent surveyor assessed the loss at Rs.3,68,60,231/. Even according to the respondent, the amount payable under the insurance policies was settled at Rs. 2,94,10,834/- vide its letter dated 19th September 1996 and by the same communication the appellant was informed that a sum of Rs. 1,20,77,614/- would be deducted. The dispute relates only to the question whether the appellant was in fact liable to pay the additional premium of Rs. 1,13,13,344/-. This claim was based on the basis that the appellant had not segregated the Blow-room from the rest of the area and therefore, the entire area attracted premium at the rate of Rs.11.73 per thousand. It may be noted that initially the entire area was insured @ Rs.2.5 per thousand, and subsequently the officers and engineers of the respondent Insurance Company visited the premises of the appellant factory and vide communication dated 22.11.1994, the Blow- room was separately insured at the higher rate of Rs. 8.9 per thousand. In the letter dated 22.11.94 addressed to the appellant, it was stated that: "We are in receipt of your letter dated 14th November, 1994 furnishing separate values in respect of the properties situated in the Blow-room area of your factory referred to herein above. The additional premium in respect of the said property comes to Rs. 93,316/- as per the premium computation shown hereunder." Therefore, it is clear that the Blow-room was taken as a separate portion segregated from the rest of the factory premises.

The fire occurred on 24.12.1994 and the surveyors M/s Mehta & Padamsey Pvt. Ltd. visited the premises on 6.1.1995. In the report of the Surveyors, dated 16.5.1996, it was stated that the Blow-room was connected with the process area via the opening meant for the fireproof doors. It was also stated that the entire main factory building, including the area of the Blow-room was a single communicating structure. But, on the other hand, it is pertinent to note that the representatives of the Loss Prevention Association of India Ltd. also visited the factory premises and in paragraph 7.1 of their report , it is stated by them as under:

"As mentioned earlier, various sections of the factory were not segregated from each other (except Blow Room which was segregated by means of double fire-proof doors). So the fire spread very quickly from the stock of raw material to the finished product stack which was located at the other end of the section named 'Mixing Conditioning Department."

[emphasis supplied]

When the appellant raised objections regarding the opinion expressed by the surveyors, M/s Mehta & Padamsey Pvt. Ltd., a revised report was given on February 11, 1997, wherein it was stated that in the absence of verifiable records, the only date when it is possible to state with certainty that the Blow-room was segregated, is January 6, 1995, but this opinion was not based on any available records or data.

It is of primary importance to note that the fire had not spread to the Blow-room area. That raises a strong presumption that the Blow-room was segregated even before the accident. The appellant had also produced documents to show that they had installed the fireproof doors to protect the Blow-room. The next important fact was that the respondent demanded a higher rate of premium for the Blow-room in November 1994 and this is prima facie indicative of the fact that the Blow-room was separated from the rest of area. The observations of the representatives of the Loss Prevention Association of India Ltd., who visited the factory on 6.1.1995, cannot be lightly disregarded. Therefore, it is clear that the attempts of the respondent Insurance Company to show that the appellant had not taken effective steps to segregate the Blow-room cannot succeed.

The respondent Insurance Company claimed the additional premium of Rs. 1,13,13,344/- on the basis of the recommendations of the Tariff Advisory Committee, and it seems that the Comptroller and Auditor General had also recommended that this additional premium should be paid by the appellant. According to the opinion of the Tariff Advisory Committee, the Blow-room was not segregated and the entire main factory, including the building and the Blow-room, was a single communicating structure and, therefore, premium at the higher rate of Rs. 11.73 per thousand should have been charged for the entire area and this higher rate of Rs. 11.73 was reduced to Rs. 8.9 per thousand by the Tariff Advisory Committee with effect from 1.4.1994. It was made clear that the revised lower rate of Rs.8.9 per thousand would apply to the new business or renewals falling due on or after 1.4.94. It is also the case of the respondent Insurance Company that the TAC-approved type Automatic Diversion System or Co-2 Flooding System in the Chute Feeding arrangement between the Blow-room and the Carding Section was not installed. It is pertinent to note that the appellant was never informed that these arrangements have to be made. The respondent Insurance Company has also not produced any correspondence to show that when the insurance policies in question were issued, the appellant was informed about these matters or that the appellant refused to comply with these requirements.

Learned Author E.R. Hardy Evamy, in his book relating to Fire & Motor Insurance, 2nd Edition, on

page 7, has observed:

"The contract of fire insurance, like other contracts of insurance, differs from any ordinary contract in that it requires, throughout its existence, the utmost good faith (uberrima fides) to be observed on the part of both the insured and the insurers.

In addition to the ordinary obligation, which exists in every contract that all representations made by the parties during the negotiations leading up to the contract shall be honestly made, it is an implied term of the contract of fire insurance that the person seeking the insurance shall communicate to the insurers all matters within his knowledge which are in fact material to the question of the insurance, and not merely all those which he believes to be material."

There is no case that the insured had suppressed any material, whereas the respondent Insurance company had not apprised the insured about the Automatic Diversion System or the Co-2 Flooding System in the Chute Feeding Arrangement. The special precautions to be made on the basis of the report of the TAC are generally matters within the knowledge of the insurers and the contract of insurance being a contract of utmost good faith, ordinarily, these matters should have been brought to the notice of the insured before the policy was issued in his favour. It is also important to note that the respondent Insurance Company did charge a higher rate of premium for the "Blow-room". There is nothing to indicate that it was done on a provisional basis or that the insured suppressed any material facts. In fact, the engineers of the respondent Insurance Company visited the appellant's factory prior to the issuance of the policies and charged a higher rate of premium for the Blow-room. When premium is thus demanded and collected at a higher rate, it is an indication regarding the nature of the contract that subsists between the parties, namely, that the insurer was aware of the higher risks involved. In Halsbury's Laws of England, Vol. 25, at Para 458, the following observations are made:

"The rate of premium in fact charged may give rise to important inferences. The materiality of a representation, which has been made, may be inferred from a reduced rate of premium being charged. Similarly, ignorance on the part of the insurers of some matter supposed to be well known may be inferred if they charge no more than the ordinary rate of premium, while an exceptionally high rate of premium may be indicative of their acceptance of the risk as hazardous without requiring disclosure of the precise facts making it so."

It is clear that the respondent Insurance Company recovered the premium at a higher rate for the Blow-room and this can only be on the basis of the acceptance of the fact that the Blow-room was a separate unit. Therefore, the contention of the respondent that the Blow-room and the rest of the area was a single communicating structure cannot be accepted.

On reappraisal of the evidence, including various correspondences between the insured and the insurer, it is clear that the appellant had segregated the Blow-room from the rest of the area even prior to the occurrence of fire. The fact that the respondent charged a higher rate of premium after having inspected the premises, and the report of the Loss Prevention Association of India Ltd. that the Blow-room was segregated by means of double fire-proof doors and the fire had not spread to this area, strengthen the plea of the appellant as regards the Blow-room. It is also to be noted that the respondent Insurance Company received the separate values of bifurcation as early as on 14.11.94 without any demur and went ahead with the issuance of policy charging premium at a higher rate for the Blow-room. The belated steps taken by the respondent to charge premium at still higher rate for the entire area was not justified under law. It may be noted that out of Rs.

1,13,13,344/-, an amount of Rs. 43,99,003/- was sought to be levied as premium due for the period 1993-94. This amount was sought to be recovered from the appellant apparently much after the lapse of the validity period of those policies. Therefore, we hold that a sum of Rs. 1,20,77,614/- due to the appellant was illegally withheld by the respondent.

In the result, the respondent Insurance Company is directed to pay an amount of Rs. 1,20,77,614/- to the appellant with 12% interest per annum from 14.3.97, that is the date of the complaint filed by the appellant before the National Consumer Disputes Redresssal Commission, up to the date of payment. The appellant would also be entitled to proportionate costs from the respondent Insurance Company. The appeal stands allowed to the extent indicated above.