

SUPREME COURT OF INDIA

The New India Assurance Co. Ltd.

Vs.

Protection Manufacturers Pvt.Ltd.

C.A.No.312 of 2006

(Altamas Kabir and Cyriac Joseph JJ.)

08.07.2010

JUDGEMENT

ALTAMAS KABIR, J.

1. This is a statutory appeal filed under Section 23 of the Consumer Protection Act, 1986, hereinafter referred to as 'the 1986 Act', from an order dated 24th October, 2005, passed by the National Consumer Disputes Redressal Commission, New Delhi, hereinafter referred to as the "National Commission", in O.P. No.60 of 2003. By the said order, the National Commission accepted the claim of the Respondent herein, M/s. Protection Manufacturers Pvt. Ltd., in respect of insurance claim on account of a fire which had broken out in its factory at about 8.45 a.m. on 29th March, 2000, and directed the Appellant Insurance Company to pay Rs.2,26,36,179/- to the Respondent with interest at the rate of 12 per cent per annum from three months after the date of the fire. In other words, the interest was to be reckoned from 1st July, 2000, till date.

2. Although, the scope of the appeal is to some extent limited, a few facts may be stated for proper appreciation of the case made out by the Respondent/complainant.

3. On 29th March, 2000, at about 8.45 a.m., there was a devastating fire in the factory of the Respondent/complainant. The same was noticed by the factory workers who had assembled in front of the factory premises and were waiting for the factory to open. On being informed, the fire brigade reached the site at about 9.10 a.m. and began their operations immediately. However, the fire was so severe that it continued to flicker for the next three to four days and was completely extinguished only on 4th April, 2000. As the factory premises of the Respondent was covered by Fire Insurance Policy for the period from 19th February, 2000, to 18th February, 2001, against the risk of fire, the Respondent made its claim to the Insurance Company amounting to Rs.2,85,50,000/- on account of damage and loss suffered to the building, plant and machinery, stocks and stock-in-process and the transformer for which the Respondent Company had paid Rs.1,16,636/- as premium. It appears that while the Policy was in force, the insurance coverage was enhanced.

4. On the very same day when the fire broke out, the Insurance Company appointed Mr. A.S. Asthana, Surveyor, to conduct a preliminary spot survey.

On 30th March, 2000, Mr. Asthana and the representatives of the Insurance Company took joint stock of burnt motors and air coolers which were being manufactured by the Respondent/complainant.

Mr. Asthana submitted his preliminary report on 3rd April, 2000, but did not specify the cause of fire.

Thereafter, on 9th April, 2000, one Mr. Bhaskar Joshi was appointed as Joint Surveyor to conduct a final survey along with Mr. Asthana. On 13th April, 2000, a status report was submitted by Mr. Bhaskar Joshi. The Joint Surveyors prepared a draft assessment report and estimated the loss suffered by the Respondent/complainant to be Rs.2,37,09,372.12 paise. The joint assessment report which was submitted on 28th August, 2000, clearly stated that the exact cause of fire was not known, though it could be due to a short circuit.

5. Thereafter, on 30th October, 2000, the Regional Manager of the Insurance Company appointed M/s. J. Basheer & Associates as investigator to conduct an investigation into the cause of fire and to assess the loss. As many as six independent investigation reports were filed by M/s. J. Basheer & Associates on 28th May, 2001, 3rd July, 2001, 27th August, 2002, 4th October, 2002, 7th November, 2002 and 10th December, 2002. According to M/s. J. Basheer & Associates, the net amount of loss suffered by the Respondent Company on account of the fire would be Rs.1,10,57,034/-, which tallies almost exactly with 6 the assessment made by the Insurance Company amounting to Rs.1,10,67,230/-. Interestingly, although in the report submitted by M/s. J. Basheer & Associates it has been mentioned in clause that their appointment was for investigation

into (i) cause of fire and (ii) assessment of loss, there is nothing definite in the 67 page report as to the cause of fire, except for a reference to the reply sent by the Fire Officer, Cuttack, to the Khurda Branch Manager of the Insurance Company on 5th May, 2001, stating that the estimate of fire amount was about Rs.15 lakhs and the cause of fire was "short circuit" in the raw material section.

6. On 25th June, 2001, the Appellant Insurance Company requested Mr. Bhaskar Joshi to make his observations on the report submitted by M/s. J. Basheer & Associates on 28th May, 2001. In his comments submitted on 10th August, 2001, Mr. Bhaskar Joshi severely criticized the report filed by M/s. J. Basheer & Associates and even went to the extent of observing that they had failed to measure upto the faith and responsibility reposed on them by the insurers. The report seemed to suggest that the same had been tailor-made in order to fit the loss assessed by the Insurance Company at Rs.1,10,67,230/-, which uncannily tallied with the estimate of M/s. J. Basheer & Associates, namely, Rs.1,10,57,034/-.

7. After receipt of the views expressed by the Joint Surveyors, the Appellant Insurance Company decided to obtain the views of Justice Y.V. Chandrachud, former Chief Justice of India, on the question as to the cause of fire. In his report, Chief Justice Chandrachud arrived at the conclusion that the report of M/s. J. Basheer & Associates was unfounded and speculative while that of the Joint Surveyors contained a careful analysis of the events. Chief Justice Chandrachud was of the view that he had no doubt that the fire was accidental and could not by any reasonable norm or standard be characterized as an act of arson.

8. Mr. Bhaskar Joshi also commented on the report submitted by M/s. J. Basheer & Associates on 3rd July, 2001, and 29th November, 2001, and castigated the same in no uncertain terms. Mr. Joshi observed that M/s. J. Basheer & Associates had not gone into the roots of documentation and had not even bothered to verify the original documents. On the other hand, they had gone around creating confusion and controversies and to create an air of suspicion, which was a classic example of table-top investigation.

9. Thereafter, as the claim of the Respondent Company was not being settled by the Appellant Insurance Company, a complaint was filed by the Respondent Company with the National Commission on 13th February, 2003, for a direction to the Insurance Company to pay compensation of Rs.2,48,94,000/- for the loss suffered by it, together with interest @18% p.a. and to also grant compensation of Rs.10 lakhs for the delay in settlement of the claim, which had caused mental agony and harassment to the Respondent/Complainant.

10. The claim of the Respondent-Company was repudiated by the Appellant Insurance Company on 20th February, 2003, when the National Commission admitted the complaint filed by the Respondent- Company and directed notice to issue to the Insurance Company limited to the question of deficiency of service. After considering the reply filed by the Insurance Company and after

examining one Mr. Amit Biswas, the representative of the Insurance Company, and Mr. J. Basheer of M/s. J. Basheer & Associates, who admitted that he had not visited the Excise Office, the Vendors and had also not provided any supporting evidence to bolster his findings, the National Commission, by its order dated 24th October, 2005, directed the Appellant Insurance Company to pay to the Respondent Company a sum of Rs.2,26,36,179 with interest @12% p.a. with effect from 1st July, 2000 and to also pay a sum of Rs.1 lakh by way of compensation. The Insurance Company was given liberty to recover the said amount from its defaulting officers.

Incidentally, it may be indicated that in the final assessment report of the Joint Surveyors the loss suffered by the Respondent Company was assessed at Rs.2,26,36,180.23 paise.

11. Aggrieved by the said Award of the National Commission, the Appellant Insurance Company has filed this appeal and questioned the said Award on several grounds.

12. Appearing for the Insurance Company, Mr. Jaideep Gupta, learned Senior Advocate, submitted that the National Commission had erroneously approached the problem by concentrating only on the reports submitted by the Joint Assessors and the opinion given by former Chief Justice of India, Y.V. Chandrachud, while rejecting the several reports submitted by M/s. J. Basheer & Associates.

It was submitted that the specific issues and the allegations made in respect thereof were not seriously considered by the National Commission.

13. Mr. Gupta submitted that the National Commission had not considered the evidence in its totality. Out of the six reports submitted by M/s. J. Basheer & Associates only two were taken into consideration, while the other four, including the Final Report submitted on 10th December, 2002, were ignored and were wrongly rejected. The National Commission relied only on the Joint Report submitted by the M/s. Asthana and Joshi and the views expressed by Chief Justice Chandrachud, which was only an opinion and hence not admissible in evidence. Mr. Gupta urged that the only certificate available as to the cause of the fire was the Fire Certificate issued by the Fire Officer, Orissa, Cuttack, on 17th May, 2000, indicating that the fire was the result of an electrical short circuit, but except for a bald statement, no evidence was produced to corroborate such opinion.

14. Mr. Gupta also referred to paragraph 6 of the Final Assessment Report on the basis of the joint survey conducted by M/s. A. Asthana & Co. and Bhaskar Joshi, which deals with the cause of the fire. It was pointed out that the very first sentence of paragraph 6 indicates that the exact cause of the fire was not known, but the police had attributed it to short circuit. Sub-paragraph 2 records the fact that nothing specific as to the cause of the fire could be found even on further probe and hence it had to be presumed that short circuit could be one of the probable causes out of other probables. It

was also indicated that in the light of the reports issued by the local authorities, such as the police and the fire brigade, the cause of the fire could only be attributed to a short-circuit, since no evidence could be found that would point towards a deliberate act of arson. The final opinion expressed in Sub-paragraph (a) of paragraph 6 was that the fire appeared to be accidental and the loss would be indemnifiable under the Fire Policy issued to and held by the insured.

15. Mr. Gupta also referred to the opinion of Chief Justice, Y.V. Chandrachud, wherein His Lordship indicated that on a perusal of the Survey Report and the Investigation Report it was quite clear that the Report of J. Basheer & Associates was unfounded and speculative, whereas the Report of the Joint Surveyors contained a careful analysis and assessment of the cause of fire and the facts incidental to and attendant upon the event of fire.

16. Mr. Gupta reiterated his earlier submission that except the Fire Certificate issued by the Fire Officer, Orissa, Cuttack, there were no other reports as to the cause of the fire and the views expressed by the Joint Surveyors and also Chief Justice Chandrachud were without foundation and were themselves speculative and conjectural and could not, there, be relied on. If, however, all the reports submitted by J. Basheer & Associates were taken together, it would point towards an act of arson as to the cause of the fire.

17. Mr. Gupta then referred to the decision of the National Commission on the question of cause of the fire. It was pointed out that the National Commission in considering the report of J. Basheer & Associates and the opinion of Chief Justice Y.V. Chandrachud and the views expressed by Bhaskar Joshi which had been accepted by the Insurance Company, observed as follows :

"Undisputedly, this report is accepted by the Insurance Company and the learned counsel for the Insurance Company had stated that the Insurance Company accepted that the fire was accidental and could not be characterized as an act of arson."

18. Mr. Gupta submitted that the said observation was made on the basis of a concession which had been made by Counsel for the Insurance Company and not on the pleadings, wherein it had been consistently stated that the cause of the fire had not been finally determined by any of the Assessors or Investigators and that the opinion of M/s. J. Basheer & Associates, that an act of arson was the cause of fire, could not be ruled out. Mr. Gupta reiterated that even in the Joint Survey Report of M/s. Asthana and Joshi it had been mentioned that the exact cause of fire is not known but that the police had attributed it to a short circuit. But it had also been indicated that the same was only a probable hypothesis. Mr. Gupta submitted that it is on such improved probability that an opinion was given that the fire appeared to be accidental and the loss would be indemnifiable under the fire policy issued to and held by the insured. Mr. Gupta submitted that in the circumstances when the cause of fire had not been established with any certainty, the direction given by the Commission to make payment of insurance on the Fire Policy, was not justifiable.

19. Mr. Gupta urged that this was a fit case for remand to enable the National Commission to ascertain the cause of the fire before making any Award for payment of insurance under the aforesaid policy. In support of his submissions, Mr. Gupta firstly referred to the decision of this Court in *National Insurance Co. Ltd. vs. Harjeet Rice Mills* [(2005) 6 SCC 45], wherein it was held that since the High Court had failed to consider the allegations of the Insurance Company, that the claim of the complainant was fraudulent, though there was adequate prima facie material available to warrant a proper inquiry, the matter was required to be remanded for a decision afresh for adjudication on such submissions made on the behalf of the Insurance Company. Learned Counsel also referred to the decision of this Court in *United India Insurance Co. Ltd. & Ors. vs. Roshan Lal Oil Mills Ltd. & Ors.* [(2000) 10 SCC 19], where in a somewhat similar situation as existing in the instant case, the matter was remanded to the Commission for a fresh hearing.

20. Mr. Gupta submitted that the National Commission had wrongly relied on the opinion of Justice Y.V. Chandrachud, former Chief Justice of India, in contravention of the provisions of Section 45 of the Indian Evidence Act, 1872.

Learned counsel urged that if the Commission wanted to rely on the opinion given by Justice Y.V. Chandrachud, as if it were an expert opinion, it could only have done so after examining His Lordship in order to satisfy the provisions of Section 45 of the aforesaid Act. In support of his said submissions Mr. Gupta relied on the decision of this Court in *Ramesh Chandra Agrawal vs. Regency Hospital Ltd. & Ors.* [2009] 9 SCC 709, wherein, while considering the evidence of experts in the light of Section 45 of the Evidence Act, it was held that such evidence is only advisory in character since such expert is not a witness of fact.

21. Mr. Gupta urged that in view of the inconclusive nature of the reports as submitted, the matter was required to be sent back on remand to the National Commission for a fresh determination in accordance with law.

22. Mr. Piyush Gupta, who appeared in-person on behalf of the Respondent-Company, submitted that the allegations made about inclusion of the damage in respect of the products manufactured at the manufacturing unit at SCR-14, Suryanagar, Bhubaneswar, was misleading, since after the establishment of the new factory premises at Bhatkuri, the Suryanagar Factory ceased to exist.

A request was made to the Central Excise Authorities to cancel the licence for production of air coolers at Suryanagar with effect from 1st July, 1999 and all manufacturing operations were being carried on by the insured at its new location at Bhatkuri which was affected by the fire.

23. Mr. Piyush Gupta submitted that the Company maintained computerized financial accounts which combined financial accounting as well as inventory management in one software. Learned counsel submitted that in making their report the Joint Surveyors, M/s. Asthana and Joshi, had relied on the same after carrying out a detailed check of the system to ascertain its integrity. A substantial quantity of raw materials which had been damaged during the super cyclone in October, 1999, had been found to be subtracted from the other material which had been damaged on account of the fire.

Learned counsel pointed out that in their report, M/s. Asthana and Joshi had in paragraph 8.03.1.14 indicated that they had verified the integrity of the system by making dummy entries and the results were found to be reliable. In order to further cross-check the account, ledger entries of the Company's accounts in the vendor's books were also called for and the same when reconciled with the Company's system produced corroborative results.

Mr. Piyush Gupta submitted that based on their examination of the stock and the entries in the computer which were reconciled with the accounts of the suppliers (vendors), they submitted a draft assessment report assessing the loss incurred by the Company on account of the fire amounting to Rs.2,37,09,372.12/-. However, upon visiting the Regional Office of the Appellant-Insurance Company for discussions, they were given the version of the assessment made by the Insurance Company amounting to Rs.1,10,67,230/-. As against this, the loss assessed by M/s. J. Basheer & Associates was almost identical, namely, Rs.1,10,67,034/-. Mr. Gupta urged that it was obvious that the assessment made by the investigators was based on the Insurance Company's assessment of the loss suffered by the Company on account of the fire.

24. Mr. Piyush Gupta then submitted that Section 64UM of the Insurance Act, 1938, which provides for licensing of Surveyors and Loss Assessors, would be attracted to the facts of this case and instead of appointing another surveyor, as was done in the instant case by the appointment of M/s. J. Basheer & Associates, the Insurance Company ought to have gone to the Regulatory Authority under the Insurance Regulatory and Development Authority Act, 1999, and under Sub-Section (3) it was for the said Authority to call for an independent report from any other Approved Surveyor or Loss Assessor specified by it. Mr. Gupta urged that by appointing another surveyor/assessor/investigator after M/s. Asthana and Joshi had submitted their report, the Insurance Company had presented two different reports as to the loss caused and had also introduced a third opinion as to the cause of the fire from a former Chief Justice of India, Justice Y.V. Chandrachud, although, an attempt was made to play down the same since it went completely against the case of the Insurance Company. It was pointed out that Chief Justice Chandrachud had observed that the report submitted by M/s. J. Basheer & Associates was unfounded and was in any way of speaking, speculative, while the Joint Surveyors' report contained a careful analysis of the event.

It was further pointed out that Chief Justice Chandrachud came to the conclusion that he had no doubt that the fire was accidental and could not by any reasonable norm or standard be characterized

as an act of arson.

25. On the merits of the report submitted by M/s. J. Basheer & Associates, Mr. Piyush Gupta submitted that one Mr. J. Basheer had been deputed by M/s. J. Basheer & Associates to visit the factory premises of the Respondent-Company, which had been damaged by the fire, only on 14th November, 2000, i.e., 8 months after the fire had occurred and by that time rehabilitation work had already been commenced after obtaining due permission from the Appellant- Insurance Company. Even then, Mr. Basheer was in the factory for barely half an hour and did not visit the factory ever again.

26. On the point of non-consideration of the last 3 reports filed by M/s. J. Basheer & Associates, learned counsel submitted that the same was nothing but a repetition of what had been mentioned in the earlier reports and did not reflect anything new which deserved separate consideration.

27. On the quantum of damages, Mr. Piyush Gupta referred to the assessment made by the Commission on a comparison of the reports submitted by M/s. Asthana and Joshi and M/s. J. Basheer & Associates.

It was submitted that the conclusion arrived at by the Commission holding that the report submitted by M/s. J. Basheer & Associates was totally unreliable and tailor-made with regard to the loss suffered by the Respondent-Company on the basis of the suggestions made by its Regional Office at Orissa and its agreement with the observations made by the Joint Surveyors to the effect that the whole exercise of M/s. J. Basheer & Associates was beyond their competence, cannot be called into question and the ultimate Award directing the Appellant- Assurance Company to pay Rs.2,26,36,179/- with interest @12% per annum from 3 months after the date of occurrence of the fire, i.e., from 1st July, 2000 till payment, was fully justified and the further direction to the Insurance Company to pay a further sum of Rs.1 lakh to the Respondent-Company by way of compensation for unjustly repudiating the claim of the Respondent-company did not also call for any interference.

28. A further submission was made by Mr. Gupta claiming payment of interest from the date of the fire and not from the date of the final decision of the Commission as the delay was on account of the Insurance Company, whose repudiation of the claim of the Respondent-Company was found to be unjust.

In this regard reference was made to the decision of this Court in *Sovintorg (India) Ltd. vs. State Bank of India*, New Delhi [(1999) 6 SCC 406], wherein Section 14 of the Consumer Protection Act, 1986, fell for consideration and it was observed that where no contract existed between the parties

regarding payment of interest on delayed deposit or service, interest could not be claimed under Section 34 C.P.C. as the provisions of the C.P.C. have not been made applicable to proceedings under the 1986 Act. However, the general provisions of Section 34 of the Code being based on justice, equity and good conscience, would authorize the consumer courts to grant interest according to the circumstances of each case. It was submitted that in the said case the direction to pay interest @12% given by the State Commission was enhanced by the National Commission to 15% per annum. Reference was also made to the decision of this Court in Ghaziabad Development Authority vs. Balbir Singh [(2004) 5 SCC 65], where somewhat similar views were expressed in the context of Section 73 of the Contract Act, 1872, and it was observed that the award of compensation had to be made under different and separate set of circumstances and must vary from case to case depending on the facts of each case and no hard and fast rule, could, therefore, be laid down.

29. Mr. Gupta submitted that no interference was called for with the impugned Award of the National Commission and the appeal was liable to be dismissed.

30. The nature of the controversy between the parties has made us dwell on the facts of the case at some length. Despite the extensive submissions made on behalf of the parties, the issues to be resolved in this Appeal are confined to two questions, namely, (i) What was the cause of fire which broke out in the factory premises of the assured at Bhatkuri at about 8.45 a.m. on 29th March, 2000? (ii) What was the extent of loss and damage suffered by the assured on account of such fire?

31. As far as the answer to the first question is concerned, the report of the Joint Surveyors, M/s. Asthana & Joshi, dated 28th August, 2000, indicates that the exact cause of the fire was not known, though it could be due to a short circuit.

Interestingly, while referring in its report dated 28th May, 2001, to the reply given by the Fire Officer, Cuttack, to the Khurda Branch Manager of the Insurance Company on 5th May, 2001, stating that the cause of fire was a "short circuit" in the raw material section of the factory premises, M/s. J. Basheer & Associates ultimately observed that the fire could reasonably be attributed to an act of "Arson" by vested interests, for some pecuniary benefit, without any factual basis for the same.

Apart from the aforesaid observation made at the end of the report, no foundation has been laid down in the report for such an observation which literally appears out of the blues.

32. Even if the views expressed by the Joint Surveyors, M/s. Asthana and Joshi, on the reports submitted by M/s. J. Basheer & Associates are discounted, although they were appointed by the Insurance Company itself, one cannot ignore the views obtained by the Insurance Company from

former Chief Justice, Y.V. Chandrachud, although, an attempt has been made on behalf of the Insurance Company to exclude the said views from consideration or at least to water down the same by taking refuge in Section 45 of the Evidence Act.

Such a stand has no legs to stand upon, since the opinion given by Justice Chandrachud was based on an analysis of the materials placed before him by the Insurance Company, including the reports submitted by the Joint Surveyors, M/s. Asthana and Joshi and M/s. J. Basheer & Associates. Section 45 of the Evidence Act empowers the Court, in order to form an opinion upon a point of foreign law or of science or of art, or as to identity of handwriting or finger impressions, to rely upon the opinions of persons specially skilled in such matters. The case in hand is quite different, as the views expressed by Justice Chandrachud were not meant to be an opinion within the meaning of Section 45 of the Evidence Act, but an analysis of the reports and the materials provided to His Lordship by the Insurance Company. In fact, the attempt made on behalf of the Appellant Insurance Company to exclude the views expressed by Justice Chandrachud with regard to the cause of fire from the area of consideration does not commend itself to us as the same is a completely independent and unbiased assessment of the events relating to the cause of fire on the basis of the materials made available to His Lordship.

33. Without any material to support the theory of arson projected by M/s. J. Basheer & Associates and sufficient material to hold otherwise, it would be entirely unjust and inequitable to accept such a theory without any evidence whatsoever in support thereof. Reference can be made in this context to the submission made by the counsel for the Insurance Company before the National Commission and quoted in para 17 above. Accordingly, we endorse the views expressed by the National Commission that the cause of fire was accidental and that the attempt made by M/s. J. Basheer & Associates to show that the fire had been caused by an act of arson, was motivated and intended to benefit the Appellant Insurance Company. The decisions cited by the parties were rendered in their own particular fact situations in accordance with law which is not disputed. The fact situations are, however, distinguishable.

34. This brings us to the second question regarding the quantum of loss suffered by the Respondent Company on account of the fire. As has been commented upon by the Joint Surveyors and Chief Justice Chandrachud and subsequently by the National Commission, the almost identical amounts, barring a few rupees, arrived at by the Insurance Company and M/s. J. Basheer & Associates speak volumes of the exercise carried out by the latter on a wholly cursory investigation which has quite aptly been described as "tailor-made". The amount of loss suffered by the Respondent Company on account of the fire has been calculated by the Joint Surveyors on the basis of the amounts mentioned by the Respondent Company and the computer data available in support thereof and also upon cross-checking with the accounts of suppliers and vendors of raw materials to the Respondent Company. We see no reason to differ with the views expressed by the National Commission in this regard. We also accept the discretion exercised by the National Commission regarding the rate of interest awarded from three months after the date of the Award. The submissions made on behalf of the Respondent Company for enhancement of the same is rejected as we are of the view that such exercise of discretion was just and equitable in the absence of any agreement between the parties

regarding payment of interest or the quantum thereof.

35. The submissions of Mr. Piyush Gupta in regard to Section 64 UM of the Insurance Act, 1938, are also of substance, as the Appellant Insurance Company should have applied to the Regulatory Authority under the Act for a second opinion instead of appointing M/s. J. Basheer & Associates for the said purpose unilaterally. The reports submitted by M/s. J. Basheer & Associates are liable to be discarded on such ground as well.

36. The Appeal filed by the Insurance Company, therefore, fails on all counts and is dismissed.

There will be no order as to costs.

37. Having regard to the judgment delivered today, no further orders are required to be passed on the application for directions filed on 30.4.2010 on behalf of the Respondent Company and supported by an affidavit dated 27.4.2010 affirmed by Mr. Piyush Gupta and the same is disposed of accordingly.