

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 23 OF 2007

1. SHYAM FERRO ALLOYS LTD
RATURIA ANGADPUR, DURGAPORE,
WEST BENGAL

.....Complainant(s)

Versus

1. NEW INDIA ASSURNACE CO. LTD & ORS
CHAIRMAN -CUM-MANAGING DIRECTOR,
87 MAHATMA GANDHI ROAD, FORT,
MUMBAI - 400 001

2. NEW INDIA ASSURNACE CO. LTD & ORS
CHAIRMAN -CUM-MANAGING DIRECTOR,
87 MAHATMA GANDHI ROAD, FORT,
MUMBAI - 400 001

.....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER

For the Complainant : Mr. Sanjoy Kumar Ghosh, Advocate

For the Opp.Party : Mr. Amit Kumar Singh, Advocate
: Mr. Tovikata Achumi, Advocate

Dated : 30 Dec 2022

ORDER

1. Heard Mr. Sanjoy Kumar Ghosh, Advocate, for the complainant and Mr. Amit Kumar Singh, Advocate, for the opposite parties.

2. Shyam Ferro Alloys Limited (the Insured) has filed above complaint, for directing The New India Assurance Company Limited (the Insurer) to pay (i) Rs.16979277/- with interest @21% per annum from 18.11.2004 till the date of payment, towards insurance claim, (ii) Rs.15/- lakhs, as compensation for business loss and mental agony, (iii) Cost of litigation; and (iv) Any other relief, which is deemed fit and proper in the facts and circumstances of the case.

3. The facts as stated in the complaint and emerged from the documents attached with it, are as follows:-

(a) Shyam Ferro Alloys Limited (the Insured) was a company, registered under the Companies Act, 1956 and engaged in manufacture and supply of steel and Ferro-alloys. The Insured had two factories, i.e. one at Burdwan, commissioned in the year 1997 and other at Durgapur, commissioned in September, 2002. For manufacturing steel and Ferro-alloys, the Insured installed Furnace, which had submerged Arc Furnace with three electrodes. Its functioning is that high current at low voltage is supplied through transformer in electrodes, which produces arc in the charge. This charge consists of ore, reductant and fluxes. The ore are oxides of Manganese/Chromium/Iron/Silicon/Calcium, which have to be reduced by reductant like Charcoal, Cill-coke, Breeze coke, LAMC etc. The flux consists of Dolomite/Quartz, Feldspar etc., which helps in expediting the reducing reaction. The outputs are Ferro-Alloy, Slugs and gases (passing through chimney in air). Ferro- Alloys and Slugs are tapped out in a pan and separated manually in the size as per customer's requirements. Apart from managerial and technical staffs, about 200 workers per shift are employed. The present insurance claim relates to the unit at Raturia Angadpur Industrial Area, Durgapur, district Burdwan, for the loss occurred, due to fire incident on 18.11.2004 at second floor, where, Transformer, Transformer flexile (copper), Transformer wall plates (copper), Copper bus tubes, Equalizers, Air cooled copper flexible,

Electrodes hoisting, Cylinders, Slipping Cylinders, Hydraulic power pack, Hydraulic Hose pipes, EMUT Feeders, Batch weighing load cells etc. were installed.

(b) The Insured obtained "Standard Fire And Special Perils Policy" No.512502/11/03/01140 from The New India Assurance Company Limited (the Insurer), for the period of 02.01.2004 to 01.01.2005, for a sum insured of Rs.9/- crores (i.e. Rs.one crore, on the Building and Rs.8/- crores, on Plant & Machinery and Accessory), at factory premises. The Insured had credit facility from West Bengal Financial Corporation, Kolkata and Allahabad Bank.

(c) On 18.11.2004 at about 18:50 hours, Srinivasan Raju, an employee, who was at crane bay, observed flames in 2nd furnace at 2nd floor. He immediately rushed to furnace floor and switched off the furnace and instructed other furnace operators to switch off the furnace to avoid any short circuiting. Then he rushed to second floor and observed heavy flames around the furnace. He alarmed the Supervisor. The staff started firefighting with the fire devices installed there. They also informed Fire Service Station, at Durgapur, from where fire tenders were deputed on the spot, which could control the fire in three hours. The Insured informed the fire incident to police station, where FIR No.602 was registered on 18.11.2004.

(d) The Management formed a Committee of Senior Technical Officers of the factory to find out the cause of fire. The Committee, after investigation, submitted its report dated 29.11.2004 that the furnace was running smoothly and there was no abnormality. Tapping were also normal. Operational reasons were ruled out. No body witnessed the origin of fire. The possible reasons for fire might be (i) Hot splinter along with hot air might have gone up and fallen on electrical cable and ultimately causing fire. (ii) A hot splinter might have fallen on hydraulic hosepipe resulting in fire. (iii) Bursting of hydraulic hosepipe and then catching fire; and (iv) Slipping of some hydraulic hoses and then catching fire.

(e) The Insured informed the Insurer on 18.11.2004 on telephone about the fire incident and the loss at its factory premises. The Insurer appointed S.R. Das, Surveyors & Loss Assessors, Kolkata, as the surveyor on 19.11.2004, who visited the spot on 21.11.2004 and on subsequent dates. He prepared list of burnt/damages machinery and accessories. He demanded various papers and also to arrange for dismantling the 7.5 MVA transformer, in his presence through Fax dated 22.11.2004. The Insured supplied various papers with list of damaged machinery/accessory on 30.11.2004 and informed that claim form could only be filed after assessing the damage of transformer. The surveyor submitted Preliminary Survey Report dated 15.12.2004, confirming the fire incident and the loss.

(f) The surveyor made joint inspection of the factory premises on 10.12.2004 and 17.12.2004, in presence of the officers of Insurer, an officer of Loss Prevention Association of India, the officer of the Insured and prepared inspection notes on 18.12.2004. List of damaged parts were prepared on 07.01.2005. The surveyor again inspected the factory premises on 17.01.2005, 18.01.2005 and 19.01.2005. The surveyor, vide letter dated 22.01.2005, informed that no elements were found inside Buchholz Relay and On Load Tap Changer. He asked to dismantle the burnt transformer in his presence. The burnt transformer was dismantled on 17.02.2005, in presence of the surveyor, who took photographs of the damaged parts and made inventories on 17.02.2005 and 18.02.2005 relating to his observations. The surveyor, vide letter dated 21.02.2005, acknowledged dismantling of transformer in his presence but demanded individual turn of coil and laminated sheets, which were supplied on 24.02.2005. The surveyor, vide letter dated 28.02.2005, raised issues of non-presence of the elements inside Buchholz Relay. The Insured, vide letter dated 14.03.2005, informed that all metallic remains of the Buchholz Relay and On Load Tap Changer were shown (photos were again supplied) and non-metallic parts were totally burnt. The surveyor wrote a letter dated 16.03.2005 to the Insured that all 4 possible reasons for initiation of fire as given by the Insured were not liable to be accepted. The surveyor, vide letter dated 08.04.2005, demanded final claim bill. The surveyor was requested to dispose of salvage, for submitting final claim bill. The surveyor disposed of salvage for Rs.3549707/- and informed vide letter dated 23.04.2005. The Insured submitted Final Claim Bill, for Rs.16979277/- of the estimated loss. The surveyor shared draft of assessing loss to Rs.12646229/- dated 18.06.2005. The surveyor again and again wrote letters to the Insured for explaining cause of fire, working of Buchholz relay and On Load Tap Changer, which were replied by the Insured.

(g) The Insurer appointed Harshad Seth, Kolkata, a technical expert to ascertain cause of fire, in November, 2005, who inspected the site on 25.11.2005, along with the surveyor. He took papers from the Insured and the surveyor and submitted his Technical Report dated 13.01.2006, mentioning therein that due

to excessive current flowing through transformer windings, the same would have got heated giving rise to oil vapour, which had caused fire incident as flash point of transformer oil was about 160' C and hydraulic oil was 210' C. Safety devices Buchholz Relay and O.L.T.C. were there but either these devices were bypassed or it were not in working condition.

(h) The surveyor submitted Final Survey Report dated 18.01.2006, assessing Gross Loss to Rs.13163596/- and after deducting 25% for depreciation, salvage value and 5% for excess clause, he assessed Net Loss to Rs.3705334/-. But observed that as the fire was originated from inside the transformer due to overload and most essential safety device i.e. Buchholz Relay was not having element inside the relay to indicate extent of gradual deterioration and warn for timely protection therefore the Insurer was not liable for the loss. Copy of Final Survey Report dated 18.01.2006 was not supplied to the Insured. The Insurer, vide letter dated 24.03.2006, repudiated the claim on the ground that fire was originated from inside the transformer due to extra heavy load in the absence of protective device i.e. On Load Trap Changer and Buchholz Relay were not in working condition. It was apparent that the Insured had not taken adequate care and precautions while operating the said transformer therefore the Insurer was not liable for the loss.

(i) The Insured submitted its representation dated 06.04.2006, protesting the reasons as mentioned in the letter dated 24.03.2006. The Insured stated that the transformer could not be operated without "On Load Trap Changer" and "Buchholz Relay", which were fitted there and verified by the surveyor at the time of joint inspection. It was also found that oil tank of transformer was full of oil and adequate oxygen was not present inside of it, as such ignition inside transformer was not possible. The claim has been repudiated on baseless ground. The Insured then gave legal notice dated 21.02.2007. In spite of service of representation dated 06.04.2006 and legal notice dated 21.02.2007, the Insurer did not respond. Then this complaint was filed on 14.03.2007, alleging deficiency in service.

4. The Insurer filed its written reply on 11.07.2007 and contested the complaint. The facts of obtaining insurance policy and loss occurred to the Insured due to fire on 18.11.2004, appointment of S.R. Das, Surveyors & Loss Assessors, Kolkata, as the surveyor on 19.11.2004 and his Final Survey Report dated 18.01.2006, appointment Harshad Seth, Kolkata, as a technical expert and his report dated 13.01.2006 and repudiation of claim vide letter dated 24.03.2006, have not been disputed. The Insurer stated that the Insured gave possible reasons for fire as:- (i) Hot splinter along with hot air might have gone up and fallen on electrical cable and ultimately causing fire. (ii) A hot splinter might have fallen on hydraulic hosepipe resulting in fire. (iii) Bursting of hydraulic hosepipe and then catching fire; and (iv) Slipping of some hydraulic hoses and then catching fire. The surveyor, vide letter dated 28.02.2005, made various queries for examination of aforesaid possibilities of fire. The Insured, instead of supplying required information, avoided to answer by simply saying that the Insured was a commercial organization and not a research institute. When the Insured was asked to show the electrical contacts of Buchholz Relay and On Load Trap Changer, the Insured informed that the metallic contacts had melted and fallen down and non-metallic contacts were burnt. When the bindings of the burnt transformer was taken out, a joint report dated 08.02.2005 was prepared, in which, no melted material was found in the tank. The Insured could not show the melted materials, although the surveyor raised this issue from very beginning. Later on body of Buchholz relay and a spindle and a wheel of On Load Trap Changer were produced for examination of the surveyor. Harshad Seth, the technical expert, in his report dated 13.01.2006 did not accept the causes of the fire as given by the Insured, for cogent reasons and found it to be imaginary. Technical expert and the surveyor, therefore, came to the conclusion that Buchholz relay and On Load Trap Changer were not in working condition at the time of incident and the Insured was negligent for not using protective device, as such fire incident could not be avoided. Technical expert also found that even the furnace transformers are provided with battery of protective devices but the same was also not maintained resulting in 4-5 major transformer break downs within a period of 9 months and the Insured was indifferent to the necessity of protective devices/equipment. The competent authority of the Insurer examined all the papers and came to the conclusion that the fire of originated from inside the transformer due to extra heavy load in absence of protective devices like On Load Trap Changer and Buchholz relay. The loss occurred due to negligence of the Insured and the loss of beyond the matrix of insurance coverage. The claim was therefore repudiated. Delay has occurred as the Insured avoided to answer queries of the surveyor and took unreasonable time in supply relevant documents. After repudiation of the claim, reconsideration was not possible. There was no deficiency in service on the part of the Insurer.

5. The Insured filed Rejoinder Reply on 24.08.2007, in which, the facts stated in complaint have been reiterated. It has been stated that hot splinter might have fallen on the cables, which were rubber/PVC coated and could have been easily ignited. Hosepipes were soaked with oil and could ignite with hot splinter. Neoprene pipe is manufactured by using neoprene rubber, which is also inflammable. Entire area surrounding furnace used to become hot during operation and hydraulic oil normally attains temperature of 45 degree C during operation, which causes erosion in hydraulic pipes. Female adapter is fitted with the body of distribution block and male adapter is pressed fitted on hydraulic hose. Adapter used to slip at the joint due to heat. These reasons were illegally discarded. The furnace log sheets dated 16.11.2004, 17.11.2004 and 18.11.2004 were supplied to the surveyor to prove that the transformer had protection of O.L.T.C. There was no evidence to prove that there was major breakdown of the transformer for 4-5 times within 9 months. Observation in this respect is based upon conjectures and surmises. Buchholz relay and O.L.T.C. were found at the time of joint inspection but at that time the surveyor did not raise any objection that these two protective devices did not contain any contacts inside of it. The Insured produced an Invoice of the transformer to prove that the transformer was fitted with Buchholz relay and O.L.T.C. from the manufacturer and stated that at the time of commissioning the Unit, the transformer was inspected by Chief Electrical Inspector, West Bengal, who gave a certificate/approval.

6. The Insured filed Affidavit of Evidence of M.K. Aggarwal, Authorised signatory, Affidavit of Evidence of A. Srinivas, Assistant General Manager Production, Affidavit of Evidence of, V. Veerbhadra Rao, Deputy General Manager (Engineering), Affidavit of Evidence of A.K. Singh, Proprietor of M/s. Akriti Hi-tech Engineers, Affidavit of Evidence of D. Srinivasa Rao, Assistant Manager Electrical and Affidavit of Evidence of Suman Patra and various documentary evidence. The Insurer filed Affidavit of Evidence of Kali Prasad Das, Regional Manager. The Insured served interrogatories, which was answered by the surveyor S.R. Das. Both the parties have filed their written synopsis.

7. I have considered the arguments of the counsel for the parties and examined the record. The Insurer, vide letter dated 24.03.2006, repudiated the claim on the ground that fire was originated from inside the transformer due to extra heavy load, in the absence of protective device, i.e. On Load Trap Changer and Buchholz relay were not in working condition. It was apparent that the Insured had not taken adequate care and precautions, while operating the said transformer therefore the Insurer was not liable for the loss.

8. The surveyor visited the spot on 21.11.2004 and prepared list of damaged machinery and accessories, which included Buchholz relay and On Load Trap Changer. This fact is further proved from salvage list in which weight of Buchholz relay was shown as 10 kg. and weight of On Load Trap Changer was shown as 294 kg. + 80 kg. The surveyor, vide letter dated 22.11.2004, permitted to carry on repairs of damaged articles and complete within a reasonable time (except 7.5 MVA transformer, which was required to be dismantled). In Preliminary Survey Report dated 15.12.2004, the surveyor mentioned that "determination of cause of fire due to breakdown to transformer is rather complex, primarily because all the safety devices for winding temperature, oil temperature isolator, Buchholz relay etc. were burnt out leaving no clue **whereas the control system in the panel is quite in order**". The surveyor, for the first time, vide letter dated 11.12.2004, asked the Insured to retain along with internal elements and components, OLTC, Buchholz relay and conservator, breather, drain cocks, cooling tubes, oil gauge, thermometer, cooling water pump & motor, star-delta converter etc., which are integral parts of transformer. This letter was issued after 19 days of permitting repairs. The surveyor, vide letter dated 22.01.2005, informed that no elements were found inside Buchholz Relay and On Load Trap Changer. The burnt transformer was dismantled on 17.02.2005, in presence of the surveyor, who took photographs of the damaged parts and made inventories on 17.02.2005 and 18.02.2005 relating to his observations. The surveyor, vide letter dated 21.02.2005, acknowledged dismantling of transformer in his presence but demanded individual turn of coil and laminated sheets, which were supplied on 24.02.2005. The surveyor, vide letter dated 28.02.2005, raised issues of non-presence of the elements inside Buchholz Relay and On Load Trap Changer. The Insured, vide letter dated 14.03.2005, informed that all metallic elements of the Buchholz Relay and On Load Trap Changer were melted and its remains were shown (photos were again supplied) and non-metallic parts were totally burnt. After permitting repair on 22.11.2004, asking to produce internal elements of Buchholz Relay and On Load Trap Changer, on 11.12.2004 was not reasonable.

9. For deciding this issues as to whether On Load Trap Changer and Buchholz relay were in working condition, the Insured filed Invoice of the Transformer dated 02.12.2002, Delivery Challan dated 07.06.2003 (Annexure-C-6, page 54 of the complaint) and Affidavit of Evidence of A.K. Singh, Proprietor of M/s. Akriti

Hi-tech Engineers, who has stated that now a days On Load Trap Changer and Buchholz relay are company fitted in the transformer. The Insured stated that at the time of commissioning the Unit, the transformer was inspected by Chief Electrical Inspector, West Bengal, who gave a certificate/approval. The furnace log sheets dated 16.11.2004, 17.11.2004 and 18.11.2004 were filed/supplied to the surveyor to prove that the transformer had protection of O.L.T.C. There is no reason to disbelieve these evidence and hold that On Load Trap Changer and Buchholz relay were not in working condition, particularly when it is admitted that the Unit was run by professional and executive. Had the fire initiated from inside the transformer, entire transformer oil might have totally burnt, but in the present case, on dismantling transformer, oil was found in its tank, which totally contradict the finding that fire was initiated from inside the transformer. There was no evidence to prove that there was major breakdown of the transformer for 4-5 times within 9 months. Observation in this respect by the technical expert in his report dated 13.01.2006 is based upon conjectures and surmises. Findings of the technical expert, the surveyor and the Insurer in this respect is not liable to be accepted.

10. The committee formed by the Insured in its report dated 29.11.2004 stated that hot splinter might have fallen on the cables, which were rubber/PVC coated and could have been easily ignited. Hosepipes were soaked with oil and could ignite with hot splinter. Neoprene pipe is manufactured by using neoprene rubber, which is also inflammable. Entire area surrounding furnace used to become hot during operation and hydraulic oil normally attains temperature of 45 degree C during operation, which causes erosion in hydraulic pipes. Female adapter is fitted with the body of distribution block and male adapter is pressed fitted on hydraulic hose. Adapter used to slip at the joint due to heat. Probable reasons for fire as given by the Insured have been illegally discarded. Repudiation of the claim is not based upon cogent reason and evidence and liable to set aside.

11. The surveyor, in Final Survey Report dated 18.01.2006, assessed Gross Loss to Rs.13163596/- and after deducting 25% for depreciation, salvage value and 5% for excess clause, he assessed Net Loss to Rs.3705334/-. There is no dispute in respect of gross loss and deduction of salvage value. But there is dispute in respect of 25% deduction in the head of depreciation and calculation for excess clause. Invoice of the Transformer dated 02.12.2002, Delivery Challan dated 07.06.2003 (Annexure-C-6, page 54 of the complaint) prove that transformer might have been installed after 07.06.2003 the Unit started manufacture thereafter and on the date of incident dated 18.11.2004, depreciation for two years was not proper. I think it proper that depreciation of 15% ought to be applied. Rs.13163596/- minus its 15% comes to Rs.11189056/- minus salvage value of Rs.3549707/- comes to Rs.7639349/-. If 5% is deducted under excess clause then Net Loss comes to Rs.7257381/-. The surveyor has wrongly assesses Net Loss to Rs.3705334/-.

12. Regulation-9 of the Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002, requires the Insurer to settle the claim maximum within a period of 6 months from the date of intimation of the loss. Regulation-9(6), provides that after expiry of 6 month, the Insurer will be liable to pay interest, 2% per annum above the market rate. The Insurer is liable to pay interest from June, 2005. This Commission, vide order dated 07.09.2007, directed the Insurer to deposit Rs.37/- lacs. Thereafter, vide order dated 11.08.2009, directed the Insurer to deposit interest @12% per annum on the above amount, which were deposited by the Insurer and paid to the Insured. The Insured further is entitled for balance amount of Rs.3557381/-.

O R D E R

In view of the aforesaid discussion, the complaint is partly allowed. The New India Assurance Company Limited (the Insurer) is directed to pay Rs.3557381/- with interest @9% per annum from June, 2005 till the actual payment, within a period of two months from the date of this judgment.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER