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M/S. SHOBICA ATTIRE
v.
NEW INDIA ASSURANCE CO. LTD. AND ANR.

SEPTEMBER 15, 2006

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[DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

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Insurance—Against damages from riots, strike, etc.—Stock-in-trade of textile items and garments in showroom—Looting by armed rioters—Claim for damages—Allowed for stock on elevated ground and rejected in respect of stocks in two levels of basement of showroom—Correctness of—Held—It was established that showroom was attacked by a frenzied mob, which set fire to elevated ground floor and indulged in looting—Claimant had discharged initial burden and insurance company failed to establish that claim was unjustified and not covered by insurance policy—It was possible that looting had taken place before police and fire fighting personnel arrived—There was nothing to support the plea of insurance company that claimants themselves transported part of goods from the showroom or removed them from basement levels in anticipation of rioting—Claim allowed for stocks in basement levels especially in view of support thereof by bank with which stock was hypothecated—However, as insurance company was within its rights to inquire into the incident and it partly approved the claim, claim in respect of compensation towards hardship, mental agony and harassment rejected.

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Appellant-firm had a showroom wherein all the stock-in-trade of textile items and garments was insured by respondent expressly covering the said stock from damages caused due to riots, strike, malicious and terrorist damage. This stock in trade was also hypothecated with a bank, the second respondent, from whom the appellant had taken loan, and their value could not be less than Rs. 2 crores at any given point of time. The furnitures, fixtures, fittings and glass plates of the showroom were separately insured with another insurance company. Consequent upon bomb blasts in the city, a group of armed rioters allegedly looted their showroom and set fire to it. According to appellant, the entire stock of goods was either looted or reduced to ashes. Respondent appointed surveyors to survey the loss. Consequent to receipt of information indicating that the appellants had themselves taken away

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some of the stock during the rioting, respondent ordered an inquiry into that aspect by an investigator, VA. A

The insurance company which had separately insured the fixtures, fittings and furnitures approved the claim of the appellant. However, as regards their claim from respondent for compensation in respect of the stock in trade, the surveyors worked out damages excluding the stocks in the two levels of the basement of showroom. Appellants asked the respondent that they were entitled to whole of their claim. Second respondent-bank supported the appellant in this regard. As there was no response from the respondent thereto, appellant filed a complaint-claim petition before the National Consumer Disputes Redressal Commission praying for a direction upon the respondent to settle the balance of their claim, also claiming interest thereupon from the date of claim till realization, and a further sum towards hardship and mental agony caused to them due to deficiency of service on the part of the respondent. The Commission, however, dismissed the complaint holding that there was remote possibility of the riotous mob having entered the first and second levels of basement as the only point of entry from the elevated ground floor was blocked by fire, heat and smoke and particularly in the absence of any lights in the basement area. Hence the present appeal. B C D

Appellants contended that there was no way in which the frenzied mob of looters could be prevented from looting the stock in trade which was kept in the entire showroom comprising of the ground floor and the two basement floors. E

Respondent contended that (i) soon after the mob set fire to the showroom on the ground floor, the police and fire fighting personnel arrived at the scene and were present there up to mid-night, and in their presence no looting could have taken place (ii) there was no evidence of damage by fire in both the basement levels and there was also no evidence of the stock in the two basement levels having been looted by the rioters (iii) surveyors concluded that the stock in the two basement levels had not looted and also indicated that nobody could have entered the basement levels when the elevated ground floor was burning (iv) the sales persons who were in the two basement levels stated that no one from the mob had entered the two levels of the basement as long as the employees were inside and it was doubtful as to whether after they left whether anyone could have entered the two levels of the basement in view of the conditions prevailing in the elevated ground floor. F G

Allowing the appeal, the Court H

A HELD: 1. The appellants had discharged the initial burden regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under the insurance policy and it was for the respondent to disprove such claim with evidence, if any. Respondent, despite the report of the investigator, failed to establish that the claim of the appellants was not justified and was not covered by the policy of insurance. [275-C-D]

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2.1. That there was communal unrest in the city on the date in question is not denied. That the mob attacked and set fire to the showroom of the appellants is also an established fact. That the showroom was attacked by a frenzied mob, which set fire to the elevated ground floor of the showroom and indulged in looting, is also established. [274-F, G]

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2.2. At exactly what point of time the mob may have entered into the two basement levels is difficult to determine in the prevailing circumstances and it is quite possible that the looting had taken place before the police and the fire fighting personnel arrived at the site. [274-G, H]

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2.3. It is doubtful whether the incident which occurred at the showroom of the appellants can be explained with such clinical precision as to when exactly the sales persons in the two basement levels escaped from the showroom through the elevated ground floor or when the police and fire fighting personnel arrived at the site and when exactly the riotous mob took over the showroom. The statements of the sales persons clearly indicate that when they were fleeing the showroom they saw the mob trying to break through the plate-glass doors and windows leading to the first level of the two basement floors. There is also not denial of the fact that the said plate-glass doors and windows were in fact broken and for which insurance coverage was paid by the other insurance company. [273-G, H; 274-A, B]

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3.1. There is nothing on record to indicate that the stock in trade had been removed from basement levels in anticipation of any such rioting. On the other hand, the bank has clearly supported the case of the appellants by informing the respondent that the stock insured was for Rs. 2 crores and the average stock at any point of time in the insured premises was more than Rs. 2 crores and the bank requested the respondent to re-consider the claim of the appellant-firm. [275-A]

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3.2. Although, VA was engaged on a suspicion that the appellants had themselves transported part of the goods from the showroom, there is no real evidence in support thereof. [275-B]

3.3. The report submitted by the investigators, proceeds to a large extent of surmises and the conclusion ultimately arrived at by them. Their conclusion was arrived at by adopting a negative approach. The investigators reached the aforesaid conclusion merely by stating that the appellants had no material to strengthen their claim by providing unassailable evidence of looting. Such an approach cannot be supported since apart from claiming that the goods in the showroom had been looted and the attendant circumstances, the appellants were not in a position to supply any further evidence. [274-C, E, F]

4. Inasmuch as, the respondent was within its rights to cause an inquiry into the incident and it partly approved the appellants' claim based on the report of the investigator, apart from the actual claim, the appellants were not entitled to payment of compensation towards hardship, mental agony and harassment. [275-D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2066 of 2006.

From the Order dated 21.11.2005 of the National Consumer Disputes Redressal Commission, New Delhi in Original Petition No. 91 of 1999.

S. Dorairaj, V. Ramasubramanian, Arvind and V. Balachandran for the Appellant.

Pranab Kumar Mullick for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. This is an appeal under Section 23 of the Consumer Protection Act, 1986 from an order dated 21st November, 2005 passed by the National Consumer Disputes Redressal Commission, New Delhi (for short 'the Commission') in Original Petition No. 91 of 1999, dismissing the said petition. In order to appreciate the decision of the Commission, the facts of the case are briefly set out hereinbelow:-

The appellant-firm, dealing in textile goods, has its showroom in the city of Coimbatore. It was covered by an insurance policy with the New India Assurance Company Limited, respondent No.1 herein, and at the relevant time had an insurance cover for all the stock in trade of textile items and garments. The said policy dated 11th March, 1997, expressly covered damages to the said stock in trade that might be caused due to riots, strike, malicious and terrorist damage.

From the materials on record, it appears that the appellant-firm had been

A enjoying the benefit of loans from the 2nd respondent on the hypothecation of the stock in trade, the value of which was not less than Rs.2 crores at any given point of time. The furnitures, fixtures, fittings and glass plates of the showroom were separately insured with M/s. National Insurance Company Limited.

B Consequent upon a series of bomb blasts, which rocked the city of Coimbatore on 14th February, 1998, a group of armed rioters are alleged to have looted the appellants' showroom and set fire to it. According to the appellants, the entire stock of goods was either looted or reduced to ashes. The conflagration, which was of a communal nature, also saw the house of the proprietary of the appellant-firm being attacked by the rioters, causing her to flee with her family across the state border to Palghat in Kerala to save their lives. It appears that on the very next morning, a few officials of the New India Assurance Company Limited along with their surveyors, M/s. Asawa & Co., inspected the damage at the appellants' showroom. However, it was only after the communal passions began to subside that the proprietrix of the appellant-firm was able to return to Coimbatore on 17th February, 1998 and to lodge a complaint with the police regarding the incident. The officials of the insurance company took possession of the salvaged stock and the same was kept in the custody of their nominated surveyors, M/s. Asawa & Co. In addition to the above, the insurance company also appointed one M/s. Standard Surveyors (P) Ltd. to survey the loss. The said surveyors issued a questionnaire to the appellants which was replied to by the appellants on 20th March, 1998 giving details of the loss suffered by them together with various documents.

F While the said formalities were proceeding, an anonymous information was said to have been received by the insurance company indicating that the appellants had themselves taken away some of the stock during the rioting. On the basis of such information, an inquiry was ordered by the respondent-insurance company by an investigator of M/s. Vasu Associates. The appellants and/or their officers were not associated with the said inquiry.

G On 20th March, 1998, the appellant-firm lodged its claim with the respondent-insurance company for payment of compensation amounting to Rs.2.20 crores. It is the case of the appellants that under the guise of ascertaining the correct picture, the respondent insurance-company for one reason or the other failed to settle the claim.

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In the meantime, at the instance of the National Insurance Company, A which had insured the fixtures, fittings and furnitures, M/s. Comtec, Surveyors, Valuers and Assessors, filed their final report on 9th June, 1998 on the basis whereof the National Insurance Company Ltd. approved the claim of the appellant for Rs.20,43,605/-.

After the surveyors had submitted their report dated 11th September, B 1998, working out the damage at Rs. 1,02,38,738/- excluding the stocks in the two levels of the basement, the respondent-insurance company wrote to the respondent-bank on 8th October, 1998 stating that the claim of the appellant-firm had been approved for the aforesaid amount as assessed by the surveyors and the settlement offer was full and final. The respondent-insurance company C also enclosed a cheque for a sum of Rs.1,02,16,173/- after deducting a sum of Rs.22,565/- towards reinstatement of the sum insured from the date of loss till the date of expiry of policy. The bank responded by informing the respondent-insurance company on 9th October, 1998, that the stocks insured were for Rs. 2 crores and the average stock at any point of time in the insured premises was more than Rs. 2 crores. The respondent-bank requested the D insurance company to reconsider the claim of the appellant-firm in full to enable it to reestablish its business. The appellants also wrote to the respondent-insurance company on 5th November, 1998, indicating as to how they were entitled to whole of the claim and sought settlement of the full claim to which they were entitled. As there was no response from the respondent- E insurance company, the appellant-firm filed a claim petition before the Commission on 16th March, 1999, *inter alia*, praying for a direction upon the respondent-insurance company to settle the balance of the claim of the appellants for a sum of Rs.97,83,827/- and interest at the rate of 18 per cent F thereupon from the date of claim, namely, 23rd March, 1998, till realization. A further sum of Rs.10,00,000/- was also claimed towards hardship and mental G agony caused to the appellants due to deficiency of service on the part of the respondent-insurance company.

The respondent-insurance company filed its written statement relying upon the investigation report dated 15th August, 1998, the surveyors report dated 11th September, 1998, and the statements of Nagarajan - the Cashier, G Pankajam and Sivasubramaniam, who were working in the showroom of the appellant at the relevant time as sales persons. The appellant filed a rejoinder statement and the 2nd respondent bank also filed an affidavit dated 18th December, 2003, supporting the case of the appellants. A further rejoinder dated 16th February, 2004, was filed on behalf of the appellants on the basis H

A of the survey report and the letter of the National Insurance Company accepting the claim of the appellants in respect of the destroyed plate glass, furnitures, fixtures and fittings.

B After the filing of the affidavits of evidence on behalf of the respective parties, the Commission by its Order dated 21st November, 2005, dismissed the complaint filed by the appellant-firm upon holding that there was remote possibility of the riotous mob having entered the 1st and 2nd levels of basement as the only point of entry from the elevated ground floor was blocked by fire, heat and smoke and particularly in the absence of any lights in the basement area.

C It is against such order of rejection of the appellants' claim, that the instant appeal has been filed.

D On behalf of the appellants, it was reiterated that the entire showroom comprised of the two basement levels as also the ground floor level were ravaged by the mob of looters who firstly entered into the ground floor and looted all the articles stored therein. The mob also broke the plate glass windows and doors which were at the ground floor level and leading to the first level of the basement floors and entered through the same to loot the basement levels as well. The entire situation was such that it was not possible to pinpoint with any amount of accuracy the exact time of the looting of the different levels of the showroom. After the ground floor showroom was set on fire and smoke started pouring into the basement levels, the employees of the showroom who were at the basement levels rushed out through the staircase and escaped from the showroom. There was no way in which the frenzied mob of looters could be prevented from looting the stock in trade which was kept in the entire showroom comprising of the ground floor and the two basement floors.

E It is also the case of the appellants that the mob frenzy was so violent that the proprietrix and her family had to flee to the neighbouring State of Kerala in order to save their lives and could return to Coimbatore only after G the communal passions had died down.

Sales persons who were in the basement levels gave statements corroborating the case made out on behalf of the appellants.

H As against the above, the stand taken on behalf of the insurance company was that soon after the mob set fire to the showroom on the ground

floor, the police and fire fighting personnel arrived at the scene and were present there up to mid-night on 14th February, 1998, and in their presence no looting could have taken place. It was also submitted that there was no evidence of damage by fire in both the basement levels and there was also no evidence of the stock in the two basement levels having been looted by the rioters on 14th February, 1998. Consequently, the surveyors, who had been assigned the task of making an assessment of the damage and loss on account of such mob attack on the appellants' showroom and looting by the rioters, had not taken into account the claim of the appellants with regard to the stock in the two basement levels. In fact, the surveyors arrived at a conclusion that the stock in the two basement levels had not been looted on 14th February, 1998. In the surveyor's report, it was indicated that there were no indications of the mob having entered the two levels of basement and that the wooden racks and glass shelves, as also the glass tops of the sales counters were absolutely intact. It was also indicated that once the mob had set fire to the elevated ground floor, nobody could have entered the basement levels and that since fire in the ground floor had been started a little after 4.00 P.M. and the same was extinguished at around mid-night, nobody could have entered the premises during this period when the elevated ground floor was burning.

In view of the above, the surveyors only took into consideration the damage caused to the stock in the elevated ground floor level and the insurance company settled the claim for loss to the stock on the said basis.

From the statements of the sales persons who were in the two basement levels, it was sought to be argued that no one from the mob had entered the two levels of the basement as long as the employees were inside and it was doubtful as to whether after they left whether anyone could have entered the two levels of the basement in view of the conditions prevailing in the elevated ground floor.

From the submissions made on behalf of the parties, it is evident that in the wake of a series of bomb blasts in the city of Coimbatore on 14th February, 1998, there was wide spread unrest in the city of Coimbatore coupled with mob frenzy, arson and looting. Although, an attempt has been made on behalf of the investigating agency to clinically examine the manner in which the incident involving the appellants' firm had occurred, it is doubtful whether the incident which occurred at the showroom of the appellants on 14th February, 1998 can be explained with such clinical precision as to when

A exactly the sales persons in the two basement levels escaped from the showroom through the elevated ground floor or when the police and fire fighting personnel arrived at the site and when exactly the riotous mob took over the showroom. The statements of the sales persons clearly indicate that when they were fleeing the showroom they saw the mob trying to break through the plate-glass doors and windows leading to the first level of the two basement floors. There is also no denial of the fact that the said plate-glass doors and windows were in fact broken and for which insurance coverage was paid by the National Insurance Company on the basis of a report submitted by M/s. Comtec, Surveyors, Valuers and Assessors.

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C The report submitted by the investigators, M/s. Vasu Associates, proceeds to a large extent on surmises and the conclusion ultimately arrived at by them which reads as follows does not inspire much confidence:-

D “The owners themselves claim looting, because they did not find some of the textile goods after the incident, but they have no material to strengthen their claim by way of supplying us with substantial evidence which are unassailable. In the absence of substantial evidence they themselves are not for sure, it was looting. From what we have seen and heard, we are also of the opinion that, there could not have been looting at all. Surveyors are also convinced and therefore, they are not also inclined to assess the loss.”

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F As will be evident from the above, it will appear that the aforesaid conclusion was arrived at by adopting a negative approach. The investigators reached the aforesaid conclusion merely by stating that the appellants had no material to strengthen their claim by providing unassailable evidence of looting. Such an approach cannot be supported since apart from claiming that the goods in the showroom had been looted and the attendant circumstances, the appellants were not in a position to supply any further evidence.

G That there was communal unrest in the city of Coimbatore on the date in question is not denied. That the mob attacked and set fire to the showroom of the appellants is also an established fact. That the showroom was attacked by a frenzied mob, which set fire to the elevated ground floor of the showroom and indulged in looting, is also established. At exactly what point of time the mob may have entered into the two basement levels is difficult to determine in the prevailing circumstances and it is quite possible that the looting had taken place before the police and the fire fighting personnel arrived at the site.

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There is nothing on record to indicate that the stock in trade had been removed from basement levels in anticipation of any such rioting. On the other hand, the bank has clearly supported the case of the appellants by informing the insurance company that the stock insured was for Rs.2 crores and the average stock at any point of time in the insured premises was more than Rs. 2 crores and the bank requested the insurance company to re-consider the claim of the appellant-firm.

Although, M/s. Vasu Associates were engaged on a suspicion that the appellants had themselves transported part of the goods from the showroom, there is no real evidence in support thereof.

In our view, the appellants had discharged the initial burden regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under the insurance policy and it was for the insurance company to disprove such claim with evidence, if any. In our view, the insurance company, despite the report of the investigator, failed to establish that the claim of the appellants was not justified and was not covered by the policy of insurance.

Inasmuch as, the insurance company was within its rights to cause an inquiry into the incident and it approved the appellants' claim of Rs.1,02,38,738/- based on the report of the investigator, we are unable to agree with the submission made on behalf of the appellants that apart from the actual claim, the appellants are also entitled to payment of compensation towards hardship, mental agony and harassment.

We, therefore, allow the appeal and direct the respondent-insurance company to pay to the appellants the balance amount of Rs.97,83,827/- together with interest at the rate of 9% per annum from the date of the claim till payment. Such payment is to be made within a month from date.

There will be no order as to costs.

VS.

Appeal allowed.