



2025:DHC:9903



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 28th October 2025

Pronounced on : 13th November 2025

+ **RFA (COMM) 446/2025 & CM APPL.47767/2025, CM APPL. 47768/2025**

THE NEW INDIA ASSURANCE COMPANY LIMITED

.....Appellant

Through: Mr. Aditya Kumar & Ms. Ila
Nath, Advs.

versus

M/S SHIV SHAKTI PRODUCTS LIMITED

....Respondent

Through: Mr. Sachin Bansal & Mr. Gaurav
Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

CM APPL. 47766/2025 (for condonation of delay in filing the appeal)
& CM APPL. 47770/2025 (for condonation of delay in re-filing the appeal)

1. For the reasons disclosed in the applications and basis submissions recorded later, delay in filing and re-filing the appeal stand condoned.
2. Both these applications stand disposed of accordingly.

RFA (COMM) 446/2025

1. This appeal has been preferred by the appellant/insurer under Section 13 of the Commercial Courts Act, 2015 assailing the impugned



judgment and decree passed on 26th November 2024 (hereinafter, “*impugned judgment*”) by the District Judge (Commercial Court), North-East District, Karkardooma Courts in *CS (Comm) No. 58/2023*, whereby the suit has been decreed in favour of respondent/insured and the appellant/insurer has been directed to pay compensation to the tune of Rs.25,17,580/-, along with interest at the rate of 9% per annum from the date of filing of the suit as also the litigation costs.

2. The dispute relates to an insurance claim under Fire Floater Policy No.32030311180300000003 (hereinafter “*insurance policy*”) for the loss suffered on 9th June 2019, when rain water entered the insured premises and was rendered useless, a substantial quantity of stock of paper lying therein.

Factual Background

3. Respondent/Insured is a public limited company engaged in the business of importing, manufacturing, and trading of various kinds of paper. Appellant/Insurer had issued the subject policy for the period from 26th August 2018 to 25th August 2019, for a total sum insured of Rs.1,20,00,000/-wherein stocks of all kinds of papers were insured for Rs.1,16,00,000/-; plant and machinery for Rs.2,00,000/- and furniture, fixtures and fittings for Rs.2,00,000/-.

4. The policy was issued with respect to three locations *i.e.* registered office situated at *Khasra* No. 433, Village Sabhapur, near Sonia Vihar, Delhi; warehouse/godown located at *Khasra* No. 431, Village Sabhapur, near Sonia Vihar, Delhi; and registered office located at 550, Old Dal Mill, Bakhtawarpur, Delhi.



5. The incident occurred on 9th July 2019 at the godown premises of the respondent/insured located at *Khasra* No. 431, Village Sabhapur, near Sonia Vihar, Delhi when rainwater entered the subject premises upon overflowing from overhead clogged drains and channels, as a result of which the Stock Lot Paper, Poly Coated Paper, Release Paper, Self-Adhesive Paper and Gumming Sheets kept in the godown were drenched in water and rendered useless.

6. Respondent/Insured intimated the appellant/insurer *vide* email dated 9th July 2019 and the initial assessment of loss was stated to be around *Rs.15,00,000/-*. An authorised loss surveyor, one *Mr. Sandeep Bharti*, was appointed as per the provisions of Section 64 UM of Insurance Act, 1938. Thereafter, the surveyor visited the insured premises on 10th July 2019 and on various other dates for a detailed inspection of the premises and the insured stock.

7. Respondent/Insured *vide* letter dated 17th July 2019, provided the surveyor with a list of stock that it claimed to have been damaged due to the incident of loss and as per the list, *51,885 kilograms ('kgs')* of paper stock was damaged in the value of *Rs.27,54,670/-*.

8. Surveyor issued a letter of request dated 18th July 2019 seeking various documents and clarification vital for assessment of loss. Respondent/Insured *vide* letter dated 25th July 2019 provided the surveyor with the list of various types of stocks maintained by them. A request for arranging supporting documents was again made by the surveyor *vide* letters dated 27th August 2019 and 14th September 2019 and documents were thereafter, submitted by respondent/insured on 17th October 2019 and 12th November 2019.



9. After several more exchanges between the surveyor and respondent/insured, the surveyor issued the final report on 31st July 2020 wherein respondent's claim was repudiated as '*No Claim*' as being in direct conflict with *Clause 6* of '*Conditions- Fire Floater*' in light of the respondent's/insured's failure to provide the requisite document and adequate clarifications. Further, the report noted that loss is liable to be assessed at Rs.5,52,044/- with respect to damaged stock of paper of 51,885 kgs at the value of Rs.22.21 per kg.

10. The claim was reopened on 15th September 2020 and further documents were submitted by respondent/insured on 4th January 2021 and 10th April 2021 and the claim was finally repudiated on 11th April 2022.

11. Thereafter, a suit for recovery of compensation to the tune of Rs.35,38,605/- was filed by respondent/insured. The District Court directed appellant/insurer to compensate respondent/insured to the tune of Rs.25,17,580/- for 54,730 kgs of damaged stock valued at Rs.48.50 per kg, subject to salvage deductions at the rate of Rs.2.50 per kg.

Submissions on behalf of the Appellant

12. In support of their plea, *Mr. Aditya Kumar*, counsel for appellant/insurer categorised his submissions under the following heads:

12.1 Slow Moving/Dead Stock

Counsel for appellant argued that no deduction with respect to dead stock was made in the impugned judgement. For this, he placed reliance on the surveyor's report, which noted stock valued at Rs.36,29,768/- was more than 6 months old and the



same would have to be valued at 50%. Stock valued at Rs.18,14,884/- or 10.85% was non-utilizable and should have been deducted under this head.

12.2 Salvage

Trial Court while assessing the amount deducted on account of salvage has halved the assessment made by the surveyor and held that Rs.2.5 per kg instead of Rs.5.00 per kg should have been deducted.

Responding to the query put by the Court, counsel for appellant submitted that the surveyor is a domain expert and is statutorily mandated to conduct loss assessments to his best judgment. Additionally, counsel for appellant/insurer submitted that the surveyor had repeatedly requested the respondent for obtaining quotations for disposing of salvage, however, the same were not arranged.

Placing reliance on *Sri Venkateswara Syndicate v. Oriental Insurance Company Limited* (2009) 8 SCC 507, counsel for appellant buttressed the claim that the final report of surveyor is entitled to the highest weightage and ought not to be departed from. Therefore, in light of above submissions, the appropriate deduction on account of salvage ought to have been Rs.2,73,650/- as opposed to Rs.1,36,825/-, assessed by the Trial Court.

12.3 Under-insurance

Counsel for appellant/insurer vehemently argued that the Trial Court committed a fundamental error that there was no under-



insurance by calculating value of the claim as against the sum insured, instead of calculating the collective value at risk *qua* the sum insured. He submitted that the available stock value, as provisionally assessed by the surveyor, was to the tune of Rs.1,49,18,397/- and in accordance with *Clause 10* of the Terms and Conditions, there was under-insurance of 22.24% which was calculated by the surveyor. Accordingly, deduction to the tune of Rs.1,65,912/-was made by the surveyor.

It was further submitted that under-insurance occurs when value at risk is greater than sum insured and thus lower premium has been paid by the insured. A deduction on account of under-insurance is made from the claim payable to the insured, proportionate to the percentage of under-insurance.

In this regard, reliance was placed on ***Sikka Papers Ltd. v. National Insurance Co. Ltd.*** (2009) 7 SCC 777 wherein, the Apex Court held that a claim is mandatorily subject to under-insurance deductions if the value of the insured stock ‘collectively’ and not just the damaged stock is more than the sum insured, on the date of loss. Further reliance was also placed on ***I.C. Sharma v. Oriental Insurance Co. Ltd.*** (2018) 2 SCC 76. Relevant portion of the same is extracted hereinbelow for the ease of reference:

“10. The Insurance Company can however apply the principle of averaging out when all the goods are not destroyed. Supposing the entire house was insured for Rs. 50,00,000, but on valuation it is



found that the value of the structure and the goods was Rs 1,00,00,000 and if the policyholder claims that he has suffered loss of Rs 40,00,000 then he will be entitled to only Rs 20,00,000, by applying the principle of averaging out. What this means is that if the value of the goods is more than the sum for which they are insured then it is presumed that the policyholder has not taken out insurance policy for the uninsured value of the goods. The claim is allowed by applying the principle of averaging out i.e. the insured is paid an amount proportionate to the extent of insurance as compared to the actual value of the goods insured."

(emphasis added)

Therefore, deduction of Rs.4,65,428/- ought to have been made on account of under-insurance.

12.4 Compulsory deduction of Excess

It is contended that the Trial Court did not consider Clause 13 (a) of the Insurance Policy which provides a compulsory deduction of 5% of the claim amount, subject to a minimum of Rs.50,000/- in addition to *Clause 1* of the Terms and Conditions which specifically provides for exclusions on account of *Excess*.

Surveyor made a deduction of Rs.50,000/- considering the gross loss to be assessed at Rs.11,52,366/-. However, the Trial Court impugned judgment did not record any deduction under this head.

13. As regards the contention of the respondent/insured that these pleas were not taken in the pleadings, appellant/insurer contended that it was covered by the issues framed by the Trial Court. Reliance was placed on the decision of the Supreme Court in ***Bhagwati Prasad v. Chandramaul*** (1965) SCC OnLine SC 111 where it was noted in



paragraph 10 that “*if a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial, the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if, it is satisfactorily proved by evidence.*”

14. All these aspects were involved in the trial and could be derived from the issues which were framed. It was stated that ***Bhagwati Prasad (supra)*** has been followed in ***Standard Chartered Bank v. Andhra Bank Financial Services*** (2006) 6 SCC 94. Reliance was also placed on ***Ram Swarup Gupta v. Bishun Narain Inter College*** (1987) 2 SCC 555 and ***Sardul Singh v. Pritam Singh*** (1999) 3 SCC 522 wherein it was stated that once the parties are aware of contentions canvassed and evidence has been led, objections as to absence of specific pleadings cannot be raised.

15. On the issue of condonation of delay, the appellant’s/insurer’s counsel submitted that the delay was of 140 days in filing and 7 days in re-filing, since the approved procedure mandated for challenging the judicial order had to be necessarily followed by the appellant/insurer being a Public Sector Undertaking (***PSU***). He further submits that detailed reasons have been given in the condonation of delay application.

16. Reliance was placed on the decision of the Supreme Court in the ***State of Haryana v. Chandra Mani*** (1996) 3 SCC 132, where the Supreme Court noted that procedural red tape is inherent in bureaucratic decision making and due to that public interest would suffer if the applicant is not suited on the ground of delay.



17. Reliance was also placed on a decision of the Supreme Court in ***State of Jharkhand v. Azadul Haque and Others***, decided on 12th September 2025 SLP (Civil) Diary No.3916/2025 where the Supreme Court has taken notice of the fact that the state being an impersonal machinery, moves at a snail's space and there would be no personal interest of the officials in withholding the file. The Supreme Court notes in paragraph 6, “*even when there is bureaucratic lethargy, substantial justice cannot be sacrificed at cost of public good...*”

Submissions on behalf of the respondent

18. On the issue of limitation, counsel for respondent/insured, contended that the appeal is barred, since there is a delay of 179 days in filing the appeal which is beyond the mandated 60 days. The appeal was filed on 2nd August 2025, while the deadline for filing the appeal was on 26th November 2024. It is contended that the delay is not sufficiently explained and the grounds taken do not form a sufficient cause. In this regard, he relies on ***Oriental Insurance Company Limited v. Sharp Mint Limited*** (2024) SCC Online Del 8030 and ***CDS Infra Projects Limited v. Reinforced Earth India P Limited*** (2025) SCC OnLine Del 3203.

19. As regards the plea of under-insurance, respondent/insured contends that it was not taken by the appellant/insurer in their written statement before the Trial Court and therefore, would be considered as waived and abandoned. In fact, for that reason no issue was framed. The only plea taken before the Trial Court was the non-submission of requisite documents to the surveyor, resulting in repudiation of the respondent/insured's claim.



20. No contractual exclusion clause has been pleaded in the written statement and therefore, does not become a point of issue, considering not pleaded. For this he relies upon ***Bachhaj Nahar v. Nilima Mandal*** (2008) 17 SCC 491. Respondent/Insured contends that a factual issue cannot be raised or considered for the first time in second appeal.

21. The issue of compulsory deduction and deduction of salvage were also similarly not pleaded in the written statement and the same arguments would apply to these pleas as well. Moreover, the damaged stock of papers having been drenched in rainwater lost its worth for all practical purposes and therefore, there is no market value. Despite that, the Trial Court had taken salvage value at Rs.2.5 per kg, while in fact, there is none.

22. As regards the issue of the surveyor's report, it is contended that the surveyor closed the claim *vide* report dated 31st July 2020 and since COVID pandemic was going on, the respondent/insured requested the appellant to reconsider the case and sought to submit more documents in support of their claim. Respondent/Insured was allowed to file documents and the case was opened for reconsideration. Respondent/Insured submitted further documents *vide* letter dated 4th January 2021 (*Ex. PW1/12 (colly)*) and 10th April 2021 (*Ex. PW1/18*).

23. The surveyor admitted in the cross-examination that he was advised by the appellant/insurer *vide* email dated 12th August 2021 for perusal and consideration of the same. However, the surveyor did not consider any of the documents submitted by the respondent/insured and by email dated 2nd April 2022, intimated the shortcomings to appellant/insurer in paragraph 7(a) to 7(h) of his email. The Trial Court



in paragraph 27 and 28 of the impugned judgement stated that the shortcomings of paragraph 7(a) to 7(h) was satisfied by the respondent/insured and no personal hearing was given to the respondent, before finally closing the case.

24. As regards the deposition of the surveyor that he had no authority to communicate to the respondent directly, it was contended that all communication was directly done by the surveyor, and therefore the testimony could not have any credence.

25. Reliance of the appellant on *Sikka Papers Limited (supra)* was distinguished on the ground that in *Sikka Papers*, the insured was demanding the cost of repair and other miscellaneous expenses and the Supreme Court held that since the machinery was of higher value and the repair costed a higher amount, therefore under insurance was applicable.

Analysis

26. Essentially, there are two primary issues which form the basis of the challenge preferred by the appellant/insurer. *First*, that the surveyor's final report dated 31st July 2020 was ignored, whereas it ought to have been relied upon in accordance with settled law; and *second*, omission of appellant to raise pleadings regarding under-insurance and other deductions, before the Trial Court, would not preclude them from taking these pleas at an appellate stage.

27. In respect of the first issue concerning the surveyor's report, the issue has been considered by the Supreme Court in *Sri Venkateswara Syndicate v. Oriental Insurance Company Limited* (2009) 8 SCC 507 which categorically states that the reports of surveyor are to be given



importance to, but there can be sufficient grounds not to agree with the assessment made by them.

28. The Supreme Court goes on to state that the insurer would not be bound by whatever the surveyor has assessed or qualified, but it can appoint another surveyor, in case, it does not agree with one of its reports. Essentially, the Court has stated that the surveyor's report is not sacrosanct. The relevant observations in this regard are extracted as under:

“31. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assesses the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured.

32. There is no disputing the fact that the surveyor/surveyors are appointed by the insurance company under the provisions of the Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section, the insurance company cannot go on appointing surveyors one after another so as to get a tailor-made report to the satisfaction of the officer concerned of the insurance company; if for any reason, the report of the surveyors is not acceptable, the insurer has to give valid reason for not accepting the report.

.....



35. In our considered view, the Insurance Act only mandates that while settling a claim, assistance of a surveyor should be taken but it does not go further and say that the insurer would be bound by whatever the surveyor has assessed or quantified; if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured.”
(emphasis added)

32. The factual matrix in ***Sri Venkateswara*** (*supra*) involved the appointment of a new surveyor, after having received a previous report from the originally appointed surveyor. The issue in question was whether appointment of successive surveyors by the insurer till it received a favourable report was legal or not. The assertion made by the insured in the matter was that this process would shatter the confidence and trust of the people in the very purpose of insurance.

33. In ***New India Assurance Company Limited v. Pradeep Kumar*** (2009) 7 SCC 787, the Supreme Court held that though assessment of loss by an approved surveyor is a pre-requisite for settlement of a claim, the surveyor's report is not the last and final word, and it is not so sacrosanct that it cannot be departed from. Court's observations are extracted as under, for reference:

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

“64-UM. (2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated



to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as 'approved surveyor or loss assessor')

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

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

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

(emphasis added)



21. In yet another decision by the Supreme Court in ***S.S. Cold Storage India Private Limited v. National Insurance Company Limited*** (2024) 2 SCC 467, the Court, relying *inter alia* upon ***Pradeep Kumar*** (*supra*) reached a conclusion that the surveyor's report did not consider all relevant factors and was therefore, not accepted. The Supreme Court's opinion in this regard is extracted as under:

“41. Absence of consideration of relevant factors is, therefore, writ large on the Surveyor's Report. The reports of the loss assessor and the experts dwelled on general aspects of scientific observations relating to the absence of friction or movement when ammonia passes through the pipes and its alkalinity (non-acidic nature) not being corrosive to the pipes as well as the manufacturing details, and specifications of the pipes, which are conspicuous by their absence in the Surveyor's report. It seems, all relevant factors were not considered in the proper perspective by the Surveyor, yet, such Surveyor's Report was relied on by the respondent to defeat the claim of the appellant. The report having recorded the ipse dixit of the Surveyor, without any reference to the aforesaid aspects touched upon by the loss assessor and the experts, the same is, in our opinion, not worthy of acceptance.”

(emphasis supplied)

22. The Supreme Court in ***New India Assurance Company v. Mudit Roadways*** (2024) 3 SCC 193 similarly placed reliance upon ***Pradeep Kumar*** (*supra*) and stated as under:

“46. Guided by the above ratio, the situation in the present case is found to be similar. The surveyor's report cannot be considered a sacred document and contrary evidence, including an investigation report, is subject to rebuttal. The key question is whether the investigation report is indispensable, or if the survey



report alone is sufficient, to determine the cause of the fire.”

(emphasis added)

23. In this regard, we must examine the Trial Court’s reasoning for rejecting the surveyor’s report as sacrosanct. As is evident from the impugned judgment extracted below, the Trial Court noted that despite having received information and documents from the respondent/insured, the surveyor noted shortcomings and discrepancies in his email of 2nd April 2022 in Paragraph 7 (a) to 7 (h) and was therefore, merely repeating the queries without considering the replies given by the respondent/insured.

“27. The core question to decide is that pursuant to reopening of the case and examining the replies/documents as submitted by plaintiff company, whether the surveyor was justified in recommending the claim of the plaintiff as “Not pursued- No Claim” for want of shortcomings/discrepancies as pointed out by him in his email dated 02.04.2022 i.e. part of Ex.DW2/2. DW2 Sh. Sandeep Bharti noted the following final shortcomings/ discrepancies in his email dated 02.04.2022 in clause (a) to (h) of para no.7.

“(a) The auditor certification on inventory details of 31.03.19 and 09.07.19 is not evident/legible and UDIN of referred inventory details of 31.03.19 and 09.07.19 is not provided (in case these are certified by regular auditor).

(b) UDIN of Balance Sheet of 09.07.19 is not provided.

(c) The cost sheet towards manufacturing of Adhesive Paper [7-99] is not certified by regular auditor.

(d) The insured failed to justify how type-wise /invoice-wise identification of claimed stock of paper could be carried since neither the invoices nor the stock of



paper bear any identification particular/lot no./material code etc.

(e) Pkt. to Kgs. conversion factor as per invoice no.20 dt. 06.05.19 of M/s Kirti Paper is not provided.

(f) There is mismatch in opening quantity. of stock register of Adhesive Paper (0-60) as on 01.04.19 vs. closing of this item as mentioned in stock summary of 31.03.19.

(g) There is mismatch in opening quantity. of stock register of Paper (60-75) as on 01.04.19 vs. closing of this item as mentioned in stock summary 31.03.19.

(h) There is mismatch in closing quantity. of stock register of Waste Paper (4707) as on 09.07.19 vs. closing of this item as mentioned in stock summary on 09.07.19.”

28. In this regard, perusal of submission of information and documents given by plaintiff company to the surveyor i.e. Ex. PW/18 dated 10.04.2021 shows that the plaintiff had explained the shortcomings/discrepancies to the surveyor, which he pointed out from point (a) to (h) of clause 7 of his email dated 02.04.2022 while finally recommending the case of plaintiff to be closed as “No claim” for want of those clarifications/documents. Regarding the query (a) of para no.7 of the said email, the plaintiff provided the stock details duly certified by regular auditor including the details of stock on 31.03.2019 and 09.07.2019 in para no.7 of its reply and also annexed the relevant documents. Regarding the query (b) of para no.7 of abovesaid email i.e. about UDIN of Balance sheet, the plaintiff provided the UDIN number in para no.11 of its reply. Regarding query (c) of para no.7, the plaintiff provided the auditor certified cost sheet towards manufacturing of adhesive paper as mentioned in para no.7(g) of its reply. Similarly, the clarification as sought by DW2 in para 7 (c to h) of abovesaid email, the plaintiff had given specific answer/clarification with regard to each query as raised in these para no.7 (c to h). The surveyor i.e.



DW2 Sh. Sandeep Bharti has not explained as how these clarifications/documents which were already submitted to him in letter Ex.PWL/18 by the plaintiff company, were not appropriate or up to mark. Merely by repeating the same queries without considering the replies or without pointing out the specific deficiencies in the replies corresponding to the queries raised by him, the surveyor was not justified in recommending the claim of plaintiff as “Not pursued-No claim”. Even if the surveyor was not supposed to directly communicate with the plaintiff as argued by Ld. Counsel for defendant, it is unexplained that what prevented the defendant company to consider the recommendation of the surveyor on the basis of repeated queries and their replies given by the insured/plaintiff with regard to his claim arising out of insurance policy issued by defendant company. The defendant company could have given personal hearing to the plaintiff company after reopening the case by considering the replies of the plaintiff and the recommendation of the surveyor. Therefore, it is held that the claim of plaintiff was not validly repudiated by the defendant company and closed as “No claim”. Accordingly, this issue is decided against the defendant and in favour of the plaintiff.”

(emphasis supplied)

24. Presented with this analysis of the Trial Court, this Court does not see any reason to differ with it. Appellant's/insurer's contention that aside from this, the surveyor's report should be given the highest weightage is a proposition which is untenable as per settled law. This aspect, therefore, does not provide acceptable ground for appeal.

25. Moreover, non-consideration of relevant documents by the Surveyor while deciding the insured's claim has recently been examined by the Supreme Court in **Orion Conmerx Pvt Ltd. v National Insurance**



Co. Ltd. 2025 INSC 1271 where the final surveyor's report had erroneously ruled the cause of fire to be 'not accidental' in a fire insurance policy without providing adequate reasoning to that effect. The Court was of the view that the final Surveyor erred by not considering the 5855 pages of documents provided by the insured and holding that 'till date insured have not submitted any reasonable or co-relatable documentary evidence in support of the quantum and thereby the value of the claim.' The relevant paragraph in that regard is extracted as under:

"41. The final Surveyor's conclusion that the fire is not accidental is not correct, as there is no reasoning in the final Surveyor's report as to why the fire is not accidental. This Court is of the view that the final Surveyor's report has only found that electric short circuit is not the sole source and that there were three independent sources/seats/pools of fire. But the said finding cannot lead to the conclusion that the fire in question is not accidental. This is more so, when the final Surveyor in its report has neither concluded that the incident of fire falls within the exception/exclusion clause of the fire policies nor fraud, negligence or intentional damage by the Insured. In fact, the final Surveyor's report is not conclusive with regard to the cause of fire and there is no finding leave alone any conclusion in the final Surveyor's report that the Insured caused the fire. Accordingly, this Court is of the view that in the present case, the incident of fire is an accidental fire and is an occurrence which reasonably and otherwise is an occurrence within the terms and conditions of the Insurance policies.

....

....

59. Insofar as the quantity and value of the goods lost by fire and water is concerned, the same could not have been accurately ascertained by mere physical visit; instead, what was more reliable were various



documents and evidence maintained by the Insured in normal course of business. That is precisely the reason why all such documents were asked for by the Surveyor and were supplied by the Insured.”

(emphasis added)

26. In terms of various other aspects like under-insurance, dead stock, salvage and compulsory deduction of excess not having been pleaded in the written statement by the appellant/insurer before the Trial Court, the view taken by the Supreme Court in ***Bachchhaj Nahar*** (*supra*) as presented by the respondents, appeals to this Court. In ***Bachchhaj Nahar***, the Supreme Court focuses on the object and purpose of pleadings, which is to ensure that all issues are clearly defined and cases cannot be expanded and shifted during trial. In this regard, the Supreme Court opines as under:

“12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief,



are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

(emphasis added)

26. Admittedly these aspects were not taken up by the appellant/insurer during the course of trial, and therefore, no issue could be framed and thereupon, the Trial Court was disabled from considering these aspects. Moreover, in ***Rama K.T. Barman Through LRs v. MD. Mahim Ali & Others*** (2024) INSC 644, the Supreme Court while considering the scope of the Appellate Jurisdiction under Order 41 of Code of Civil Procedure, 1908 (***CPC***), has observed as under:

12. As per Order XLI Rule 25, the appellate court may, if necessary, frame issues and refer the same for trial to the court whose decree is appealed from, and direct such court to take additional evidence required. Further, as per Rule-27 Order XLI, the Appellate Court may allow evidence or document to be produced



or witness examined, in the circumstances stated therein, after recording the reasons for such admission of evidence. However, the Appellate Court cannot create a new case for the party, frame the issues and decide the issues without following the procedure contemplated under Order XLI of CPC.

13. In the instant case, the High Court in the second appeal had framed one substantial question of law on 16-3-2007, and framed two another substantial questions of law on 5-2-2015 and one more substantial question of law in 2015. Thus, in all framed four additional questions of law.

14. Apart from the fact that none of the said substantial questions of law formulated by the High Court were either raised before the trial court or the appellate court, none of parties was given any opportunity of leading the evidence on the said issues. It is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties.

(emphasis supplied)

27. Appellant's/insurer's contention that all these aspects were covered under the generic issues which were framed by the Trial Court is untenable. It is not about the manner in which the issues were framed, but the fact that pleadings in question were not before the Trial Court at all.

28. Order XIV Rule 1(3) of CPC specifically states that each material proposition, affirmed by one party and denied by the other, shall form the subject of a distinct issue, Order XIV Rule 3 of CPC further states as under:



“ORDER XIV: Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

3. Materials from which issues may be framed—The Court may frame the issues from all or any of the following materials: —

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.”

29. The Apex Court in ***Sri Shivaji Balaram Haibatti v. Sri Avinash Maruthi Pawar*** 2017 INSC 1126 dealt with a proposition where the High Court had additionally framed a general issue on a plea which was not raised by the respondent therein before the Trial Court and therefore, the courts below did not have an opportunity to record any findings of such a plea either. The Apex Court’s observations in that regard are extracted as under:

“28. It is these issues, which were gone into by the two Courts and were concurrently decided by them against the respondent. These issues, in our opinion, should have been examined by the High Court with a view to find out as to whether these findings contain any legal error so as to call for any interference in second appeal. The High Court, however, did not undertake this exercise and rather affirmed these findings when it did not consider it proper to frame any substantial question of law. It is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the Court cannot record any finding on the issues which are not part of pleadings. In other words, the Court has to record the findings only on the issues which are part of the pleadings on which parties are



contesting the case. Any finding recorded on an issue de hors the pleadings is without jurisdiction. Such is the case here.”

(emphasis supplied)

30. Considering that the pleadings in this regard were bereft of such allegations being made by the appellant/insurer, there was no question of the Trial Court having such material from which an issue could have been framed. Appellant's/insurer's reliance on being covered by a generically framed issue, is therefore not tenable.

31. The appeal is accordingly, dismissed.

32. Pending applications are rendered infructuous.

33. Judgement be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

(NITIN WASUDEO SAMBRE)
JUDGE

NOVEMBER 13, 2025 /SM/sp