



2026:DHC:3155



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Reserved on: 29<sup>th</sup> January, 2026**  
**Pronounced on: 16<sup>th</sup> April, 2026**

+ **RFA 75/2023, CM APPL. 4439/2023**

**NATIONAL INSURANCE COMPANY LTD**

Direct Agent Branch- II

21, Darya Ganj,

New Delhi -110002

.....Appellant

Through: Mr. Niraj Singh, Ms. Vibhuti  
Khandelwal, Advocates

versus

**GAYATRI DEVI**

Proprietor Gayatri International

B-48, Devli Road, Khanpur

New Delhi-110062

.....Respondent

Through: Mr. Mukesh Kumar, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. Regular First Appeal has been preferred under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 (CPC) against the Judgement and Decree dated 15.10.2022 whereby the Suit of the Plaintiff has been decreed in the sum of Rs. 20,47,400/- along with interest at the rate of 6% p.a. from 28.07.2008 till the decision of the Suit and further simple interest at the rate of 9% p.a., till realization.
2. The Plaintiff/Respondent Gayatri Gupta filed a *Civil Suit bearing CS(OS) No. 243/2020 for recovery of Rs.29,67,400/- along with pendent lite and future interest at the rate of 18% per annum from the date of institution of the suit till the date of realization.*



3. *Facts in brief* are that the Plaintiff/Respondent is the Proprietor of M/s Gayatri International, carrying on her trade as Contractor from B-48, Devli Road, Khanpur, New Delhi, who undertakes contractual jobs of various Government and semi-Government organizations. She during the course of business, got a *Work Contract* from M/s BSNL, to be performed at Gurgaon. She procured various machinery and other articles, for completion of the work. Since the Plaintiff was stationed at Delhi, while the work was to be performed at Gurgaon, the machinery, equipment and other articles were to be deployed at the site in Gurgaon. She got an Insurance Policy number 360/102/44/06/5900000010. Full risk was covered under the Insurance Policy and the Defendant was responsible to compensate the Plaintiff for any loss or damage caused to the Plaintiff on account of above said machinery.

4. The Plaintiff sent her machinery, equipment and other articles, to Gurgaon in a truck bearing No. HR-55C-4151, on 02.09.2007. The truck driver enroute, parked his truck at Shankar Chowk, Gurgaon for taking a tea break. However, while the truck was parked, machinery and other articles were stolen from the truck. The estimated cost of the machinery was Rs. 16,47,400/-. An FIR was registered on the same day, i.e. 02.09.2007 at P.S. DLF, Phase-II, Gurgaon.

5. Thereafter, on the same day, the driver of the truck bearing No. HR-55C-4151 informed the Plaintiff, i.e. the owner of the machinery, about the theft. On verification, it was found that in addition to the articles mentioned in the FIR, there was some more articles which were being kept in the truck without the knowledge of the driver and therefore, were not disclosed in the



FIR. The additional articles included 40 rods of value of Rs.10,000/- each, having a total value of Rs. 4,00,000/-. **A separate FIR dated 03.09.2007 was registered at the same Police Station, about the theft of additional articles.**

6. Despite best efforts, the Police was unable to recover the articles. The Plaintiff thus, lodged her claim with the Defendant on 28.07.2008. The Plaintiff claimed that despite repeated requests, the Defendant failed to settle the insurance claim.

7. The total value of the goods was Rs. 20,47,400/- on which interest was in the sum of Rs.7,20,000/- with the litigation expenses at Rs. 2,00,000/-. Thus, *the Plaintiff filed a Suit for recovery of Rs. 29,67,400/- along with interest, at the rate of 18% per annum.*

8. The Suit was contested by the Defendant/Insurance Company/Appellant who in the *Written Statement*, denied the averments made in the plaint. It was claimed that there was material suppression of material facts in the plaint. The Plaintiff had failed to disclose that her claim was repudiated by the Defendant, *vide* Letter dated 01.01.2009.

9. It was further stated that after receiving the claim intimation from the Plaintiff, Defendant had appointed an independent and duly licensed surveyor to survey and assess the loss. The surveyor submitted his final Survey Report dated 04.11.2008 with an assessment of net loss of Rs. 1,54,576/-.

10. The Defendant carefully examined the contents of the Survey Report, terms and conditions of the Policy and the documents and came to



the conclusion that the claim of the Plaintiff was not payable and consequently, the same was repudiated on 01.01.2009.

**11.** It was further explained that the location covered under the Insurance Policy was Khanpur whereas the loss had occurred at different location, i.e., Gurgaon. As per Contractor's Plant and Machinery Policy, it was applicable to the insured items, whether they are at work or rest of being dismantled for the purpose of clearing or overhauling or in the course of aforesaid operation themselves or when being shifted within the premises or during subsequent re-erection, but only after successful commission. However, in the present case, the reported theft of the machinery parts occurred while kept in a truck at Gurgaon. The subject machinery parts were carried from Khanpur to Gurgaon through the truck. Since the parts were not unloaded from the truck, it was subject matter of *Marine Insurance Policy* and not covered under Contractor's Plant and Machinery Policy. It was thus, asserted that the claim of the Plaintiff was rightly repudiated as it was not covered under the *Contractor's Plant and Machinery Policy*, which had been taken by the Plaintiff. It was thus, submitted that the Suit of the Plaintiff was liable to be dismissed.

**12.** The Plaintiff in **the Replication**, denied that she had any intimation about the repudiation. She also claimed that the Report of Surveyor assessing net loss of Rs.1,54,576/-, was not even informed to her. She reiterated a claim for recovery of the Suit amount along with the interest.

**13.** *Issues on the pleadings*, were framed on a 03.08.2012 as under:

“(i) *Whether the plaintiff is entitled to recover an amount of Rs.29,67,400/- from the defendant? OPP*



(ii) whether the plaintiff is entitled to interest? If so at what rate and for what period? OPP.

(iii) Whether the defendant has rightfully repudiated the claim of the plaintiff? OPD

(iv) Relief.”

14. The Plaintiff in support of her case examined herself as **PW1** and deposed on similar lines, as the averments made in the plaint.

15. The Defendant/Appellant examined **DW1 Sh. Jerry Rajiv** who deposed on similar lines as the defence taken in the Written Statement.

16. **DW2 Shiv Kumar** in his affidavit of evidence Ex.DW2/A relied upon the Survey Report dated 04.11.2008 Ex. DW1/1.

17. **The learned District Judge**, on appreciation of the evidence, observed that the Policy was not location specific, but it covered the loss to the machinery and therefore, the claim of the Respondent that the Contractor's Plant and Machinery Policy Ex. P-1 did not cover the incident of theft, was rejected. It was further noted that there was no such clause in the Insurance Policy which was location specific or did not cover the goods stolen by, kept in a truck.

18. The learned District Judge considered the Claim Form Ex.PW1/4 and the Letter dated 01.01.2009 Ex. P-2 and the Survey Report Ex. DW1/1, and concluded that the Plaintiff had proved the loss of the machinery as Rs.20,47,400/-. **The Suit of the plaintiff was decreed.**

19. Aggrieved by the said judgment, present **Appeal has been preferred. The grounds of challenge are that** the learned trial court failed



to appreciate the risk covered, as per the schedule of the Insurance Policy, only covered the location of Khanpur, Delhi, however, the insured items were allegedly stolen at Gurgaon, Haryana, therefore, the loss suffered by the Respondent is not covered under the policy.

**20.** The Appellant further agitates that the insurance policy between the insurer and the insured, represents a contract between the parties, since the insurer undertakes to compensate the loss suffered by the insured, on account of risks covered under the insurance policy, the terms of insurance policy have to be strictly construed and the insured cannot claim more than what is covered under the policy.

**21.** Reliance is placed on Vikram Greentech India Ltd. & Anr. Vs. New India Assurance Co. Ltd. (2009) 5 SCC 599; and Bajaj Allianz General Insurance Co. Ltd. and Anr. Vs. State of Madhya Pradesh 2020 SCC OnLine SC 401 whereby it was held that the court is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms, which were not intended by the parties; and the provisions of an insurance contract are required to be interpreted in a business-like manner and to be conveyed by the words used in the Insurance Policy document.

**22.** The Appellant further asserts that the insured is entitled to the reimbursement of the actual loss, which has been suffered by the insured, and therefore, the reliance was placed on United India Insurance Co. Ltd. Vs. Kantika Color Lab & Ors. (2010) 6 SCC 449.

**23.** Further, the learned Trial Court did not appreciate that the Respondent in her mail dated 06.02.2009 alleged that the machine is not shifted/carried from Khanpur to Gurgaon. The machinery with parts always



remained at work site i.e. at Gurgaon and the Respondent did not inform the Appellant, regarding the transit of the insured item from the specified location to some other location.

**24.** The reliance is further placed on *Sri Venkateshwara Syndicate Vs. Oriental Insurance Co. Ltd.* (2009) 8 SCC 507 and *United India Insurance Co. Ltd. & Ors. Vs. Roshan Lal Oil Mills Ltd. & Ors.* (2000) 10 SCC 19 whereby it was held that the Survey Report is an important document for settlement of a claim and its non-consideration could result in miscarriage of justice.

**Submissions heard and record perused.**

**25.** It is an admitted case that the Appellant Insurance Company had issued an Insurance Policy to cover the cost of machinery of the Respondent, from 15.12.2006 till 14.12.2007. There is no challenge to the fact that while the machinery was being transported to the work location at Gurgaon in a truck, the goods got stolen while the truck was parked at Shankar Chowk, Gurgaon, for which FIR was filed on 02.09.2007 and FIR No. 258 dated 03.09.2007, both under Section 379 IPC, P.S. DLF, Phase-II, Gurgaon, were registered.

**26.** The Plaintiff as PW1 had deposed that on assessment the value of the goods was found as Rs. 16,47,400/-, which got mentioned in the first FIR dated 02.09.2007 under Section 379 IPC. However, subsequently it was found that there were other articles kept in the truck about which the driver was not available. On checking, it was found that 40 iron rods for a total value of Rs. 4,00,000/-, were also kept in the truck which was stolen.



Consequently, the second FIR No. 258 got registered on 03.09.2007 under Section 379 IPC.

27. It is further not in dispute that the investigations were carried out by the Police and *Final Report under Section 173 Cr.P.C. stating that the stolen goods could not be recovered, was submitted in the Court.*

28. The Plaintiff thus, submitted the Claim Form Ex. PW1/4, wherein the valuation of the goods was given as Rs. 20,47,400/-, which was claimed from the Insurance Company. It had been indicated that the articles stolen were:

- (i) Iron drill rods purchased on 07.10.2005;
- (ii) Digitrack Mark- III, locator complete set; and
- (iii) Red Sonde.

29. The stolen articles were not questioned or doubted, by the Defendant.

30. The Appellant had claimed that they had appointed their own Surveyor who had given the final Survey Report Ex. DW1/1. This Survey Report was proved by Defendant No. 1, but aside of deposing that he had appointed the Surveyor, he was not the competent person to prove the contents of the Survey Report.

31. The second witness examined by the Appellant was **DW2, Sh. Sunil Arora**, who also deposed in regard to the Survey Report Ex. DW1/1. However, he admitted in his cross-examination that he did not know the name of the Surveyor, who had visited the place of occurrence, which indicated that though he had signed the Survey Report Ex. DW1/1, but he had never visited the place of occurrence or was competent to depose about



the contents of the Survey Report. The Surveyor was not examined by the Appellant.

32. The learned District Judge, while referring to the testimony of DW1 and DW2 therefore, concluded that the Survey Report Ex. DW1/1 was not proved.

33. Furthermore, the perusal of the Survey Report Ex.DW1/1 reflected that for ZT 15 Drill Rod (total 40 in number), the Plaintiff had claimed Rs. 4,24,000/-, which was approved by the Surveyor. However, for Digitrak Mark III and Red Sonde, Rs. 5,35,000/- and Rs. 1,25,000/- respectively, were claimed. Both the claims were denied, but there is no explanation forthcoming on what basis the claim was totally denied.

34. The Survey Report is reproduced as under:

Sr. No.	Item Description	Quantity (Nos.)		Amount (Rs.)	
		Claimed	Recomm.	Claimed	Recomm.
1	ZT 15L Drill Rod	40	40	4,24,000	4,24,000
2	Digitrak Mark III	1	Nil	5,35,000	Nil
3	Red Sonde	1	Nil	1,25,000	Nil

<b>Total</b>	<b>10,84,000</b>	<b>424000</b>
Add CST @ 4% =	43,360	16,960
	<b>11,27,360</b>	<b>4,40,960</b>
Less depreciation @ 40% =		1,76,384
<b>Total Loss =</b>		<b>2,64,576</b>



Therefore,

<b>Salvage Value</b>	=	<b>NIL</b>
<b>Assessed Loss</b>	=	<b>Rs.2,64,576</b>
Less as per Excess (As per Policy)	=	Rs.1,10,000
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Nett Loss Amount	=	Rs.1,54,576
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**35.** The Surveyor had calculated the net loss amount as Rs. 1,54,576/-, but there was no explanation given nor any witness examined by the Defendant/Appellant, to explain the basis on which the claim of Rs.20,47,400/- has been denied, and only a claim for Rs. 1,54,576/- was approved by the Surveyor.

**36.** The mention of Khanpur in the Insurance Policy was in fact, an indication of the office or the place of work of the Plaintiff and in no way limited the scope of insurance coverage for loss to the machinery only when it was located in the place of work, i.e., Khanpur. This contention of the Appellant Insurance Company has, therefore, been rightly rejected by the learned District Judge.

**37.** Furthermore, it was discussed that the Survey Report Ex. DW1/1 relied upon by the Defendant to claim that the cost of machinery that was stolen was only Rs. 1,54,576/-, which was not proved by the Defendant as the Surveyor had not been examined and DW2 had not accompanied the Surveyor and had no personal knowledge about the contents of the Survey Report.



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**38.** The learned District Judge, therefore, rightly refused to place any reliance on the Survey Report Ex. DW1/1 and accepted the claim of the Plaintiff for Rs.20,47,400/- and decreed the Suit along with the interest.

**39.** The **Appellant has not been able to point out any infirmity in the impugned judgment** wherein the learned District Judge has rightly appreciated the evidence of parties, to decree the Suit of the Plaintiff/Respondent.

**40.** **There is no merit in the Appeal, which is hereby dismissed.** Pending Applications, if any, stands disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**APRIL 16, 2026**  
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