

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(STATUTORY ORIGINAL JURISDICTION)**

Present:

**Mr. Justice Md. Toufiq Inam**

**INSURANCE APPEAL NO. 01 OF 2023.**

**IN THE MATTER OF:**

An application under Sections 73(5) of the Insurance Act, 2010.

**-AND-**

**IN THE MATTER OF :**

Mercantile Insurance Company Limited.

----- Appellant.

**-Versus-**

The Government of the People's Republic of Bangladesh and others.

----- Respondents.

Mr. Md. Aminul Islam, Advocate

----- For the Appellant.

Mr. Zulfiqar Bubul Chowdhury, Senior Advocate  
with

Mr. M. Imtiaz Farooq,

Mr. Md. Faisal Islam, and

Mr. Md. Tanvir Nahiyani, Advocates

----- For the Respondents.

Heard On: 10.06.2026, 11.06.2026, 15.06.2026;

**And**

**Judgment delivered On: 17.06.2026.**

**Md. Toufiq Inam, J:**

This Insurance Appeal is directed against the judgment and order dated 11.04.2017 passed by the Dispute Resolution Committee of the Insurance Development and Regulatory Authority (IDRA) in Dispute Resolution Case No. 09 of 2016 whereby the Committee allowed the dispute resolution case and directed the present

appellant, Mercantile Insurance Company Limited, to pay an amount of Tk. 5,09,42,011/- (Taka Five Crore Nine Lac Forty-Two Thousand and Eleven) only to the claimant-respondent No.3 together with interest in accordance with law within one month from the date of receipt of the judgment.

The facts leading to the filing of the present appeal, in brief, are that Respondent No. 3, M/S. Famous Enterprise, is a business concern engaged in the purchase and sale of electrical goods, electric cables and related materials. For the purpose of conducting its business, Respondent No. 3 obtained credit facilities from Respondent No. 4, One Bank Limited, and as security for the said facilities, the stock-in-trade stored in its shop-cum-godown situated at Sitakunda, Chattogram, was required to be insured against the risk of fire.

It appears from the record that the said business establishment had been insured from time to time with different insurance companies. For the period commencing from 01.10.2015 to 01.10.2016, fire insurance coverage was obtained from the present appellant, Mercantile Insurance Company Limited. The insured value of the stocks and materials kept in the shop-cum-godown was Tk. 8,25,00,000/-.

On the night of 29.11.2015 at about 3:00 a.m., a devastating fire broke out in the shop-cum-godown of Respondent No. 3, resulting in extensive destruction of electrical goods, cables, pipes and other stocks stored therein. Immediately after the occurrence, the incident was reported to the local police and General Diary No. 1361 dated 30.11.2015 was lodged with Sitakunda Model Police Station. The occurrence was also intimated to the appellant-insurance company as well as to the financing bank.

Upon receiving information regarding the fire incident, the appellant appointed two independent surveyors, namely M/s. Engineers Survey Associates Ltd. and M/s. Rupali Surveyors, to investigate the occurrence and assess the loss sustained by the insured. The surveyors conducted physical inspection of the premises, examined relevant documents, verified the stocks and, thereafter, submitted a Joint Final Survey Report dated 26.05.2016. In the said report, the surveyors assessed the net loss suffered by the insured at Tk. 5,09,42,011/-.

However, despite assessment of the loss by its own surveyors, the appellant-insurer declined to settle the claim. According to the appellant, the policy governing the risk described the insured premises as a first-class constructed building whereas the surveyors found upon physical inspection that the building was in fact a second-class construction. Relying upon such discrepancy, the appellant repudiated the insurance claim.

Being aggrieved by the refusal of the insurer to indemnify the loss, Respondent No. 3, along with One Bank Limited, instituted Dispute Resolution Case No. 09 of 2016 before the Dispute Resolution Committee constituted under the Insurance Act, 2010 and the Insurance Development and Regulatory Authority (Dispute Resolution Committee) Regulations, 2012, seeking payment of the assessed loss of Tk. 5,09,42,011/- together with statutory interest.

Before the Dispute Resolution Committee, the claimants/ Respondent No.3 contended that the insured premises had consistently been described as a second-class constructed building in previous insurance policies and even in the cover notes originally issued by the appellant. It was further alleged that after the

occurrence of the fire the insurer created confusion by producing another cover note containing a different description of the building with a view to avoiding its liability under the policy.

The appellant-insurer contested the proceeding by filing written objections and asserted that the insured had failed to disclose the true nature of the construction of the building. According to the appellant, the discrepancy regarding the nature of construction constituted a material breach of the insurance contract, disentitling the insured from receiving any benefit under the policy.

Upon consideration of the pleadings, documents and evidence adduced by the parties, the Dispute Resolution Committee, by judgment and order dated 11.04.2017, found that the insurer-appellant had failed to establish any valid ground for repudiation of the claim. The Committee further held that the loss suffered by the insured had been duly established through the surveyors' report and accordingly directed the appellant-insurer to pay Tk. 5,09,42,011/- together with interest in accordance with law.

Being aggrieved thereby, the appellant-insurer has preferred the present appeal.

Mr. Md. Aminul Islam, the learned Advocate appearing on behalf of the appellant-insurer, submits that the impugned judgment and order passed by the Dispute Resolution Committee are wholly misconceived both in fact and in law and are liable to be set aside. He contends that the Committee failed to appreciate that the insurance contract governing the risk at the time of the occurrence was Cover Note No. MICL/HAT/FC-165/10/2015 bearing Serial No. 11269, valid for the period from 01.10.2015 to 01.10.2016,

wherein the insured premises were specifically described as a first-class constructed building. According to the learned Advocate, the classification of a building is a material factor in underwriting fire risks and directly affects the rate of premium and the insurer's assumption of risk.

Referring to the Joint Final Survey Report dated 26.05.2016 prepared by M/s. Rupali Surveyors and M/s. Engineers Survey Associates Ltd., the learned Advocate submits that the surveyors unequivocally found upon physical inspection that although the policy described the insured premises as a first-class construction, the building was in fact a second-class construction. He argues that such discrepancy amounted to a material variation between the subject matter insured and the risk actually undertaken by the insurer. In view of such material discrepancy, the insurer was legally justified in exercising its discretion to repudiate the claim.

He further submits that the Committee acted illegally in relying upon earlier insurance policies and cover notes wherein the building was described as a second-class construction, while ignoring the operative policy governing the risk on the date of occurrence. According to him, the rights and liabilities of the parties are to be determined strictly on the basis of the prevailing policy and not on the basis of earlier insurance arrangements. He adds that the Committee exceeded its jurisdiction in recording a finding that the proposal form and policy documents relied upon by the insurer were introduced subsequently as an afterthought and manipulated device. Such finding, according to him, was arrived at without any evidence, expert opinion or forensic examination. He contends that the Committee wrongly shifted the burden of proof upon the insurer and failed to appreciate that insurance contracts

are founded upon the doctrine of utmost good faith requiring the insured to disclose all material facts accurately. He therefore submits that the impugned judgment suffers from misreading and non-consideration of material evidence and is liable to be set aside.

In reply, Mr. Zulfiqur Bubul Chowdhury, learned Senior Advocate, appearing on behalf of the Respondent No.3, assisted by Mr. M. Imtiaz Farooq, Mr. Md. Faisal Islam and Mr. Md. Tanvir Nahiyani, learned Advocates, supports the impugned judgment and order and submits that the same was passed upon proper appreciation of the facts, evidence and applicable law. He contends that the occurrence of the fire incident, the existence of insurance coverage, and the assessment of loss at Tk. 5,09,42,011/- by the appellant's own surveyors are all admitted and undisputed facts. Therefore, according to him, the insurer cannot avoid its contractual obligation by raising a technical objection relating to the classification of the building.

He submits that the materials on record clearly establish that the insured premises had consistently been described as a second-class construction in earlier insurance policies issued by different insurance companies as well as in the original cover notes bearing Serial Nos. 11266 and 11267 issued by the appellant itself. Those cover notes were transmitted by the appellant to the financing bank immediately after issuance and were acted upon by all concerned. According to him, the subsequent emergence of another cover note containing a different description created serious doubt regarding the genuineness and authenticity of the insurer's case.

Mr. Chowdhury further submits that the insurer failed to adduce any evidence whatsoever to establish fraud, concealment,

misrepresentation or suppression of material facts on the part of the insured. The burden of proving such allegations squarely rested upon the insurer, but no witness, document or expert evidence was produced to discharge that burden. Mere existence of conflicting cover notes issued by the insurer cannot be treated as evidence of misconduct on the part of the insured. The surveyors never recommended repudiation of the claim. Rather, they accepted the occurrence of the fire, verified the existence of the insured stock and assessed the net loss at Tk. 5,09,42,011/-. Therefore, according to him, the insurer's liability to indemnify the insured stood established by its own surveyors' report. He argues that the insurer's attempt to repudiate the entire claim despite admitting the occurrence of the insured peril and the quantum of loss is arbitrary, unreasonable and contrary to the fundamental principles governing contracts of insurance.

The learned Advocate lastly submits that the findings recorded by the Dispute Resolution Committee are findings of fact based upon documentary evidence and there is no misreading of evidence, legal infirmity or jurisdictional error warranting interference by this Court in appeal. He accordingly prays for dismissal of the appeal and affirmation of the impugned judgment and order.

Upon hearing the learned Advocates of both sides and upon consideration of the pleadings, documents and evidence on record, the following points arise for determination in this appeal:

- (i) Whether the appellant-insurer was justified in repudiating the insurance claim on the ground that the insured premises were physically found to be a second-class constructed building although the policy

relied upon by the insurer described the same as a first-class constructed building?

- (ii) Whether the appellant-insurer succeeded in proving that the insured had made any material misrepresentation, concealment or false declaration regarding the nature of construction of the insured premises so as to disentitle it from receiving the insurance benefit?
- (iii) Whether the findings and conclusions arrived at by the Dispute Resolution Committee suffer from any illegality, perversity, misreading or non-consideration of material evidence warranting interference by this Court?

**Point Nos. (i) and (ii)**

Since both the points are interrelated, they are taken up together for consideration.

The occurrence of the fire incident resulting in the destruction of the insured stock is an admitted fact. Equally admitted is the fact that the appellant had issued insurance coverage in favour of Respondent No. 3 and that after the occurrence it appointed two independent surveyors, namely M/s. Engineers Survey Associates Ltd. and M/s. Rupali Surveyors, to investigate the occurrence and assess the loss. The Joint Final Survey Report dated 26.05.2016 assessed the net loss at Tk. 5,09,42,011/-. The appellant does not dispute either the occurrence of the fire or the quantum of loss assessed by the surveyors. The sole ground on which the claim was

repudiated is the alleged discrepancy regarding the classification of the insured building.

From the survey report it appears that the surveyors observed that while the policy described the shop-cum-godown as a first-class constructed building, physical inspection revealed it to be a second-class construction. The surveyors, however, did not conclude that the insured had committed fraud, concealment or misrepresentation. Nor did they recommend repudiation of the claim. They merely observed that the insurer might exercise its discretion in dealing with the claim.

The question, therefore, is whether the appellant has been able to establish that the discrepancy was attributable to any deliberate act or omission on the part of the insured. The answer, in my view, must be in the negative.

The materials on record reveal that prior insurance policies covering the same premises consistently described the building as a second-class construction. The record further reveals that Cover Note Nos. 11266 and 11267 issued by the appellant itself on 01.10.2015 similarly described the premises as a second-class building used as a shop-cum-godown. Those documents were admittedly transmitted to the financing bank and acted upon by the parties.

The appellant, however, places reliance upon another Cover Note bearing No. MICTL/HAT/FC-165/10/2015, Serial No. 11269, purportedly issued for the period from 01.10.2015 to 01.10.2016. Unlike the cover note relied upon by the respondent, this document describes the insured property as a first-class constructed building

and contains particulars materially different from those appearing in the other cover note relating to the same insured premises.

Apart from the aforesaid anomaly, no satisfactory explanation has been offered by the appellant as to how two separate cover notes, bearing different serial numbers and containing materially inconsistent descriptions of the same insured premises, came into existence during the relevant period. If both documents were genuinely issued by the insurer in respect of the same risk, the insurer was under an obligation to explain the circumstances under which such conflicting records were generated and maintained. No such explanation is forthcoming from the evidence on record.

The inconsistencies are not attributable to any act or omission on the part of the insured. Rather, they appear to have originated entirely from the records, documentation and internal administrative processes of the insurer itself. Consequently, any ambiguity arising from such contradictory documentation cannot be permitted to operate to the prejudice of the insured. The discrepancies in the insurer's own records substantially diminish the evidentiary value of the documents relied upon by the appellant and render its case susceptible to serious doubt.

It is a settled principle of insurance law that the burden of proving concealment, misrepresentation or breach of utmost good faith lies upon the insurer who seeks to avoid liability under the policy. Mere existence of a discrepancy is insufficient. The insurer must establish that the insured knowingly made a false statement concerning a material fact which induced the insurer to undertake the risk.

In the instant case, no witness, document or other evidence has been produced to establish that Respondent No. 3 knowingly furnished any false information regarding the nature of construction of the building. On the contrary, the contemporaneous documents indicate that the premises had consistently been treated as a second-class construction. Therefore, the allegation of material misrepresentation remains wholly unproved.

Moreover, the appellant has failed to demonstrate how the alleged discrepancy had any nexus with the occurrence of the fire or the extent of the loss suffered by the insured. The subject matter of insurance was the stock of electrical goods, cables and pipes. Those goods were admittedly destroyed by fire and the resulting loss was independently verified by the surveyors appointed by the appellant itself.

In such circumstances, repudiation of the entire claim on the basis of a discrepancy which the insurer itself failed to explain cannot be sustained in law. Accordingly, Point Nos. (i) and (ii) are decided against the appellant and in favour of the respondents.

**Point No. (iii)**

The next question is whether the findings recorded by the Dispute Resolution Committee suffer from any illegality or perversity warranting interference by this Court.

Upon examination of the impugned judgment, it appears that the Committee considered the rival pleadings, the relevant insurance documents, the survey report and the surrounding circumstances of the case. The Committee noted the existence of conflicting cover notes and found that the insurer failed to establish any lawful basis

for repudiating the claim. It further relied upon the surveyors' assessment of loss and held that the insured was entitled to indemnification under the policy.

The findings so recorded are based upon evidence available on record. I do not find that the Committee misread any material evidence or ignored any relevant document. The conclusion reached by the Committee is a plausible and reasonable conclusion arising from the facts proved before it.

It is well settled that an appellate Court does not interfere with findings of fact merely because another view is possible. Interference is warranted only where the findings are perverse, arbitrary, based on no evidence or suffer from manifest illegality. No such infirmity has been demonstrated in the present case. Rather, I find that the Committee correctly appreciated the evidence and properly applied the principles governing insurance contracts, burden of proof and repudiation of claims.

Accordingly, Point No. (iii) is also decided against the appellant.

Having answered all the points for determination against the appellant, I find no merit in the appeal. Accordingly, I hold that the impugned judgment and order dated 11.04.2017 passed by the Dispute Resolution Committee in Dispute Resolution Case No. 09 of 2016 were passed upon proper appreciation of the facts and evidence and do not call for any interference by this Court.

**In the result, the appeal is dismissed.**

The judgment and order dated 11.04.2017 passed by the Dispute Resolution Committee, Insurance Development and Regulatory

Authority (IDRA), in Dispute Resolution Case No. 09 of 2016 are hereby affirmed.

The appellant-insurer is directed to pay the awarded sum of Tk. 5,09,42,011/- (Taka Five Crore Nine Lac Forty-Two Thousand and Eleven) together with the statutory interest as awarded by the Dispute Resolution Committee, if not already paid, within 60 (sixty) days from the date of receipt of this judgment.

There shall, however, be no order as to costs.

Send down a copy of this judgment at once.

**(Justice Md. Toufiq Inam)**

Ashraf/ABO.