

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 479 OF 2016

(Against the Order dated 14/03/2016 in Complaint No. 2/2008 of the State Commission Uttar Pradesh)

1. MANAGER, NATIONAL INSURANCE CO. LTD. &
2 ORS.

THROUGH MANAGER, NATIONAL INSURANCE
COMPANY LTD., NATIONAL LEGAL VERTICAL
OFFICE OF GENERAL MANAGER-NORTH, 2E/9
JHANDEWALAN EXTENSION (II FLOOR)
NEW DELHI-110055

2. MANAGER (DIVISIONAL), NATIONAL
INSURANCE CO. LTD.,

THROUGH MANAGER, NATIONAL INSURANCE
COMPANY LTD., NATIONAL LEGAL VERTICAL
OFFICE OF GENERAL MANAGER-NORTH, 2E/9
JHANDEWALAN EXTENSION (II FLOOR)
NEW DELHI-110055

3. BRANCH MANAGER-NATIONAL INSURANCE
CO. LTD

THROUGH MANAGER, NATIONAL INSURANCE
COMPANY LTD., NATIONAL LEGAL VERTICAL
OFFICE OF GENERAL MANAGER-NORTH, 2E/9
JHANDEWALAN EXTENSION (II FLOOR)
NEW DELHI-110055

.....Appellant(s)

Versus

1. M/S. AGRAHARI DAL & ANR.
GAURIGANJ, SULTANPUR THROUGH
PROPRIETOR, HARI LAL, S/O. SRI JAGANNATH,
R/O. GAURIGANJ, PARGANA &
TEHSIL-GAURIGANJ,
DISTRICT-SULTANPUR

2. YOGENDRA KUMAR
SURVEYOR-VALUER, SKY BUSINESS CENTRE, 9
MANDIR MARG, MAHANAGAR
EXTENSION-226106, LUCKNOW [U.P.]

.....Respondent(s)

BEFORE:

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

For the Appellant : Mr. Vishnu Mehra, Advocate

For the Respondent : For Respondent-1 : Mr. Brij Kumar Upadhyay, Advocate
For Respondent-2 : Ex-parte

Dated : 01 Jun 2022

ORDER

1. Heard Mr. Vishnu Mehra, Advocate, for the appellants and Mr. Brij Kumar Upadhyay, Advocate, for Respondent-1.
2. National Insurance Company Limited has filed above appeal from the order of Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow dated 14.03.2016, passed in Consumer Complaint No.2 of 2008, allowing the complainant with cost of Rs.10000/- and directing the appellants to reimburse the loss of respondent-1 of Rs.3761035/- along with interest @12% per annum.
3. The office has reported 5 days delay in filing the appeal. The appellant has filed IA/4236/2016, for condoning the delay. Cause shown is sufficient. IA/4236/2016 is allowed and delay in filing the appeal is condoned.
4. M/s. Agrahari Dal Mill (respondent-1) filed CC/2/2008, for directing National Insurance Company Limited and others (the appellants) to pay (i) Rs.4705035/- with interest @ charged by bank on loan, from 11.05.2007 till the date of payment, (ii) Rs.50000/- as compensation for mental agony and harassment, (iii) cost of litigation and (iv) any other relief, which is deemed fit and proper, in the facts and circumstances of the case.
5. The facts, as stated in the complaint and emerged from the documents attached with the complaint, are as follows:-
 - (a) The complainant (respondent-1) was a sole proprietorship concern and engaged in the business of running dal mill, for earning his livelihood. The Insured established his dal mill with the financial assistance of Rs.15/- lacs from Allahabad Bank, branch Sultanpur, in construction of building and installing machineries and Cash Credit Facility of Rs.37/- lacs, for running business. Apart from it, the Insured also invested huge amount at his own level in his mill. The Insured obtained Standard Fire and Special Perils Policy No. 450304/11/06/3100000348, from National Insurance Company Limited (the appellant), for a period of 20.01.2007 to 19.01.2008 on the stock of dal and raw materials, at mill premises at Gauriganj, Sulatanpur, for a sum insured of Rs.66/- lacs.
 - (b) There was heavy storm with rain on 11.05.2007, due to which, southern wall of mill premises collapsed and walls of other two sides cracked. Due to collapsing of the wall, the machineries installed in the mill premises were totally damaged. The machineries, building materials and raw materials kept in the mill i.e. peas, gram and arhar became useless, due to coming below the wall and wetting in water, which caused total loss of Rs.4705035/-.
 - (c) The Insured informed the Insurer, the bank and concerned police station about the incident in his mill. On which, the Insurer appointed Shri Yogendra Kumar, Lucknow (respondent-2), for survey and assessment of the loss. The surveyor inspected the mill premises, took claim form and

other necessary documents from the Insured on 05.06.2007. The complainant extended all cooperation and supplied required information time to time but the opposite parties kept the claim of the complainant pending till the date. On account of which, the complainant, who was in financial crisis, was being harassed mentally and physically. The act of the opposite parties amounts to deficiency in service on the part of the Insurer. The complainant was entitled to reimbursement of actual loss, as detailed in the complaint.

(d) The dal mill of the complainant was closed due to aforesaid incident and due to delay in settlement of the claim by the opposite party, the burden of payment of interest on the loan taken by the complainant was increasing day by day.

(e) Cause of action arose on 29.12.2007, when upon meeting with opposite party-3, he did not extend any kind of cooperation nor give information in respect of the claim of the complainant. The Commission has pecuniary and territorial jurisdiction in the complaint. The complaint was filed on 07.01.2008.

6. The appellants (the Insurer) filed their written statement and contested the complaint. The fact of obtaining Standard Fire and Special Perils Policy for a period of 20.01.2007 to 19.01.2008 has not been disputed however incident of heavy storm and rain on 11.05.2007, collapsing southern wall and causing loss to machineries and stock have not been admitted. It has been stated that the Insured informed about the incident to the Insurer on 04.06.2007. After receiving information, the Insurer deputed Shri Yogendra Kumar, Lucknow, the surveyor, on the same day, for survey and assessment of loss. The surveyor inspected the mill premises of the Insured on 04.06.2007. The surveyor obtained claim form on 05.06.2007. The surveyor demanded the documents in support of the claim and issued reminder on 07.07.2007 but the Insured did not respond. The surveyor again sent a letter dated 22.09.2007, demanding requisite papers to support the loss, with request to furnish the papers till 04.10.2007. The surveyor submitted Final Survey Report dated 05.11.2007, assessing the loss of Rs.10000/-. The Insurer proposed to settle the claim for Rs.10000/- and intimated the Insured on 22.01.2008 through registered post along with discharge voucher, for his approval, which was refused by the Insured. There was no deficiency in service on their part. The complaint raises complicated issue of fact and is liable to be relegated to go before Civil Court.

7. The Insured filed Affidavit of Evidence of Hari Lal. The Insurer filed Affidavit of Evidence of Smt. Kalpana Bajpai, the Manager. Both the parties filed their documentary evidence and written synopsis. State Commission, after hearing the parties, by judgment dated 14.03.2016, held that the Insured informed the Insurer and submitted his claim form on 11.05.2007, in which, loss of stock of Rs.3761035/- has been claimed, showing loss of peas of 956.65 quintals, gram of 232.50 quintals and arhar of 375.90 quintals. The Insured also informed the local police about the incident on 08.06.2007 and Sub-Divisional Officer, Sultanpur on 29.06.2007. The surveyor wrongly assessed the loss to Rs.10000/-. The Insured was entitled for the claim of Rs.3761035. On these findings, the complainant was allowed with cost of Rs.10000/- and the Insurer was directed to pay Rs.3761035/- along with interest @12% per annum within three months. Hence this appeal has been filed.

8. We have considered the arguments of the counsel for the parties and examined the record. State Commission, in the impugned judgment did not record any finding that the claim of respondent-1 was proved from any documentary evidence nor give any reason to ignore the report of surveyor. Supreme Court, in **Sri Venkateswara Syndicate Vs. Oriental Insurance Company**

Ltd., (2009) 8 SCC 507, held that although surveyor's report is not a sacrosanct but strong evidence is required to rebut it. In **Khatima Fibres Ltd. Vs. New India Insurance Company Ltd., 2021 SCC OnLine SC 818**, held that in the absence of malafide and misconduct on the part of surveyor, its report cannot be ignored. Impugned order of State Commission is arbitrary and devoid of any reason.

9. The Insured alleged that incident of heavy storm and rain occurred on 11.05.2007 at 18:00 hours, which caused damage. The Insured informed the incident to the Insurer on 04.06.2007, to the local police on 08.06.2007 and Sub-Divisional Officer, Sultanpur on 29.06.2009. There is absolutely no explanation of this inordinate delay in giving information to the Insurer. State Commission has wrongly noted that claim form was submitted on 11.05.2007 to the Insurer although it was submitted on 05.06.2007 (as mentioned in paragraph-5 of the complaint) and the claim form does not mention any date. General Condition No.6 (i) of Standard Fire and Special Perils Policy (Material Damage) provides as follows:-

6.(i).- On the happening of any loss or damage, the Insured shall forthwith give notice thereof to the Company and shall within 15 days after the loss or damage or such further time as the Company may in writing allow in that behalf, deliver to the company.

(a) A claim in writing for the loss or damage containing as particular an account as may be reasonably practicable of all the several articles or items or property damaged or destroyed and of the amount of loss or damage thereto respectively having regard to their value at the time of the loss or damage not including profit of any kind.

There was violation of General Condition No.6 (i) of the Policy. Inordinate delay, in giving information to the Insurer about the loss raises a strong doubt in respect of genuineness of the claim. The Insurer/surveyor was deprived of their right to verify damaged stock.

10. The surveyor, in Status Report dated 30.08.2007, has noted that "near the mill machine portion, there is no stocking of raw material. We visited the mill after 23-24 days from the date of loss. The Insured neither could show us any fully damaged stock nor could explain how huge quantity of water can enter inside the mill. On the walls we did not find any sign/markings of water accumulation".

The complainant claimed loss of peas of 956.65 quintals, gram of 232.50 quintals and arhar of 375.90 quintals. But he has failed to verify the damaged material to the surveyor on the spot. The complainant did not produce any material to show that in what manner, he had disposed of the damaged materials.

11. A perusal of insurance policy shows that only stocks of dal and raw materials were insured but the complainant has wrongly claimed loss of machinery and building also. The surveyor found that whatever damage was caused, it was cause to machinery and building and not to the stock of pulse and raw materials. The surveyor in Final Survey Report dated 05.11.2007, found that the Insured informed that bags kept in the mill premises contained damaged pulse but on verification, it were found as 'chuni' and not pulse. Finished pulse used to stock in godown and not in mill premises.

12. In view of aforesaid discussions, the complainant/respondent-1 has failed to prove his claim, in the complaint by any reliable evidence. He failed to rebut various observations of the

surveyor in his reports, showing that entire claim was not genuine. In such circumstance, deficiency in service on the part of the appellant is not proved. The order of State Commission is thoroughly illegal and liable to be set aside.

ORDER

In view of the aforesaid discussions, the appeal is allowed. The order of Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow dated 14.03.2016, passed in Consumer Complaint No.2 of 2008, is set aside and the complaint is dismissed. The parties shall bear their own cost.

Statutory deposit in appeal and deposit in compliance of stay order dated 21.02.2017 shall be released to the appellant forthwith.

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C. VISWANATH
PRESIDING MEMBER
.....J
RAM SURAT RAM MAURYA
MEMBER