

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 255 OF 2015**

1. M/S. SHYAMALI COLD STORAGE PVT. LTD. &  
ANR.

.....Complainant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD. & 4 ORS.  
HEAD OFFICE AT 87, MAHATMA GANDHI MARG,  
FORT, MUMBAI-400001.  
2. DEVISIONAL MANAGER,  
THE NEW INDIA ASSURANCE CO, LTD. OFFICE  
NO. 512500, AT KHADINA MORE, P.O. CHINSURA,  
DISTRIT-HOOGLY,  
WEST BENGAL-712101.  
3. DEPUTY GENERAL MANAGER,  
THE NEW INDIA ASSURANCE CO. LTD, 4-MANGO  
LANE(1ST FLOOR),  
KOLKATA-700 001.  
4. ASSISTANT DIRECTOR OF AGRICULTURAL  
MARKETING (ADMIN),  
PURTA BHAVAN, 7TH FLOOR, BURDWAN,  
WEST BENGAL  
5. INSURANCE REGULATORY & DEVELOPMENT  
AUTHORITY,  
3RD FLOOR, PARISRANA BHAVAN,  
BASHEERBAGH,  
HYDERABAD-500004(A.P.)

.....Opp.Party(s)

**BEFORE:**

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

**For the Complainant :** Mr. Ranjan Mukherjee, Advocate  
: Ms. Aayushi, Advocate

**For the Opp.Party :** For Opposite-Party-1 to 3: Mr. R.B. Shami, Advocate  
For opposite party-4 : Mr. Chanchal Kumar Ganguli, Advocate

**Dated : 01 Jun 2022**

**ORDER**

1. Heard Mr. Mr. Ranjan Mukherjee, Advocate, for the complainants and Mr. R.B. Shami, Advocate, for opposite parties-1 to 3 and Mr. Chanchal Kumar Ganguli, Advocate, for opposite party-4.
2. M/s. Shyamali Cold Storage Private Ltd. (the Insured) has filed above complaint for directing The New India Assurance Company Ltd. (the Insurer) to pay (i) Rs.11462874/- towards the insurance claim, (ii) Rs.5/- lacs, as the compensation, for mental agony and harassment, (iii) Rs.50000/-, as the cost of the litigation, (iv) interest @ 12% per annum on the awarded amount till the date of realization and (v) any other relief, which is deemed fit and proper, in the facts and circumstances of the case.
3. The facts, as stated in the complaint and emerged from the documents attached with the complaint, are as follows:-
  - (a) The Insured was a company, registered under the Companies Act, 1956 and engaged in cold storage business, at village Surul (G.T. Road More), P.O. & P.S. Golsi, district Burdwan, having licence under West Bengal Cold Storage (Licensing & Regulation) Act, 1966. The New India Assurance Company Ltd. (the Insurer) is a public sector insurance company and a subsidiary of General Insurance Corporation of India and used to provide different types of insurance services. The Insured obtained (i) Standard Fire and Special Perils Policy No.51250011120100000040, for a sum of Rs.703/- lacs, on Cold Storage premises, for the period of 15.03.2013 to 14.03.2014, (ii) Machinery Insurance Policy No.51250044125100000010, for a sum of Rs.158.5/- lacs on Plant & Machinery of the cold storage, for the period of 31.03.2013 to 30.03.2014, (iii) Fire Declaration Policy No.51250011120200000006, for a sum of Rs.106764000/- on Stock of Cold Storage, for the period of 31.03.2013 to 30.03.2014 and (iv) Deterioration of Stocks (Potatoes) Insurance Policy No.51250044125400000008, for a sum of Rs.106764000/- on Potatoes stored in the cold storage, for the period of 31.03.2013 to 30.03.2014, from the Insurer.
  - (b) The potatoes are stored in the cold storage on the rent basis in the month of March and cleared in the month of October of succeeding year. While running cold storage, the Insured noticed on 20.05.2013 that the potatoes stored in the cold storages were becoming soft and pouch were leaking. The Insured wrote a letter dated 20.05.2013 to Assistant Director of Agricultural Marketing (Administrative), with the copy to Officer-In-charge, police station Galsi and Divisional Manager (opposite party-2), informing the aforesaid fact and seeking help for giving opinion in respect of actual cause of softness of potatoes and leakage. The Insured gave a reminder dated 24.05.2013 and 13.06.2013 to Assistant Director of Agricultural Marketing (Administrative) (opposite party-4).
  - (c) Divisional Manager (opposite party-2) visited the cold storage of the Insured along with the surveyor Mr. K.B. Kuri, on 23.05.2013 and examined actual situation. The Insured gave a reminder dated 27.05.2013 to Divisional Manager (opposite party-2) as the potatoes were gradually deteriorating. When the Insured did not receive any response, then he wrote a letter dated 07.06.2013 to Deputy General Manager (opposite party-3) along with copy of the letter dated 27.05.2013.
  - (d) Assistant Director of Agricultural Marketing (Administrative) vide memo No.2607 dated 17.06.2013, directed the Insured to act immediately as per provisions of Section 12 (1) of West Bengal Cold Storage (Licensing & Regulation) Act, 1966. In pursuance thereof, the Insured served notice to all his hirers and Pradhan of Gram Panchayat, with request to withdraw their

potatoes from the cold storage. The Insured informed Police Station Galsi, Burdwan, vide letter dated 22.06.2013, of the aforesaid activities.

(e) Indra Deo Sharma, the Plant In-charge of the cold storage absconded leaving his duties from midnight of 21.06.2013. On inquiry, it was noticed that there was loss of quantity and weight of the potatoes of the customers preserved in 4<sup>th</sup> & 5<sup>th</sup> floor of both old chambers of the cold storage, in March, 2013. Then a special meeting of the directors of cold storage and employees were held on 25.06.2013, in which, all of them opined that Indra Deo Sharma had failed to maintain requisite temperature inside the chambers maliciously, due to which, loss had occurred. The Insured gave an information to Police Station Galsi in this respect on 25.06.2013, on which, FIR of Case Crime No.285/2013, under Section 420/427 IPC was registered. The police, after investigation, submitted Charge Sheet No.245/2014 dated 31.07.2014, on which, Chief Judicial Magistrate, Burdwan took cognizance, vide order dated 30.08.2014.

(f) The Insured, vide letter dated 03.07.2013, informed Divisional Manager that as per their advice during last visit with the surveyor Mr. K.B. Kuri, on 23.05.2013, they have cleared the deteriorated potatoes lying at 4<sup>th</sup> & 5<sup>th</sup> Floor on urgent basis. The Insured, vide letter dated 08.07.2013, informed Divisional Manager that out of total quantity of 71417 bags stored at 4<sup>th</sup> & 5<sup>th</sup> floor, they have cleared 33850 bags up to 8.07.2013 and estimated loss was of Rs.9017710/-. Details of statement of account were also attached.

(g) Mr. K.B. Kuri, the surveyor submitted his Preliminary Inspection Report dated 11.07.2013, stating that prima facie, the claim for deterioration of potatoes is not tenable. The Insured submitted his Claim Form on 14.07.2013, along with other details and documents under Fire Declaration Policy, which was accepted by the Insurer on 03.09.2013. The Insured, vide letter dated 30.07.2013, informed the surveyor that total loss of 43489 bags potatoes of Rs.11462874/- and supplied all details and documents.

(h) Assistant Director of Agricultural Marketing (Administrative) sent the sample of rotten potatoes for plant pathology and Interim Report dated 22.06.2013 of Plant Pathology was received. The Insured forwarded a copy of the report dated 22.06.2013 to the police. The Insured supplied this report and other papers to Divisional Manager, vide letter dated 07.09.2013. The surveyor submitted his Final Survey Report dated 16.09.2013, stating that the claim was not admissible in Deterioration of Stocks (Potatoes) Insurance Policy. The Insured wrote a letter of protest to the surveyor on 07.10.2013. However, the Insurer vide letter dated 05.12.2013, repudiated the claim of the Insured as it was not admissible in Deterioration of Stocks (Potatoes) Insurance Policy.

(i) The Insured made a representation dated 06.01.2014, against repudiation letter and stated that his claim was admissible under Fire Declaration Policy as the loss had occurred due to malicious act of Indradeo Sharma, Plant In-charge. The Insured also wrote a letter dated 14.01.2014 to Grievance Cell (CMD's Secretariat) but nothing was done. Then this complaint was filed on 10.04.2015, claiming deficiency in service on the part of Insurer.

4. The insurer filed its written reply on 27.11.2015, in which, the material facts relating to cold storage business of the Insured, issue of the insurance policies and deterioration of potatoes, have not been denied. It has been stated that as soon as the Insurer received letter of the Insured dated 27.05.2013, appointed Mr. K.B. Kuri, the surveyor, for survey. The surveyor inspected the cold storage along with Regional Manager and submitted his Preliminary Inspection Report dated

11.07.2013, stating that prima facie, the claim for deterioration of potatoes is not tenable. After conducting detail survey, he submitted his Final Survey Report dated 16.09.2013, again confirming his previous view. From Final Survey Report of the surveyor dated 16.09.2013, it was proved that the potatoes were deteriorated due to deposition of ice on cooling coils, which dropped as chilled water over the potatoes bags, causing cold injury to the stock. Gradually this water soaking of bags spread inside the floor and rotting spread. General Exception clause-ii of Deterioration of Stocks (Potatoes) Insurance Policy provides that any damage to the stocks due to rise or fall in temperature caused by stoppage of any section or sections of refrigeration plan and machinery. According to own allegations, the damage was caused as Indra Deo Sharma, Plant In-charge, had failed to maintain requisite temperature inside the chambers, where potatoes were stored. The claim fell in exception clause as such it was repudiated. The alleged FIR was registered under Section 420/427 IPC against Indra Deo Sharma, Plant In-charge, which do not relate to malicious act. The claim, under Fire Declaration Policy was not tenable. There was no deficiency in service on the part of Insurer.

5. Insurance Regulatory & Development Authority (opposite party-5) also filed its written reply on 05.02.2016. The Insured filed his Rejoinder Reply on 18.03.2016, in which, the facts stated in the complaint were reiterated. The Insured filed various documentary evidence and Affidavit of Evidence of Ratan Rudra and Additional Affidavit of Ratan Rudra. The Insurer filed documentary evidence and Affidavit of Evidence of Sharda Sharma, Administrative Officer. Both the parties filed their written synopsis.

6. The complainant argued that it is not disputed that he had obtained Fire Declaration Policy No.51250011120200000006, for a sum of Rs.106764000/- on Stock of Cold Storage, for the period of 31.03.2013 to 30.03.2014. The complainant based his claim (Exhibit CW-1/2) under this policy. "Riot, Strike and Malicious Damage" are insured peril under this policy. The damage was caused due to malicious act of Indra Deo Sharma, Plant In-charge, in not maintaining requisite temperature in the chambers of cold storage, where the potatoes were stored. The Insured lodged FIR of Case Crime No.285/2013, under Section 420/427 IPC against him, in which, the police, after investigation, submitted Charge Sheet No,245/2014 dated 31.07.2014, on which, Chief Judicial Magistrate, Burdwan took cognizance, vide order dated 30.08.2014. The claim was wrongly repudiated as not falling in Deterioration of Stocks (Potatoes) Insurance Policy, although, the claim was not made in that policy. The impugned letter is a result of non-application of mind.

7. I have considered the arguments of the counsel for the parties and examined the record. Clause-V of Fire Declaration Policy is quoted below:-

**“V. Riot, Strike and Malicious Damage**

Loss of or visible physical damage or destruction by external violent means directly caused to the property insured but excluding those caused by

(a) Total or partial cessation of work or the retardation or interruption or cessation of any process or operations or omissions of any kind.

(b) Permanent or temporary dispossession resulting from confiscation, commanderring, requisition or destruction by order of the Government or any lawfully constituted authority.

(c) Permanent or temporary dispossession of any building or plant or unit of machinery resulting from the unlawful occupation by any person of such building or plant or unit or machinery or prevention of access to the same.

(d) Burglary, housebreaking, theft, larceny or any such attempt or any omission of any kind of any person (Whether not such act is committed in the course of disturbance of public peace) in any malicious act.

If the company alleged that the loss/damage is not caused by any malicious act, the burden of proving the contrary shall be upon the Insured.”

8. A bare reading of the aforesaid clause shows that malicious damage must be caused directly to the property insured by external violent means. Total or partial cessation of work or the retardation or interruption or cessation of any process or operations or omissions of any kind are exceptions. There is no external violent means which caused the damage. Rather the damage was caused due to not maintaining requisite temperature in the chambers of cold storage, by Plant In-charge, which falls in exception (a) of Clause-V. In view of the aforesaid discussion, the complainant is not entitled to any relief.

### **ORDER**

In view of the aforesaid discussions, the complaint has no merit and is dismissed.

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**RAM SURAT RAM MAURYA**  
**PRESIDING MEMBER**