

Insurance claim repudiation based on inadequacy of documents to prove loss: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

MUKESH G. DHAKAN

...Appellant

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED

...Respondent

Case No: FIRST APPEAL NO. 412 OF 2023

Date of Judgement: 01 January 2024

Judges:

A. P. SAHI – PRESIDENT

For Appellant: MR. R.VENKAT PRABHAT, ADVOCATE

For Respondent: MR. DAKSH PANDIT, ADVOCATE

Facts of the Case:

Appellant is director of M/s Om Ganesh Jewellers Pvt Ltd, Chennai which took a Jeweller's Block Insurance Policy from respondent insurance company. On 27/2/2012, a hollowing machine used to manufacture gold chains caught fire due to power failure. Appellant claimed loss of 1169.3 gms of gold pieces worth Rs. 33 lakhs and other damages. Insurance company appointed surveyor to assess loss, surveyor found significant inconsistencies in appellant's documents about gold stock and actual loss. Insurance company repudiated the claim through

detailed letter dated 29/9/2012 based on surveyor's report. Appellant approached state and national consumer commissions but complaint dismissed due to failure to disprove surveyor's findings on actual loss.

Appellant's Arguments:

Surveyor failed to properly analyze stock registers, receipts showing availability of over 1000 gms of gold on date of incident. Repudiation solely based on surveyor's inaccurate, prejudiced report that ignored appellant's documents. State Commission erroneously dismissed complaint without analyzing appellant's evidence about actual loss. Deficiency in service by insurance company in denying legitimate claim based on biased surveyor's report.

Respondent's Arguments:

Surveyor made several efforts to assist appellant establish actual loss, but significant contradictions found in appellant's statements & records. No credible proof provided about availability of over 1000 gms of gold claimed on date of incident as records not properly maintained. Theory of gold melting in fire & draining away with water practically impossible as per technical analysis. Minimal gold traces found in debris collected, establishing claimed loss as untrue. Appellant violated policy conditions about proper record keeping, failed to disprove survey findings. No deficiency by insurer or unfairness in detailed claim repudiation based on surveyor's report.

Court's Observations and Decision:

Surveyor's Findings not Disproved by Appellant:

Repudiation letter recorded detailed factual findings of surveyor about contradictions in appellant's claims and lack of stock registers proof. Despite opportunities, appellant never questioned surveyor's findings even in original consumer complaint or appeal arguments. No mismatch between negligible gold traces in debris compared to huge loss claimed by appellant. Appellant failed to cogently prove actual loss of over 1000 gms gold with documents or dislodge surveyor's conclusions. State Commission rightly held appellant did not establish actual loss to prove insurance claim.

No Deficiency in Service by Insurer:

Appellant was given surveyor's reports and detailed repudiation letter citing reasons for denial with technical analysis. Yet appellant never countered surveyor's findings even before consumer forums. Surveyor made all efforts to assist appellant establish claim but appellant uncooperative. Insurer provided fair claims assessment process through expert surveyor before denial. No substance in allegation of biased repudiation or unfairness against insurer.

Appeal Devoid of Merits:

Appellant failed to factually counter survey findings of contradictions and lack of stock register proof to show actual loss. Technically & logically reasoned repudiation ruling out gold melting or draining in fire not questioned. Appellant violated policy conditions regarding proper record keeping. State Commission rightly held appellant did not prove claim or deficiency by insurer. No grounds to interfere with State Commission dismissal order.

Conclusion:

The National Commission dismissed the appeal as devoid of merits, upholding the State Commission's order. The appellant was unable to factually counter the surveyor's findings about inconsistencies in the claim and stock registers or technically prove possibilities like gold melting in fire. As there was no deficiency of service by the insurer or unfairness in the detailed repudiation based on expert surveyor's report, the dismissal of the complaint was upheld.

Sections Referred:

Sections 21(b) and 22, Consumer Protection Act 1986

Case Laws Referred:

No case laws were referred in the order

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Court

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Full Text of Judgment:

1.The claim under a Jeweller's Block Insurance Policy by the Complainant was repudiatedwhereafter the appellant approached the State Consumer Disputes Redressal Commission, Mumbai, registering the complaint over there. Since it was found that the territorial jurisdictionis that of Tamil Nadu State Consumer Disputes Redressal Commission, the Complainant instituted the complaint at Chennai, which has been rejected on 06.01.2023. The present Appeal has been preferred against the said Order of the Tamil Nadu State Consumer Disputes Redressal Commission in CC No.86 of 2015.

2.The complainant describes himself to be the Director of a Jeweller's Firm titled as M/s.Ganesh Jewellers Private Limited, Chennai. On 27.02.2012, a hollowing machine which is operated for the manufacture of gold chains was put on by the operator Mr. Jayesh N. Dhakan. After some time it appears that the machine came to a halt on account of power failure. The machine is stated to be automatically operated and therefore it resumed functioning, but at about 4:30 pm. the security guard of the premises noticed smoke coming out. It was discovered that the machine and its electrical equipments had caught fire which was sought to be controlled and was ultimately put out. The complainant alleges that in the said fire accident, 1169.300 gms ofgold coupled with 892.700 gms of iron rod that had been utilised for manufacturing chains were also lost along with machinery and equipments.

3.The Insurance Policy covering the said risk was taken by the Complainant and was effective from 01.06.2011 to 31.05.2012.

4.The claim was lodged with information to the Insurance Company promptly, who appointed a surveyor and a final survey report was submitted on 20.09.2012. The report also indicates that debris was collected from the spot by the surveyor for being sent to Emeralds Laboratory, Comibatore on 18.06.2012 for testing.

5.Information was sought to be collected by the survey or from the complainant whereafterthe survey report was submitted and on 29.09.2012 the claim was repudiated by the Insurance Co. on several grounds, primarily on the ground that the complainant could not establish the actual loss suffered.

6.The complainant approached the State Commission and by the impugned order dated 06.01.2023 the State Commission has recorded that the nature of the claim required thorough investigation of facts which can only be done in a proceeding before the regular civil court in as much as the facts projected on record did not establish actual loss the complaint was accordingly dismissed, hence this Appeal.

7.In order to appreciate the controversy, it may be pointed out that the incident of fire is not disputed. The surveyor found that the documents that were relied on by the complainant werenot sufficient to establish the status of stocks of gold to be compare the amount of gold that was stated to have been utilized for the purpose of manufacturing of chains in that particular hollowing machine.

8.Debris which was collected and tested found very minimal traces of gold which did not match with the quantity of loss as claimed by the complainant. It was also observed by the surveyor that the machinery and parts etc. had been shifted before arrival of the surveyor andthe statement of the machine man given on 29.02.2012 to 24.05.2012 contained varying stands,hence were not creditworthy. Even though certain gold particles and some gold chain brokenpieces were found, the claim of the quantity of the loss was not actually proved. The theory ofthe gold having melted and washed away was also disbelieved as there was no evidence of the temperature rising above1000 degrees centigrade, which is the melting point of gold.

9.The State Commission thereafter proceeded to consider the matter and then concluded that actual loss could not be established by the complainant and even otherwise any further investigation to examine complicated facts would require the tools of the civil court. Hence, the complaint was dismissed.

10.Ld. Counsel for the appellant has urged that the State Commission has without dealing with the facts or evidence, incorrectly arrived at the conclusion that actual loss could not be established, and further the process adopted by the surveyor in analyzing the facts anddocuments filed committed a gross error by not referring to the receipts and the stocks that wererecorded by the complainant. Hence

the repudiation was unjustified. It is urged that the repudiation is only founded on the surveyor's report which was otherwise incorrect and was suffering from lack of appreciation of the relevant material that was produced by the complainant. It is therefore, submitted that the State Commission failed to enter into the pleaded and established facts that were proved by the complainant, and hence there was a complete failure of exercise of jurisdiction by the State Commission that resulted in the dismissal of the complaint. This erroneous approach of the State Commission and the prejudiced approach of the surveyor has deprived the complainant of his legitimate claim. Hence, the order of the State Commission deserves to be reversed and the claim deserves to be allowed.

11. The Appeal had been entertained on 23.11.2023 and the following Order was passed:-

"Learned counsel for the appellant is given a last opportunity to argue this appeal on admission, where the State Commission has recorded a finding of fact that the drainage of more than 1 kg gold is unbelievable as it is not supported by facts. Prima facie, this contention has to be met on a serious note by the learned counsel for the appellant.

List on 29.12.2023."

12. The matter was again taken up on 29.12.2023 when the following order was passed:-

"This appeal has been preferred against the order of the State Commission arising out of the claim of the complainant/appellant regarding loss of gold during hollowing process on 27.02.2023. The complaint was filed before the State Commission seeking damage for the loss of gold worth R.33,00,0000/- and odd as well as other ancillary benefits contending that there was deficiency in service by the opposite party.

The appeal was taken up on 23.11.2023 and the learned counsel was requested to advance his submissions as prima facie, the appeal deserved to be dealt with at the admission stage itself.

Today learned counsel for the appellant has advanced his submissions extensively.

Put up for orders on 01.01.2024.”

13.It is therefore, at the admission stage that the matter has been heard in order to ascertain as to whether any plausible ground is available for admitting the Appeal. The issue to be examined is to whether there is any deficiency on the part of the Insurance Company by repudiating the claim and as to whether the State Commission was justified in rejecting the complaint.

14.There is no dispute that the policy covering the risk existed and was valid between 01.06.2011 to 31.05.2012. The incident took place on 27.02.2012. After lodging of the claim, the surveyor came into action and debris were collected and sent for testing to Emeralds Laboratory, Coimbatore on 18.06.2012.

15.The debris had been collected and sent to M/s. Emeralds Laboratory for retrieving any element of gold from the same. For this custody of the items were taken and sent to the Laboratory. Upon receiving the report, the Insurance Company indicated the amount of gold retrieved from the sample dust. This is indicated in the letter dated 01.10.2011 which is on record and is reproduced herein under:

“To,

Om Ganesh Jewelers Private Limited

No. 74 1st Floor, NSC Bose Road, Sowcarpet,

Chennai-600079

“Dear Sir,

Re: Claim intimation on 28.02.2012 under Policy # OG-12-1521-4099-00000001; Claim OC-12-1501-4099-00000001 in respect of alleged loss of 1169.30 grams of gold chain cutpieces due to fire in Hollowing Machine on 27.02.2012 at 12, Plot # 12. Vyasarpadi co-operative Industrial Estate, Erukencheri High Road, Vyasarpadi, Chennai-600039

This is with reference to Surveyors letter dated 08-08-12 and your visit to you showroom at above address along with surveyors today morning to handover 3 kys, 3,490 grams of gold retrieved from dust sample collected from you for testing at Emerald, Coimbatore and balance 112.51 grams of dust returned from Emerald which is as shown below

Pan	Sample Dust Weight Collected	Gold retrieved from Sample Dust	Balance Sample Dust Weighed at Om Ganesh
Low Content Pan1	124.980 Grams	00.110 Grams	0725.29 Grams
High Content Pan 2	088.870 Grams	03.380 Grams	037.22 Grams
Total	213.850 Grams	03.490 Grams	112.51 Grams

Despite surveyors letter dated 09-08-12, since you have not shown any interest to collect 3 keys, 3.490 grams of gold retrieved from sample dust by Emerald and balance dust, we along with surveyors visited your showroom to handover items personally;

However, you have vehemently refused to accept 3 Keys, 3.490 Grams of retrieved gold and balance unused dust 11251 grams and directed us to leave your premises. Hence, by not having any other option we along with surveyors returned with items and the same are kept in our custody. We now advise you to collect the above from our office without any further delay.

Thanking You,

Yours Faithfully

Sd/-

Authorised Signatory"

16. This information was sent to the complainant.

17. Communications took place between the surveyor and the complainant for providing documents regarding stocks. The surveyor analyzed the same and submitted his report on 20.09.2012. The complainant contended that the surveyor report was not made available as a result the complainant had to move an application under the RTI Act whereafter the said report was provided by the Insurance Company.

18. The report has been extensively reproduced in the letter of repudiation dated 29.09.2012 and the said letter is reproduced herein under for ready reference:

"To

OM Ganesh Jewellers Private Limited,

74, 1 Floor, NSC Bose Road, Sowcarpet, Chennai 600 079

Dear Sirs,

Re: Claim intimation on 28-02-2012 under Policy # OG-12-1521-4099-00000001; Claim #OC-12-1501-4099-00000001 in respect of alleged loss of 1169.30 grams of gold chain cutpieces due to fire in Hollowing Machine on 27-02-2012 at# 12, Plot 12, Vyasarpadi Co-Operative Industrial Estate, Erukencheri High Road, Vyasarpadi, Chennai- 600 039.

This is with reference to the claim intimation by your good self for alleged loss damage to 1169.30 Grams of gold chain cut pieces due to fire in Hollowing Machine on 27-02-2012 at your factory located at Vyasarpadi. Based on your claim intimation without prejudice, we had appointed Surveyor, Cunningham Lindsey International Private Ltd. to investigate, survey and assess the loss. Without prejudice, we have also appointed Professional Surveyors and Loss Adjusters Private Ltd to monitor recovery of gold chain cut pieces from burnt debris.

Now we are in receipt of Survey Report from Cunningham Lindsey along with claim documents submitted by you and on perusal of the same we note that:

1. Loss was reported to us on 28-02-2012 and surveyors had visited the premises on the same day at around 16:30 hours to inspect the loss.

During their inspection

it was noticed by surveyor that the burnt machine and floor panels were disturbed/moved by you prior to their visit items were not found in their original places.

The location of fire was not offered for inspection in as is where is condition.

Hence, surveyor could not verify, quantify and assess the loss in as is where is condition.

2. During inspection by surveyor on 28-02-12 it was informed by your good self that one tray/container inside the Hollowing Machine with material was totally burnt. No traces of this tray could be found during inspection. The photographs submitted by you were not clear and they were dark. You had cleaned the room and informed surveyor that you had retrieved all the water stagnated in the room and in the collection pit from the room located adjacently outside the building

wall, filled in two plastic barrels and in one bucket. Upon information from you that you had secured the entire debris in the room including the water, the surveyor's focus was on retrieving gold from such debris. In order to ensure authenticity and integrity to Surveyor's survey and assessment, they confirmed that they had kept the debris/materials offered for inspection under lock and key at your premises on 28-02-2012 itself.

3. You have informed surveyor on manner of occurrence dated 27-02-2012 at about 16:30 hours that the machine was started at 11:00 AM and then there was power cut during 14:00 hours to 15:00 hours and thereafter the machine appears to have automatically resumed its operations. At around 16:30 hours, the security near the gate saw some smoke and alerted the machine in charge. Fire inside the Hollowing Plant room was noticed and it was put off by pouring water and using fire extinguishers through one of the ventilator and from the door side. It was admitted that Fire Fighting and Rescue Services Department was not notified the occurrence. It was noticed by the surveyor that Machine Control Panel (MCB), located outside the Hollowing Machine Room fuse switches were intact and no MCBs were tripped during the fire incident. All the switches were turned off manually. The surveyor's requested you to identify and clearly narrate the sequence of events from the time of occurrence being noted for the first time. You had submitted an incident report dated 29-02-12 given by Mr, Jeyashi N Dhakan (Machine In-charge) during second visit of surveyor's.

4. The surveyors have recorded that initially on 28-02-2012 they were given to understand that gold chains were reportedly placed in the Hollowing Machine in order to separate the iron inside the hollow portion of gold chain. However, on 29-02-2012 you had informed surveyors that gold material placed in the machine at the time of incident were only waste cut chain pieces. There were no records with regard to availability of stocks; movement of the same, use of it, or output thereof was made available on 28-02- 2012 or subsequently thereof. Admittedly and it was found that there was no system of verifying and recording the purity of gold in your plant.

5. You informed and confirmed to the surveyors that you did not maintain any accounting records to establish the date wise stock movement, receipts, processing, wastage, output, dispatches,

quality, articles, quantity etc. Subsequent to further visit by surveyor on 01-03-2012 a specific letter dated 09-03-2012 was submitted to you seeking list of details, documents and clarifications:

6. In reference to the incident report submitted by your goodself dated 29-02-2012

therewas no mention on the gold weight or iron weight. Whereas in your revised incident-report received by surveyors on 24-05-2012 in which you had made a claim i.e. "there isa gold weight 1169.30 grams and including iron weight is 892.700 grams.

Despite such introduction as an after thought, no records were made available to surveyor on the availability of 1169.30 grams on the date of incident inside the Hollowing Machine.1169.30 grams was only a figure shown as a balance in a particular order whereas the item placed in the machine was only small wastage chain bits:

No records of any kindwere produced to surveyors, to substantiate how 1169.30 grams was arrived at or was available at the time of incident. The manner in which 1169.30 grams was sought to becomputed to support the claim of the said quantity being available in the machine was highly unsatisfactory and untrustworthy. You did not and could not provide daily process record from date of commencement of operation of the Hollowing Machine till 27-02-12 showing to substantiate the quantity of gold issued for process, input details with purity,form of metal, output with purity, weighment records etc. as is the market practice in this industry. The factory records. for daily activity including machine wise process, quantityprocess, type of ornaments made, customer orders, breakup of ornaments, wastages incurred during processing yield, process cost from commencement of operations till 27-02-12 or for a reasonably contemporaneous period was not produced, as is ordinarily maintained in such establishments. Thus the attempt and effort of surveyor to find support for availability of 1169.30 grams of gold in the Hollowing Machine on 27-02-12 miserably failed. Despite repeated and several opportunities, you could not come up with proof to buck the revised incident report claim dated 29-02-12 which was received by surveyor's on 24-05-12.

7. The ledger, profit and loss statement furnished by you to surveyor was for the total and consolidated business carried out in different

locations and the documents provided only details of business performance during Financial Year 2010-11 on consolidated basis, Location specific details as are required to be maintained and furnished to support the claim were completely lacking. The surveyors had no option but to record their dissatisfaction on the claim of availability of 1169.30 grams as on 27-02-12. The surveyor should have given sufficient opportunity to you to substantiate the claim and you have failed to come up with credible evidence in this regard.

8. Surveyors were left with no option but to conclude that the claim of availability of 1169.30 grams of gold on 27-02-12 at the time of incident is not true and is not reflected by the evidence made available. It is obvious that you have come up with this figure of convenience to support the claim but have failed to substantiate it with necessary evidence as they are required to, in such cases.

9. have brought to your notice on the requirements under the contract of insurance with regard to book keeping and maintenance of records and need to provide proof in support of the claim vide General Condition 6 which is reproduced below for your ready reference:

"The insured shall keep proper stocks and account books in which all sales and purchases are recorded. The insured shall also maintain a separate register for deposit and withdrawals of stock from bank lockers"

It was noted by surveyor that you are guilty of gross violation of the necessary terms and conditions of the Policy of insurance in book keeping and maintenance of records and to provide proof to support the claim.

10 The surveyor's were denied the basic opportunity to inspect and examine the physical condition and evidences at the affected site in as is where is condition despite their visit at the earliest point of time on 28-02-12 itself.

You had completely altered the physical position and had unilaterally gathered the debris in the aftermath of the Incident. The purpose of survey as a mandatory requirement was defeated by your conduct.

You had prejudiced its own cause by such conduct and in addition there to failed to maintain records or provide proof of alleged claimed loss. The upshot of such conduct on your part had disabled the surveyors from accepting the claim.

11. Despite of your conduct in not retaining the physical condition of the premises and evidences in as is where is condition, Surveyor's had chosen to keep the debris as was provided, under lock and key front 28-02-2012. The claim on availability of 1169.30 grams being available on 27-02- 2012 was not true. Nevertheless, Surveyor in good faith, sought to utilize the debris to retrieve possible gold by a technical process to ascertain possible loss for you in the incident. In this regard, please refer the various- emails/letters sent by surveyor dated 01-03-2012; 23-03- 2012; 06-04-2012; 10-04-2012; 28-04-2012 seeking your co-operation for which they received a belated and unsatisfactory response/mail from your end dated 03-05- 2012.

Based on your response, surveyor had visited your premises on 07-05-2012 and also held a joint meeting at our office premises along with the Professional Surveyors on 01-06-2012, and proceeded on 14-06-2012 and 15-06-2012 to enlist the services of Emerald Testings (India) Pvt. Ltd., Coimbatore and carried out the testing on 18-06-2012.

This was followed by letter dated 27-06-2012 from surveyors and in the meetings dated 02-07-2012 and 03-07-2012, you had expressed disinclination to consider the retrieval method, if at all, on the basis of findings from testing of the debris. Surveyors had sent their observations vide letter dated 09-07-2012 which elicited letters dated 12-07-2012 and letter dated Nil received on 18-07-2012. In spite of the above correspondence and discussions, surveyor's found that you were not cooperating to complete the survey and arrive at appropriate findings. There was disinclination on your part in view of the fact that

you could not substantiate the claim of availability of 1169.30 grams of gold chain cut pieces on 27-02-2012.

12. You had claimed a sum of Rs.32,78,717/- on the following basis:

Received from Office	5000 grams (24. Ct).on 10-02-12
Convert to 22 CT weight	5427 grams
Issue to office	3256.20 grams on 27-02-12
Pending stock in factory	2170.80 grams on 27-02-12
Finished goods in factory	1001.50 grams

Difference claimed as lost	1169.30 grams (22 CT)
Loss of goods value	Rs.32,78,717/-

13. Surveyor's found the above basis of claim highly unsatisfactory and is without any basis and nor substantiated. While you had totally altered the physical condition after the incident and deprived surveyor and us for verifying and collecting physical evidences, you also failed to maintain proper records for the claimed availability of gold. There was no credible or acceptable proof to substantiate the claim or loss of 1169.30 grams in any manner.

14. In so far as the verification of the debris and the testing process initiated to arrive at possible loss if any, for which again you did not cooperate and you had come up with new and ingenious explanation vide your letter dated 12-07-2012, The claim of complete melt down of gold and washing away of gold/gold particles in liquid form was suggested by you vide your letter dated 12-07-2012, This new stand of yours is to prove that the claim originally made was not true and therefore you were compelled to come up with newer and newer explanations. Such explanations are not acceptable for that they are not technically and practically feasible. The loss/damage as suggested by melt down and washing away of gold in liquid form is not possible at all. The following technical findings demolish such explanation as imaginary and fanciful.

15. Nature of fire Vs. your allegation on gold melted and lost in liquid form:

In your incident report dated 29-02-2012 you had mentioned, "suddenly that machine burn exactly 4.30 PM to 4:45PM After 15-20 minutes will stop the fire..."

Whereas in the letter dated NIL received on 12.07.2012, you had mentioned that "saw a huge fire had broken out."

In your letter dated Nil received on 12-07-12, you have mentioned that part of hollowing machine being plastic got melted fully and converted itself into small bits of plastics and it started flowing away with fire water carrying along with gold in liquid form that had melted in the fire. Your above statements are contradictory to each other and cannot be accepted for following reasons: You have not commented

anything on probable cause of fire and how fire could have initiated. The fire had reportedly originated from the Hollowing Machine. This machine is made of self extinguishing polypropylene sheets. There is no combustible or highly inflammable material available to accelerate a fire after its initiation. The machine consists of acid solution. As per manual of the machine, the solution is 75% normal water and 25% commercial Hydrochloric Acid (HCL). As per material safety data of HCL, it is non-flammable, no auto ignition temperature is applicable, non-explosive even in presence of flames, sparks and not combustible chemical.

Therefore in the absence of any combustible material or fuel to aid fire and the remnants after the fire, the incident is not a "huge fire" as mentioned without any facts.

16. Your contention on melting of gold in the reported incident:

Melting Temperature required for gold is 1000 degrees centigrade. If the temperature had reached up to this level at the time of reported incident, then all non-metallic items including plastic materials, pipes, wires etc., available inside the hollowing rooms would have totally melted and deformed. On the contrary no window glass were seen broken due to the heat in the hollowing room. Electrical wiring, platform plastic sheet beneath the machine were only partly warped and most part retained its shapes. Condition of walls inside the room does not corroborate with your statement, as at 1000 Centigrade the walls/tiles will develop serious cracks. Whereas no damage or cracks to wall tiles fixed in the wall was observed. Other plastic parts seen inside the room were in tact condition (such as PVC pipes etc).

As long as the gold jewellery and bits were in the acid bath the temperature of the gold cannot reach high enough for it to melt since HCL acid boiling point is much lower than that of gold.

Once this started to go up in flames the machine should have destabilized since plastic loses its structural stability at higher temperatures. This should have allowed the contents of the acid bath namely gold jewellery bits and hydrochloric acid to spill out of the bath and on to the floor plastic sheet of platform,

- The fire at floor level could not have reached such a high temperature enough to completely melt plastic nor evaporate all the

acid since flame temperature are high near the tip of the flame and very low at the base.

This is further evidenced by the fact that the plastic flooring surrounding the platform has been unaffected by the fire.

Since the gold particles affected in the incident were in chain pieces and not in powder form definitely it will get settled in the bottom of the pit only and also no possibility of gold get converted into liquid state in this fire incident, as the plastic sheet itself was partly warped...

Therefore in view of all the above,
there is no possibility of gold having melted to liquid state.

17. Your contention of escape of gold along with plastic:

Even if surveyor were to assume that the gold bits were small enough and they were of weight 1 gm each the plastic needed to float this amount of gold would be quite large.

Specific gravity of gold-19.3 and Specific gravity of water-

Specific gravity of plastic propylene) 0.90 (i.e. very near to that of water and 21 times less of Gold Specific Gravity).

The amount of poly propylene plastic piece needed to make a specific quantity of gold to float is very high.

Escaping of such plastic pieces through the drain hole is not possible at all and the gold stuck in the small pieces of plastic will settle down in the pit, if it passes through the drain hole in the hollowing room.

Further you said, water if any escaped from the pit would only carry water and ash with it and not the gold particles with it. Please note that size of collection pit is not huge enough to collect the huge amount of water. It is designed to accept the flow of water that occurs in the normal operation of hollowing machine. When huge amount of water flows through such collection pits, cannot stay at the bottom and from the Bottom they do emerge and flow out of the pit. In this connection, your argument that water cannot escape the room and pit and carry away pieces of gold with it is out of question the truth and veracity of the claim and the records submitted by you and therefore, we regret to inform you that your claim stands repudiated. Please note that nothing contained in this letter is or should be construed as a

waiver of any one or more rights on our part and all our rights under and in relation to the Policy remain fully reserved.

Thanking You,

Yours Faithfully

Sd/-

Authorized Signatory"

19. A perusal of this repudiation letter indicates the stand taken by the Complainant and the surveyor's observation in respect of the retrieving of the material which is indicated in paragraph-2

20. Again in paragraph-4 of the repudiation letter contradiction was observed with regard to the operations carried out and the gold material inside the hollowing machine. It is the stock of the said material as alleged by the complainant for which documents were called for by the surveyor. In response there to the complainant seems to have sent a chart which is at page 187 of the paper book and is extracted herein under:-

"STOCK LOSS DETAILS ON VYSARPADI FACTORY

RECEIVED FROM OFFICE

5000 GM on 10/02/2012 I is a 24 ct

Convert to 22 ct weight is 5427 gm

ISSUE TO OUR OFFICE

3256.200 gm on 27/02/2012 IS A 22 ct

PENDING IN OUR FACTORY

2170.800 gm pending stock in factory date is 27/02/2012 is a 22 ct

1001.500 gm is Finished Goods on the Factory

LOSS OF GOODS ON FACTORY

1169.300 GM Loss of goods Date is 27/02/2012 is a 22 ct

The Loss of Goods Claim Value is Rs:32,78,717/-"

21. To substantiate the availability of such stock, Ld. Counsel for the complainant invited the attention of the Bench to the gold summary stock/journal register and the receipts from 01.2.2012 to 27.02.2012. On the strength of these statements, learned counsel for the appellant contends that there was sufficient material to demonstrate the availability of the stock with the complainant and then its

utilization for manufacture at the factory in terms indicated above. The calculation which has been made in the chart extracted above is that the finished goods in the factory have been reduced from the actual pending stock in the factory to arrive at the amount 1169.300 gm of 22 ct valued Rs.32,78,717/-

22.The repudiation letter goes to analyse the above facts in Paragraphs-6, 7 & 8 and came to the conclusion that no records were available to indicate that the said gold was made available on the date of incident i.e. 27.02.2012 inside the hollowing machine. The statement indicated in the chart above was not supported by any trustworthy documents of the stock movement between office and the factory and therefore, the statements were found to be not reliable.

23.It has been categorically stated in the repudiation letter in the above paragraph-5 that the daily process record was not provided for in order to infer any machine wise process of gold and its quantity as well as the type of ornaments made, with its breakup, so as to establish the availability of the quantity of gold as projected by the complainant.

24.In paragraph-7 of the repudiation letter it has also indicated that profit and loss statement of accounts with locations and specific details were not maintained and completely lacking.

25.Apart from this, washing away of the gold in liquid form was suggested through the letter dated 12.07.2012. This suggestion has been disbelieved, as recorded in the para-14 to 17 of the letter of repudiation quoted above which also seems to be appropriately analyzed that the melting point of gold above 1000 degree and there is no evidence to indicate the rise of high temperature. Even otherwise the entire material existing would have melted had the temperature reached such a height. The plastic flooring surrounding the machine was found to be unaffected by the fire. In the absence of any such material, the repudiation letter clearly records that this theory of melting of gold is unbelievable.

26.The flow of water was sought to be explained through the holes

inside the room where the gold could have passed through. The said analysis has been made in paragraph-17 of the repudiation letter and thus, it was concluded that the theory that the gold could have floated and over flown with the water as claimed by the complainant was unacceptable.

27. Another fact that violation of condition no.6 has been discussed and narrated in para-9 of the repudiation letter quoted above which demonstrates that proper records of the stocks and movement of goods was not maintained.

28. Having recorded all these facts what is conspicuous is that the complainant had received the extensive report of the surveyor and a detailed repudiation letter with reasons that were scientific and were logically or dained as extracted herein above. In spite of this, the complaint, which has been filed in the year 2015 and which runs into 25 paragraphs nowhere seeks to question or counter the findings arrived at by the surveyor and recorded in the letter of repudiation discussed herein above. The learned counsel for the appellant was afforded full opportunity to point out any pleading in the original complaint for this appeal critically or otherwise questioning the said findings in the repudiation letter but he was unable to indicate the same except for the general allegations without reference to any specifics.

29. The aforesaid factual scenario leads to the conclusion that there were no match of fact and figures between the traces of gold that were found in the debris and collected in front of the complainant as indicated in the Laboratory report with that of the amount actually claimed. Thus, the very status of the actual loss of a huge amount of over and above 1kgm of gold could not be established by the complainant through any cogent evidence and the finding of the surveyor as recorded in the repudiation letter could not be dislodged by the complainant either before the State Commission or even by the Ld. Counsel for the appellant while advancing his submissions before this Commission.

30. Consequently, the First Appeal does not deserve to be entertained and the conclusions drawn by the State Commission, therefore, cannot

be disturbed as the appellant has failed to question the veracity of factual findings recorded by the surveyor as contained in the letter of repudiation.

31. Thus there is neither any deficiency of service nor is there any unfairness on the part of the Insurance Company so as to gather any ground to allow the complaint. The Appeal, therefore, lacks merits and is accordingly dismissed.