M/s GVR COLD STORAGE V. M/s UNITED INDIA INSURANCE COMPANY LTD.

1. M/s GVR COLD STORAGE,
Through its Partner, Shri G. Venugopal Reddy, Village & Mandal Duggirala,
GUNTUR.

……..Complainant(s)

Versus

1. M/s UNITED INDIA INSURANCE COMPANY LTD.,
III Floor, Post Box No. 231, Kubera Towers, 15/1, Arundelpet,
GUNTUR – 522002.

……..Opp.Party(s)

Case No: CONSUMER CASE NO. 54 OF 2014

Date of Judgement: 04 Jan 2023

Judges:

HON’BLE MR. C. VISWANATH,PRESIDING MEMBER
HON’BLE MR. SUBHASH CHANDRA,MEMBER

For the Complainant : Mr Sanjay Bhatt, Advocate
For the Opp.Party : Ms Nanita Sharma, Advocate with Mr Faeek, Advocate

Facts

Complainant set up a cold storage in 2008 in Guntur after obtaining clearances. Availed Rs 2.3 crore loan from Indian Bank, Vijayawada. Obtained two standard fire and special peril

policies from United India Insurance covering stock for Rs 25 crore and building & machinery for Rs 3.08 crore. On 6th July 2011, chamber B collapsed after being hit by lightning during torrential rains. Incident reported to insurance company, FIR lodged, visited by officials. Surveyor appointed, inspected site and sought documents. Complainant filed claims of Rs 1.33 crore for stocks and Rs 2.1 crore for building/machinery. Insurance company repudiated claims based on surveyor's report citing structural defects not covered under policy.

Court's Elaborate Opinions

Repudiation based on surveyor's report relying on external expert's inputs without IRDA approval erroneous. Surveyor report under Insurance Act not binding on insurer or insured. No bar on appointing second surveyor but reasons must be provided for disagreeing with first report. Structural soundness as per various reports filed by complainant. Incident of lightning strike supported by newspaper reports and officials' site visit. Possible accumulated rain water weight could have also triggered collapse not analysed. Poor structural stability as per surveyor is disputable. Claim wrongly repudiated based on unauthorized expert report.

Arguments by Parties

Complainant:

Building collapsed due to lightning strike during torrential rains – covered peril under policy. Structurally safe as per various certificates. Entitled to claim amount with interest and other expenses.

Insurance Company:

Repudiated claim based on surveyor report citing structural defects. Collapse attributable to design flaws, inferior materials and workmanship. Lightning or rains not responsible for chamber collapse.

Sections:

Complaint filed under Section 25 relating to consumer disputes redressal agencies.

Referred Laws:
Insurance Act 1938, specifically Section 64 UM dealing with surveyor's role and report.

The Commission allowed the complaint directing the insurance company to pay the claimed amount of Rs 3.34 crores with interest.

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Full Text of Judgment:

1.This complaint has been filed under section 25 of the Consumer Protection Act, 1986, (in short, 'the Act') alleging deficiency in service in the repudiation of its insurance claims under the Standard Fire and Special Peril Policies issued by the opposite party.
2. The fact of the case in brief, as stated by the complainant are that the complainant had established a cold storage in village Duggirala, District Guntur, Andhra Pradesh for storage of agricultural products in 2008 after obtaining necessary clearances from the local Gram Panchayat, Deputy Chief Inspector, Factory Department, Guntur, Andhra Pradesh and Fire and Emergency Department, Andhra Pradesh. He was sanctioned a loan of Rs.2,30,00,000/- by the Indian Bank, Vijayawada for the said cold storage. The complainant had obtained two Standard Fire and Special Peril Policies no.150800/11/11/11/00000051 and no.150800/11/11/110000083 including one enhancement policy no.150800/11/11/1183000009 each for a period of four months from 19.04.2011 to 18.08.2011 and from 06.05.2011 to 05.09.2011 respectively, covering stock for Rs.25 crores and building and plant machinery for Rs.3.08 crores. It is submitted by the complainant that on 06.07.2011 evening in the course of torrential rains, chamber B of the

cold storage was struck by lightening and this led to the collapse of the two chambers on the stocks stored while operations were on. The incident was reported to the opposite party by letter dated 06.07.2011 which was received on 07.07.2011. An FIR was lodged with the local police on the same day. It is submitted that the incident was also reported in the local newspaper and that the site was visited by the local revenue and police officials.

3. Based on the intimation received, the opposite party appointed M/s Rank Surveyors Pvt. Ltd., who visited the site on 09.07.2011 and 10.07.2011. The surveyor inspected the premises and the complainant furnished various documents sought by them on 13.09.2011. The complainant filed two claim forms for damaged stocks. Rs.1,33,91,310/- was claimed for the stock and Rs.4,40,06,339/- for building, machinery and other equipments. The latter claim was subsequently modified to Rs.2,10,00,000/- since inadvertently the value of both the plants had been included. The total claim was for Rs.3,34,25,044/-.

4. The opposite party vide its letter dated 27.02.2012 repudiated the claims on the basis of the survey report, stating that it was established that the insured building/ cold storage unit had collapsed due to improper structural design, poor quality material and poor quality workmanship which were not covered under the said policy. The complainant sent a legal notice dated 27.03.2012 to the opposite party which was replied to on 12.04.2012 by the opposite party reiterating the grounds of repudiation. It is submitted by the complainant that the opposite party did not provide a copy of the survey report dated 05.02.2012 until 19.07.2012 when it was applied for under the Right to Information Act, 2005.

5. The complainant has stated that the building was constructed as per the technical recommendations of the department of Civil Engineering V R Siddhartha Engineering College, Vijayawada and an independent survey of the cold storage was done on 05.07.2007 by a Consultant Engineer, Mr K Srinivasa Rao of Kartik Consultancy and Mr K Srinivasa Rao who

certified that the structural design and workmanship were of IS standards. Complainant has relied upon a letter dated 10.11.2008 of the Southern Power Distribution Company of Andhra Pradesh Ltd., allotting power to the cold storage in support of his contention that the building was structurally sound. He has relied upon the certificate of K Panakalu, Licenced Structural Engineer and Consulting Engineer, Guntur to emphasize that proper norms of construction including specifications were adopted. It is also mentioned that a loan of Rs.2.26 crores was sanctioned by the Indian Bank, Vijayawada after the bank had undertaken due diligence, including the quality of construction.

6. The complainant is before this Commission with the prayer seeking the following relief:

a. Direct/ order the opposite party to pay the complainant Rs.3,34,25,044/- (Rs.1,08,25,044) on account of loss of stocks) + Rs.2,26,00,000/- (on account of loss of buildings and machinery) with interest thereon at the rate of 12% from the date of incident of collapse i.e., 06.07.2011 as Insurance Claim arising from the loss of building/ machinery of the cold storage;

b. Direct/ Order the opposite party to pay the complainant Rs.12,58,809/- with interest thereon at the rate of 12% from the date of incident of collapse, i.e., 06.07.2011 as insurance claim arising from miscellaneous expenses of Rs.12,58,809/- towards removal of debris, payment to welder and cranes for removal of pillars, electrical fittings, wiring, hamali charges, lift charges etc.;

c. Director/ order the opposite party to pay the complainant Rs.1,00,000/- as litigation cost and further Rs.1,00,000/- as compensation towards mental agony;

d. Direct/ order the opposite party to pay the complainant Rs.20,00,000/- as compensation towards loss of profit due to delayed payment; and

e. Grant any other or further relief which may be deemed fit and appropriate in the given facts and circumstances of the case.

7. The complaint was resisted by way of reply by the opposite party wherein the averments in the complaint were denied. It was stated that the repudiation had been done on the basis of the report of the surveyor which had categorically concluded the building was structurally unsound and therefore the collapse of the same was not on account of a peril covered under the policy. Based upon the report of M/s Rank Surveyors Pvt. Ltd., it has been concluded by the opposite party that the insured building/ cold storage unit collapsed due to improper structural design, poor quality of materials and poor quality of workmanship.

8. Reliance was placed on the report of the structural engineer Mr Kodandapani, appointed by the surveyor. The report of the structural engineer was that the structural stability of the building was unsatisfactory and was responsible for the collapse of chamber B. The report of the surveyor had included the loss assessed at Rs.58,000/- which was only for academic purpose, and therefore, there was no admission of any liability on the part of the opposite party.

9. Parties led their evidence and filed their rejoinder and written version. We have heard the learned counsel for both the parties who have also filed their written arguments with supporting case laws, and perused the records carefully.

10. The complainant’s case is that the collapse of the cold storage was on account of a lightening strike which was accompanied by torrential rains on the date of occurrence, i.e., 06.07.2011. It is alleged that on account of the lightening strike chamber B of the cold storage collapsed. It is averred that as lightening was a covered peril under the policy, he is entitled to the claim preferred. It is his case that the building was structurally safe and did not collapse on account of structural defects. The loss of stocks has been computed based on storage data and market prices prevalent.

11. On the other hand, the opposite party has relied upon the

report of the surveyor appointed by him and the inputs of the technical expert/ structural engineer appointed by the surveyor who concluded that the building did not collapse on account of a peril covered under the policy but instead the collapse was attributable to poor structural construction, sub-standard workmanship and use of inferior material. The claim has, therefore, been repudiated as not covered under the policy. The basis of repudiation of the claim is the report of the Surveyor, which is based upon the inputs of Shri Kodandapani, Structural Engineer engaged as an expert. The report of the structural expert annexed in the final report reads as under:

"The report of the senior consultant civil engineer is clear in indicating the cause to be due to improper structural design, poor quality of materials and poor quality of workmanship. Since, the loss to the building, plant and machinery and stocks has not been caused by any of the perils named and covered namely fire, lightening, explosion/ implosion etc., the claim is inadmissible."

However, the basis for concluding that structural infirmities led to the collapse of the roof of chamber B is stated as under:

"We reproduce below the report given by the Senior Civil Engineer Mr Kodandapani in so far as material to the context of "cause of damage" In my observation, I found that the Chamber 2 (North side chamber) is partially damaged due to structural failure. The raft foundation laid for this structure is in good condition and, I have not found any soil settlement or foundation failure. To steel used for columns and beams is a local branded and from which we can't expect a uniform quality and strength. Based on the existing semi collapsed structure, I expect that the beams failed at Column joints are first instance and the consequent chain reaction brings down the structure. This is mainly due to improper structural design, poor quality of materials and poor quality of workmanship. At some places the required bond length of beams rods are also not provided."

12. The inputs of this expert are disputed/ contested by the complainant on the ground that the said chamber of cold storage collapsed due to thunderous storm and lightening striking the building of the cold storage during the torrential rain on 06.07.2011. The loud noise of explosion and consequent collapse of the said chamber was witnessed by the employees of the complainant and other persons and they were interviewed by the surveyor of opposite party. However, the surveyor in his report only recorded from the said employees or persons the chain of events leading to collapse of chamber and deliberately and erroneously ignored the fact of heavy rain, lightening and storm. According to the complainant, the reasons given by surveyor are without any basis and are intended only to deny the legitimate claims of complainant. Under Section 64 UM sub section 3 of the Insurance Act, 1938, a surveyor appointed by an insurer is empowered to appoint an expert to assist in the finalisation of the assessment of loss in an insurance claim. Section 64 UM (3) specifically provides that:

"The authority may at any time, in respect of any claim of the nature referred to in sub-section (2) call for an independent report from any other approved surveyor or loss assessor specified by it and such surveyor or loss assessor shall furnish such report to the authority within such time as may be specified by the authority or if no time limit has been specified by it within a reasonable time and the cost of, or incidental to such report shall be borne by the insurer."

13. In the present case, it is not evident from the record whether the expert was appointed with prior approval of the IRDA as mandated in Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000.

14. Based upon the report of the surveyor, it appears that the girders and beams holding up/ supporting the roof suffered from structural defects and the collapse of the walls was due to improper structural design, poor quality of materials and poor quality of workmanship. What is not forthcoming from the

report is why the roof collapsed, when it did on the evening of 06.07.2011 and whether torrential rains were the cause for it, i.e., whether the weight of water accumulated on the roof could have been the trigger.

15. On the other hand, the complainant has filed documents in support of his assertion that the cold storage building was declared structurally safe from a design and construction angle as it was vetted for design by a certified structural engineer Mr M Srinivasa Rao, and that columns and beams which were constructed using IS standard materials and the design of the structure was also according to IS code. He has also relied upon the fact that a loan of Rs.2,30,000,00/- was sanctioned by the Indian Bank, Vijayawada on 29.02.2008 after due diligence of building plans and evaluation of cost estimates. Lastly, it is also the complainant's contention that the cold storage was inspected for safety and certified as complaint by the Deputy Chief Inspector of factories, Guntur, Andhra Pradesh on 23.07.2008 and the Fire Service Department, Andhra Pradesh.

16. It is moot whether the building would have withstood a lightening strike, if indeed there was one on the evening of 06.07.2011. While the complainant relies upon the report of the local revenue authorities and reports in newspapers in support of its assertion, the opposite party has contested this in light of its surveyor's report of poor structural design and construction apart from doubting the veracity of a lightening strike as an isolated incident. The incident of lightening struck on the insured's premises is borne out by the reports in the local newspapers and the visit of revenue and police officials to the premises. There is no evidence produced to the contrary by the opposite party.

17. In New India Assurance Co. Ltd. Vs. Pradeep Kumar 2009 (4) CPJ 46 SC, the Hon'ble Supreme Court has held that while section 64 UM mandates the appointment of a registered surveyor in matter of claims of Rs.20,000/- and above;

"a surveyors report is not the last and final word – it is not that sacrosanct that it cannot be departed from; it is not

conclusive. Approved surveyor's report maybe the basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such a report is neither binding upon the insurer nor insured".

18. It is relevant to note that the Hon'ble Supreme Court in its judgment in Shri Venkateswara Syndicate vs Oriental Insurance Company Limited (2009) 8 SCC 507 has held that:

"There is no prohibition in the Insurance Act, 1938 for appointment of second surveyor by the insurance company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first surveyor and the need to appoint second surveyor. Scheme of Section 64 U M particularly of sub-sections (2) (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reasons the report of the surveyor is not acceptable

to the insurer may be for the reasons if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint the second surveyor or surveyors till it gets a report which would satisfy its interest. There must be sufficient ground to disagree with the findings of surveyor/ surveyors. The Insurance Act only mandates that while settling a claim, assistance of a surveyor should be taken but it does not go further and say that the insurer would be bound by whatever the surveyor has assessed or quantified; if for any reasons, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured."

19. In National Insurance Co. Ltd. & Anr. Vs. Sanjay Kumar, II (2009) CPJ 223 (NC) it was held that the insurer, if not satisfied by the assessment of loss by the Surveyor, can refer the matter to IRDA and that the insurer was not competent to call for the report of any expert. It was also held that

repudiation based upon an expert’s report in such a case loses its merit. In the present case, as admitted by the opposite party, it was the surveyor who appointed the expert.

20. The opposite party, in relying upon the surveyor’s report based on the inputs of this expert, has erred in arriving at a finding. The repudiation of the claim on this basis is, therefore, perverse and not justifiable. The same is accordingly liable to be rejected.

21. In view of the above, we find merit in the contentions of the complainant. The complaint is accordingly allowed. The opposite party is directed to pay the Complainant Rs.3,34,25,044/- with interest at the rate of 6% per annum from the date of repudiation of the claim till realisation. Order be complied with within eight weeks, failing which interest payable will be at 9% per annum.

22. The complaint is disposed of with these directions.