

M/S. UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD. V. SURESH CHAND JAIN & ANR.

1. M/S. UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD.
ZONAL OFFICE SCO NO. 39 & 40, 1ST FLOOR, SECTOR-31,
GURGAON-122002
HARYANA

.....Appellant(s)

Versus

1. SURESH CHAND JAIN & ANR.
SOLE PROP. OF M/S. JAICHANDA ELECTRICALS, NOW AT
1892/27, GROUND FLOOR, HARIRAM ELECTRICAL
MARKET, BHAGIRATH PALACE, CHANDINI CHOWK,
DELHI-110006
2. ALLAHABAD BANK
THROUGH ITS CHIEF MANAGER, A-13, FIRST FLOOR,
DDA COMMEFIAL COMPLEX, DEFENCE COLONY,
NEW DELHI-1100024

.....Respondent(s)

Case No: FIRST APPEAL NO. 376 OF 2016

Date of Judgement: 16 Jan 2023

Judges:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

For the Appellant : Mr.D.Varadarajan, Advocate and Mr.Rajat
Khattry, Advocate

For the Respondent : Mr. O.P.Gupta, Advocate for R-1 None for
R-2

Facts:

Complainant purchased 2 insurance policies from appellant insurance company through respondent bank to cover period 25.11.2011-24.11.2012 for Rs. 50 lakhs against risks of burglary, fire etc. for stock lying at Rajgarh Extension and Bhagirath Place premises. On 28.3.2012, complainant informed bank through letter about completion of construction and shifting of stock to his Bawana premises, requesting bank to update records and inform insurance company. Bank sent letter dated 31.3.2012 to insurance company about addition of Bawana premises. Theft occurred at Bawana premises on 29.6.2012 for which FIR was registered. Complainant informed insurance company and bank. Surveyor was appointed who inspected premises and submitted report determining loss at Rs. 7.13 lakhs against claim of Rs. 41.31 lakhs made by complainant. Fire broke out at Bawana premises on 18.10.2012 for which status report was issued by Fire department. Insurance company did not settle claims for theft and fire losses. Hence, complainant filed complaint before State Commission alleging deficiency in service and unfair trade practices by insurance company and bank. Prayer was made for Rs. 45 lakhs against burglary loss, Rs. 4 lakhs against fire loss, compensation of Rs. 20 lakhs for mental agony plus interest.

Arguments by Parties:

Insurance Company:

Policies were issued only for Rajgarh and Bhagirath Place premises. Stock lying at Bawana was not covered. Complainant did not inform about change of location to Bawana premises. Repudiation was as per policy terms since change in location was not informed. Surveyor report assessed loss at Rs. 7.13 lakhs against claim of Rs. 41.31 lakhs. Relevant case laws were cited to submit that repudiation was valid.

Complainant:

Entire arrangement between bank and insurance company was a joint venture. Bank purchased policies for complainant by paying premium and debiting his account. Premises at Bawana was already mortgaged with bank. By informing bank, complainant had complied with policy terms. Onus was on bank and insurance company regarding endorsement for change of location. Insurance company failed to follow IRDA norms by not deciding claim within 6 months. Deficiency is proved. Cited case laws are distinguishable since they did not involve joint venture between bank and insurance company.

Bank:

Admitted receiving letter from complainant regarding change of premises and forwarding it to insurance company. Legally entitled to recover outstanding loan of Rs. 60.75 lakhs as on 31.5.2013 along with further interest.

Court's Opinions:

It stands proved that bank and insurance company had a joint venture; policies were purchased by bank to safeguard its loan, by paying premium and debiting complainant's account; property at Bawana was already mortgaged with bank. By informing bank about change of premises, complainant had complied with policy terms. Onus was on bank and insurance company regarding endorsement. Insurance company failed to prove it had sent policies alongwith terms and conditions to complainant. Once complainant informed bank, which purchased policies and paid premium on his behalf, about change of location, burden shifted to bank and insurance company regarding endorsement. Findings in case laws distinguishing facts. Insurance company and bank had common management on their boards and worked together. Bank's admission of receiving letter from complainant and forwarding to insurance company proves complainant's version. Failure to settle claims within stipulated IRDA timeframe shows deficiency in service. Directions issued to process fire claim after obtaining

necessary documents from complainant.

Sections:

No specific sections have been mentioned.

Referred Laws:

Regulations by IRDA (Insurance Regulatory Development Authority) requiring claim to be decided within 6 months have been cited but no specific regulation has been referred to.

Cases cited & referred:

1. National Insurance Co. Ltd. Vs. M/s Venketeshwara Distributor (2011) SCC Online NCDRC 169

2. Shri Subhash Chand Jain V. United India Insurance Co. Ltd. (2010) SCC Online NCDRC 289

3. Oriental Insurance Co. Ltd. Vs. P.R.Automobiles & Oils & Anr. I (2010) CPJ 83 (NC)

4. Ashik Jitendra Bhuta Vs. Oriental Insurance Co. Ltd. (2015) SCC Online NCDRC 829

5. Deokar Exports Pvt. Ltd. Vs. New India Assurance Co. Ltd. (2008) 14 SCC 598

6. M/s Vijay Concerns Vs. State Bank of India & Anr. (2013) SCC Online NCDRC 838

7. United India Insurance Co. Ltd. Vs. Ambuja Laboratories Ltd. (2016) SCC Online NCDRC 755

8. Suraj Mal Ram Niwas Oil Mills Pvt. Ltd. Vs. United India Insurance Co. Ltd. (2010) 10 SCC 567

The court distinguished the facts of the present case from the cited ones, mainly on the ground that in those cases there was no joint venture between the bank and insurance company, which is a salient aspect in the present case.

In conclusion, the appeal was dismissed as the findings and

order passed by the State Commission were based on facts proved on record and no infirmity or perversity was found warranting interference. The insurance company was directed to pay the claim amount within 2 months, failing which penal interest @12% would accrue. It was also directed to process and finalize the fire claim within 60 days after seeking necessary documents from the complainant.

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Court

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Full Text of Judgment:

1.The present Appeal has been filed against the order dated 18.03.2016 of the State Commission in CC No. 357 of 2013 whereby complaint of the complainant had been allowed.

2. The brief facts of the case are that respondent no.1 (hereinafter referred to as complainant) purchased two insurance policies from the Appellant (hereinafter referred to as Insurance Company) through respondent no.2 (hereinafter referred to as Bank) covering the period 25.11.2011 to 24.11.2012 in the sum of Rs.50.00 lacs covering the risk of Burglary and Standard Fire and Special Perils with earthquake and shock endorsement. The complainant wrote a letter dated 28.03.2012 to the Bank that the construction of his Bawana premises had been completed and that he was transferring his stocks to the said premises no. C-276,Sector-2, Bawana Industrial Area. The Bank acknowledged the said intimation and Bank also wrote about change of address to the insurance company. A theft took place on 29.06.2012 at Bawana premises and FIR No. 213 of 2012 was registered at Police Station Bawana and both the Insurance Company and the Bank were informed. The Insurance Company appointed a surveyor on 30.06.2012 and on 01.07.2012, the complainant filed a formal claim with the Insurance Company. The Surveyor did survey at the complainant's premises at Bawana Industrial Area and took the photographs. The contention of the complainant is that the Surveyor was provided with all the documents he asked time and

again but instead of submitting its report, it kept on asking documents again and again. Meanwhile, fire also broke out at the Bawana premises on 18.10.2012 and status report was issued by the Fire Department. The complainant aggrieved by the act of the insurance company of not settling his claim, filed the complaint on 03.06.2013. He was aggrieved of non action on the part of the Insurance Company in settling his burglary claim of Rs.45.00 lacs and fire claim of Rs.4.00. lacs. He has filed the complaint for the award of Rs.45.00 lacs and prayed for compensation of Rs.20.00 lacs for mental agony and harassment and for deficiency in service on the part of the insurance company and Bank and also claimed interest. It was also the case of the complainant that insurance company is a joint venture of the Bank.

3. Both the Bank and the Insurance Company filed their written version. The insurance company had not disputed issuance of two policies. It was, however, contended that policy was issued for the stocks lying at the location at Rajgarh Extension, Gandhi Nagar, Delhi and Bhagirath Place, Chandni Chowk and the stocks lying at Bawana Industrial Area was not covered under the policy and that the complainant had not informed the insurance company about the change / shifting from insured premises. It was also contended that they had not received any letter from the Bank relating to the change of address of the complainant. It was contended that the repudiation of claim was done in terms of clause 4 of the General Condition of the policy schedule. It is, however, admitted that it had appointed an independent IRDA licensed Surveyor to inspect the Bawana premises on receiving the information about the burglary loss and the surveyor had submitted its report dated 21.03.2013 determining the tentative loss of stolen goods at Rs.7,13,830/- against the final claim made by the complainant for Rs.41,31,180/- It was further submitted that claim was repudiated vide letter dated 22.08.2013 for the reason that stock lying at Bawana was not insured. It was however, submitted that loss pertaining to the fire could not be processed due to non submission of any

document by the complainant. It is contended that claim is liable to be rejected.

4. The Allahabad Bank had also filed its written version. In the written version, it had not denied the contention of the complainant that Bank and Insurance Company are a joint venture and has also admitted that the letter dated 28.03.2012 of the complainant informing the change of address and had contended that it had duly informed the Insurance Company about change of address of the insured i.e. the complainant. It is also contended that complainant had taken loan from the Bank which he is liable to repay the same along with interest under the law and banking rules.

5. In the rejoinder, the complainant has reiterated his contention in the complaint and it is further alleged that the insurance company was very well aware of the change of address of the complainant since it had sent the surveyor to Bawana for the survey and this shows that the insurance company had duly received the letter from the Bank dated 31.03.2012 in which the bank had written to them about the change of address of the complainant. It was also contended that all the purchase and sale bills duly certified by Chartered Accountant were supplied to the insurance company but the insurance company did not approve the claim. He had also placed on record letter dated 01.07.2012 in order to show that he had supplied all the required documents to the surveyor.

6. In the rejoinder to the written version of the Bank, complainant had stated that it was a joint venture of both the Insurance Company and the Bank and has further stated that present MD of Insurance Company was the MD of the Bank in the year 2006 and one of the Executive Director of the Insurance Company is also the MD of the Bank and that insurance company being a Company of Japan, nobody knows it in India and is doing his business as a joint venture with the Banks which includes Allahabad Bank, Karnataka Bank and India Overseas Bank and, therefore, the contention that Bank has no connection with the insurance company is meritless.

7. Parties led their evidences before the State Commission and

filed all their documents. After hearing the arguments of the learned counsel for the parties, complaint was allowed.

8. In the present Appeal, main contention of the insurance company is that policies were issued for stocks lying at Rajgarh and no policy had been issued for the stock lying at Bawana and, therefore, they had rightly repudiated the claim. It is also argued that they had not been informed about the change of address of the complainant and had relied on findings in the following cases:

1. National Insurance Co. Ltd. Vs. M/s Venketeshwara Distributor (2011) SCC Online NCDRC 169.

2. Shri Subhash Chand Jain V. United India Insurance Co. Ltd. (2010) SCC Online NCDRC 289

3. Oriental Insurance Co. Ltd. Vs. P.R.Automobiles & Oils & Anr. I (2010) CPJ 83 (NC)

4. Ashik Jitendra Bhuta Vs. Oriental Insurance Co. Ltd. (2015) SCC Online NCDRC 829

5. Deokar Exports Private Ltd. Vs. New India Assurance Co. Ltd. (2008) 14 SCC 598.

6. M/s Vijay Concerns vs. State Bank of India and Anr. (2013) SCC Online NCDRC 838.

7. United India Insurance Co. Ltd. Vs. Ambuja Laboratories Ltd. (2016) SCC Online NCDRC 755.

8. Suraj Mal Ram Niwas Oil Mills Pvt. Ltd. Vs. United India Insurance Co. Ltd. (2010) 10 SCc 567.

9. It is argued on behalf of the complainant that even in the Appeal, the insurance company has not denied that Bank is a share holder in their company and had only contended that they are the two independent companies. It is argued that complainant had taken loan from the Bank and in order to safeguard the loan, the policy had been taken. It is further argued that whole arrangement between the complainant and the Bank clearly shows that at the time when the loan was granted and documents executed with the bank, the property situated at Bawana Industrial Area was mortgaged to the Bank and the Bank had paid the entire premium of both the insurance policies by

debiting the same from the account of the complainant. It is further argued that despite the fact that surveyor had submitted its report on 21.03.2013, the insurance company did not approve the claim and remained sitting over the report of the surveyor and it was only after the complaint was filed that the claim was repudiated on a flimsy ground. It is submitted that under the rules of IRDA, the insurance company was liable to decide the claim within 6 months and that it did not follow the rules of IRDA and it clearly establishes the deficiency on their part. It is further argued that case laws relied upon by the insurance company are not relevant because findings given in those cases are based on different facts and circumstances and which are clearly distinguishable. It was the contention of the complainant that in none of the case laws relied upon by the Appellant Insurance Company, the Bank and Insurance Company were having joint venture. It is submitted that there is no perversity, illegality or perversity in the impugned order since impugned order is based on the evidences on record and, therefore, the Appeal is liable to be dismissed.

10. I have heard the arguments and perused the relevant record. The repudiation letter clearly shows that claim had been repudiated only on the ground that complainant had changed the address and the stock lying at Bawana was not insured.

11. The case of the complainant is that premises at Bawana had been mortgaged with the Bank at the time when the loan had been taken and that insurance policies had been obtained in order to insure the property as well as the stock and that the premium had been paid by the Bank at the time when the policy was taken and debited from his account. The State Commission after perusing the relevant record has also reached to the conclusion that the Bank and the Insurance Company was having a joint venture. The State Commission has held as under:

"It has also been proved on record that OP No.1/Insurance Company is a joint venture of OP No.2 and the insurance

policies had been taken by OP No.2 bank to safeguard its loan amount which is not denied by OP in their reply therefore, OP No.2 bank had been rightly and correctly impleaded as partly in the present complaint and the OP No.2 is a necessary party. We are also of the opinion that OP No.1 for the first time has filed before this commission the assessment of the loss towards fire and we hold that both the OPs have committed deficiency in service by not assessing the loss caused to the complainant towards burglary and fire as a result of which the complainant failed to liquidate his loan amount of OP No.2 bank and his business has been completely ruined and his property has been taken by the bank charging compound interest @ 16% with penalty. In its Affidavit-in-Evidence, the OP No.2/Bank has stated that on 17/8/2010, the complainant had taken a Term Loan of Rs30,00,000/- and OD Limit of Rs.35,00,000/- aggregating at Rs.65 lacs by furnishing D.P. Note for Rs.65 lacs in favour of the bank and mortgaging the subjected property situated at Plot No.276, Pocket-C, Udyog Vihar, Bawana Industrial Area, Delhi by virtue of registered lease deed as document No.5662 dated 15/5/2007 as collateral security. It has been further stated that as on 31/5/13, a sum of Rs.60,75,077/- is outstanding as recoverable from the complainant along with further interest. In nutshell submission of the Bank are that it is legally entitled to recover its loan amount alongwith interest from the complainant. There is no denial by the bank that the OP No.1/Insurance Company is not its joint venture and at times the Managing Directors of both the OPs were not the same person as specifically highlighted by the complainant. There is also no denial by the bank that it had not forwarded the letter dated 28/3/12 received from the complainant to the OP No.1/Insurance Company. Clause 6 of the Term Loan Agreement dated 17/10/10 executed between the complainant and the OP No.2/Bank clearly lays down the basis and background which creates an obligation on the complainant to ensure that the goods in question are duly covered by the insurance policies. Clause 6 further provides that in case of any failure on the

part of the complainant to comply with the requirement of insurance covers, the OP No.2/Bank shall be entitled to complete the said procedure and recover the cost of the said procedure from the complainant. It is, therefore, clear that the entire arrangement of having insurance cover for the goods in question arose on account of loan agreement/arrangement between OP No.2 and the complainant and the records show that admittedly the property situated at 276, Pocket-C, Sector-2, Bawana Industrial Area, Delhi was mortgaged to the OP No.2/Bank and OP-2 Bank had paid the entire premium of both the insurance covers/policies by debiting the account of the complainant."

12. It also stands proved and not denied by the Bank and rather admitted by the Bank that the complainant had written a letter dated 28.03.2012 to them informing them that they had shifted the stock at their Bawana address which was mortgaged with the Bank. It is also apparent that Bank had written a letter dated 31.03.2012 to the insurance company which the insurance company has however, denied. In view of the proved facts that the entire arrangement between the Bank and the Insurance Company was a joint venture and it was the Bank who purchased the insurance policy for the complainant after paying the premium and debiting from the account of the complainant with the Bank, it is sufficient that once the complainant had informed the Bank about the change of address and shifting of stock, it had complied with the terms and conditions of the insurance policy and burden was, therefore, upon the Bank and the Insurance Company to do the necessary endorsement in the policy. It is also clear from the evidences that the Insurance Company had failed to prove on record that it had sent the policies to the complainant along with all the terms and conditions. The present case is, therefore, distinguishable from the case laws relied upon by the Appellant. In none of the cases, there was a contention that entire arrangement was a joint venture between the Bank and the Insurance Company and, therefore, findings of those cases

are not relevant on the facts and circumstances of this case. The State Commission has also observed that terms and conditions of the policy were never conveyed to the complainant and that insurance policy had never been sent to the complainant. It has held as under:

"After issuing the aforesaid insurance policy schedules, the insurance policies have been claimed to have been dispatched by the OP No.1 to the complainant on 16/12/11 but no such courier receipt showing dispatch or acknowledgment of the complainant was placed on record by the OP No.1 along with the Written Statement. However, Original Courier Receipt bearing No.0212520239 dated 16/12/11 has been placed on record by the OP No.1 along with its Evidence Affidavit which marked as Exh. RW-1/2. A bare perusal of the said receipt shows that it nowhere contains the acknowledgment of the complainant or anybody on his behalf. Therefore, we have no hesitation in holding that filing of the said courier receipt by the OP No.1/Insurance Company is nothing but an attempt to fill the lacunae of non-dispatch of insurance policies to the complainant and thus the OP No.1 has been deficient in rendering services to the complainant and accordingly is not entitled to take any advantage of any of the clauses of the said policies."

13. Regarding joint venture between the Bank and the Insurance Company, the State Commission has observed as under:

"From a bare perusal of the Insurance Policy Schedules filed by the complainant at page 11-14 of the complaint, it is evident that the OP No.1/Universal Sompo General Insurance Co. Ltd is a joint venture between Allahabad Bank, Indian Overseas Bank, Karnataka Bank and Dabur Investments. It is further evident from these Schedules that the name of the OP No.2 viz Allahabad Bank has been shown as Intermediary Name and hypothecation has also been mentioned in favour of the OP No.2/Bank. Thus, we find force in the contention of the complainant that both the Opposite parties viz Insurance

Company and the Bank were engaged in joint venture business and the subjected policies were arranged by the Bank as a part of entire arrangement to cover the risks from certain perils and during the entire period the OP No.2/Allahabad Bank was the de-jure owner of the stocks in question for the reason that the entire stocks were admittedly hypothecated to the bank and from the documents placed on record, it is clear that the entire arrangement was mutually entered into between the parties for protecting the interests of OP No.2/Bank as well."

14. The State Commission on service of the letter of the complainant dated 28.03.2012 regarding change of address has observed as under:

"The complainant has claimed that vide letter dated 28/3/12, he had informed the OP No.2/Allahabad Bank about completion of construction and transfer of stocks to 276, Pocket-C, Sector-2, Bawana Industrial Area, Delhi. Copy of the said letter has been placed at page 15 of the complaint which, inter-alia, after giving necessary particulars about Loan Account No. & stocks transferred etc, clearly states as under :-

'This best of our knowledge & kindly do update our record in your books as per this information, and kindly send the copy of the same information to whom it ever be concerned insurance company, of our above said premises by you.' This very fact has not been disputed by the OPs and therefore is deemed to be admitted. Therefore, from a combined reading of Insurance Policy Schedules filed by OP-1 and the Letter dated 28/3/12 written by the complainant to the bank, a logical inference that can be drawn is that as the Insurance Company and the Bank are the joint ventures, the complainant found it sufficient to intimate the

Bank alone about shifting of stock at Bawana with the request to further inform the insurance company and there was no reason for the complainant to even presume any failure on the part of the bank for not complying with the instructions of

the complainant. On receiving the letter dated 28/3/12, in fact, the OP No.2/Bank has issued a letter bearing No. LJP/Adv/Jaichand/163 dated 31/3/12 to the OP No.1/Insurance Company under the heading 'Addition of premises for stocks' and forwarded a copy of letter dated 28/3/12 received from the complainant. This very fact of forwarding the letter dated 31/3/12 along with copy of letter dated 28/3/12 to the OP No.1 has not been denied by the OP No.2/Bank. However, OP No.1 has denied to have received the said letter from OP No.2. There is nothing on record to indicate that the said letter was not sent by the OP No.2 to the OP No.1 as per request made by the complainant and in all probabilities, it can safely be presumed that the addition of Bawana premises as well as shifting of stock there was well within the knowledge of both the OPs and despite of specific knowledge the OP No.1/Insurance Company did not care to protect the interests of the OP No.2/Bank being the de-jure owner of the goods and a joint venture of OP No.1 as well as the interest of the complainant.

The presumption of having knowledge about the addition of new premises by the OP No.1/Insurance Company is drawn in favour of the complainant and further finds support from the fact that it had appointed its surveyor to inspect and survey the new premises which was done by the surveyor. Moreover, the claim of the complainant of informing about the newly added premises was not refuted by the OP No.1/Insurance Company even after 29/6/12 i.e. the first incidence of peril till the second date of peril/fire. Even otherwise, if the version of the OP No.1/Insurance Company is to be believed that it had not received the letter dated 31/3/12 sent by the OP No.2/Bank, the bank has to be held to be deficient in rendering due services to the complainant and being the joint venture of OP No.1, both the OPs are jointly or severally liable to compensate the loss suffered by the complainant. The Counsel for the OP No.1/Insurance Company has relied upon some decisions of the Hon'ble National Commission. We have

considered the same. Suffice it to say that these cases are distinguishable on facts inasmuch as in none of these cases the Insurance Company and the Bank were the joint venture of each other having common management whereas in the present case the OP No.1/Insurance Company is the joint venture of the OP No.1/Allahabad Bank."

15. The learned counsel for the Insurance Company has failed to point out any evidence on record which was not considered by the State Commission and having a vital impact on the impugned order. There is no denial of the facts that there was common management on Board, and both the Bank and the Insurance Company were working together through common management. It is an admitted fact that the complainant had informed the Bank of the shifting of stock from Rajgarh to Bawana, the place which was already mortgaged to Bank, when loan was taken and the complainant had done the needful by informing the Bank regarding shifting of stock and the Bank has also admitted that on receiving the letter from the complainant, it had forwarded it to Insurance Company. The Bank should have filed the proof of forwarding the letter to the Insurance Company in view of the denial by the Insurance Company. The Bank, however, has suppressed it and we cannot close our eyes to the fact that the Bank and the Insurance Company are in a joint venture for profit and so the bank has intentionally concealed the proof with the intention to profiteer its joint venture company.

16. I, therefore, find no infirmity and perversity in the impugned order which is based on the evidences on record. I also found no illegality in the impugned order on this count.

17. Regarding claim of Rs.4.00 lacs for the loss due to fire in the premises, the State Commission has observed that all the relevant documents had been supplied to the insurance company but the insurance company had failed to process the claim and the State Commission issued directions to the insurance company to process the said claim within 30 days

after demanding any other necessary document from the complainant. In the Appeal, there is no mention that there is any compliance of this direction by the insurance company. From the above submission, it is apparent that findings of the State Commission on all counts are based on the facts proved on record and, Appeal, therefore, has no merit and is liable to be dismissed.

18. The claim amount shall be paid within 2 months from the date of this order failing which the complainant shall be entitled to penal interest @ 12% per annum. The claim of fire shall be finalized within 60 days.

19. The Appeal stands disposed of.