

NEW INDIAASSURANCE CO. LTD. V. MARKANDESHWAR FOOD & ALLIED PRODUCTS LTD.

1. NEW INDIAASSURANCE CO. LTD.
12/1, ASAF ALI ROAD,
NEW DELHI

.....Appellant(s)

Versus

1. MARKANDESHWAR FOOD & ALLIED PRODUCTS LTD.
166-167 STONE, G.T. ROAD, VILLAGE KHANPUR KALIAN
KURUKSHETRA

.....Respondent(s)

Case No: FIRST APPEAL NO. 775 OF 2016

Date of Judgement: 03 Jan 2023

Judges:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

For the Appellant : Mr. Jawahar Narang, Advocate

For the Respondent : Mr. Gaurav Nair, Advocate and
Mr. Rahul Sharma, Advocate

Facts:

Two appeals filed against order dated 08/04/2016 of Haryana State Commission in Complaint No. 68/2013. Appeal 730/2016 by Complainant (Markandeshwar Food & Allied Products Ltd). Appeal 775/2016 by Opposite Party (New India Assurance Co Ltd). Complainant had taken fire insurance policy from insurance company. Fire occurred in insured premises on 07/02/2012 and Complainant informed insurance company. Surveyor assessed losses, insurance company paid compensation as per surveyor's

report. Complainant filed complaint alleging deficiency, claiming higher loss. State Commission allowed complaint, directed insurance company to pay balance loss as assessed by surveyor

Court's Opinions:

Appeal 775/2016 by Insurance Company:

Insurance policy covered stocks, packing material etc upto Rs 2 crores. Surveyor had assessed loss of packing material separately. State Commission relied on surveyor's assessment which was based on evidence. Insurance policy did not specify cover for each item, only overall cover of Rs 2 crores. No evidence led by insurance company regarding specific cover for each item. Findings of State Commission are based on evidence and free from any perversity or illegality. Appeal by insurance company has no merits and is dismissed

Appeal 730/2016 by Complainant:

State Commission found insurance company deficient but did not award compensation. Complainant entitled to interest from date of filing complaint till payment of awarded amount. Interest granted at 9% p.a.; if amount not paid in 3 months, interest will be 12% p.a.

Arguments:

Insurance Company:

Policy covered stocks, packing material etc within overall limit of Rs 2 crores. Surveyor correctly assessed loss of packing material based on various clauses. Awarding loss assessed by surveyor illegal as it exceeds specific cover

Complainant:

Surveyor assessed total loss of packing material, award is as per assessment. Seeks interest/compensation for deficiency of service by insurance company

Sections:

Appeals under Consumer Protection Act, 1986

Cases Referred/Cited: None

Laws Referred:

The Consumer Protection Act, 1986

Conclusion:

Appeal of Insurance Company dismissed; Appeal of Complainant partly allowed. Complainant granted interest on awarded amount from date of complaint @9% or 12%. Insurance company to pay awarded amount with interest within 3 months

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Full Text of Judgment:

1.The present Appeals have been filed by the Complainant as well as the Opposite Party Insurance Company challenging the order dated 08.04.2016 of the Haryana State Consumer Disputes Redressal Commission (for short “the State Commission”) in Complaint No.68 of 2013.

2. First Appeal No.730 of 2016 has been filed by the Complainant. It is contended on behalf of the Complainant that although the State Commission has allowed the Complaint but while allowing the Complaint, the Complainant had not been compensated for the loss and damages and mental agony etc. suffered by them due to the act on the part of the Insurance Company. It is prayed that compensation in terms of the interest or otherwise shall be awarded to them.

3. First Appeal No.775 of 2016 has been filed by the Opposite Party Insurance Company. It is contended on behalf of the Insurance Company that the impugned order suffers with perversity, illegality and infirmity as it has awarded compensation beyond the limit of the insured value. It is submitted that vide insurance policy No.36030011110100000341 valid for the period from 11.11.2011 to 10.11.2012, the entire stock as well as the packing material had been insured for ₹2 Crores and the value of the packing material was much less and

the surveyor had correctly assessed the loss of the packing material and did the deductions.

4. I have heard the arguments and perused the relevant record.

5. The brief facts of the case are that the Complainant had purchased four insurance policies of Standard Fire and Special Perils from the New India Assurance Company Limited (for short "the Insurance Company"). The relevant policy No.36030011110100000341 was of the value of ₹2 Crores and had covered stocks of all kinds of packing material, milk, milk products, ghee, butter, dairy products and other material connected to insured trade whilst lying at insured premises. Admittedly, on 07.02.2012, a fire broke out in the insured premises. The fire tenders were summoned to extinguish the fire. Police Station Pipli was informed about the fire and the incident was recorded in daily diary. The Insurance Company was also informed. A surveyor was appointed who after visiting the insured premises submitted his report and assessed the loss at ₹56,42,954/- after deducting the salvage value for the stocks as well as the building. The surveyor in his report assessed the loss of packing material at ₹42,29,024/- out of which 5% was deducted under excess clause and the balance came to ₹40,17,572.08ps. Based on the report of the surveyor, the Insurance Company paid a sum of ₹10,85,563/- to the Complainant towards loss of damaged stocks and ₹2,35,356/- for damages of packing material after deducting ₹454/- as reinstatement premium and thus a total amount of ₹13,20,454/- was paid to the Complainant. Dissatisfied with this, the Complainant filed a Complaint before the State Commission on 04.09.2013 alleging that the total loss was ₹78,74,014/- which included loss of stocks at ₹63,15,200/- and loss of building at Rs.15,18,814/-.

6. The claim was contested by the Insurance Company. It was alleged that the stock of packing materials was covered only in policy No.36030011110100000341, the total amount insured of which was ₹2 Crores. The Complainant had claimed 48,26,450/- on account of loss of packing material in that policy but the surveyor had assessed the loss at ₹42,29,024/-. After applying

the average clause, the value of the assessed loss was ₹3,65,222/- and a sum of ₹18,261/- was liable to be deducted in terms of excess clause and therefore, the loss comes out to ₹3,46,961/-. The surveyor had assessed the damage to stocks other than packing material to the tune of ₹7,38,602/- and thus the total value of loss of stocks worked out to ₹10,85,563. It is further contended that the Complainant had claimed compensation of ₹15,18,814/- towards damage to building while the surveyor had assessed the loss of building at ₹2,47,743/- and after applying the excess clause to the tune of ₹12,387/-, the loss was ₹2,35,356/- and thus the total loss after deducing a sum of ₹465/- on account of reinstatement of premium, the balance amount of ₹13,20,454/- was paid to the Complainant and therefore, the Complaint had no merit and was liable to be dismissed.

7. Parties led their evidences before the State Commission. The State Commission heard the arguments of both the parties and considered all the contentions and arguments raised before it and on the basis of the evidences produced before it, passed the impugned order whereby the contentions of the Insurance Company were rejected.

8. I have given thoughtful consideration to the rival contentions of the parties in their Appeals and have also orally heard the Counsels for the parties and have gone through the written synopsis filed by the parties.

9. The Insurance Company has challenged the impugned order on the ground that under the relevant policy, although the value of the policy was ₹2 Crores but it had covered not only the packing material but also the loss of stocks etc. and the surveyor had assessed the loss of packing materials on the basis of various clauses. It is therefore argued that the grant of sum of ₹40,17,572.08ps. towards loss of packing material is illegal.

10. It is argued on behalf of the Complainant that the State Commission has relied on the assessment of loss done by the surveyor who had assessed the loss of packing material at ₹42,29,024/- and after deducting the amount already paid by

the Insurance Company, had awarded the balance amount and therefore committed no illegality and infirmity in the impugned order. It is further submitted that the impugned order be modified to the extent that the compensation for the act of deficiency on the part of the Insurance Company be awarded to the Complainant.

11. The State Commission has duly considered the arguments of the Insurance Company which have again been raised before me and has held as under:

"13. Learned counsel for the Insurance Company has stated that since the policies Exhibit C-4 to C-6 did not cover the packing material and that packing material was covered only under first policy Exhibit C-3, therefore, the complainant was not entitled to any claim qua that.

14. Whether the packing material was covered in the subsequent three policies or not, is immaterial as the first policy Exhibit C-3 itself covered the loss to the extent of Rs.2.00 crores. The Insurance Company has not led any evidence giving break ups of coverage of each particular item. So, the contention raised by the learned counsel for the Insurance Company that the packing material was covered only in one policy (Exhibit C-3) is not much relevant as the first policy Exhibit C-3 covers loss upto Rs.2.00 crores."

12. I have also gone through the policy which is Ex. C-3 and it is clear from the policy that it covers total loss of ₹2 Crores which includes loss of packing material and the stock and building. It is also clear that in the said policy there is no breakage given regarding the extent to which each item i.e. the packing material, stock or the building had been insured. Findings of the State Commission on this count are, therefore, based on the evidences before it and do not suffer with any perversity, illegality or infirmity. The Appeal of the Insurance Company, therefore, has no merit and is hereby dismissed.

13. In Appeal No.730 of 2016, the Complainant has alleged that although the State Commission has found the Insurance Company

deficient in providing services but has not awarded compensation to Complainant. The Complainant has prayed for compensation. From the impugned order, it is apparent that while the State Commission has reached to the conclusion that the Insurance Company has been deficient in providing service and had not given due damages for the loss although covered under the said policy, has not compensated the Complainant while ordering for the payment of the balance payable amount.

14. While allowing the Appeal, vide this order I grant interest @ 9% p.a. from the date of filing of the Complaint i.e. 04.09.2013 till the date of payment of this amount, on the amount awarded by the State Commission in the impugned order. The entire payable amount shall be paid to the Complainant within three months, failing which the payable interest shall be at @ 12% p.a.

15. With these directions, both the Appeals stand disposed of.