

# **Repudiation of insurance claim due to non-disclosure of material fact regarding seized goods: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI**

M/S. VIKING ENGINEERS PRIVATE LIMITED

...Appellant

NEW INDIA ASSURANCE CO. LTD.

...Respondent

Case No: FIRST APPEAL NO. 164 OF 2016

Date of Judgement: 01 January 2024

**Judges:**

SUBHASH CHANDRA – PRESIDING MEMBER

DR. SADHNA SHANKER – MEMBER

For Appellant: MR. N.K. SHARMA, ADVOCATE

For Respondent: MR. J.P.N. SHAHI, ADVOCATE

**Facts:**

*The complainant obtained a Standard Fire and Special Perils Policy from the insurance company for Rs. 9 crores to cover buildings, plant, machinery and stock. During policy validity, a fire occurred at the insured premises destroying goods worth Rs. 49 lakhs. The complainant informed the insurance company and filed a claim with relevant documents. However, the insurance company repudiated the claim stating that the complainant failed to disclose the material fact that the*

goods were seized by the Excise Department and were under 'superdari' while obtaining insurance. The complainant's subsequent requests for review were denied. Aggrieved, the complainant approached the State Commission but the complaint was dismissed. So the complainant has filed the present appeal.

Arguments by Complainant:

Seizure of goods does not mean transfer of ownership from the complainant to the Excise Department or terminate ownership rights of complainant. The goods were insured and stored at the location specified in the insurance policy. 'Superdari' cannot be construed as a legal document divesting ownership over the goods.

Arguments by Insurance Company:

The goods were seized on 25.7.2008 but the policy was obtained/renewed after 1 year without disclosing this fact. Had this been disclosed, the policy would not have been issued/renewed. The surveyor's report confirms that the material fact regarding seized goods was not disclosed. The stock was not lying in insured's premises but in open area of landlord's factory shed. The State Commission has rightly dismissed the complaint.

Court's Opinions and Decision:

The key question is whether the repudiation by the insurance company is justified. From records, it is clear that on date of fire, as goods were under seizure and 'superdari', complainant did not have clear title. The insurance company rightly rejected the claim based on suppression of this material fact as per surveyor's report. Reliance is placed on Reliance Life Insurance Co case which held that finding of material misrepresentation/concealment in insurance significantly affects the insurer and non-disclosure of fact influencing insurer's decision is suppression of material fact. Here, the status of goods and complainant's title was material fact which was never disclosed to insurer. Complainant was aware that he did not hold clear title. Thus, insurance company was justified in repudiating the claim and State Commission's order is well-reasoned. The appeal lacks merit and is dismissed.

**Sections:**

***The judgment refers to the following sections:***

***Section 19 of the Consumer Protection Act, 1986 – Related to appeals against orders of State Commissions. Section 2(1)(d) of the Consumer Protection Act, 1986 – Related to definition of ‘consumer’.***

**Cases Referred:**

***Reliance Life Insurance Co. Ltd. v. Rekhabeen Naresh bhai Rathod (2019) 6 SCC 175 – Related to effect of finding material misrepresentation/concealment in insurance***

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**Court**

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**Full Text of Judgment:**

1.The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986(hereinafter referred to as “the Act”) by M/s Viking Engineers Pvt. Ltd. (hereinafter referred to as the ‘complainant’) assailing the Order dated 29.07.2015 passed by the State Consumer Disputes Redressal Commission, Haryana (hereinafter to be referred to as ‘State Commission’)in complaint No. 11 of 2015 whereby the complaint of the complainant was dismissed.

2.There is a delay of 145 days in filing the present appeal. In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

3.The brief facts of the case are that the complainant obtained a Standard Fire and Special Perils Policy from the New India Assurance Company (hereinafter referred to as the ‘insurance company’) for a sum insured of Rs.9,00,00,000/-. The premium of Rs. 73,278/- was paid. The policy was valid for the period from 21.07.2009 to 20.07.2010. The said policy covers the building, plant, machinery and stock at plot nos. 70 and 71 Sector 24, Faridabad. During the subsistence of the insurance policy, on 20.10.2009 at about 11:00 p.m., a fire broke out at Plot No. 70, Sector-24, Faridabad, Haryana, which resulted in the destruction of goods worth Rs.49,30,000/-. The insurance company was

informed about the incident of fire. The complainant filed the claim and provided all the relevant documents to the surveyor and loss assess or but the claim was not settled. The insurance company vide its letter dated 16.03.2011 repudiated the claim without giving any reason. The relevant portion of the same is reproduce below:

"5. You have not disclosed the material facts that the goods lying at plot no. 70, Sector-24, Faridabad have been seized by excise deptt. and were under super darinama while taking insurance coverage."

Subsequent requests for a review were made but no avail.

4. Being aggrieved by the repudiation by the insurance company, the complainant filed a complaint before the State Commission with the following prayer:-

I. The Complaint of the complainant may kindly be admitted and registered and the Respondents may be summoned and the Respondent may be directed to pay a sum of Rs.49,30,000/- on account of fire claim of the complainant along with interest @ 18% p.a. from date of the loss till its realization.

II. Damages on account of mental tension, agony and harassment to the tune of Rs.10,00,000/- may also be awarded to the complainant.

III. Litigation expenses of Rs.35,000/- may also be awarded in favour of the complainant.

IV. Any other relief which this Hon'ble State Commission deems fit and proper may also be awarded in favour of the complainant.

5. The insurance company filed their reply raising preliminary objections that the complainant is a commercial entity and does not come within the definition of 'consumer' within the definition of Section 2(1)(d) of the Act. Another objection raised is that the matter involves complicated questions of law and fact and the same cannot be decided in summary manner and it should be referred to a civil court for adjudication. Further objection raised is that complaint is time-barred as the same was not filed within two years from the date of cause of action. The insurance company further asserted that investigation report and the survey report clearly established that the risk was not covered under the terms and conditions of the policy as the goods were stored in the open compound

of plot No.70, Sector 24, Faridabad which was not covered instead of a covered shed, which was taken on rent. It is further asserted that storing goods in an open space was beyond the scope of the insurance contract. The insurance company further averred that the goods stored at plot No.70 had been seized by the Excise Department and were released on 'superdari' by the complainant and the same was not kept at the insured premises.

6.The State Commission, after considering the facts and circumstances of the case, has concluded that the complainant had concealed material fact and the complainant is not entitled for compensation, and hence, dismissed the complaint.

7.Being aggrieved by the order dated 29.07.2015, the complainant has filed the instant appeal before this Commission with the following prayer:

a.Allow the present appeal and set aside the order dated 29.07.2015 passed in CC No. 11 of 2013 by the State Consumer Disputes Redressal Commission, Haryana, at Panchkula;

b.Direct the Respondent to pay compensation in the sum as prayed for before the Ld. State Commission;

c.Pass such any other order/orders as may be deemed fit and proper in the circumstances of the case.

8.Learned counsel for the complainant has argued that the seizure of goods by the Excise Department does not mean transfer of ownership from the complainant to the Excise Department and it cannot terminate the complainant's ownership rights. He further argued that the goods were insured and stored at the location specified in the insurance policy. He further argued that the 'Super daganama' cannot be construed as a legal document that divests the complainant's ownership over the goods.

9.Learned counsel for the insurance company has argued that the stock was seized on 25.07.2008 and the insurance policy was taken/renewed for the period from 21.07.2009 to 20.07.2010 i.e. after about one year from the date of seizure of the goods but at the time of obtaining the policy, the fact that the stock was seized was not disclosed to the

insurance company. Had it been disclosed at the time of obtaining the policy, the insurance policy would not have been issued/renewed to the complainant. He further submits that the surveyor's report also confirms that the material fact had not been disclosed. The relevant part of the surveyor's report is reproduced for ready reference:

"In our opinion the insurer don't attach any liability on account of following reasons:

a. The material fact, that the goods lying at plot# 70 have been seized by the excise department and were under the superdaginama, have not been disclosed by the insured while taking insurance coverage on dated 26.08.08 &/or while renewing the policy on 15.07.2009.

b. The goods under claim were not lying in the insured's own premises or lease/rented area rather the same were lying in the open area belonging and communicating to the factory shed of the landlord (Refer para 9.10) In view of the above, we are of the opinion, that the Insurers do not attach any liability in this claim."

10. Further, learned counsel for insurance company has argued that the State Commission has passed a well-reasoned order and the complaint is liable to be dismissed.

11. We have heard the learned counsel for both the parties and have gone through the record including the Order dated 29.07.2015 of the State Commission and the memorandum of appeal.

12. The question which falls for our consideration is whether the repudiation by the insurance company is justified or not.

13. From the perusal of the documents available on record, it is apparent that the goods in question that were damaged in the incident of fire were kept at the premises on 'Superdginama' i.e. the goods were seized by the Excise Department on 25.07.2008 and the goods were handed over to the complainant for safe custody. It is therefore clear that on the date of the fire i.e. 20.10.2009, as the goods were under seizure, the complainant did not have a clear title over the goods. The insurance company had rejected the claim on the basis of suppression of material fact relying on the report of the surveyor. Moreover, it is admitted that the factum of the goods being on superdginama were never

disclosed to insurance company neither at the time of obtaining the policy nor at the time of renewal. In this regard, reliance is placed on the decision rendered in the case of Reliance Life Insurance Co. Ltd. v. Rekhaven Nareshbhai Rathod, (2019) 6 SCC 175 wherein it was held as under:

“31. The finding of a material misrepresentation or concealment in insurance has a significant effect upon both the insured and the insurer in the event of a dispute. The fact it would influence the decision of a prudent insurer in deciding as to whether or not to accept a risk is a material fact.”

If the title of the subject matter of the insurance is not clear, then the same is a material fact and the suppression/concealment of the same would amount to non-disclosure of material fact.

The material fact in the present case is that the complainant never intimated the insurance company about the status of the goods, whether they were under his absolute ownership or he was only a custodian of the goods. The ‘superdginama’ that was given by the insured, as an undertaking, stated that he shall keep the goods in safe custody and produce them as and when required. The complainant was fully aware that he does not hold clear title on the goods and neither did he disclose this material fact to the insurance company either while obtaining the policy or at the time of its renewal. Thus, we are of the view that the insurance company was justified in repudiating the claim of the complainant and the Order of the State Commission is a well-reasoned Order which does not suffer from any illegality or infirmity warranting our interference.

14. The appeal being without merit is dismissed. All pending applications, if any, stand disposed.