

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 811 OF 2018

1. M/S. REDDY RAW RICE MILL

REPRESENTED BY ITS MANAGING PARTNER MARAM
RAGHAVA REDDY, S/O PEDA RAGHAVA REDDY, R/O 11-
33-970/C, NEAR ZP BOYS HOSTEL, VENGAL RAO
NANAGR, KAVALI, SPSR
NELLORE
ANDHRA PRADESH

.....Complainant(s)

Versus

1. UNITED INDIA INSURANCE COMPANY LIMITED &
ANR.

REP. BY ITS MANAGER HEAD OFFICE AT: 24, WHITES
ROAD,
CHENNAI
TAMIL NADU

2. UNITED INDIA INSURANCE COMPANY LIMITED
REP. BY ITS BRANCH MANAGER, DNO. 10-6-2A, 1ST
FLOOR, BUNGALOW STREET, NEAR RAILWAY STATION
CENTER, KAVALI,
NELLORE
ANDHRA PRADESH

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR. A. MAHDEV, ADVOCATE AND
MR. A. NAVEEN KUMAR, ADVOCATE

FOR THE OPP. PARTY : MR. RAVI BAKSHI, MS. SAYMA FEROZ
AND MR. MANVENDRA PRATAP SINGH,
ADVOCATES

Dated : 04 December 2023

ORDER
ORDER

This Complaint under Section 21(a)(i) of the Consumer Protection Act, 1986 (for short "the Act") has been filed against the rejection of its claim under the Standard Fire and Special Perils Policy (in short the 'Policy') issued by the Opposite Party in respect of stocks of raw paddy and raw rice in the registered premises of the Complainant's rice mill.

2. The facts of the case, in brief, are that the Complainant has been running a raw rice mill since March 2009 at Jaladanki Village & Mandal Nellore (D) 524223 Nellore Andhra Pradesh financed by loan of ₹85 Lakhs from State Bank of India, Kavali Branch and has been insured covering the risk of damages to stocks under successive policies since March

2009 with SBI Insurance. In December 2014, the Complainant got the loan account transferred to Canara Bank when the loan amount was raised to ₹3 Crores and the insurance was continued with SBI Insurance. During the currency of the policy, on 27.05.2015, due to sudden and unforeseen heavy rain, 28,660 bags of paddy were allegedly completely inundated and damaged since standing water of 5 ft. height covered the stock of paddy bags stacked in the rice mill. 20 tarpaulin sheets and gunny bags kept in open stacks covered by Tarpaulin sheets were also completely damaged. Each paddy bag weighed 75 kgs. Due to the complete inundation, the Complainant claims loss of the entire stock of 28,660 paddy bags. The Opposite Party who was immediately informed, appointed and deputed an Insurance Surveyor. After visiting the premises, taking the photographs and certain documents, the Surveyor assessed the claim of ₹3,31,58,070/- filed by the Complainant. on 14.12.2015, Opposite Party sent a settlement voucher to the banker of the Complainant (Canara Bank) for a sum of ₹1,40,474/- in full and final settlement of the claim on the ground that only 15,400 bags of paddy stock had been affected and that the damage was not complete and was recoverable through the process of drying. The Bank informed the same to the Complainant which was conveyed to be not acceptable. The Complainant submits that there was no communication by the Opposite Party with regard to the settlement of the claim or the basis on which this settlement had been made to him. No Surveyor's Report was furnished by the Opposite Party. The assessment of loss by the Opposite Party is stated to be contrary to the assessment made by various officials of the State Government who had also visited and assessed the loss. The submission of the proposed settlement to the Bank instead of the Complainant, whose mill is admitted to have been hypothecated to the Bank, is stated to be not justified. From the Surveyor's Report which was obtained subsequently, it was evident that the inspection did not indicate the witnesses in whose presence the survey was conducted. In view of the report of the Tehsildar, Jaladanki, SPSR Nellore District and the affidavit of the Mandal Surveyor who inspected the site the day following the damage, it was clear that the entire stock had been inundated. The conclusion of the Surveyor that only 15,400 bags had been affected is contested by the Complainant. It is also contested that 85% of the quantity affected could be recovered after repeated drying in open platforms since there could be no salvage out of the damaged stocks, which had been completely drenched in view of submergence in water. It is also contended that no photographs of the damaged stocks were enclosed with the Surveyor's report even though the Surveyor had charged for the same in his expenditure account. Therefore, it is the Complainant's case that the conclusion of the Opposite Party with regard to quantity of loss and the Surveyor's report itself is not justifiable and his claim has been perversely rejected. According to the Complainant, 21,495 quintals of paddy were damaged whereas the Surveyor has reported that only 87 quintals of paddy was damaged. The Surveyor's Report does not refer to any documents including stock statement and registers that were provided to the Surveyor. It is also stated that the Mandal Surveyor had concluded the damage to paddy to be worth ₹3,11,67,750/-, the tarpaulin sheets damage was valued at ₹5 Lakhs and damage to the gunny bags was estimated at ₹14,90,320/- totaling to ₹3,31,58,070/-. The Complainant had calculated the value of the paddy bags @ ₹1,087/- per bag, tarpaulin sheets @ ₹25,000/- per sheet and the gunny bags @ ₹52/- per bag. The Complainant has approached this Commission to direct the Opposite Party to:

- (i) reimburse the loss suffered by the complainant of ₹3,31,58,070/- (Three Crores Thirty One Lakhs Fifty Eight Thousand And Seventy Rupees only)

along with interest @ 12% p.a. from 27.05.2015 till the date of realization;

(ii) direct the Opposite Parties to pay a compensation of ₹30,00,000/- (Rupees Thirty Lakhs) for the mental agony suffered by the Complainant;

(iii) direct the Opposite Parties to pay further amount of ₹3,00,000/- interest per month being paid by the Complainant to the Canara Bank;

(iv) direct the Opposite Parties to pay a costs of ₹50,000/- to the Complainant for prosecuting this case;

(v) And pass such other order or relief as this Hon'ble Commission may deemed fit and proper in the circumstances of the case.

3. The Complaint was resisted by way of a reply by the Opposite Party which raised preliminary objections that (i) the Complaint was not maintainable as there was no deficiency in service on its part since it had immediately deputed a Surveyor and followed the process under Section 64 UM of the Insurance Act, 1938; (ii) the amount admitted under the claim was sent to the Banker since the Complainant did not accept the payment as it was seeking undue enrichment; (iii) there was no cause of action in the Complaint as the dispute only pertained to the quantum of the claim which was not maintainable since the assessment made by independent Surveyors had been accepted by the Opposite Party; (iv) the Complaint was liable to be rejected for non-joinder of necessary parties since the Complainant's case was that he had obtained the insurance cover from other insurers as well who had not been made parties to this Complaint. On merits, it was stated that the Opposite Party acted strictly in terms of the requirements of Section 64 UM of the Insurance Act and obtained a report from independent Surveyors and that the Complainant had failed to show how the assessment was wrong or improper. It was contended that the affidavit of the Tehsildar has no evidentiary value and was not relevant to the claim. It is also submitted that the assessment of charges by the Mandal Surveyor is erroneous on which no reliance can be placed. Therefore, it is prayed that the Complaint be dismissed as baseless and lacking in merits.

4. Parties led their evidence and filed their written submissions. I have heard learned Counsel for both the parties and given careful consideration to the material on record.

5. The case of the Complainant is essentially that the Surveyor's report is perverse as it did not appreciate the fact that the entire stock of paddy covered by tarpaulin sheets had been inundated on account of rain water which was standing to a height of nearly 5 ft. and had covered the paddy stock on the insured premises. It is stated that the Surveyor deliberately did not file the relevant photographs even though it stated that he had taken the photographs and had also charged for the same in his bill of expenditure to the Opposite Party. The conclusion of the Surveyor in assessing the number of paddy bags affected to be 15,400 is contested by the Complainant since the total stock of 28,660 bags had been inundated in the rain. Lastly, it is also contested that 85% of the effect paddy stock was retrievable through repeated drying since, according to the Complainant, paddy/raw rice once submerged in

water could not be salvaged and therefore, the case had to be accounted for as a total loss. It is also contended that the Opposite Party has been deficient in service since no letter of repudiation or any other communication was issued to it. The claim was settled after obtaining a voucher for full and final settlement from the bankers whereas the policy had been obtained by the Complainant and the stock was only hypothecated to the bankers from whom a loan of ₹3 Crores had been obtained. In view of the deficiency in service by the Opposite Party, the Complainant has made out a case for being paid ₹3,31,58,070/- along with interest and other damages.

6. On its part, the Opposite Party has relied upon the report dated 05.10.2015 of the Surveyor I. C. Ramireddy B. E., Insurance Surveyor/Loss Assessor, Valuer. As per this report, the total sum insured was ₹1,11,94,159/- for building and ₹6,54,12,455/- for stocks. The stock of paddy including gunnies in open platform within the mill premises was ₹2,00,00,000/- and ₹3,00,00,000/- for stock of paddy, rice, broken rice etc. in the mill building. The property affected on account of the sudden rain/storm on 27.05.2015 at about 4 p.m. was the stock of paddy including the gunnies on the open platform within the mill premises which was insured for ₹2 Crores. The Surveyor's Report notes that due to unforeseen violent winds accompanied by heavy downpour the bags kept in the form of lots wrapped with polythene bags was drenched as the polythene covers were either blown off or torn. It also notes that the incident being unforeseen the insured could not take any preventive measures other than the regular protection measures for un-anticipated seasonal rains. On account of the localized storm, due to the downpour, the paddy stocks kept in the open platform were drenched and the gunny bags damaged. Since the localized storm was unforeseen and sudden, the probable cause was within the scope of cover of the Policy. The drenched paddy is stated by the Surveyor to be confined to the outer layers or the exposed faces of the lots of the jute gunny bags while the bottom layer was partly inundated and the other five faces outer layers were only drenched according to the Surveyor. The Surveyor has calculated the quantity of paddy to be 11,550 quintals on the basis of the number of bags in 4 lots of 8000, 5000, 1800 and 600 bags which weighed 75 kgs each. It has calculated the affected quantity @ 5% to be 577.50 qtls. or 57,750 kgs since one quintal equals 100 kgs. It has assessed 85% of the quantity to be recoverable after repeated drying in the open platform and only 15% to be treated as direct loss. Further, taking the paddy to rice ratio to be only 67% in the case of the drenched paddy, it has calculated the net damaged quantity to be 87 quintals since 490 quintals was salvageable out of the affected quantity of 577 quintals. This quantity is assessed at a value of ₹1,95,750/-. However, since the total quantity of paddy on the open platform was 1,155 kgs at a value of ₹2250 per quintal, the total value of paddy was assessed at ₹2,59,87,500. The loss was adjusted on the basis of the average (since total value exceeded ₹2 Crores of insured amount) and policy excess of ₹10,000/- also further deducted to arrive at net recommended payable amount of ₹1,40,649/-. The report also concluded that the claim did not fall under any exclusion clause of the policy.

7. From the foregoing, it is evident that the Opposite Party has settled the claim on the basis of a report of the Surveyor appointed under Section 64 UM of the Insurance Act, 1938. However, it is also apparent that the Surveyor's Report does not provide any details with regard to the inspections that he has claimed to have done with regard to the witnesses present nor has it provided any photographs in support of the conclusion that the paddy insured was not fully drenched or was drenched only to the extent of 15% loss. Even though

it has claimed charges for photographs in its bill to the Opposite Party, the Report does not provide pictorial proof of the basis for limiting the claim to 15%. The Report mentions that the claim is admissible since the event was unforeseen and that the localized storm had blown away the tarpaulin sheets and damaged the gunny bags as well as the stocks of paddy. As per its own assessment, the quantity of paddy in the open platform exceeded the insured quantity of ₹2 Crores.

8. The rival contentions of the parties have been considered. It is evidence that no evidence has been brought on record by the Opposite Party to substantiate its conclusion that 85% of the paddy was salvageable through repeated drying. Notably no photographs have been filed even though the expenditure on photographs (which are an integral part of any Surveyor's Report involving a claim of damage) has been filed. While the Hon'ble Supreme Court in *Sri Venkateswara Syndicate vs. Oriental Insurance Company Limited*, (2009) 8 SCC 507 has held that a Surveyor is mandatorily required to be appointed in any claim of insurance exceeding ₹20,000/- and it has also been held in *Khatema Fibres Limited vs. New India Assurance Company*, 2021 SCC Online SC 818 that a report of Surveyor should necessarily be accepted unless it is proved to be perverse, in the present case, in the Report of the Surveyor which was not shared with the insured and was obtained subsequently, no evidence of arriving at its conclusion have been set out. The Opposite Party has also admittedly not conveyed any reason for not considering the claim of ₹3,11,67,750/-, and has only relied upon the Surveyor's calculation to arrive at a figure of ₹1,40,474/-. The action of the Opposite Party in obtaining a full and final settlement voucher from the banker instead of the insured is also contrary to the required procedure which requires intimating or obtaining consent through a Discharge Voucher from the insured. As held by the Hon'ble Supreme court in *New India Assurance Company Limited vs Pradeep Kumar* (2009) 7 SCC 787 while a report of the Surveyor is an essential requirement in settlement of claims of ₹20,000/- and above, it cannot be that sacrosanct that it cannot be departed from. The Opposite Party has failed to appreciate the deficiencies in the report of the Surveyor and has mechanically accepted its conclusions and proceeded to settle the claim on its basis. No formal letter of repudiation of the claim has been issued by the Opposite Party. Not sharing a copy of the Surveyor's report with the insured and not obtaining a signed voucher in full and final settlement from the insured but instead from the banker certainly amounts to deficiency in service on the part of the Opposite Party qua the insured/Complainant. No document to prove that the Complainant failed to sign the voucher has been brought on record.

9. For these reasons, the action of the Opposite Party is not sustainable. The Complaint is liable to succeed. It is accordingly allowed with the following directions:

(i) The Opposite Party shall settle and pay the claim of the Complainant for ₹3,11,67,750/-, within a period of eight weeks after applying the average deduction etc. as per norms along with interest @ 6% p.a. on the amount from the date of filing of the Complaint till realization.

(ii) In case of failure to make the payment within this period, the interest payable shall be 9% p.a. till realization.

(iii) The Opposite Party shall also pay litigation costs of ₹50,000/- to the Complainant.

10. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER