

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1033 OF 2016

(Against the Order dated 05/05/2016 in Complaint No. 145/2009 of the State Commission
Delhi)

1. BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
7TH FLOOR, BLOCK NO. 4, DLF TOWER-15, SHIVAJI
MARG,
NEW DELHI-110015

.....Appellant(s)

Versus

1. M.M. KNITWEARS PVT. LTD. & ANR.
HAVING ITS REGISTERED OFFICE AT E-1, AMAR COLONY,
LAJPAT NAGAR,
NEW DELHI-110024

2. PUNJAB NATIONAL BANK
CC-21, NEHRU PLACE
NEW DELHI-110019

3. PUNJAB NATIONAL BANK
46, DOHIL CHAMBERS, NEHRU PLACE,
NEW DELHI-110019

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MS. SUMAN BAGGA, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENT NO. 1 : MR. JAVED AHMED,
ADVOCATE

FOR THE RESPONDENT NO. 2 : EX PARTE VIDE ORDER DATED
06.09.2022

Dated : 01 January 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 05.05.2016 of the State Commission in complaint no. 145 of 2009, whereby the complaint of the complainant company was allowed and the appellant / opposite party no. 1 was directed to pay an amount of Rs.

21,27,173/- less Rs. 2,59,741/- (already paid) with interest at the rate of Rs.10% per annum alongwith Rs. 1,00,000/- towards compensation and litigation cost.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'insurance company') and the learned counsel for the respondent (hereinafter referred to as the 'complainant company') and perused the record including the State Commission's impugned Order dated 05.05.2016 and the memorandum of appeal.

3. The opposite party no. 2 (hereinafter referred to as the 'bank') has been ordered to be proceeded against *ex parte* vide Order dated 06.09.2022.

4. The appeal has been filed with reported delay of 46 days.

In the interest of justice and considering the reasons given in the application for condonation of delay, the delay in filing the appeal is condoned.

5. The brief facts of the case are that on 07.11.2006 the complainant company through its banker, namely, Punjab National Bank, obtained a Standard Fire and Special Perils Policy for sum insured of Rs. 2.20 crores. The premium of Rs. 62,363/- was paid and the policy was issued. The policy was valid for the period from 07.11.2006 to 06.11.2007. During the subsistence of the insurance policy, on 26.12.2006 a fire broke out in the premises of the complainant company. The bank - opposite party no. 2 was informed about the fire and in turn the bank - opposite party no. 2 informed the insurance company about the incident of fire. The fire brigade was also called to control and extinguish the fire. The officials of fire brigade got control over fire and in the process of extinguishing the fire huge amount of water had been accumulated on the floor of the factory and in that process the finished and semi-finished garments at complainant factory remained submerged in the water for more than 24 hours which damaged the quality of the garments and the said garments could not be used. The surveyor was appointed by the insurance company. The surveyor visited the factory and inspected the premises on 27.12.2006 at about 6.30 p.m. The surveyor requested complainant company to furnish information, details and documents in order to claim the insured sum and the complainant company submitted all the documents and information to the satisfaction of the surveyor. The insurance company sent a cheque for an amount of Rs. 2,59,074/- to the complainant company against full and final settlement under the policy.

6. The grievance of the complainant company is that the insurance company has not given any reason to limit the claim of the complainant company at Rs. 2,59,074/-. It is stated that the complainant company has received the said amount under protest and the complainant company further sent a letter dated 14.06.2007 to the insurance company enclosing purchase orders, export invoices and the costs of re-conditioning etc. Subsequent letters were also sent by the complainant company to the insurance company but no action was taken and the complainant company was assured by the insurance company to consider the claim of the complainant company. Further, the insurance company vide its letter dated 15.12.2008 revised the compensation amount to Rs. 5,24,620/- but no valid and cogent reason was given for the same.

The contention of the complainant company is that it is entitled for indemnification for Rs. 22 lakh keeping in view the loss caused to it.

7. Being aggrieved, the complainant company filed a complaint before the State Commission.

8. The complaint was contested by filing written statement by the insurance company stating preliminary objections that the complainant company is barred by limitation as the same had been filed beyond the limitation period from the date of occurrence and the complainant company was not a consumer within the definition of 'consumer' within the meaning of Section 2(1)(d)(ii) of the Act.

9. The State Commission vide impugned Order dated 22.02.2018 allowed the complaint and directed the insurance company to pay Rs. 21,27,173/- less 2,59,074/- (already paid) along with interest at the rate of 10% per annum from the date of complaint i.e. 15.07.2009 till realization. Compensation of Rs.1,00,000/- towards mental agony, harassment and inconvenience including cost of litigation was also awarded.

10. Aggrieved by the said Order of the State Commission, the insurance company filed the instant appeal before this Commission.

11. Learned counsel for the insurance company has argued that the State Commission grossly erred in awarding the amount of Rs.21,27,173/- by completely ignoring the survey report issued by the IRDA approved surveyor wherein the basis of assessment was provided. She further argued that the State Commission has also ignored the fact that that the claim of the complainant company is of Rs. 18,08,945/- and the said claim does not come within the pecuniary jurisdiction of the State Commission. She furthermore argued that the complaint is barred by limitation since the complaint was filed on 15.07.2009 whereas the fire broke out on 26.12.2006 i.e. beyond the expiry period of two years from the date of cause of action. In support of her contention, she placed reliance on the decision rendered by this Commission in the case of **Balaji Textiles vs. New India Assurance Co. Ltd.**, F.A. No. 05 of 2015, decided on 12.01.2012 and **Wilson Home Appliances vs. New India Assurance Co. Ltd. & Anr.**, F.A. No. 959 of 2015 decided on 10.12.2020. In the case of **Wilson Home Appliances vs. New India Assurance Co. Ltd. & Anr. (supra)**, it has been held as under:

8. Investigation and Survey by an insurance company are fundamental in determining the amount payable to the insured. An insurance company is duty bound to appoint its surveyor in accordance with the provisions of The Insurance Act, 1938 (Section 64 UM Surveyors or loss assessors' specifically refers). Essentially, its surveyor has to possess the prescribed qualifications, it is accountable, inter alia also to the regulator. A Survey cannot be disregarded or dismissed without cogent reasons (it, but, also goes concomitantly that the rationale and computation recorded in the Survey should be convincing and pass credence in scrutiny).

12. Further, learned counsel for the insurance company has placed reliance on the following decisions:

1. United India Insurance Co. Ltd. & Ors. Vs. Roshan Lal Oil Mills Ltd. & Ors. (2000) 10 SC 19 Para No. 7.
2. National Insurance Co. Ltd. vs. Shree Laxmi Textile Industries & Anr. (1986-2002 Consumer cases (Part iv), 2000 Vol X Pg 5269.
3. Mrs. Sunanda Kishor Bhand vs. UIIC in CC No. 278/2000 dated 15.01.2014.
4. Khatema Fibres Ltd. vs. New India Assurance Co. Ltd. CA 9050/2018 decided on 28.09.2021.

13. Learned counsel for the complainant company has argued that after the incident of fire on 26.12.2006, initially, the claim was settled by the insurance company for a sum of Rs.2,59,741/- in May 2007 which had been accepted under protest in writing. Thereafter, vide letter dated 14.06.2007, the complainant company has made a representation to enhance the amount of compensation, which was replied on 14.08.2008 stating therein that the matter was being discussed with the surveyor. Again, vide an e-mail dated 07.10.2008 the insurance company informed the complainant company that they were unable to contact the surveyor and therefore, the matter was not being settled and on 15.12.2008, the insurance company enhanced the same to Rs. 5,14,620/-. It is thus submitted that the cause of action arose in December 2008 and he had filed the complaint in 2009 i.e. well within the limitation period. In so far as the pecuniary jurisdiction is concerned, from a perusal of letter dated 14.06.2007 along with its annexures, it is clear that the total loss is of Rs. 23,86,247/- and only after deducting Rs. 2,59,074/-, the balance amount comes to Rs.21,27,173/-. Thus, the complaint is well within the pecuniary jurisdiction of the State Commission. On merits, he argued that the State Commission had dealt with all the aspects of the matter and has passed a well-reasoned Order and the appeal is liable to be dismissed.

14. The main issue in this appeal is the quantum of compensation to be awarded under insurance policy for which the insured is entitled for.

15. It is noted that this is the second round of litigation and the complaint is of the year 2009. Now, we are at the end of 2023. Almost 14 years have passed.

16. In the first Order dated 28.05.2014, the State Commission has gone into the merits of the matter and directed the insurance company to pay to the complainant company an amount of Rs. 21,27,173/- after adjusting the amount already paid along with interest at the rate of 10% per annum from the date of filing of the complaint i.e. 15.07.2009 till the date of realization and compensation of Rs. 1,00,000/- towards mental agony, harassment and inconvenience caused to the complainant company including the cost of litigation. This Order was appealed against by the insurance company before this Commission on the ground that the question of limitation has not been decided by the State Commission. The Order was set aside by this Commission and the

matter was remitted back to the State Commission for deciding the complaint afresh after considering the objection of the appellant regarding limitation. Thereafter vide Order dated 05.05.2016 the State Commission decided the issue of limitation in favour of the complainant company and reiterated the earlier Order of the State Commission in terms of relief on merit.

17. As regards the quantum of compensation payable to the complainant company, a perusal of the survey report dated 21.03.2007 shows that there was no under insurance in this case and the surveyor has adopted the valuation of stock certified by Chartered Accountant for the purpose of determination of value before occurrence. Thereafter, in para 8 under assessment of loss, he had made certain deductions stating that the insured had claimed cost of such stocks against which the purchase order was on hold or stood cancelled or the purchase order had expired actually before the date of loss. He has also deducted cost of re-alteration of affected stock on the ground that the insured is only entitled to cost of cleaning and finishing. Based on these assumptions, he assessed the loss of Rs. 2,59,705/-. It is seen that from the first Order of the State Commission that neither the insurance company nor the bank filed their evidence despite many opportunities and the representation of the complainant company remained unanswered. It is also seen that the enhancement of compensation admitted by the insurance company to the tune of Rs. 5,14,620/- does not contain any reason or any addendum survey report to support the enhancement. The reason for deduction of certain value of stock is also unclear as the stock in this case is not a perishable item but it can be sold at a later date even if the purchase order is cancelled or a delivery date has been missed. Also, no reason has been given for not allowing re-alteration of damaged stocks for making them saleable.

18. In the complaint as well as in the representation dated 14.07.2007 filed by the complainant after settlement of the claim by the insurance company, the complainant had sought an amount of Rs. 18,08,945/- against the value of stock. To substantiate the above claim, the complainant company has also furnished the details as sought by the surveyor. The surveyor has not given any concrete reason for deduction of the amount against the value of stock. Although on representation the insurance company enhanced the claim from Rs. 2,59,705/ to Rs. 5,14,620/- it was without giving any reason whatsoever. The insurance company neither rejected the grounds taken in the representation dated 14.06.2007 nor allowed the same and merely enhanced the compensation.

19. Further, in the complaint as well as in the representation, the complainant has claimed an amount of Rs. 4,00,097/- against cost of re-alteration of damaged stock. The surveyor has deducted the same even without giving any reason whatsoever.

20. In view of the above, we are of the opinion that the surveyor report is not based on legally justifiable reasons and facts and cannot be relied upon, being arbitrary and perverse. It is settled law that the survey report is not the last and final word and can be departed if there are sufficient reasons to rebut the same. The Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. v. Pradeep Kumar** 2009 (7) SCC 787 held as under:

"In other words although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim of twenty thousand rupees or more by

insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured."

- 21. In view of the above, we are of the opinion that the State Commission has passed a just and well-reasoned Order, which does not call for any interference by this Commission.
- 22. The appeal of the insurance company being devoid of merit is dismissed.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**