

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 2156 OF 2018

1. M/S. SHIVAM WOOD INDUSTRIES (PARTNERSHIP FIRM)Complainant(s)

Versus

1. ORIENTAL INSURANCE CO. LTD.Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI,PRESIDENT

FOR THE COMPLAINANT : MR. AFTAB SINGH KHARA, ADVOCATE
MR. DUSHYANT TIWARI, ADVOCATE

FOR THE OPP. PARTY : MR. SIDDHANTH, ADVOCATE FOR
MR. RAJIV JAISWAL, ADVOCATE

Dated : 01 January 2024

ORDER

1. The present complaint is in respect of a claim of indemnification of Rs.5,00,000/- and odd in respect of a fire that broke in the factory premises on 02.03.2014 at about 10:00 p.m. The cause of fire is shown to be an electrical short circuit. The Complainant immediately informed the Insurance Company and the surveyor, M/s Ashok K. Sood, after having conducted the survey, submitted a report on 02.01.2015 and found the claim to be admissible but while calculating the loss, deducted 75% as depreciation as the lost and damaged goods were more than 15 years of age. The loss was with regard to machinery namely electrical equipments. There is no dispute that the occurrence of the loss was accepted under the said report and the Insurance Company also accepted the same and accordingly tendered a discharge voucher to the Complainant for Rs.65,000/- which is against Rs.65,402 that was assessed by the surveyor.

2. The case of the Complainant is that as a matter of fact the parts and machinery which were damaged had been replaced shortly before the incident and therefore they were not 15 years old and hence this conclusion drawn for deducting 75% as depreciation was unjust, hence the complaint.

3. The complaint was filed before the District Commission keeping in view the quantum of the claim of Rs.5,07,000/- raised by the Complainant. However an application was filed by the Insurance Company contesting the said position and urging vide application dated 03.07.2018 that in view of the judgement in the case of ***Ambrish Kumar Shukla & Ors. Vs. Ferrous Infrastructure Pvt. Ltd.***, the District Forum had no pecuniary jurisdiction as the three cover notes of the policy have the sum insured value of about Rs.5,00,00,000/-. On the said application being moved, the District Forum passed orders on 11.07.2018 to the following effect:

“Today the case is fixed for reply and consideration on the application filed by the OP on 03.07.2028 requesting this Forum to reject/dismiss the present complaint on the ground of pecuniary jurisdiction. It has been averred in the said application that the Complainant is having three insurance policies bearing No.214584, 214585, 214586 valid w.e.d.31.05.2013 to 30.05.2014 for sum assured of Rs.5,00,00,000/- (five crore). It is further averred that this Forum has got no pecuniary jurisdiction to entertain the complaint beyond 20 lacs as held by the Hon’ble National Commission in case titled as Ambrish kumar vs. ferrous Infra Structure Pvt. Ltd.

On the other hand the ld. Counsel for the Complainant instead of filing the reply to the above mentioned application suffered a statement that as per the order of the Hon’ble national Commission on the point of pecuniary jurisdiction he wants to withdraw the present complaint with the liberty to file a fresh complaint before the appropriate authority.

*Heard. In view of the statement made by the ld. Counsel for the Complainant, the present complaint stands dismissed as withdrawn with the liberty to file a fresh complaint before the appropriate authority if so advised. Exemption of time spend before this Forum is granted in terms of the judgment of Hon’ble Supreme Court in case titled as “**Luxmi Engineering Works Vs. PSG Industrial Institute (1995) III SCC P.583**”. Copies of this order be supplied to the parties concerned free of costs. File be consigned to record-room after due compliance.”*

4. It is thereafter that the present complaint has been instituted before this commission. This issue of pecuniary jurisdiction has been dealt with in a similar claim between the same parties in respect of the year 2010 and the reasons given in the said order which has been passed today in Consumer Complaint No. 3130 of 2017 are being adopted to reject the contention of the Insurance Company on the pecuniary jurisdiction of this Commission. The objections raised are similar, hence the same reasoning would apply on the facts of the present case as well, even though the present claim is of a subsequent year in respect of a fire accident.

5. The contention of the Complainant that in spite of having admitted the cause of the incident and the consequential loss, the quantum has been erroneously calculated of a lesser amount as claimed which is not correct. The submission is that there is no occasion for applying 75% depreciation on the value of the lost goods which is without any basis.

6. A perusal of the complaint which was filed before the District Commission and has been repeated here in paragraph 6 states as under:

“6. That after the lapse of two years from the date of loss, the complainant was surprised to receive letters dated 17.02.2016 Annexure C-4 vide which the respondents informed that **claim has been sanctioned for Rs.65000/-** only and sent blank discharge voucher mentioning fire claim no. 261700/11/2014/000017 and required **/demanded discharge voucher dully signed and stamped along**

with cancelled cheque of the complainant form in order to release the amount. The complainant wrote the **protest letter dated 16.03.16** Annexure C-5 asking for surveyor report, bills and terms and conditions of policy. The respondent vide letter 18.03.16 Annexure C-6 sent the surveyor report dated 02.01.2015 along with few bills to the complainant. Neither the Policy nor any terms of conditions were supplied despite specifically asked for. The respondent kept the file dumped for more than 14 months after the receipt of surveyor report and that too for a small amount. The respondents told the complainant on his personal visit that unless and until, the compliant executes the discharge voucher for full and final settlement, company will not release the payment. Such was the coercive tactics/ methods used by the respondents. ”

7. A perusal of the said admission on facts indicates that the Complainant had received the surveyor report vide letter dated 18.03.2016. In the said background, the Commission does not find any averment about raising a challenge specifically on the issue of 75% depreciation as indicated in the surveyor’s report. There is no challenge raised to this percentage of deduction specifically in the present complaint as well.

8. Learned Counsel for the Complainant then urged that this issue has been raised in the rejoinder affidavit.

9. The aforesaid claim having not been raised either in the complaint before the District Commission or before this Commission, there was no occasion for the Opposite Party to have given any reply on this issue. The Complainant therefore has clearly developed his case in a rejoinder before this Commission for which he relies on certain receipts. There is no explanation as to why such receipts were not produced before the surveyor or the Insurance Company or before the State Commission. Learned Counsel contends that the Insurance Company never asked or required to furnish any such documents. This explanation is not even worth the name inasmuch as it is the Complainant who is the claimant and had to support his entire claim with all such documents for the purpose of indemnification on the ground that some spare parts had been replaced very shortly before the incident of fire. This case having not been set up in the complaint itself, and now coming up through rejoinder, therefore does not inspire confidence and there is no preponderant element so as to accept this argument. The Insurance Company had offered a sum of Rs.65,000/- for the loss but the Complainant after having received the survey report did not raise the specific issue of 75% deduction either before the District Commission or even before this Commission in the complaint. A plea in the rejoinder therefore does not improve the case of the Complainant inasmuch as such material was never placed either before the surveyor or before the Insurance Company.

10. The complaint therefore lacks merit and is accordingly rejected without prejudice to the rights of the Complainant to receive the amount of Rs.65,000/- that has been already offered by the Insurance Company as per law.

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A. P. SAHI
PRESIDENT