IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 04.12.2023

Date of Hearing: 03.07.2024

Date of Decision: 22.11.2024

FIRST APPEAL NO. 642/2023

IN THE MATTER OF

NATIONAL INSURANCE CO. LTD.,
GENEREAL CLAIM HUB (DR/2), CORE -2,
SCOPE MINAR, THIRD FLOOR,
LAXMI NAGAR, DELHI.

(Through: Mr. Mohit Kumar, Advocate)

…Appellant

VERSUS

M/S SHIVA FASHION,
THROUGH ITS PROPRIETOR SHIV KUMAR,
5871, NAI SARAK, NEAR BHAIRO MANDIR,
JAGIWADA, CHANDNI CHOWK,
DELHI-110006.

(Through: Mr. Shiv Kumar, Proprietor)

…Respondent

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. Prateek Mishra, counsel for the Appellant.
Mr. Narender Kalra, counsel for the Respondent along with proprietor of the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per District Commission record are as under:

> *"The Complainant took a policy bearing No.360702111810000383 for his stock lying at shop No.5871, Nai Sarak, Near Bharo Mandir, Jagiwada, Chandi Chowk, Delhi for a value of Rs.2.5 Crore. The said policy was effective from 24.10.2018 to the midnight of 23.10.2019. The complainant was earlier running his business under the name and style of New Shiv Fashion. It is further alleged that with a view to claim benefit of GST Complainant started his business by the name Shiva Fashion.*
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> *It is also alleged that the above policy was for Rs.2.5 Crore for the entire stock of the goods lying at the above said shop. The stock of the complainant was duly inspected by the staff of OP before issuance of the policy. Complainant paid premium of Rs.31,285/- (Rupees Thirty One Thousand Two Hundred Eighty Five) for the above policy for the year 2018-2019.*
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> *It is further stated that on 01.06.2019 complainant closed his shop around 8.00 pm and on the same night at around 1 o'clock in the night complainant received a phone call intimating that his shop had caught fire. Complainant immediately rushed to his shop. On reaching the site complainant found that fire tenders were doing their work*

and they had cut open the shutter of shop. The police also arrived at the scene.

It is also alleged the stock at complainant i.e. costly clothes were badly damaged due to the fire. The entire stock of the complainant worth Crore of Rupees was gutted in the fire. The stock was also damage due to the excessive water used by the fire department to douse the fire. The statement of the stock lying at the site has been filed. The stock worth of Rs.1.68 Crore was lying in the shop which included costly and designer Lehanga, Sarees, Suit, Gown and other dress materials. On the inspection by complainant, it was found that the whole of the stock was damaged. On 02.06.2019, complainant intimated to the OP by way of letter to settle the loss suffered by complainant.

It is also alleged that OP vide letter dated 07.06.2019 appointed Mr. Ajay Kumar Aggarwal as Surveyor to assess the loss suffered by complainant. The Surveyor after conducting survey on 02.06.2019, 04.06.2019 and 06.06.2019 asked to the complainant to submit reply to the 33 queries. The queries of surveyor were duly answered. That the complainant gave all the details and supporting documents to the surveyor.

It is further alleged that the surveyor intentionally and deliberately kept on delaying the process by asking for unwanted details such as Sales book, purchase book, day book, Bank Statement for last 3 years. All the details were provided by the complainant. It is also alleged that the surveyor took almost 10 months to complete the survey during the said period lots of mails were exchanged between complainant and the surveyor and the surveyor visited the spot 5 to 6 times.

It is further stated that nothing was suggested as what was to be done by the complainant about the salvage. The salvage was kept by the complainant in a rented godown and the complainant is paying the rent @ 10,000/- p.m. with effect from June 2019 to till date.

It is also alleged that at the request of the surveyor the complainant signed various blank papers. Initially the complainant claimed Rs.1.64 Crore towards loss but *subsequently at the request of the surveyor complainant was forced to reduce his claim to Rs.84,68,500/-(Rs. Eighty Four Lakh Sixty Eight Thousand Five Hundred). It is stated the surveyor only inspected one lot of the stock damaged by the fire. Thus, the complainant immediately on the same day wrote a mail to the surveyor that the actual loss would be as per the books of account. The complainant was compelled to bear the GST loss also had to pay lakhs of Rupees on account of GST.*

It is also stated that the surveyor did not visit the suppliers of the complainant to access the value of the goods supplied by them to the complainant. It is also alleged vide letter dated 11.02.2020 OP sent an intimation to complainant that the claim has been kept on hold on account of concealment of information of previous fire which took place during the period of 2016/2017. Complainant sent a reply to the above said letter which was hand delivered to OP on 19.02.2020. but OP failed to consider the reply and the details submitted by the complainant.

It is also alleged that vide letter dated 25.02.2020, OP intimated to the complainant that OP had repudiated the claim on account of breach of condition no. 1 of the fire policy. Thereafter complainant wrote letter to the OP on 02.03.2020 with request to reconsider the claim of complainant. That letter was received by OP on 05.03.2020. Complainant again wrote letter to OP dated 13.03.2020 to reconsider his claim. But no response was received from OP.

The complainant was thus forced to sent a legal notice to OP on 21.07.2020 to clear the claim to the tune of Rs.1,68,00,000/- (Rupees One Crore Sixty Eight Lakh). The OP vide mail dated 05.08.2020 sent an intimation to the counsel for the complainant that the claim of the complainant had been rejected on account of concealment of facts regarding clause 1 of the insurance policy.

It is alleged that the complainant had a valid and effective Fire Insurance Policy on the date of incident of fire in the premises of complainant. The complainant is fully entitled for the loss suffered by him on the account of fire.

It is alleged that the surveyor pointed out that in the proposal form intimation of previous claim has not been given by the complainant. Complainant had never submitted the proposal form. Complainant visited the office of OP 5 times to obtain the proposal form. The proposal form does not bear the signature of the complainant. It appears that someone had filled the proposal form by forging the signature of the complainant. It is alleged the claim of the claimant was rejected on erroneous grounds for breach of condition 1 of the policy.

It is prayed that OP be directed to Pay Rs.1,68,00,000/- (Rs. One Crore Sixty Eight Lacs Only) along with interest @ 18% p.a. from 02.06.2019 till realization;

OP be also directed to pay Rs.10,00,000/- (Rupees Ten Lakhs Only) to the complainant towards mental agony, harassment and loss suffered by the complainant and cost of litigation of Rs. 1 Lakh.

OP be further directed to pay the rent of the Godown to the tune of Rs.10,000/- (Rupees Ten Thousand) p.m. since July 2019 or else direct the complainant to dispose off the salvage."

2. The District Commission after taking into consideration the material available on record passed the order dated 04.10.2023, in CC No.305/2022 and held as under:

"The undisputed facts are that complainant obtained a policy from OP bearing no. 36070211181000383 for his stock lying at shop no. 5871 Nai Sarak, near Bhairo Mandir, Jogiwada Chandni Chowk Delhi for a value of Rs. 2.5 Crores valid from 24.10.2018 to 23.10.2019 Midnight. It is also not disputed that in the intervening night of 01.06.2019 and 02.06.2019 fire broke out in the above business premises of complainant.

It is not disputed by OP that fire was not genuine. It is also an admitted fact that information of incident of fire was immediately given by complainant to OP and OP appointed a surveyor who gave his report (R-13) dated 26.11.2019 after investigation was concluded that fire had taken place *in the business premises of complainant at M/s Shiva Fashion situated at 5871, Nai Sadak, Near Bhairo Mandir, Jogiwada, Chandni Chowk, Delhi due to short circuit. The surveyor assessed the loss to the tune of Rs.7,19,072.00 (Rupees Seven Lakh Nineteen Thousand Seventy Two Only). The surveyor before submitting his report also perused the documents of previous claim.*

The opposite party repudiated the claim of the complainant vide repudiation letter dated 25.02.2020 on the ground that the complainant failed to disclose material information in the proposal form which was breach condition no.1 of the policy.

It is to be noted that Surveyor had concluded that complainant had insurable interest in his favour however despite the said finding the claim was repudiated vide repudiation letter dated 25.02.2020, in view of breach of condition no. 1 of the said policy which provides as under:

1. Breach of condition NO.1 of Fire policy which reads as "This policy shall be voidable in the event of mis-representation, mis-description or non-disclosure of any material particular.

Any of the above mentioned occurrence absolves us of any further liabilities, arising out of this claim.

Counsel for complainant contended that the previous claim which has been settled with OP has nothing to do with the present complaint/claim of the complainant since the fire took place during the validity of the insurance policy period. Moreover, the said claim was under a different proprietorship concern namely "New Shiva Fashion" run from Karol Bagh, New Delhi.

It is to be noted that the surveyor stated in his report that he found some transactions pertaining to few parties i.e. Yash Dev Creations, Moon Traders, GSM Creations and Chetna Vashtra Bhandar, Manno Enterprises, Priyanka Collection, Om trading, Fortunext Supply and Kay Aay which appeared to be suspicious. However no evidence was led by OP in support of the above contention as such the same is rejected.

It was to be noted despite the fact that Surveyor submitted report on 26.11.2019, the decision of repudiation was taken *by OP on 25.02.2020. It was also alleged on behalf of complainant, the complainant never played fraud while obtaining the insurance policy and the reasons for repudiation was arbitrary. It is to be further noted that OP did not dispute the complainant was running its business from the above said premises and the stock of complainant lying at the shop was insured and was destroyed in the fire.*

As regards the submissions of OP that the complainant raises disputed facts which cannot be adjudicated in a summary trial. It was to be noted that surveyor concluded in his report that complainant had insurable interest in his favour as such the said contention is without merits.

It is further to be noted that there is nothing on record to show that OP supplied the terms and conditions of the policy to complainant. As regard the liability of Insurance Company in case the terms and conditions of the policy were not communicated or served on the insured, it has been held by the Hon'ble Supreme Court in ***M/s Modern Insulators Ltd. Vs. The Oriental Insurance Company 2000 (2) SCC 734*** *as under :*

"It is the fundamental principle of insurance law that utmost good faith must be observed by the contracting parties and good faith forbids either party from nondisclosure of the lads which the parties known. The insured has a duty to disclose and similarly it is the duty of the insurance company and its agents to disclose ill material facts in their knowledge since obligation of good faith applies to both equally.

In view of the settled position of law we are of the opinion that the view expressed by the National Commission is not correct. As the above terms and conditions of the standard policy wherein the exclusion clause was included, were neither a part of the contract of insurance nor disclosed to the appellant respondent cannot claim the benefit of the said exclusion clause. Therefore, the finding of the National Commission is untenable in law. "

We accordingly hold that complainant has established deficiency of services on part of OP. We direct OP to pay Rs.1,68,00,000/- (Rupees One Crore Sixty Eight Lakh) to the

> *complainant with interest @ 7.5% per annum from the date of lodging of the claim within four weeks of date of receipt of order, failing which OP will be liable to pay interest @12% per annum till realization. We also award compensation of Rs.2,00,000/- (Rupees Two Lakh) to complainant for mental agony and Rs.25,000/- (Rupees Twenty Five Thousand) as cost of litigation."*

3. Aggrieved by the order dated 04.10.2023, passed by the District Commission in CC No.305/2022, the Appellant has filed the present appeal praying for setting aside the order of the District Commission, *inter-alia*, contending that impugned order contains no reason as to why the District Commission chose to depart from the survey report and the impugned order has rejected the repudiation of the claim on the ground that there is nothing on record to show that OP supplied the terms and condition of the policy to the complainant, which was not even stated by the Respondent in his complaint, impugned order does not contain a single reason as to why the Respondent's calculation were justified though damning observations were made against the Respondent's claim in the survey report, the claimed loss of Rs.1,68,00,000/- is exorbitant when compared to maximum claim amount of Rs.7,19,072/- as assessed by the Surveyor, impugned order accepted the full loss claimed by Respondent without any deliberation or reasoning though the Respondent has continuously changed the claim amount and such rapid fluctuation warranted to examine the veracity of the quantum that was being claimed by the Respondent, a non-reasoned order has been passed by the District Commission, Respondent has failed to disclose previous fire incidents and losses that had occurred at their premises, which is violation of General Condition No.1 of SFSP Policy.

4. Reply to the Appeal has been filed by the Respondent stating therein the claim was rejected solely on the ground that Respondent has failed to provide relevant information in the proposal form, if it was so then why the surveyor took months and months to verify the loss by checking balance-sheet, books of accounts, daily ledgers and other accounts of the Respondent, that fire took place during the validity of policy, the respondent took a policy of Rs.2.5 Crore, that surveyor assessed loss to the tune of Rs.7,19,072/- only against the claim of Rs.1,54,22,699/-. It is stated that the Appellant repudiated the claim on the ground that in the proposal forum the respondent failed to disclose the incidence of previous fire and also on the ground that Respondent failed to provide the supporting documents with respect to his claim, though the documents and information were provided to the surveyor right from the year 2014, despite that surveyor rejected the legitimate claim of the Respondent.

5. We have perused the appeal and the material available on record and have heard the parties.

6. At the outset, it is necessary to note that it is an admitted position that the Respondent was having a Standard Fire & Perils Policy for one of its premises valid w.e.f. 24.10.2018 to 23.10.2019 for an amount of Rs.2,50,00,000/- for entire stock of goods lying at Shop No.5871, Nai Sarak, Near Bharo Mandir, Jogiwara, Chandni Chowk, Delhi. The fact that during the validity of the policy, the shop caught fire on 01.06.2019 and intimation was given to the Appellant is also undisputed. There is also no dispute that the Surveyor is appointed by the Insurance Company under the provisions of Insurance Act and submitted its reports. The incident of fire by short circuit is also admitted. However,

the Appellant repudiated the claim, vide letter dated 25.12.2022, solely on the ground of breach of Condition No.1 of Fire Policy**.**

7. Perusal of record shows that a pre-repudiation letter dated 11.02.2020 was sent by the Appellant/OP prior to final repudiation of the claim of the Respondent/Complainant, which reads as under:

"With reference to the said claim, based on the documents contained in the file, Final Survey Report and Operating Office's email dated 04.02.2020, kindly note the below mentioned facts:

- *A loss amount to Rs.84,91,607/- occurred in your premises in the period 2016-17 in which M/s. Adarsh Associate, Surveyor was appointed. Information about this Claim was not given to the underwriting office while taking the subject policy.*
- *Hence, on the basis of above and as per Fire Policy Condition No.1, which reads as below, it is clear that the Insurer's liability for subject claim is NIL.*

  THIS POLICY shall be voidable in the event of mis-representation, mis-description or non-disclosure of any material particular.

In view of the facts mentioned above, your claim does not seem to fall within the purview of consideration for settlement as per terms and condition of the policy, as details of previous loss history was not disclosed/hide from the under writers while taking the subject policy due to which the subject policy is voidable as per the Fire Policy Condition No.1, as stated above, Kindly explain why your claim could not be repudiated?

8. Thereafter, vide letter dated 25.12.2020, the Appellant informed the Respondent that the claim of the Respondent has been repudiated on account of breach of condition No.1 of Fire Policy. The relevant clause reads as under:

"This policy shall be voidable in the event of misrepresentation, mis-description or non-disclosure of any material particular."

9. Thus, the ***main issue*** is ***whether the Respondent/Complainant misrepresented the Appellant/Opposite Party regarding previous incident.***

10. We have perused the record carefully. A perusal of record shows that the policy in question is a renewed policy, as the policy was initially taken in the year 2017-18. The Appellant itself placed on record the survey report of M/s Adarsh Associate, Surveyor, who submitted its report to the fire previously alleged to have been occurred in the premises of the Respondent on 21.05.20216 and on the basis of which the claim in question has been repudiated by the Appellant on the ground of non-disclosure of the same in the insurance policy in question. The report clearly shows that the insured premises under policy No.350201111510000306 was ***M/s. New Shiva Fashions, 2682, 3rd Floor, Gali No.1-2, Beadon Pura, Karol Bagh, New Delhi - 110005***, whereas in the present case, the insured premises under policy No.360702111810000383 is ***M/s. Shiva Fashions, 5871, Nai Sadak, Near Bhairo Mandir, Jogiwara, Chandni Chowk, Delhi-110006***.

11. From the aforesaid fact, it is apparent that the premises are different therefore, the ground of non-disclosure of previous fire incident in the different insured premises under different policy is not tenable. The previous Policy has no relation with the current Policy issued by the Appellant Insurance Company. Further, the Appellant has not stated anything as to what difference would it have made if the Respondent had disclosed the fact of previous Policy. Therefore, repudiation by the Appellant on the basis of misrepresentations or non- disclosure was completely wrong, unjustified and arbitrary.

12. In the appeal, the Appellant has raised a ground that District Commission has given no reason for not considering the surveyor

report. The record shows that after conducting survey on 02.06.2019, 04.06.2019 and 06.09.2019, the surveyor had asked the Respondent to submit reply to 33 queries. In its report, the surveyor has stated that despite various verbal and written reminders, Respondent has not provided complete required documents and also showed inability to provide any further documents and on his report is prepared on the basis of its observations and assessment based on the documents submitted by the Respondent.

13. Perusal of record shows that on 12.09.20219, the Respondent has duly responded to the queries raised by the Surveyor, which fact has not been denied by the Appellant in its written statement filed before the Ld. District Commission. However, the Surveyor has stated in its report that the Respondent failed to provide any document, which is contrary to the record. Further, the same shows that the surveyor has not taken into consideration the response to the queries and documents supplied by the Respondent, which itself casts aspersions upon the report of the Surveyor.

14. Furthermore, the surveyor in its report has observed that loss of stock was in three categories **(i)** Burnt items; **(ii)** items damaged due to black smoke and water; **(iii)** items damaged due to water used to control the fire. It is admitted position that the Respondent was carrying out the business of clothes i.e. saree, suit, gown, raw material etc., which even as per surveyor got damaged. The clothes once damaged cannot used, thus, the loss has to be treated as a total loss. Since, the Surveyor has not considered the response to the queries and documents supplies by the Respondent, the report of the surveyor cannot be relied upon, as the Appellant has itself not relied upon the said report and repudiated the

claim of the Respondent on account of breach of condition No.1 of Fire Policy.

15. Be that as it may, the ***Hon'ble Supreme Court*** in ***"Galada Power and Telecommunication Ltd. vs. United India Insurance Co. Ltd. & Anr." Reported at (2016) 14 SCC 161 and "Saurashtra Chemicals Ltd. vs. National Insurance Co. Ltd." reported at (2019) 19 SCC 70***, has held that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation and new grounds for repudiation can be introduced during the hearing.

16. In **Saurashtra Chemical Ltd. (supra)** judgment the Hon'ble Apex Court in paragraph No.23 has held as under : -

> *"23. Hence, we are of the considered opinion that the law, as laid down in Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161: (2017) 2 SCC (Civ) 765] on Issue (2), still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC."*

17. This legal principle was reiterated in ***JSK Industries Pvt. Ltd. vs. Oriental Insurance Co. Ltd. Reported at 2022 SCC OnLine 1451:***

> ***"10. Mr. Gopal Shankarnarayan, learned senior counsel for the appellants has argued both on substantive and procedural points to assail the aforesaid orders. His first submission is that the insurance company cannot resist a claim petition on grounds beyond those cited by them while repudiating a claim. In support of this argument, a decision of this Court in the case Saurashtra Chemicals Ltd. v. National Insurance Co. Ltd. [(2019) 19 SCC 70] has been cited. In this judgment, it has been held: —***

> ***"23. Hence, we are of the considered opinion that the law, as laid down in Galada [Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd., (2016) 14 SCC 161: (2017) 2 SCC (Civ) 765] on Issue (2), still holds the field. It is a settled position that an insurance company cannot travel beyond the grounds mentioned in the letter of repudiation. If the insurer has not taken delay in intimation as a specific ground in letter of repudiation, they cannot do so at the stage of hearing of the consumer complaint before NCDRC."***

18. Further, the Hon'ble Apex Court in its judgment in ***JSK Industries Pvt. Ltd. (supra)*** and in paragraph No.14 it was held that:

> *"14. --------. Thus, following the ratio of the decision of the Coordinate Bench in the case of* ***Saurashtra Chemicals Ltd. (supra)****, the National Commission ought not to have gone beyond the grounds of repudiation and into the nature of coverage, which according to the National Commission had effectively changed from "anywhere in India to anywhere in India" to a sales turnover policy, limiting policy coverage of the subject-goods from the points of departure at the two locations at Silvassa. These are all terms of art applicable to the insurance trade but we do not consider it necessary to dilate on this aspect of the dispute having regard to the decision of this Court in the case of* ***Saurashtra Chemicals Ltd. (supra)****."*

19. Thus, the above law laid down by the Hon'ble Apex Court clearly envisages that neither the insurance company nor the Consumer Commissions can go beyond the grounds of repudiation and if the insurer has not taken any issue as a specific ground in the letter of repudiation.

20. In view of the foregoing, we are of the considered view that appeal filed by the Appellant is devoid of merit. ***Accordingly, the present appeal is dismissed with no order as to costs.***
21. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
22. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
23. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
22.11.2024

Tri