STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 28.08.2020
Date of Final Hearing: 22.11.2024
Date of Pronouncement: 27.11.2024

FIRST APPEAL NO. 105 / 2020

1. Reliance General Insurance Company Limited
through Manager, Unit No. S4, 2nd Floor
NCR Plaza, New Cantt. Road, Dehradun

2. Reliance General Insurance Company Limited
H-Block, 1st Floor, Dhirubhai Ambani Knowledge City
Navi Mumbai – 400710

(Through: Smt. Anjali Gusain, Advocate)
…… Appellants

Versus

1. The Gogreen Buildtech Pvt. Ltd.
through its Administrative Officer
Plot No. I-5, Phase-3, Industrial Area
Masuri Gulawathi Road, UPSIDC Industrial Area
Ghaziabad Road, District Hapur, U.P.
(Through: Sh. Shree Gopal Narsan, Advocate)

2. Punjab National Bank through its Manager
Ahmedpur Branch, Near Chandracharya Chowk
Haridwar

(Through: None)
…… Respondents

Coram:
Ms. Kumkum Rani, President
Mr. B.S. Manral, Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal has been directed against the impugned judgment and order dated 18.07.2020 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as "The

District Commission") in consumer complaint No. 276 of 2019, styled as The Gogreen Buildtech Pvt. Ltd. Vs. Reliance General Insurance Company Limited and others, whereby learned District Commission was pleased to allow the consumer complaint filed by respondent No. 1, by directing the appellants to pay Rs. 3,82,674/- to respondent No. 1 along with interest @6% p.a. from the date of filing of the consumer complaint till payment, besides to pay Rs. 40,000/- towards counsel fee and Rs. 70,000/- towards mental & financial agony.

2. The facts giving rise to the present appeal, in brief, are, as such that respondent No. 1 / complainant is a registered company known by the name The Gogreen Buildtech Pvt. Ltd. situated at Plot No. I-5, Phase-3, Industrial Area, Masuri Gulawathi Road, UPSIDC Industrial Area, Ghaziabad Road, District Hapur, U.P. and Sh. Rishabh Jain is the Director of the company. The complainant required a Standard Fire and Special Perils Policy and for that, the complainant contacted appellant No. 1 / opposite party No. 1 for insurance and after listening the features of the policy, agreed and bought Standard Fire and Special Perils Policy from the appellant No. 1 on 26.05.2017, which was valid from 26.05.2017 to 25.05.2018, after paying premium amount of Rs. 88,620/- through account payee cheque dated 25.05.2017. The aforesaid policy covered and insured the complainant from damages like fire, rain and earthquake etc. The aforesaid policy was renewed for the period from 04.06.2018 to 03.06.2019. Unfortunately, in the early morning of 01.12.2018, the premises of the complainant – company caught fire and goods stored in the premises and infrastructure were burnt by fire and there was mass loss of the property and goods kept in the company. The information of the fire was immediately given to the Fire Brigade Department as well as the insurer. Thereafter, the

complainant submitted a claim of Rs. 15,00,000/- with the insurance company. The appellant No. 1 visited the site and prepared a report and forwarded it to appellant No. 2 for settlement. The appellant No. 2 studied the report and passed the claim of the complainant for sum of Rs. 14,96,560/- and from the said amount, the appellant No. 2 deducted depreciation of Rs. 3,82,674/-; salvage of Rs. 64,500/- and excess amount of Rs. 52,649/- and the final amount which the appellant No. 2 agreed to settle was Rs. 9,96,916/-. The deduction of salvage of Rs. 64,500/- and excess of Rs. 52,649/- is correct and the complainant does not have any problem with these two deductions. However, the deduction of Rs. 3,82,674/- towards depreciation is totally wrong and illegal because the policy is depreciation free. The complainant told the appellant No. 1 that the surveyor has wrongly deducted Rs. 3,82,764/- as depreciation, but the appellant No. 1 did not rectify the deduction and pressurized the complainant for settlement at sum of Rs. 9,96,916/-. Thereafter, the complainant spoke to appellant No. 2 regarding the wrong deduction of Rs. 3,82,674/- and settlement, but the appellant No. 2 did not respond. The complainant also sent e-mails to the appellant No. 2 for rectification of deduction of Rs. 3,82,674/- and final amount settled by appellant No. 2, but the appellant No. 2 did not rectify the wrong and illegal deduction and pressurized the complainant to accept Rs. 9,96,916/- only as compensation. Thus, on 28.05.2019, the complainant accepted the offer of appellant No. 2 for settlement of the claim because the insurance company did not left any other option to the complainant and the complainant required funds for the company. Due to the act of the insurance company, the complainant is feeling robbed, as the promise made by the insurance company was not fulfilled. Therefore, the complainant brought the consumer complaint

before the District Commission, seeking relief as set out in prayer clause of the consumer complaint.

3. The appellants / opposite party Nos. 1 & 2 filed joint written statement before the District Commission, pleading therein that the consumer complaint has been filed with malafide intension. The complainant is engaged in commercial activity and is not entitled to any compensation from the insurance company. After receiving information about the loss, the insurer immediately appointed K.D. Kohli Insurance Surveyors & Loss Assessors Pvt. Ltd. for investigation and assessment of loss and the surveyor assessed net loss caused to the complainant to the tune of Rs. 9,96,916/-. Sh. Nikhil Jain, representative of the complainant, sent an e-mail to the surveyor on 29.05.2019 for settlement of the claim on priority. After receiving the survey report, the insurance company directed the surveyor that as per loss assessment report, the company can settle the claim if the complainant agrees on amount of net assessed loss of Rs. 9,96,916/- and it is necessary that the complainant gives his written consent and after the consent of the complainant, the insurance company can settle the claim, as per the loss assessed by the surveyor. The surveyor sent an e-mail to Sh. Nikhil Jain to send fresh consent. After the said e-mail, Sh. Nikhil Jain answered the e-mail on 28.05.2019 and stated that "we accept the gross assessed loss as assessed by you as per details in Annexure – A. Kindly have our claim processed basis as it is delayed and we are in need of funds. Also kindly provide us clearance to dispose of the salvage for clearance as well". After receiving the consent of the complainant, the insurance company settled the claim of the complainant as per report of the surveyor for Rs. 9,96,916/-. Thus, the insurer has already settled the claim of the complainant. The

complainant has not come with clean hands. The complainant is not entitled to any relief from the insurance company. The consumer complaint is not legally maintainable because there is no deficiency in service on the part of the insurer and the consumer complaint is liable to be dismissed.

4. Respondent No. 2 / opposite party No. 3 (Punjab National Bank) also submitted written statement before the District Commission, stating that the claim is to be paid by the appellants and the bank merely honoured the cheque issued by the complainant towards the amount of premium.

5. Learned District Commission, after hearing the parties and after taking into consideration the material available on record, allowed the consumer complaint vide impugned judgment and order dated 18.07.2020 in the above terms. On having been aggrieved, the opposite party Nos. 1 & 2 have filed the present appeal as appellants.

6. We have heard learned counsel for the appellants as well as learned counsel for respondent No. 1 and also gone through the record available before us. A perusal of the order-sheet has revealed that an order has already been passed to proceed the appeal ex-parte against respondent No. 2.

7. As per the pleadings of both the parties to the consumer complaint, it is established that respondent No. 1 / complainant obtained Standard Fire and Special Perils Policy from the insurance company. It is also established on record that the premises of the complainant caught fire and the goods stored in the premises and

infrastructure were burnt by fire and there was mass loss of the property and goods kept in the company. There is no dispute about sending information of the fire by the complainant to the Fire Brigade as well as insurance company. It is also an admitted fact that the insurance company took immediate measures by appointing the surveyor, who inspected the site and submitted survey report assessing net loss of Rs. 9,96,916/- after deductions towards depreciation; salvage and excess. It is further admitted on record that the complainant accepted the offer of the insurance company for settlement of claim and gave consent through e-mail for accepting the assessed amount of Rs. 9,96,916/- as compensation.

8. In para 21 of the consumer complaint, the complainant has stated that the deduction of salvage of Rs. 64,500/- and excess of Rs. 52,649/- is correct and the complainant does not have any problem with these two deductions. Thus, there is no dispute about deduction made by the surveyor towards salvage and excess.

9. In the consumer complaint, the complainant merely raised objection regarding deduction towards depreciation of Rs. 3,82,674/-, alleging it to be wrong & illegal and not as per the terms & conditions of the insurance policy. Learned counsel for respondent No. 1 / complainant has not shown any such condition of the policy that the surveyor has wrongly deducted Rs. 3,82,674/- as depreciation and the said amount can not be deducted because the insurance policy was depreciation free.

10. In para 26 of the consumer complaint, it is alleged that the complainant made a request through e-mails for rectification of

deduction of Rs. 3,82,674/- and final amount settled by appellant No. 2, but the appellant No. 2 did not rectify the wrong and illegal deduction of Rs. 3,82,674/- and pressurized the complainant to accept Rs. 9,96,916/- as compensation, but the complainant has not submitted any cogent and reliable evidence as to what type of pressure was exercised by the insurance company upon the complainant to accept the offer of appellant No. 2. Thus, from the perusal of the evidence available on record, it is fully established that the insurance company has already settled the claim of the complainant as per the loss assessed by the surveyor. Here, it is pertinent to mention that the survey report is an important piece of evidence, which can not be brushed aside unless and until there is documentary evidence to the contrary on record.

11. In various cases, it is held that proper weightage should be given to the report of surveyor unless and until there is some facts to disprove it.

12. In the case of **Sikka Papers Limited vs. National Insurance Company Limited and Others, (2009) 7 Supreme Court Cases 777,** Hon'ble Supreme Court has held that it is true that the surveyor report is not the last word, but there must be legitimate reason for departing from such report. If the complainant has failed to show any reason to justify the rejection of the surveyor report; no infirmity is found in the order.

13. In the case of **National Insurance Co. Ltd. vs. Noli Ram and Sons, 2017 (4) CPR 388 (NC)**, Hon'ble National Commission has held

that surveyor report can not be disbelieved and can not be rejected without any forceful evidence on the part of the complainant.

14. In the case of **Ashish Kumar Jaiswal vs. ICICI Lombard General Insurance Company Ltd. and Ors., 2017 (3) CPR 71 (NC)**, Hon'ble National Commission has held that the surveyor's report is only reliable document which is to be considered for settling the insurance claim, the petitioner has failed to put forward any cogent reasons to dispute surveyor's report and there is no reason to reject it.

15. In the case of **Sri Venkateswara Syndicate vs. Oriental Insurance Company Limited and Another, (2009) 8 Supreme Court Cases 507,** Hon'ble Supreme Court has held that option to accept or not accept report of surveyor lies with the insurer, however, if report is prepared in good faith, with due application of mind and in the absence of any error or ill motive, insurance company cannot reject report of surveyors; Courts or other forums can intervene only if rejection is arbitrary and based on no acceptable reasons.

16. In the case of **Pradeep Sharma vs. Bajaj Allianz General Insurance Co. and Anr., 2017 (1) CPR 259 (NC)**, Hon'ble National Commission has held that the assessment made by surveyor must be given due weightage. The complainant failed to provide stock of medicines which did not expire at the time of fire in shop and in such circumstances, surveyor rightly assessed loss and State Commission has enhanced loss to Rs. 20,000/-; petitioner could not place any document on record to substantiate that complainant suffered loss more than Rs. 20,000/- pertaining to medicines having validity period, there is no illegality, irregularity or jurisdictional error in impugned order.

17. In the case of **Devender Malhotra vs. United India Insurance Co. Ltd. & Anr., 2016 (3) CPR 461 (NC)**, Hon'ble National Commission has held that the report made by the surveyor can not be disbelieved unless there are cogent and convincing reasons to do so; report of the surveyor has to be given effect to unless there are contrary reasons to disregard the same. The appellant has not advanced any cogent and convincing reasons to disbelieve report of surveyor and assessment of loss made by surveyor is based on a correct appreciation of material made available to him.

18. In the case of **National Insurance Company Ltd. vs. Manjit Singh and Ors., 2017 (4) CPR 384 (NC)**, Hon'ble National Commission has held that the impugned order passed by the District Forum reflects a correct appreciation of issues involved in case and they rightly concluded that insurance company should make payment as per report given by surveyor.

19. In the case of **Rohtas and Anr. vs. United India Insurance Co. Ltd. and Ors., 2017 (4) CPR 502 (NC)**, Hon'ble National Commission has held that insurance policy was taken for general merchandise stocks at business premises and the loss caused due to fire, report made by surveyor in discharge of his professional duty should be accepted unless some serious discrepancies / short comings are pointed out in same.

20. The above mention principle as laid down in the above referred cases are fully applicable to the case in hand.

21. As per the pleadings of the parties, it is proved that an amount of Rs. 9,96,916/- has already been paid by the insurance company to the complainant. Learned counsel for the appellants has contended that after receiving the report of surveyor, the insurance company has already settled the claim in full and final satisfaction and the insurance company is not liable for any further claim, as such the complaint is liable to be dismissed.

22. Learned counsel of the appellants has relied on the following case law stating that when the amount has been accepted by the insured as full and final settlement and cheque encashed, then alleged deficiency on the part of the insurer is not proved:

(i) **Kanta Mathur versus National Insurance Company Ltd. & Ors., I (2015) CPJ 151 (NC)**

(ii) **Shiv Villas Resorts Pvt. Ltd. versus United India Insurance Co. Ltd. and Anr., I (2018) CPJ 184 (NC)**

(iii) **Yogesh Kumar Sharma (Dr.) versus National Insurance Company Ltd., II (2013) CPJ 178 (NC)**

23. In the case of "**Kanta Mathur versus National Insurance Company Ltd. & Ors., I (2015) CPJ 151 (NC)**" it is held that petitioner had used car for one year; claim cannot be re-opened once

cheque towards full and final settlement accepted, hence, repudiation order was justified.

24. In the case of **"Shiv Villas Resorts Pvt. Ltd. versus United India Insurance Co. Ltd. and Anr., I (2018) CPJ 184 (NC)"** the Hon'ble National Commission has held as under:-

> "Learned counsel for the respondents/opposite parties stated that the payment has already been made to the complainant as per the recommendation and assessment of loss by the surveyor and complainant has accepted the same as full and final settlement as endorsed on the concerned voucher. The Company had sent its cheque vide its letter dated 08.06.2010. After receiving the cheque and sending the discharge voucher for full and final settlement, the complainant has filed the complainant and the State Commission has rightly dismissed the complaint on the basis that the complainant has already settled the claim with the Insurance Company by receiving Rs.56,87,519/- as full and final settlement of the claim. There was no compulsion on the complainant to accept the payment. Moreover, the complainant had not filed any proof that he was coerced by the Insurance Company or the surveyor to accept the claim. It is only an afterthought of the complainant to extract more money from the Insurance Company. The learned counsel cited the following judgment to support his arguments:-
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> **Ankur Surana Vs. United India Insurance Co. Ltd., Revision Petition No. 2031 of 2012**, decided on **16.01.2013 (NC)** wherein the following has been held:-
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> "6. So far as the other ground taken by the petitioner is concerned, the receipt of amount of

Rs.14,76,264/- sent by the insurance company against the claim put up by the petitioner is not disputed by the petitioner. In fact, the petitioner filed certain additional documents which have been placed on record in which it has been included. Copy of the voucher signed by the petitioner indicates that he has received the amount in question by way of full and final discharge of his claim against the insurance company/ respondents. This being the undisputed factual position, the petitioner cannot be permitted to approach the Consumer Forum for the balance amount treating the payment as only part payment against the claim unless he establishes that he accepted the amount under undue influence, misrepresentation or fraud played by the insurance company. No such plea has been put forth by the petitioner. The only point made by learned counsel is that after receipt of the amount, the petitioner sent a letter to the insurance company asking for the payment of balance amount. This, however, cannot provide any comfort to the petitioner to reopen the matter having accepted the amount sent by the insurance company and signed the discharge voucher sent by the insurance company. The claim of the petitioner stood settled. The view taken by the State Commission is in line with the judgment of the Apex Court in the case of United India Insurance vs Ajmer Singh Cotton and General Mills and Ors. [(1999) 6 Supreme Court Cases 400]. In the absence of any allegation of fraud, misrepresentation or undue influence, we cannot agree with the contention of the learned counsel."

From the above authoritative judgments, it is clear that there was no ground before the State Commission to reject the surveyors report, as the complainant had not filed any objection to the surveyor's report. The complainant has not raised any objection against the surveyor's

> report even in the appeal. Even at the stage of arguments, it was specifically asked from the learned counsel for the appellant if there are any specific shortcomings in the surveyor's report. No specific answer was given by the learned counsel for the appellant. Thus if there are no objections to the surveyor's report, it is to be accepted. The Insurance Company has already paid according to the loss assessed by the surveyor."

25. Relying on the above cited case, learned counsel for the insurance company has argued that the complainant has never raised any objection in writing against the surveyor report and the insurance company has already paid the amount according to loss assessed by the surveyor, hence, the insurance company can not now be held to pay the balance amount to the insured.

26. In the case of **"Yogesh Kumar Sharma (Dr.) versus National Insurance Company Ltd., II (2013) CPJ 178 (NC)"**, Hon'ble National Commission has held that when the cheque has been already accepted without protest and the petitioner was never compelled by the respondent at any stage to settle claim at lesser amount than the claim was made by him; once petitioner had received amount unconditionally, then he ceases to be consumer as per Act, 1986; the privity of contract or relationship of consumer and service provider, if any, came to an end, the moment petition accepted the amount unconditionally.

27. Thus, the above cited case laws are fully applicable to the case in hand. It is pertinent to mention that the complainant has never alleged that the full and final settlement amount was received under any protest or it was partial payment. Hence, in the light of the above cited cases,

when the settlement amount has already been paid much prior to the date of filing of the complaint, therefore, no cause of action wholly or in part has arisen to file the complaint.

28. It is also well settled that provisions of Consumer Protection Act, 1986 are not applicable as the complainant ceases to be consumer as per the Act and the privity of the contract between the consumer and the service provider, came at an end, the moment when the complainant has accepted the amount unconditionally.

29. For the reasons aforesaid, we are of the view that the impugned judgment and order has been passed by the District Commission without application of mind. We are also of the considered opinion that the complainant has failed to prove any deficiency in service on the part of the insurance company. Hence, the impugned judgment and order passed by the District Commission is totally unjustified and the District Commission has exercised the jurisdiction not vested in it by law and has acted with material illegality and infirmity, while passing the impugned judgment and order. Thus, we are inclined to interfere with the finding recorded by the District Commission. Therefore, the appeal is liable to be allowed.

30. Appeal is allowed. Impugned judgment and order dated 18.07.2020 passed by the District Commission is set aside and consumer complaint No. 276 of 2019 is hereby dismissed. No order as to costs of the appeal. The amount deposited by the appellants with this Commission, be released in their favour.

31. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.

32. File be consigned to record room along with a copy of this Order.

(**Ms. Kumkum Rani**)
President

(**Mr. B.S. Manral**)
Member

Pronounced on: 27.11.2024