STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 17.04.2023
Date of Final Hearing: 25.11.2024
Date of Pronouncement: 02.12.2024

FIRST APPEAL NO. 34 / 2023

United India Insurance Company Limited
C-9, Super Complex, Ranipur More
Haridwar through its Assistant Manager Sh. Ashwani Kasana
United India Insurance Company Limited
Regional Office, Ratan Palace, Kaulagarh Road, Dehradun
(Through: Sh. R.K. Garg, Advocate)
…… Appellant

Versus

Sh. Baburam Kashyap S/o late Bir Singh
R/o E-6/12, Adarsh Vihar, Latowali
Kankhal, District Haridwar
(Through: None)
…… Respondent

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

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 41 of the Consumer Protection Act, 2019 has been directed against the impugned judgment and order dated 21.11.2022 passed by learned District Consumer Disputes Redressal Commission, Haridwar (hereinafter to be referred as “The District Commission”) in consumer complaint No. 193 of 2020, styled as Sh. Baburam Kashyap Vs. United India Insurance Company Limited, wherein and whereby the consumer complaint was allowed and the appellant / opposite party was directed to pay an amount of

Rs. 5,52,500/- to the respondent / complainant together with interest @6% p.a. from the date of filing of the consumer complaint till payment, besides to pay Rs. 10,000/- towards compensation and Rs. 10,000/- towards counsel fee and litigation expenses.

2. The facts giving rise to the present appeal, in brief, are, as such that the respondent / complainant had filed the above-mentioned consumer complaint before the District Commission, alleging that he is doing the bees keeping business and he took loan from Syndicate Bank, Haridwar. While taking loan, the complainant obtained Standard Fire and Special Perils Policy bearing No. 2502011119P105046821 from the appellant / opposite party (insurance company), which was valid for the period from 20.07.2019 to 19.07.2020. On 19.08.2019, there was heavy rain, in which 130 boxes and beehives were completely destroyed. The intimation of loss was immediately given to the insurance company, who deputed surveyor Sh. Ashish Kumar. As per the asking of the surveyor, all the required documents were submitted with the insurance company. However, the insurance company repudiated the claim vide letter dated 01.07.2020.

3. The consumer complaint was duly contested by the appellant by filing written statement, wherein it was pleaded that the surveyor was deputed to assess the loss and at the time of loss assessment, surveyor Sh. Ashish Kumar was unable to inspect the total stock, as the complainant had already removed majority of stock without intimating the insurance company, to different locations on 29.08.2019. The surveyor also found damaged boxes of different insured persons, i.e., one complainant and other Sh. Vipul Kumar and it was difficult to identify as to whom they belonged. It was also submitted that as per

the terms and conditions of the insurance policy, the peril was not covered, therefore, the insurance company has repudiated the claim of the complainant and he is not entitled to any amount from the insurance company.

4. Learned District Commission, after taking into consideration the material available on record, passed the impugned judgment and order dated 21.11.2022, thereby allowing the consumer complaint in the above terms.

5. On having been aggrieved by the impugned judgment and order, the opposite party has filed the present appeal as an appellant, alleging that learned District Commission has failed to consider that as per the terms and conditions of Standard Fire and Special Perils Policy, heavy rain was not covered under the policy. It was also stated in the memo of appeal that learned District Commission has failed to consider that "at the time of loss assessment, surveyor Sh. Ashish Kumar was unable to inspect the total stock, as the complainant had already removed majority of stock without intimating the insurance company, to different locations on 29.08.2019". It was further stated that learned District Commission has failed to consider the survey report and has erred in not considering the written arguments filed on behalf of the appellant. Therefore, the District Commission has exercised the jurisdiction not vested in it and overlooked the pleadings; documents and evidence available on record. Thus, the impugned judgment and order is liable to be set aside and appeal deserves to be allowed.

6. We have heard learned counsel for the appellant and perused the record. Vide order dated 04.11.2024, it was directed that the appeal shall proceed ex-parte against respondent.

7. According to the pleadings of the consumer complaint, it is proved that the complainant is doing the bees keeping business and he took loan from Syndicate Bank, Haridwar. It is also proved on record that while taking loan, the complainant obtained Standard Fire and Special Perils Policy from the appellant, which was valid for the period from 20.07.2019 to 19.07.2020. It is also undisputed fact that on dated 19.08.2019, there was heavy rain, due to which loss was caused to the complainant. It is further not disputed that the complainant intimated the loss to the insurance company, who after receiving the said information, deputed surveyor Sh. Ashish Kumar. It is not the case of the insurance company that the complainant did not provide requisite documents and did not complete the required formalities. It is also proved that the insurance company has repudiated the claim vide letter dated 01.07.2020.

8. In the memo of appeal, the appellant – insurance company has averred that learned District Commission has failed to consider the survey report. Thus, the insurance company has relied on the survey report. We have perused the survey report dated 21.03.2020 bearing Paper Nos. 24 to 26, wherein the surveyor has observed that "During the course of my survey, I met with the caretaker of the insured "Ajab Singh". He informed that the total boxes were 400. 130 boxes were damaged and 270 were saved". The surveyor has also observed that he noticed that the boxes of two insured – Baburam Kashyap and Vipul Kumar were placed in one location, but the surveyor has not

specifically mentioned as to how many boxes were that of the complainant. The surveyor has further observed that "However, I am hereunder assessing the loss caused to the honey boxes" and the surveyor has assessed the loss of Rs. 40,000/-. The surveyor has also stated that rain was not covered under the policy. We have perused the terms and conditions of the policy, wherein under condition No. VI, loss due to Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation is mentioned, but by reading such condition, it can not be said that loss due to rain was not covered under the policy, for which the complainant is entitled to get compensation. Thus, the observation of the surveyor that rain was not covered under the policy perils, is not correct.

9. We have perused the impugned judgment and order, whereby the District Commission has awarded sum of Rs. 5,52,500/-, but the District Commission has not specifically mentioned as to how it came to the conclusion that loss was to the tune of Rs. 5,52,500/-. It is well settled that survey report is an important and reliable document and the same can not be brushed aside, until and unless there is contrary documentary evidence on record. Thus, we are of the considered view that as per the survey report, the complainant is entitled to get an amount of Rs. 40,000/- instead of Rs. 5,52,500/-, as awarded by the District Commission and the said award is to be reduced accordingly. So far as compensation of Rs. 10,000/- granted by the District Commission is concerned, it is well settled that interest and compensation can not be awarded together, therefore, the said award is liable to be set aside. The interest as well as counsel fee and litigation expenses awarded by the District Commission are justified and require no interference. This way, the appeal is to be partly allowed and the

impugned judgment and order passed by the District Commission is to be modified accordingly.

10. Appeal is partly allowed. Impugned judgment and order dated 21.11.2022 passed by the District Commission is modified and the appellant is directed to pay an amount of Rs. 40,000/- to the respondent / complainant together with interest @6% p.a. from the date of filing of the consumer complaint till payment and Rs. 10,000/- towards counsel fee and litigation expenses. Costs of the appeal made easy.

11. 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.

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

(**Ms. Kumkum Rani**)
President

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

Pronounced on: 02.12.2024