

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 681 OF 2012

(Against the Order dated 28/08/2012 in Complaint No. 109/2003 of the State Commission
Maharashtra)

1. M/S. SHAH VADILAL JETHALAL

AGRO-EQUIP. PVT. LTD, THROUGH ITS DIRECTOR,
JAGDISH V. SHAH, 149, JANJIKAR STREET,
MUMBAI-400003

.....Appellant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD.

DIVISIONAL OFFICE 111900, HENLEY HOUSE, 2ND
FLOOR, J.N. HAREIDIA MARG, BALLARD ESTATE,
MUMBAI-400038

2. MR. UDGAOKAR, DIVISIONAL MANAGER,

THE NEW INDIA ASSURANCE COMPANY LTD.,
DIVISIONAL OFFICE 111900, HENLEY HOUSE, 2ND
FLOOR, J.N. HAREIDIA MARG, BALLARD ESTATE,
MUMBAI-400038

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 08 May 2024

ORDER

For the Appellant Mr C M Sharma, Advocate

For the Respondent Mr Ravi Bakshi, Advocate with Ms Sayma

Feroz and Mr Manvendra Pratap Singh,

Advocate

ORDER

1. This appeal under section 19 of the Consumer Protection Act, 1986 (in short, the 'Act') is directed against order dated 28.08.2012 of the State Consumer Dispute Redressal Commission, Maharashtra, Mumbai (in short, the 'State Commission') in complaint case no. CC/03/109-A dismissing the complaint. This order is impugned before us with the prayer to

allow the appeal and set aside the order and to pass such other order deemed fit in the facts of the case.

2. The brief facts of the case are that appellant/complainant, who is a company incorporated under the Companies Act, 1956 and a distributor for TISCO, had obtained a Burglary and House Breaking Policy from the respondent/opposite party for the period 14.11.2000 to 13.11.2001 for its stock in trade such as agro bucket, agro tools, etc. and other goods held in interest or on commission for a sum of Rs 1,00,53,000/- against a premium of Rs 12,535/- in respect of its godown at the steel yard complex allotted by Steel Chambers at Plot No. 997, BMD Iron & Steel Market Committee Central Facility Building, New Mumbai 412018. On 08.09.2001 a truck with burgled goods from the insured godown was apprehended and an FIR registered. The respondent was informed, and a surveyor deputed to assess the loss. A claim was lodged for loss of material worth Rs 89,29,703.65 which was repudiated by the respondent. A consumer complaint was then filed before the State Commission which was dismissed on contest and is now challenged by way of the instant appeal.

3. I have heard the learned counsel for the parties and given careful consideration to the material on the record.

4. The appellant has challenged the impugned order on the grounds that (i) the order was not based on material on record but on presumption and surmises; (ii) the godown had been inspected from time to time and no adverse remarks were made until the claim was filed; (iii) the policy was in force and had not been revoked; (iv) the grounds taken by the State Commission were beyond the terms and conditions of the Policy; (v) the surveyor's report was no conclusive proof to reject the claim; (vi) the address of the godown where the burglary occurred and that mentioned in the Policy cover note were the same and hence the issue of ownership was an incorrect ground for repudiation; (vii) no exclusion clause was applicable in the instant case and the State Commission erred in ignoring this material fact; (viii) in view of a regular chowkidar having been deployed by the Association, adequate measures for security had been taken even though it was not a condition of the Policy; (ix) all required documents authenticated by a Chartered Accountant had been submitted under the Companies Act and business policy; (x) the respondent was guilty of negligence and deficiency in service; and (xi) that the appeal was filed within the period of limitation. During oral submissions the learned counsel for the appellant argued that the State Commission had erred in holding the insured premises were shared with its sister concern by the appellant. It was reiterated that since the Association had provided security, and there was no specific requirement under the policy for a separate security arrangement, the respondent had relied upon grounds that were beyond the scope of the Policy and the impugned order had erroneously relied upon them.

5. *Per contra*, the respondent contended that the appellant had violated policy conditions requiring adequate security to be appointed by the policy holder and that the case of burglary was one of serial thefts involving 15 truckloads of material amounting to the amount of the claim. It was contended that the details sought by the surveyor had not been provided despite repeated notices and therefore it was evident that the appellant was not serious about its claim. It was also contended that the appellant had admitted that there was no separate security engaged by it for the godown as required under the Policy. Hence the learned

counsel for the respondent relied upon the grounds of repudiation and argued that the impugned order was reasoned and deserved to be upheld.

6. The respondent has repudiated the claim vide its letter dated 19.06.2003 on the following grounds:

- (i) the premises were occupied by M/s Western Steel & Engineering, a sister concern of the appellant at the time of burglary which material fact was not disclosed and hence amounts to mis-representation;
- (ii) the Policy contains a clause of exclusion that “the policy shall cease to attach if the premises shall have been left uninhabited by day and night for seven or more consecutive days and nights while the premises are left uninhabited, unless the consent of the company to the continuance of the insurance thereon is obtained and signed on the policy” and the premises were left uninhabited for 94 days and nights from 05.06.2001 till the discovery of loss;
- (iii) the total stock stated to have been stolen/burgled aggregates to about 15 truck loads which was impossible to have been done on a single day and must therefore have been done in a serially repeated manner which indicates that the appellant did not take proper care and precaution of such high value stock which constitutes a breach of condition of reasonable care under the policy;
- (iv) despite repeated reminders by the surveyor no documents were provided to assess and quantify the loss till the date of submission of his report; and
- (v) no details were submitted regarding the recovery of Rs 18 lakhs which could be adjusted against the claim since it relates to loss from the same premises.

7. The State Commission’s findings are as under:

4. Component insurance company carried out the survey through their authorized surveyor of the incident. **The surveyor observed that there was a clear breach of the terms and conditions of the policy as the insurer complainant company did not disclose full facts about the ownership of the godown premises which was on share basis with the sister concern of the complainant company, namely, Western Steel and Engineering and the loss of goods reported was taken place from the premises by the said sister concern. The godown premises were left unattended for the period of 94 days consecutive days and night commencing from 05.06.2001 till the date of loss as required under the policy condition. There is no rebuttal evidence led by the complainant against this part of report of surveyor. Moreover, the required documents pertaining to the insured’s books of accounts, records, claim information were not submitted by the complainant for verification to substantiate the alleged loss. This observation is also not rebutted by leading documentary evidence by the complainant.**

5. Submission of the Learned Advocate of the complainant that full facts about ownership of godown were revealed and also adequate measures of protecting the godown were deployed is not acceptable for want of any documentary evidence. **Crucial point remains unanswered by the complainant especially when it is their case that by breaking/opening the window of the godown theft continued to occur in respect of insured goods is not acceptable in as much as the security measures could have been deployed after noting the fact that the window of the godown was broken open to facilitate the theft of insured goods.** It is also not established by the complainant as to how the insured stored goods were serially burgled and how the loss to the extent of Rs 8929703 .65 was arrived at.

(Emphasis supplied)

Thus, in light of the findings that the godown in question was shared with a sister concern and that the premises were not put under watch and ward and that the goods were serially burgled, which have not been rebutted, the impugned order has dismissed the complaint.

8. The moot issue in this case is whether the State Commission erred in interpreting Policy conditions as contended by the appellant.

9. As per the terms and conditions of the Policy, it is clear that as per Condition No. 12, due observance and fulfilment of the terms, conditions and endorsement shall be a condition precedent to any liability of the respondent Insurance Company. General condition No. 3 specifically provides as under:

3. **REASONABLE CARE:** The insured shall take all reasonable steps to safeguard the property insured against accident, loss or damage.

General condition No. 4 (c) also provides that:

4.(c) The insured shall render to the Company all reasonable information, assistance and proofs in connection with any claim hereunder.

As per General Condition 3, a duty was cast upon the appellant to take “reasonable care” to safeguard the property which it has admittedly not done, as it depended upon the security of the Association. The appellant was also under obligation to provide details to the surveyor in finalizing the claim. Admittedly, he has provided information under the Companies Act and business policy whereas the surveyor sought details pertaining to the stocks in terms of quantity, value and stock position.

10. It has been held by the Hon’ble Supreme Court in *Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr.*, in Civil Appeal No. 4487 of 2004 decided on 24.08.2009, (2009) 8 SCC 507 that Section 64 UM of the Insurance Act, 1938 mandates that a surveyor be appointed to assess the loss in all claims of Rs 20,000/- and above. It has been held that:

23. Section 64 UM(2) of the [Insurance Act](#), 1938, reads that ‘No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or

intimates to an insurer at any time after the expiry of a period of one year from the commencement of the [Insurance \(Amendment\) Act](#), 1968 shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report on the loss that has occurred from a person who holds a license issued under this Section to act as a surveyor. In our considered view, the [Insurance Act](#) only mandates that while settling a claim, assistance of surveyor should be taken but it does not go further and say that the insurer would be bound whatever the surveyor has assessed or quantified, if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured. In the present case, the insurer has stated in the counter affidavit filed before the National Commission and even before us, why the appointment of second Surveyor was necessitated and also has given valid reasons for appointing second Surveyor and also has assigned valid reason for not accepting the report of Joint Surveyor. The correspondence between the insurer and the Surveyors would indicate the particulars differed by the insurer for differing with the assessment of loss made by the Surveyors. **The option to accept or not to accept the report is with the insurer. However, if the rejection of the report is arbitrary and based on no acceptable reasons, the courts or other forums can definitely step in and correct the error committed by the insurer while repudiating the claim of the insured. We hasten to add, if the reports are prepared in good faith, due application of mind and in the absence of any error or ill motive, the insurance company is not expected to reject the report of the Surveyors.**

(Emphasis added)

While a surveyor's report has been held to not be the final word in the Apex Court's judgment in *New India Insurance Co. Ltd. Vs. Pradeep Kumar*, (2009) 7 SCC 787 decided on 09.04.2009 it has been laid down that the report be established to be arbitrary or perverse. The Appellant has failed to do so on the basis of evidence. On the contrary, the respondent has argued that appellant failed to exercise reasonable care in safeguarding the insured godown. The respondent's contention that nearly 15 truck loads of material was burgled from the godown based upon the value of the loss claimed has also not been countered by the appellant with any evidence as to the stock position as per audited records. The State Commission has returned the findings based on the evidence led before it. The Appellant has manifestly failed to bring documentary evidence on record. For these reasons the impugned order cannot be interfered with.

11. In view of the foregoing discussion, I do not find any grounds that warrant any intervention of this Commission in the impugned order. The appeal is dismissed as without merits. Parties shall bear their own costs. Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA
PRESIDING MEMBER**