NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 223 OF 2022

(Against the Order dated 21/12/2021 in Complaint No. 638/2018 of the State Commission Haryana)

1. UNITED INDIA INSURANCE CO. LTD.
DELHI REGIONAL OFFICE KANCHENJUNGA BUILDING,
8TH FLOOR, BARAKHAMBA ROAD,
NEW DELHI - 110001 ....Appellant(s)

Versus

1. M/S. KHADI UDHYOG
THROUGH SECRETARY. SHRI RAJESH SINGLA,
JATHLANA, JAGADHARI ROAD, VILLAGE - MANGLAI,
AMBALA - 133001,
HARYANA ....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT :

Dated : 10 May 2024

ORDER

For the Appellant (s) : Mr. Maibam N. Singh, Advocate

For the Respondent(s) : Ms. Shimpy Arman Sharma, Advocate and

Ms. Yashashvi Shrivastva, Advocate

ORDER

1. This First Appeal under Section 51 of the Consumer Protection Act, 2019 (in short, the 'Act') is in challenge to the order dated 21.12.2021 of the State Consumer Disputes Redressal Commission, Haryana, Panchkula (in short, the 'State Commission') in Complaint Case No. 638 of 2018 allowing the complaint.

2. The delay of 67 days in the filing of this complaint is condoned for the reasons stated in the application for the condonation of delay in the interest of justice.

3. Briefly put, the relevant facts of the case are that the Respondent/ Complainant had availed a Standard Fire and Special Perils Policy (the 'Policy') covering the risk for machinery, stocks and building from the appellant insurance company for the period 23.12.2015 to 22.12.2016. In the intervening night of 29-30.04.2016 a fire broke out in the insured premises allegedly due to a spark from the generator. The Fire Brigade was informed and the fire was controlled after considerable effort. The Appellant/Insurance Company was intimated about the incident on 30.04.2016. The Appellant appointed Royal Associates, Investigating and Detective Agency to investigate the alleged incident of fire and cause of fire. On the basis of evidence gathered, vide report dated 02.08.2016, the investigator opined that the Respondents did not store large quantities of goods in the insured godown since the cotton purchased was distributed to workers in villages to convert it into cotton yarn and cotton to prepare products such as *dari*s (rugs) and shawls which were thereafter sent to showrooms. Hence the question of goods being kept in the godowns did not arise and during the night the godown was kept closed with no guard present. The cause of the fire which was noticed at around 9:00 AM on 30.04.2016 was not known. According to the investigator, there was no electricity connection in the godown and the DG set was also not working on 29.04.2016 on account of it being a holiday. It is also stated that intimation of fire to the fire station was delayed since it was recorded at 11.10 AM. According to the report of the investigator, although the insured had claimed that cotton yarn had got burned in the fire, according to the workers only waste cotton had been destroyed. In view of the contradictory statements, the investigator in his report dated 02.08.2016 stated that it appeared that the loss in the fire was only of waste cotton in small quantity.

4. As per the final report of the Surveyor, Shri Vishal K. Aggarwal, submitted on 09.03.2017 it was stated that no remains of cotton yarn was found on the premises and the loss was of old cotton kept in the affected sheds. Fire marks on the side walls of the affected godown was up to the height of one foot. While remains of cotton waste were found, no yarn was found to have been burnt. The report also stated that in the absence of any purchase bills, stock, manufacturing and its process flow records and transportation details, the exact assessment of loss could not be done.

5. The cause of fire was not established since it was reported to be a spark from the DG set which did not appear to be the case. According to the investigator and the surveyor, since the cotton yarn is stored in a wound manner, it could not have been completely damaged within a few hours. Hence, it was concluded that the loss was not covered under any of the specific perils mentioned in the Policy issued to the insured. It was stated that the insured had submitted a wrong and inflated claim of ₹56,00,000/- which amounted to misrepresentation and concealment of facts which was a breach of policy conditions. On the basis of the Investigation Report and Final Survey Report of the surveyor, the Appellant repudiated the claim on the grounds that (i) details of account books and purchase bills had been withheld to inflate the loss/damages under the insurance policy; (ii) the cause of fire had not been established since there was no electrical connection in the godown and it being an off day in the unit the generator set would not have been in operation; (iii) the alleged stock of 28-29 tonnes of cotton/cotton yarn could not have been reduced to ashes within such a short or even been controlled in the short period of time; (iv) in view of there not being any fire marks above the height of one foot, the alleged loss to structure of the building was not possible; and (v) the scrap of the machine, stands and iron bars, etc. were held to have no relevance to the claim. The claim was therefore repudiated on the ground of manipulation under General Condition no. 8 relating to fraudulent claims or false declarations of loss/damage due to willful connivance of the insured.

6. The Respondent filed a Consumer Complaint No. 638 of 2018 before the State Commission seeking settlement of its claim of ₹60 Lakh due to loss incurred as a result of a fire which originated from the generator on the premises. The State Commission decided the complaint on contest by the Appellant who filed its written statement wherein it was stated that the report of the IRDA licensed Surveyor and Loss Assessor under section 64UM of the Insurance Act 1938 been duly considered before the repudiation of the claim. It was also argued that the Complainant/Respondent herein was a trust which did not fall under the definition of 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986. The State Commission vide order dated 21.12.2021 allowed the complaint directing the Insurance Company Appellant to pay 75% of the claim of ₹56,94,238/- i.e. ₹42,70,678/- along with interest at 9% p.a. from the date of the fire till payment. This order is impugned before us.

7. We have heard the Learned Counsel for the parties and given careful consideration to the material on record.

8. It is the case of the Appellant that the State Commission erred in directing the Appellant to settle the claim on non-standard basis, i.e. @ 75% of the claim which was contrary to the report of the investigator and the surveyor on which basis the Appellant had repudiated the claim. It was submitted that the State Commission erred in holding that since the fire was extinguished, the claim be settled on non-standard basis. It was contended that an assessment by a licensed surveyor as per section 64UM of the Insurance Act cannot be set aside. It was also urged that the amount assessed by the surveyor was not for the purpose of settlement of claim as it was not held to be payable. The order of the State Commission was stated to be erroneous in that it had failed to appreciate that there was no electricity connection and the DG set was also not working on 29.04.2016, on which day the unit was not working. Hence the cause of the fire was not established and the submission of the Respondent that the fire was a result of the DG set was a false declaration which was not admissible under General Condition No. 8 of the Policy. The State Commission also ignored the evidence at the site which was noted by the Investigator and the Surveyor in respect to there being evidence of burnt residue of cotton waste but not cotton yarn which should have been evident since 28-29 tonnes are claimed as loss by the insured. It was also argued that the impugned order failed to provide reasons for disagreeing with the report of the Surveyor. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Sri Venkateswara Syndicate Vs. Oriental Insurance Co. Ltd. & Anr.,*** (2009) 8 SCC 507 which held that Surveyors are appointed by the insurance company under the provisions of the Insurance Act and their reports are to be given due importance and there should be sufficient grounds not to agree with the assessment made by them. Reliance was also placed on the Hon'ble Supreme Court's judgement in ***Khatema Fibres Ltd. Vs. New India Assurance Co. Ltd.***, Civil Appeal No. 9050 of 2018, (2021) 9 SCR 268 which laid down that

> A Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor's report to forensic examination of its anatomy, just as a civil court could do. Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and

> once it is found that the report is not based on *adhocism* or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop.

It was therefore submitted that the appeal be allowed.

9. On behalf of the Respondent it was submitted that the appeal was filed beyond the stipulated period of 30 days and should therefore be dismissed on ground of limitation. It was also submitted that even though the Respondent was a Trust, in view of the fact that in ***Administrator, Smt. Tarabai Desai Charitable Opthalmic Trust Hospital, Jodhpur Vs. Managing Director, Supreme Elevators India Pvt. Ltd. & Ors.,*** 2019 SCC Online NCDRC 570 wherein it was held by the Hon'ble Supreme Court on 04.10.2019 that

> In the circumstances we find it difficult to accept that a "trust" would not come within the definition of "consumer". In our view, the issue requires to be revisited and the matter requires reconsideration. We, therefore, request the Hon'ble Chief Justice of India to constitute a bench of such strength as the Hon'ble Chief Justice of India may consider proper.

10. On merits, it was argued that as a registered Trust, the Respondent procured cotton produced from Khadi warehouses and local centres for distribution to villagers and thereafter cotton yarn was obtained from them for further allotment to weavers for the weaving of specific products. A Standard Fire and Special Perils insurance policy had been obtained by it covering building for ₹30,00,000/-, stock for ₹1,00,00,000/- and machinery for ₹2,00,000/-. All the goods related to the insured trade and the entire building, including five sheds, boundary walls, gate, etc. above plinth level was insured for a premium of ₹26,416/-. The fire on the night of 29/30.04.2016 was extinguished by fire tenders from the Fire Brigade, Ambala and the workers in the insured premises of Khadi Udyog, Jathlana. The loss of stock was estimated as ₹56,94,238/- and all documents such as audit report, balance sheets, stocks, storage books maintained by the respondent were submitted to the appellant vide letter dated 08.06.2016. An expense of ₹3,06,000/- had been incurred for the clearing of the debris on account of the fire. Therefore, a total loss of ₹60,00,000/- had been claimed which was rejected illegally by the Appellant. It was submitted that the impugned order itself notes that the report of the surveyor did not inspire any confidence and was not considered reliable. It was also submitted that the order rightly pointed out that the Appellant, in collusion with the surveyor, had concocted the facts in order to repudiate the claim and Clause 8 of the General Condition of the policy was arbitrarily invoked to deny a rightful claim. It was vehemently denied that the debris on site was remains of cotton waste only and no yarn was burnt. It was contended that the investigator and the survey submitted concocted and fabricated reports in collusion with the Appellant Insurance Company and it was prayed that the appeal be dismissed.

11. The rival contentions of the parties have been considered. The preliminary issue of limitation has been considered in light of the directions of the Hon'ble Supreme Court in ***Suo Moto Writ Petition No. 03/2020*** whereby the period of limitation was extended till 28.02.2022 on account of the Covid 19 pandemic and by 90 days thereafter. As the impugned order is dated 21.12.2021, the present appeal is covered under this order. The contention of the Respondent therefore does not sustain.

12. The finding of the State Commission on the preliminary issue of eligibility raised by the Appellant is that the Respondent, although a "Trust" was covered as a 'person' under the Act despite the issue of a "Trust" having been referred to a larger Bench.

13. On merits, the State Commission has held that the Surveyor's Report did not inspire confidence and is not reliable and it has been held as under:

> Though the surveyor was deputed by the insurance company but the reasons are best known to him as to why the surveyor was not associated with the proceedings and **it appears that he was having some ulterior motives by not joining the complainant** and assessed the major loss of Rs 56,94,238/- for loss to cotton yarn (*soot*) whereas as per the allegations/averments taken on behalf of the complainant on the relevant date of causing of the fire, there was a stock available more than Rs 60,00,000/- as per the Balance Sheet Ex.-C-10 prepared by the Chartered Accountant. The surveyor has tried to create a misnomer since there was a loss of cotton yarn *(soot)* which has been referred in the balance sheet prepared by the Chartered Accountant. **Since there was a loss of the cotton yarn *(soot),* cotton etc. whereas it is quite possible that the bills of these commodities might have burned in the fire set out in the premises belonging to the complainant** but there was no reason to discard the balance sheet, which has been prepared by the qualified chartered accountant. **The reasons given by the surveyor to display the version of the complainants appears to be not applicable as he has given imaginary reasons that there was marks of the fire only up to 2-3 feet which itself reflects that the surveyor was biased against the complainant.** He has specifically referred to generator installed in the premises of the complainant that it was not working, even a small instinct of the fire can cause a loss to the generator which may not be operative at the time of visiting of the surveyor. This Commission is restraining to comment upon the work and conduct of the surveyor but it is merely advice to him that the business people are facing great hardship due to heavy financial losses and even insurers are adopting such a hard yardstick to assess the actual loss if caused to the assured. **The report submitted by the surveyor Ex.-C-12 does not inspire any confidence and is not worth reliance and reliable.** The appellant insurance company is liable to indemnify the policyholder when the insurer has obtained policy for the loss cost to the insurer. The respondent submitted that even assuming that there was a breach of condition of the insurance policy the appellant insurance company ought to have settled the claim on non-standard basis. **The insurance company cannot repudiate the claim in toto in case of loss of the cotton yarn *(soot),* cotton,** etc. It is also admitted that as per the surveyor report the fire was extinguished. In a case of this nature the Insurance Company in our view should settle the claim on non-standard basis instead of paying the entire claim amount assessed by the claimant. **In the interest of justice and equity, thus the amount of the compensation is assessed on non-standard basis.** The complaint is allowed and we direct the insurance company- OPs to pay 75% of Rs 56,94,238/- i.e. Rs 42,70,678/- to the complainant along with interest on that amount at the rate of 9% per annum from the date of occurrence till the date of payment. The amount as allowed above is directed to be paid within stipulated period of 45 days and in case of non-compliance, the complainant is further entitled to get the interest at 12%

per annum for the defaulting period. The complainant is also entitled of Rs 1,00,000/- for compensation for mental agony and physical harassment. In addition, the complainant is also entitled of Rs 55,000/- as litigation expenses. It is also made clear that for non-compliance the provisions enshrined under section 72 of the CP Act would also be attractable.

[Emphasis added]

14. From the foregoing it is apparent that the State Commission has concluded that the report of the surveyor, on the basis of which the claim has been repudiated, cannot be accepted. While a report of a surveyor is a mandatory requirement in claims exceeding ₹20,000 as per Section 64UM of the Insurance Act and it has been held by the Hon'ble Supreme Court that a surveyor's report is an important document in ***Sri Venkateshwara Syndicate*** (supra), it has also been laid down by the Apex Court that a surveyor's report is not the final word or so sacrosanct that it cannot be departed from if it is found to be perverse and arbitrary in ***New India Insurance Co. Ltd. Vs. Pradeep Kumar***, (2009) 7 SCC 787. In the instant case, the finding of the State Commission is that the report of the Surveyor is not reliable for the reason that (a) the report did not consider that the cause of the fire could have been the DG set and (b) the surveyor did not engage with the respondent in order to determine the extent of loss and that despite the balance sheet audited by the Chartered Accountant being made available, the same was not considered. For a surveyor's report to be declared unacceptable, it is essential that it should be shown to be perverse and arbitrary. As per the finding of the State Commission, the conclusion that the surveyor's report is perverse is merely based on the ground that the audited statement of stock was available but was not considered. However, there are other issues which also need consideration, including the determination of the cause of fire since the DG set was not in use on 29.04.2016, the evidence on site such as burnt residue of the cotton yarn for which the claim is essentially filed. No evidence has been brought on record to prove that nearly 28-29 tonnes of cotton yarn was in the godown. The finding of the State Commission that it was likely that the records were burnt in the fire is an assumption and presumption that has not been pleaded by the respondent/complainant. For these reasons, the order of the State Commission is liable to be set aside. Further, in terms of Khatema Fibres (supra) the State Commission should not have subjected the surveyor's report to forensic examination and assessed the claim on Non Standard basis.

15. In light of the discussion above, we find merit in the submissions of the appellant. The appeal is accordingly allowed. Impugned order is set aside. Parties shall bear their own costs.

16. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER