
2012 1 CPJ 527

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Harishankar Sukla

APPELLANT

Vs

New India Assurance
Co. Ltd. And Anr.

RESPONDENT

Date of Decision: Jan. 24, 2012

Citation: 2012 1 CPJ 527

Hon'ble Judges: ASHOK BHAN J.

Judgement

1. COMPLAINANT /Petitioner herein has filed this Revision Petition against the final judgment and order dated 20.6.2007 passed by the Orissa

State Consumer Disputes Redressal Commission, Cuttack (in short, "the State Commission") in appeal No. 513/05 whereby the State

Commission partly allowed the appeal filed by the Respondent Insurance Company and modified the order of the District Forum by reducing the

compensation from Rs. 8,88,706 to Rs. 6,85,280. Rest of the order of the District Forum was upheld.

Facts:

Petitioner/Complainant is a partner of the firm, M/s. Sharda Agency which deals with pan masala and other related item. The said firm availed cash

credit facility from the Punjab National Bank, Jharsuguda against hypothecation of the stock. The Bank had taken two policies for a sum of Rs.

12,00,000 and for Rs. 4,00,000 for two different business premises of the Petitioner, i.e., retail outlet at Bus Stand and shop -cum -godown at

Main Road, Jharsuguda. On 10.5.2002, during the currency of the policies, a fire broke out in shop -cum -godown of the Petitioner. The fire

incident was intimated to the Insurance Company and the bank. On the basis of report of the preliminary Surveyor, Lokesh Kumar Nayak

appointed by the Insurance Company, Petitioner submitted a claim of Rs. 14 lakh along with the documents with the Respondent. Thereafter, the

Insurance Company appointed Shri A.K. Tripathi, Surveyor to investigate and assess the loss suffered by the Petitioner. Shri A.K. Tripathi,

Surveyor submitted his report on 10.3.2003 assessing the loss to the tune of Rs. 8,88,706. Another Surveyor, Sanjeeb Kumar and Associates

was appointed by the Insurance Company for re -survey/re -assessment of the loss. The said Surveyor submitted their report on 28.4.2004

assessing the loss at Rs. 6,85,280. Insurance Company offered a sum of Rs. 6,85,280 as full and final settlement to the Petitioner which he refused

to accept. Aggrieved by this, Complainant filed the complaint before the District Forum.

2. RESPONDENTS , being served, entered appearance and filed their reply resisting the complaint on the grounds that the amount of Rs.

6,85,280 was offered to the Complainant on the basis of the report of the third Surveyor who submitted his report on detailed investigation; that

the report of the Surveyors cannot be challenged; that the matter cannot be decided in summary jurisdiction of the Consumer Fora as voluminous

evidence is to be adduced and the same be referred to the civil Court.

District Forum allowed the complaint and directed the Respondent Insurance Company to pay a sum of Rs. 8,88,706 to the complainant as

assessed by the second Surveyor along with interest @ 9% p.a. from 1.7.2003, i.e., after three months from the date of report of the Surveyor.

Rs. 25,000 were awarded as compensation and Rs. 5,000 were awarded as costs.

District Forum came to the conclusion that there was no

reason for the Insurance Company for appointment of the third Surveyor and not to accept the report submitted by the second Surveyor, Sri A.K.

Tripathy.

3. RESPONDENT , being aggrieved, filed the appeal which has been partly allowed by the State Commission. Relying upon the report of third

Surveyor, Sanjeeb Kumar and Associates, the State Commission modified the order of the District Forum and reduced the compensation from Rs.

8,88,706 to Rs. 6,85,280 Rest of the order of the District Forum was upheld.

Heard the learned Counsel for the parties at length.

4. LEARNED Counsel appearing for the Petitioner contends that the law is well settled in case of insurance claims that more than one Surveyor

should not be appointed by the Insurance Company until and unless there is apparent error in the first Surveyor's report; that the Respondent

Insurance Company has not given any reason to discard the report of Shri A.K. Tripathi and to appoint the another Surveyor, M/s. Sanjeeb

Kumar and Associates; that the State Commission erred in relying upon the report of the third Surveyor and holding that the two premises, i.e.,

Bus Stand and Main Road were belonged to one person/firm though the Bus Stand was in the name of Shiva Shankar Pan Masala whereas the

shop -cum -godown at Main Road which got destroyed due to fire, was in the name of the Sharda Agency.

As against this, learned Counsel appearing for the Respondent Insurance Company submits that the third Surveyor, M/s. Sanjeeb Kumar and

Associates had rightly considered both the locations for assessment of the claim because the premises at Bus Stand was a retail outlet dealing in

same and similar items belonging to the insured and the same were in existence at the time of fire at M/s. Sharda Agency, Main Road location; that

most of the bills were made in the name of M/s. Sharda Agency Bus Stand and hence it was beyond doubt that the purchases are not for both the

locations; that Mr. A.K. Tripathi, Surveyor assessed the loss on the basis of the books of accounts in total and had considered the salvage of only

one location, i.e., Main Road without knowing that the goods insured stocks was available in the other location, i.e., the Bus Stand.

5. SURVEYOR , Shri A.K. Tripathi submitted his final report on 10.3.2003 assessing the loss at Rs. 8,88,706 as under:

6. SURVEYOR , Sanjeeb Kumar and Associates though agreed with the second Surveyor on the figure of loss at Rs. 9,13,706 but recommended

the claim to be settled at Rs. 6,85,280 against Rs. 8,88,706 recommended by the second Surveyor. According to the third Surveyor, Mr. Tripathi

had assessed the loss on the basis of the books of accounts in total and considered the salvage of only one location, i.e. Main Road without

knowing the goods insured or the stocks available in the other location i.e. at Bus Stand which would have some salvage and the assessed loss

would have been reduced. The sum of Rs. 6,85,280 was arrived by the third surveyor adopting the following formula:

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possible, since the bus stand location deals grocery items along with the items that of main road location so it will be unfair,

Both the premises are almost of the same size.

The bus stand location is provided with wooden racks to store grocery items and left with legs open space for stocking the Pan Masala, Zarda,

etc, in bulk, whereas the main road location is a god own without any rack and can accommodate the goods in bulk so this is also not justifiable

As per today"s situation the shop at bus stand location must be having stocks of worth Rs. 4 to 5 lakh. It is a mixture of grocery and insured

goods, without pre -prejudice the same must be the position as on the date of the fire so deriving any basis by distinguishing insured goods and

other goods humanly not possible.

This method looks to be reasonable and logical. Alternatively, since no other method shall give a logical conclusion, this method needs to be

applied

Therefore, the liability of the insurer to the insured amount to Rs. 6,85,280 (Rs. 9,13,706/16 x 12) (Subject to Policy excess as applicable.

Sanjeeb Kumar & Associates, the subsequent Surveyor erred in reaching the conclusion that the earlier Surveyor, Tripathi had taken into

consideration the books of accounts of both the places, i.e. Bus Stand and Main Road while assessing the loss suffered by the Petitioner. A

perusal of the report of Mr. Tripathi, would show that he had nowhere mentioned that Accounts Books of both the places had been taken into

consideration by him to assess the loss. State Commission has committed factual error in arriving to the conclusion that the earlier Surveyor had

taken into consideration the Account Books of both the places, i.e., Bus Stand and Main Road while assessing the loss suffered by the Petitioner.

We agree with the contention raised by the learned Counsel for the Petitioner that there was no reason for the Insurance Company to dis -believe

the report of Tripathi and to appoint another Surveyor. Section 64 -UM of the Insurance Act, 1938 has been interpreted as under:

There is no prohibition in the Insurance Act, 1938 for appointment of second Surveyor by the Insurance Company, but while doing so, the

Insurance Company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.

Scheme of Section 64 -UM particularly, of Sub -sections (2), (3) and (4) would show that the insurer cannot appoint a second Surveyor just as a

matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent

defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint the second,

Surveyor or Surveyors till it gets a report which would satisfy its interest. There must be sufficient ground to disagree with the findings of

Surveyor/Surveyors. The Insurance Act only mandates that while settling a claim, assistance of a Surveyor should be taken but it does not go

further and say that the insurer would be bound by 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.

The proviso to Sub -section (2) of Section 64 -UM retains the right of the insurer to settle a claim for an amount different from that assessed by the

Surveyor. This proviso impliedly permits an insurer to obtain a second or further report where considered appropriate or expedient in the

circumstances of a case, based upon which the claim could be settled for a different amount than as assessed earlier. Surveyor/Surveyors are

appointed by the Insurance Company under the provisions of the Insurance Act and their reports are to be given due importance and one should

have sufficient grounds not to agree with the assessment made by them. The Insurance Company cannot go on appointing Surveyors one after

another so as to get a tailor -made report to the satisfaction of the officer concerned of the Insurance Company; if for any reason, the report of

Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. The option to accept or not to accept the report is

with (sic) 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, with 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.

7. HON "ble Supreme Court in the case of Sri Venkateswara Syndicate v. OIC, : II (2010) CPJ 1 (SC)=II (2010) SLT 664=(2009) 8 SCC

507, has held that the Insurance Company cannot appoint second Surveyor unless the report submitted by the earlier Surveyor suffers with some

inherent defects. Para 33 of the judgment reads as under:

33. Scheme of Section 64 -UM particularly of Sub -sections (2), (3) and (4) would show that the insurer cannot appoint a second Surveyor just

as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent

defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint the second

Surveyor or Surveyors till it gets a report which would satisfy its interest Alternatively, it can be stated that there must be sufficient ground to

disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act, 1938 for appointment of second Surveyor by the

Insurance Company, but while doing so, the Insurance Company has to give satisfactory reasons for not accepting the report of the first Surveyor

and the need to appoint second Surveyor.

8. IN the present case, Respondent has not placed any material on record to show that the report submitted by Tripathi, earlier Surveyor suffered

from any inherent defects or any material point ought to be considered was not considered by him or the report is arbitrary, excessive, and

exaggerated. Surveyor, Tripathi has considered all the aspects in his report and recommended the loss to be settled at Rs. 8,88,706. Insurance

Company could not appoint the second Surveyor without recording reasons for not accepting the report of Tripathi. Though the District Forum

had ruled out the report of Sanjeeb Kumar and Associates and held that the Insurance Company could not appoint the second Surveyor without

rejecting the report of earlier Surveyor, the State Commission has not dealt with this point at all. For the reasons stated above, we allow the

Revision Petition, set aside the order of the State Commission and restore the order of the District Forum. The Respondent company shall comply

with the order within four weeks from the date of receipt of a copy of this order. If any amount had already been paid to the Complainant the same

will be adjusted against the amount payable by the Insurance Company.