

## ORIENTAL INSURANCE CO. LTD Vs M/S R.P. Bricks

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** May 15, 2013

**Citation:** 2013 0 NCDRC 363 : 2013 2 CPJ 613

**Hon'ble Judges:** ASHOK BHAN , VINEETA RAI J.

**Advocate:** RAHUL SHARMA , UZMA ASHRAF

### Judgement

1. ORIENTAL Insurance Co. Ltd., Appellant herein and Opposite Party before the M.P. State Consumer Disputes Redressal Commission,

Bhopal (hereinafter referred to as the State Commission), have filed the present First Appeal against the order of that Commission which had

allowed the complaint of M/s R.P. Bricks, Original Complainant before the State Commission and Respondent herein.

2. FACTS of the case are that Respondent/Complainant-M/s R.P. Bricks, which is a proprietorship concern of one Smt. Rukhsana Parvin, was a

unit manufacturing hand-made burnt bricks from mud in Village Tapra Pathari, Tehsil and District Raisen, M.P., from the year 2004.

Respondent/Complainant had obtained a Standard Fire and Special Perils Policy (Material Damage) from the Appellant/Insurance Company for a

period of one year from 21.05.2004 upto 20.05.2005 for Rs.1 Crore against any loss caused to the stock of green bricks, finished bricks and the

kiln by storm, tempest, cyclone, flood and inundation. It was contended that due to heavy rains on the evening of 13.06.2004, heavy damage was

caused to both green and finished bricks as also the kiln. An intimation of the loss was sent to the Appellant/Insurance Company by registered post

on 15.06.2004. Appellant/Insurance Company initially appointed Surveyor-Shri S.K. Kansal to assess the loss, who after conducting a preliminary

survey of the area vide his report dated 25.06.2004 expressed inability to continue with the assignment. Appellant/Insurance Company thereafter

appointed another Surveyor-Shri V.K. Gupta. Shri Gupta vide his report dated 10.06.2005 confirmed the damage to the insured stocks/kiln at

Rs.31,77,655/- as against Respondent/Complainant 's claim of Rs.68,62,922/-. He, however, concluded that the loss was caused by normal

monsoon rains and not by floods and, therefore, the claim was not covered by the insurance policy. On the basis of this report, the

Appellant/Insurance Company repudiated the claim vide letter dated 20.01.2006. Being aggrieved by this repudiation, Respondent filed a

complaint before the State Commission on ground of deficiency in service in wrongly repudiating a genuine claim covered under the insurance

policy and requested that Appellant/Insurance Company be directed to pay it Rs.68,62,922/- being the actual damage caused, Rs.2,00,000/- for

mental agony and harassment and any other compensation as deemed appropriate.

Appellant/Insurance Company on being served filed a written rejoinder refuting the allegation of deficiency in service and denied that the claim was

wrongly repudiated. It was stated that on scrutinizing the claim papers submitted by the Respondent/Complainant and the detailed survey report of

M/s V.K. Gupta, Surveyor, it was confirmed that the rainfall on the relevant dates being 13.6 ml only no flood or inundation was caused in the

area. While admittedly there was some damage to the insured stocks/premises, this was because of monsoon rains which was not an insured peril

and was a natural phenomenon, for which precaution has to be taken by the owners. It was also submitted that as per the insurance policy, the

claim could have been indemnified only if the loss was due to storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation. In the

instant case admittedly the loss was not due to any of the above reasons and the claim based on the report of the Surveyor was rightly repudiated.

3. THE State Commission after hearing the parties and on the basis of evidence produced before it partly allowed the complaint by observing as

follows :

6. Surveyor Shri Gupta as also the O.P. - Insurance Company were of the view that the rains on the relevant days were to the tune of 13.6 mm

(1.25 inches) and that there was no flood or inundation caused in the area. We are afraid, the surveyor and the officers of the O.P. - Company

seem to have misread the report. The report consists of two limbs. The first part pertains to the extent of rains as recorded at the District/Tehsil

Headquarter, Raisen while the second part pertains to the rains experienced on 13th and 14th of June, 2004 at village Tapra Pathari where the

subject insured was situated. If we go by the first part of the report, there were no rains on 13th and 14th. It was on 15th of June 2004 that 13.6

mm rains were recorded. However, in village Tapra Pathari there have been heavy rain fall on 13th and 14th of June 2004 creating flood like

situation. It is true that no water body like river or pond was situated in the nearby area of the complainant "s unit, but, that by itself is no ground to

conclude that there was no flood or inundation. In fact, both these terms flood and inundation are synonymous which as per Chamber "s Dictionary

means "overflowing". As per Webster's Comprehensive dictionary "inundation" means a flood, a condition of super abundance. Words

inundate, flood, overflow are treated as synonyms. 7. It will be thus seen that flood or inundation does not mean that there should be flood in any

nearby river or water pond etc. A flood or inundation may take place even in plains due to heavy rains. The report dated 27.07.2004 of the

Tehsildar clearly revealed that on 13th and 14th of June, 2004 there were heavy rains in village Tapra Pathari creating flood situations in the area.

In any case the loss caused by monsoon rains cannot be treated on different footing from the loss caused by flood inundation. As noted by the

surveyor, a kiln is always situated in open and the work of preparation of bricks is also carried out in open fields. It was, therefore, wrong on the

part of surveyor and opposite party-company to say that the loss caused by rains was not covered by the policy. The opposite party-company in

our considered view was liable to compensate the loss as assessed by the surveyor.

Regarding the compensation, the State Commission observed that in her first letter dated 15.06.2004, Respondent/Complainant herself had

assessed the loss at Rs.35,00,000/- only and keeping in view this fact and the detailed report of the Surveyor, who had assessed the total loss at

Rs.31,77,655/-, the subsequent claim of Rs.68,62,922/- sought by Respondent/Complainant was highly exaggerated. The State Commission,

therefore, directed the Appellant/Insurance Company to pay the Respondent/Complainant Rs.31,77,655/- with interest @ 6% per annum from the

date of repudiation i.e. 09.11.2005 till payment as also Rs.5000/- as costs.

4. BEING aggrieved the present appeal has been filed.

Learned Counsel for the Appellant/Insurance Company was present. None appeared for the Respondent/Complainant. However, since service

was complete, the case was heard ex-parte.

5. LEARNED Counsel for the Appellant/Insurance reiterated the contentions made before the State Commission and stated that an insurance

claim has to be construed strictly in terms of the insurance policy and in the instant case monsoon rains admittedly were not specified as one of the

perils, against which the insurance policy had been taken. It was also submitted that as per the dictionary meaning the term "inundation" means

overflow and flood. In the instant case, the damage was possibly due to heavy rains and not because of any flood or overflow. Further, the report

of the Surveyor is an important document and has to be relied upon unless contradicted or controverted by more plausible evidence. In the instant

case, the State Commission erred in not giving due credence to the report of the Surveyor, which clearly confirmed that the loss occurred due to

monsoon rains on 13th and 14th June, 2004 and not because of storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation as

covered under the insurance policy and the appeal, therefore, may be allowed.

6. WE have heard learned counsel for the Appellant/Insurance Company and have carefully gone through the evidence on record. The fact

pertaining to the Respondent/Complainant taking Standard Fire and Special Perils Policy (Material Damage) to cover the stocks of green bricks,

finished bricks and the kiln from the Appellant/Insurance Company is not in dispute. As stated by the State Commission in its order, it is also a fact

that heavy rains were recorded in the village where the insured premises/stocks were located on 13th and 14th of June, 2004 creating a flood like

situation as per the report of the Revenue Officer of the area. Further, the Surveyor in its report has not disputed that there was damage to the

stocks as well as to the kiln amounting to Rs.31,77,655/- due to these rains and that he recommended repudiating the claim only on the ground

that the loss occurred due to monsoon rains and not because of flood, inundation or any other peril specified in the insurance policy. We are unable

to accept the above interpretation/contention of the Surveyor/Appellant-Insurance Company. In a number of cases under almost identical

circumstances where claims had been repudiated under the Fire and Special Perils Policy on the ground that the damage caused to the insured

stocks/premises had been caused because of seepage caused due to heavy rains and not due to inundation, floods etc., we had concluded that the

claim was wrongly repudiated since flood/inundation also means outpouring of water. On this analogy loss caused due to seepage following heavy

rains into any part of the insured premises would be covered under the definition of "flood" and "inundation" and the claim should in such

circumstances be indemnified. Some specific judgments wherein we had reached the above conclusions include Bajaj Allianz General Insurance

Co. Ltd. vs. Gondamal Hardy Mal [IV (2009) CPJ 165 (NC)]; New India Assurance Co. Ltd. vs. Dani Mourdhawaj Cold Storage Pvt. Ltd.

(RP No. 4113 decided on 10.02.2012); and Oriental Insurance Co. Ltd. vs. M/s Satharayana Setty & Sons (RP No. 3454 of 2007 decided on

14th March, 2012). In the instant case, since it is not in dispute that the damage was caused by heavy rains entering the premises, we are of the

view that since this was the outcome of inundation around the area, it would be logically covered under the policy even though "seepage" or

heavy rains "may not per se have been listed as one of the perils in the insurance policy. Therefore, following our own judgments, we agree with

the order of the State Commission, which had allowed the Respondent/Complainant's appeal and uphold the same in toto.

The present first appeal is dismissed. Appellant/Insurance Company is directed to pay the Respondent/Complainant sum of Rs.31,77,655/- with

interest @ 6% per annum from the date of repudiation i.e. 09.11.2005 till payment as also Rs.5000/- as litigation expenses.