

## New India Assurance Co. Ltd. Vs NEW GULMARG RESTAURANT

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** June 3, 1994

**Citation:** 1995 2 CPJ 357 : 1995 2 CPR 131

**Hon'ble Judges:** S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

**Final Decision:** Appeal allowed

### Judgement

1. FIRST Appeal Nos. 167 and 183 of 1994 are cross appeals, both being directed against the same order of the District Forum, Gurgaon

allowing the consumer's complaint. This order will govern both of them.

2. THE facts may be noticed from First Appeal No. 183 of 1994 "New India Assurance Co. Ltd. of Chandigarh v. New Gulmarg Restaurant of

Gurgaon. THE respondent concern M/s. New Gulmarg Restaurant had admittedly got their premises insured for a sum of Rs. one lac from the

appellant-insurers for a period of one year with effect from 29th of November, 1991. It was the complainant's case that the theft took place in the

night intervening the 31st of January, 1993 and 1st of February, 1993 in the insured premises and various articles were stolen therefrom. A First

Information Report was lodged with the police authorities and inevitably an insurance claim was presented to the appellant-insurer seeking a sum of

Rs. 70,000/- on account of the losses suffered. THE appellantInsurance Company without loss of time appointed a spot surveyor, and later M/s.

J.D. Gulshan and Company for the final assessment of the loss. It was the complainant's case that the report of the latter was not made known to

her, but to her disagreeable surprise, she received a letter from the Insurer conveying that her claim had been settled for Rs. 5575/-. Aggrieved,

thereby the complaint was preferred.

The appellant-Insurers hotly contested the case, whilst admitting the broad factual matrix of the insurance of the premises. It was the plea that they

had been in no way remiss in their duties and had appointed the surveyors, who after a detailed assessment of the loss had arrived at a figure of Rs.

5575/-. It was pleaded that the insurers were ready and willing to pay the said amount and infact had duly tendered the same. The alternative plea

was that since the dispute related only with regard to the quantum of the assessment, the consumer should resort to the arbitration clause in the

insurance policy. It was the plea that the insured had deliberately exaggerated the loss exorbitantly and the assessment of the surveyors was

reiterated as a correct and fair one.

It would appear that despite the fact that the complaint was contested, the complainant-concern rested itself content with the self serving affidavit

testimony of Smt. Chander Prabha, the proprietor of M/s New Gulmarg Restaurant and relied on documentary evidence in support of their case.

In rebuttal Shri S.K. Wadhwa, the Divisional Manager of the appellant-insurers put in his counter affidavit and primal reliance was placed on the

detailed survey report of M/s J.D. Gulshan and Company dated 15th of September, 1993, the authenticity of which was not challenged on behalf

of the complainants.

3. THE District Forum on an perusal of the same, not only chose to disagree in detail with regard to the assessed loss by the surveyors, but

proceeded to make its own assessment of the value of sweet-meets and other provisions, and equally of the mechanical gadgets like a churning

machine or a Lassi machine, or other items like hot case etc. and arrived at a figure of Rs. 55,000/- therefore. Consequently, the complaint was

allowed and an additional payment of Rs. 49,425/- was ordered in view of the already paid amount of Rs. 5575/-.

Mr. Deepak Suri, the learned Counsel for the appellant-insurers had forcefully contested that the District Forum had completely erred in its

approach and assessment of an insurance case within the consumer jurisdiction. It was argued that the appellants had duly appointed an

independent surveyor and loss assessor and based on its detailed report, had come to a bona fide conclusion with regard to the loss and had

tendered the same. In this context, the plea was that there was not the least deficiency in service and the respondent-consumer if at all could resort

either to arbitration or at best to a Civil Court for any contentious assessment of his claim.

4. THERE is patent merit in the aforesaid submission. It would appear that the District Forum has erred in the larger approach to an insurance

claim in the context of the summary consumer jurisdiction. It is somewhat elementary that the core question in such a situation is whether there has

been a patent deficiency in the insurance services undertaken by the insurers. It is not the province of the redressal agencies under the Act to

assume the role of a loss assessor and compute all the items of the alleged loss and adjudicate on the evaluation of each such item. The District

Forum seems to have slipped into this very basic error. It had chosen in the absence of any adequate material to differ from the detailed

computation of the loss by M/s J.D. Gulshan and Company and not only that had thereafter proceeded to calculate the value of individual articles

allegedly lost and their purported value for arriving at a round figure of Rs. 55,000/- irrespective of the conditions of the policy. This is an exercise

which is neither permissible within the summary jurisdiction nor is it possible to finically compute the value of each item of an insured's claim. The

National Commission has repeatedly observed that where the insurers have on the basis of the assessment of a designated surveyor and loss

assessor come to a bona fide settlement of the insurance claim, then no deficiency in the insurance services can be laid at heir door.

Herein, what deserve particular notice is the detailed survey report of M/s J.D. Gulshan and Company dated the 29th of March, 1993. This runs

into six typed pages. It refers in detail to the assured risk, the manner of the occurrence, the cause thereof, the claim made by the insured, the

action of the police and the verification and liability of the parties, Thereafter the loss of each item has been assessed including or excluding the

salvage of the items and then the figure of Rs. 5575/- has been arrived at. The authenticity of this document was not challenged on behalf of the

complainant and indeed the District Forum itself accepted and referred to the same. We find no adequate ground on the existing record to ignore

and over-ride the said report within the narrow confines of the consumer jurisdiction.

Equally, we are unable to sustain the somewhat summary assessment of each item of the allegedly lost articles by the District Forum. It bears

repetition that this does not appear to us as within the scope of a summary trial in this expeditious jurisdiction.

5. FOR the fore-going reasons, we are clearly of the view that herein there is no patent deficiency in the insurance services undertaken by the

appellant-insurers, which alone can be the foundational base of relief. The order of the District FORum is consequently, unsustainable and we are

constrained to set it aside. We must however, highlight the fact that this would in no way preclude the insured-consumer from either disputing the

quantum of the claim by way of arbitration under the terms of the policy or to resort to the Civil Court for establishing in detail the loss of each item

and equally the precise value be attached thereto.

6. FIRST Appeal No. 183 of 1994 is hereby allowed in the terms aforesaid without any order as to costs.

In view of the above, the First Appeal No. 167 of 1994 preferred by the insured for a further enhancement of the claim to a sum of Rs. 70,000/-

must necessarily fail and is hereby dismissed. The parties are left to bear their own costs herein also. Appeal No. 183/94 allowed and Appeal No.

167/94 dismissed.