

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 429 OF 2017

(Against the Order dated 24/01/2017 in Complaint No. 28/2012 of the State Commission
Rajasthan)

1. DAYARAM MEENA & ANR.

S/O. SH. CHATRULAL MEENA, CASTE-MEENA, R/O.
BILOPA, TEHSIL & DISTRICT, SAWAI MADHOPUR,
RAJASTHAN

2. BABULAL MEENA S/O. SH. CHATRULAL MEENA
CASTE-MEENA, R/O. BILOPA, TEHSIL & DISTRICT
SAWAI MADHOPUR,
RAJASTHAN

.....Appellant(s)

Versus

1. UNITED INDIA INSURANCE CO. LTD. & ANR.
PLOT NO. 20-B, FIRST FLOOR, INDRA COLONY, SAWAI
MADHOPUR,
RAJASTHAN

2. UNITED INDIA INSURANCE CO. LTD.,
THROUGH CHIEF MANAGER/AUTHORIZED OFFICER,
REGISTERED AND HEAD OFFICE:, WHITES ROAD,
CHENNAI,
TAMIL NADU

.....Respondent(s)

FIRST APPEAL NO. 994 OF 2017

(Against the Order dated 24/01/2017 in Complaint No. 28/2012 of the State Commission
Rajasthan)

1. UNITED INDIA INSURANCE CO. LTD.
THROUGH ITS DULY CONSTITUTED ATORNEY
MANAGER, DELHI REGIONAL OFFICE-I, 8 FLOOR
KANCHENJUNGA BLDG. 18 BARAKHAMBHA ROAD
NEW DELHI 110001

.....Appellant(s)

Versus

1. DAYARAM MEENA
S/O. SH. CHATRU LAL MEENA BILOPA, TEHSIL AND
DISTRICT SAWAIMADHPUR
RAJASTHAN

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

FOR THE APPELLANT : FOR DAYARAM MEENA : MR. N.K CHAUHAN, ADVOCATE
(THROUGH VC).

FOR THE RESPONDENT : FOR UNITED INDIA
INSURANCE CO. LTD. : MR. ABHISHEK KUMAR GOLA,
ADVOCATE
(THROUGH VC).

Dated : 07 August 2024

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

These are Cross Appeals against the impugned Order dated 24.01.2017 passed by the State Consumer Disputes Redressal Commission, Rajasthan directing the Insurance Company to pay to the Complainant Rs. 1,00,000/- alongwith other ancillary reliefs.

2. The factual background, in brief, is that the Complainant insured his 400 trolleys of Mustard Husk with a Standard Fire & Special Perils Policy from the Insurance Company for one year, from 29.06.2011 to 28.06.2012, with a sum insured of Rs. 21,00,000/- and paid Rs. 12,514/- as the premium. On 03.12.2011, the Mustard Husk caught fire, and the Complainant immediately informed Mr. Purshottam Mittal, the agent of the Insurance Company, who advised him to notify the fire brigade and Police. On 05.12.2011, the Complainant submitted an application regarding the incident at the Insurance Company's office. Despite this, no action was taken by the Insurance Company until 26.12.2011, including taking pictures of the incident site, inspecting the location, or recording statements. The Complainant then issued a Legal Notice on 26.12.2011, demanding the amount of Rs. 21,00,000/-. On 30.12.2011, the Insurance Company finally contacted the Complainant and asked him to come to the incident site, where the Surveyor and other employees of the Insurance Company were also present. However, despite the survey, the claim amount was not paid. Aggrieved by the deficiency of service on the part of the Insurance Company, the Complainant filed his Complaint before the State Commission, Rajasthan.

3. The Ld. State Commission vide the impugned Order dated 24.01.2017 partially allowed the Complaint and directed the Insurance Company to pay to the Complainant Rs. 1,00,000/- with interest @ 9% p.a. from the filing of complaint till the date of realization along with Rs. 10,000/- towards mental agony. The relevant extracts of the impugned Order are set out as below –

“.....The only dispute in present case is the point that as per opponent the Spontaneous Combustion is not covered under condition no.1 (9) of the policy.

We are not agreed with the above argument of opponents as the surveyor of opponents has mentioned in his report that the husk caught fire in the morning of dated 3.12.2011 due to which mustered husk damaged in fire. The complainant registered the First Information Report of incident on dated 3.12.2011 only. The surveyor of opponent found the remains of around 450 to 500 quintals of mustered husk at the spot and found the substantial damages to the spot of incident and considered the market value of husk to be around Rs. 1,00,000/-, but the insurance company repudiated the claim of complainant on the ground that the insured mustered husk is damaged due to self-combustion, which is not covered under insurance contract. Therefore it was requested to decide the claim as per the provisions of insurance policy issued. The opponent insurance company has not produced any such evidence which shows that the heap of mustered husk burnt due to self- combustion. The complainant also failed to produce the bill regarding perches of above husk before the surveyor of opponent. But in our considered opinion survey report cannot be ignored therefore complainant is entitled to the amount assessed by the surveyor. The Hon'ble Supreme Court in IV (2006) CPJ 17 (SC) National Insurance Co Ltd. VS. Nipha Exports Private Limited and Hon'ble National Commission in I (2012) CPJ 341 (NC) Chanan Preet Singh Vs. United India

Insurance Co Ltd and III (2008) CPJ 93 (NC) Champalal Verma Vs. Oriental Insurance Co Ltd it is held that the survey report cannot be ignored.

In view of the above discussion and observations we find it appropriate to partly allow the complaint of complainant for the amount of Rs. 1,00,000/- as loss assessed by the surveyor alongwith interest @ 9% per annum from the date of present complaint i.e. 4.05.2012 till the actual payment, along with lump-sum compensation of Rs. 10,000/- towards mental agony and litigation expenses.

Consequently the complaint of complainant is partly allowed to the extent that the opponent will pay the amount of Rs. 1,00,000/- (Rupees One Lakh) along with interest @ 9% per annum from the institution of the present complaint dated 4.05.2012 till payment, except this the opponents will also pay the amount of Rs. 10,000/- (Rupees Ten Thousand) to complainant towards mental agony and litigation expenses.”

4. Ld. Counsel for Appellant/Insurance Company has argued that that upon receiving intimation from the Complainant about the fire incident, the Insurance Company appointed a Surveyor. The Surveyor observed that despite several requests, the Complainant failed to produce the documents of purchase and sale of Mustard Husk, providing only the purchase agreement. On 30.12.2011, the Complainant stated that the heap of Mustard Husk was kept in an open field under the sky, covered by a plastic sheet. There was no electrical line over the fields, and the cause of the fire was possibly due to internal self-heating. The loss was attributed to spontaneous combustion, which is an excluded peril under the Insurance Policy; That the Complainant has not denied the Surveyor's recording of statements or that the fire was caused by spontaneous combustion in his Affidavit Evidence; That an article published in "The Insurance Times" in December 2010, titled "Is actual ignition requisite for a spontaneous combustion loss," states that fire occurs only with ignition. Spontaneous combustion without ignition does not constitute fire under the terms of the coverage. The process of spontaneous combustion involves the absorption of oxygen by the commodity, leading to oxidation and increased temperature. This heating process accelerates, affecting other parts of the stock. However, at this stage, there is no ignition, and if detected, the commodity will show signs of heating without ignition, thus not qualifying as fire per the Policy terms.; That the State Commission passed a non-speaking Order without providing reasons for rejecting the Surveyor's findings. The State Commission dismissed the spontaneous combustion defense by merely stating that the Insurance Company had not produced any evidence proving that the fire was due to spontaneous combustion. The circumstances of the case indicate that the goods could not have caught fire from any other source, as there was no electricity in the field, and the Husk heaps were kept in the open sky covered with plastic; That this Commission, in "United India Insurance Co. Ltd. v. Dalas Biotech Ltd., RP/2096/2013" held that in cases of loss, fumes generated due to own fermentation, i.e., spontaneous combustion, as observed by the Surveyor, were not due to any electrical short circuit or other sources; That the Complainant prepared a fake letter and Affidavit of the Insurance Company's Agent, falsely stating that the Agent was informed of the incident. There was a delay of 25 days in intimation of the claim, and a discrepancy in the Agent's signatures between the Surveyor's statements and the letter produced by the Complainant; That the Complainant has not provided any purchase and sale bills of the Mustard Husk, only an agreement, and there is no documentary evidence regarding the weight, quantity, and cost of the Mustard Husk; That the Hon'ble Apex Court in "Oriental

Insurance v. Sony Cheriyan, (1999) 6 SCC 451" has held that the terms of the agreements must be strictly construed to determine the extent of the Insurer's liability.

5. Ld. Counsel for Respondent/Complainant has argued that the State Commission failed to appreciate that the Complainant's claim was repudiated on baseless and false grounds of "spontaneous combustion". The stock in question was Mustard Husk fodder, and spontaneous combustion is only possible where a chemical reaction is involved. In this case, the fire broke out due to unknown reasons; That the State Commission did not recognize that the Complainants had informed the agent of the Insurance Company on 03.12.2011 at 9 AM and subsequently submitted a written notice to the branch office on 05.12.2011. Despite this, the Insurance Company appointed a Surveyor after a delay of 25 days, during which time the ash of the burnt stock was blown away by the wind; That the State Commission overlooked the deficiency in service by the Insurance Company, which failed to take timely action to assess the loss. The Insurance Company assessed the liability based on its own assumptions without considering the Sale-Purchase Affidavit, the Complainants' ITR, and the weighing receipts of the stock at the time of purchase. The State Commission observed that the Insurance Company failed to produce any evidence supporting its defense that the fire resulted from spontaneous combustion, exempting it from liability under the Exclusion Clause; That the Survey Report cannot be relied upon as it failed to properly assess the loss. The Surveyor admitted in the report that there were ash remains of 40-50 trucks, while the stock quantity was 400 trolleys, and the ashes were blown away due to the wind. It was clear from the Policy that the stock worth Rs. 21.00 lakhs was stored in an open field. Therefore, the impugned Order should be modified; That the State Commission did not acknowledge that the Survey Report was contrary to the facts on record and that the actual loss caused by the fire amounted to Rs. 30.00 lakhs; That the Survey Report was effectively rebutted before the State Commission with cogent and reliable evidence, including Sale-Purchase Affidavits and immediate claim intimation, which was proven by the Affidavit of the Insurance Agent; That there was negligence on the part of the Insurance Company in appointing the Surveyor after a delay of 22 days from the incident, during which the burnt stock ash blew away due to winds; That the Hon'ble Apex Court in "Sikka Papers Ltd. v. National Insurance Co. Ltd. & Ors. (2009) 7 SCC 777" held that while the Surveyor Report is significant, there must be legitimate reasons for departing from such a report.

6. This Commission has heard the Ld. Counsel for both the Appellants and the Respondents, and perused the material available on record.

7. The Insurance Company from its side has stressed upon the statement upon the Complainant as recorded by the Surveyor that, "The Mustard Husk might have caught the fire due to internal heat, no one was present on the spot at the time of incident....". Hence, according to the Insurance Company, such statement amounts to an admission that the Insured item (Mustard Husk) had caught fire, due to "self-combustion", on account of which no Insurance Claim is admissible. In the opinion of this Commission, however, such an isolated statement cannot be regarded sufficient to reject the Insurance Claim in its totality, since it only amounts to a speculation on the part of the Complainant, that the Insured item, "might have" and "not definitely" caught fire due to internal heat which was clearly an innocuous response to the suggestion made to him by the Surveyor, whose Report in any case has been sought to be discarded on behalf of the Complainant by contending that it was biased. The fact that the Surveyor visited the place of occurrence 25 days after intimation of the fire had been conveyed to the Insurance Company, strongly strengthens such inference.

It is also very significant that the fire had taken place on 3.12.2011 early in the morning. Undoubtedly, the time of the year was well in the winters, and as such there was hardly any chance of the Insured item catching fire on its own especially in the early morning hours.

8. At the same time, this Commission is also of the opinion that mere statements/Affidavits of the Complainant and his other witnesses are not sufficient in themselves to establish his Claim that as many as 40-50 trucks of Mustard Husk valued at Rs. 30.00 lakhs were burnt in the fire incident, in the absence of any specific document pertaining to the actual quantity and price of the concerned item. It was incumbent upon the Complainant/Appellant to maintain proper documentary evidence in the form of Receipts/Vouchers etc. which would have gone a long way in supporting his Claim about the loss incurred. The copies of the rent receipt showing that he had taken six Bighas of land for 11 months, is not sufficient to show actually how much was the quantum of the Mustard Husk on the relevant date. In any case, the documents in this regard relied upon by the Complainant, copies of which are on pages 96 to 98 C of the Paper Book in FA No. 429 of 2017, also do not pertain to any date close to the date of fire i.e. 3.12.2011. The rental receipt for the land (Exh.16) is dated 15.2.2012, while the computerised receipts relied upon by him on pages 98 of the Paper Book, are dated 29.5.2011, 30.5.2011 and 2.6.2011 which are 6 months prior to the date of occurrence, and can therefore not be reliably accepted to assess the quantity of Mustard Husk allegedly burnt on 3.12.2011.

9. In the circumstances, this Commission finds no infirmity with the impugned Order passed by the Ld. State Commission which had in the given facts and circumstances assessed the compensation for the loss payable to the Complainant at a conservative amount of Rs. 1.00 lakh only.

10. For the aforesaid reasons, both these Appeals are dismissed. Parties to bear their own costs.

11. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

.....J
SUDIP AHLUWALIA
PRESIDING MEMBER