NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO. 1004 OF 2019

(Against the Order dated 25/04/2019 in Complaint No. 412/2018 of the State Commission Chandigarh)

1. NEW INDIA ASSURANC CO. LTD.
(tp hub) 1 floor, core 3, scope minar Laxmi nagar district centre
Laxmi nagar
DELHI 92 .....Appellant(s)

Versus

1. PUNJAB UNIVERSITY
through its registrar, chandigarh , PB549, sector 14, sas nagar
MOHALI
PUNJAB 160055 .....Respondent(s)

BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE APPELLANT : FOR THE APPELLANT : MR. J. P. N. SHAHI, ADVOCATE
FOR THE RESPONDENT : FOR THE RESPONDENT : MR. AJAY SOOD, ADVOCATE

Dated : 29 August 2024

ORDER

1. The present First Appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as “the Act”) against the Order dated 25.04.2019 passed by the learned State Consumer Disputes Redressal Commission, U.T. Chandigarh (hereinafter to be referred as “the State Commission”), in Consumer Complaint No. 412 of 2018, wherein the Complaint filed by the Complainant (Respondent herein) was partly Allowed.

2. For convenience, the parties in the present matter are being referred to as mentioned in the Complaint before State Commission. Punjab University is identified as the Complainant (Respondent herein) and the New India Assurance Co. Ltd is referred as the Opposite Parties/Insurer (Appellant herein).

3. Brief facts of the case, as per the Complainant, are that the complainant is a reputed university providing education to students in various disciplines. The matter pertains to availing General Insurance policies from the OP for over 20 years. These policies covered the property of different departments, hostels, and the secretariat building (Administrative Block) of the university against risks like fire and burglary, including furniture, fixtures, books, periodicals, fans, ACs, computers, coolers, almirahs, UPS and printers. However, in the year 2015-16, a new official, Sunil Gandhi, Senior Branch Manager of OP-1, renewed the

policy for the year 2014-15 and issued a new policy for 2015-2016, which incorrectly insured only the "Building Super Structure" instead of including furniture and fixtures. Despite this, the policy was renewed in May, and Policy No.35010111160100000042, dated 17.05.2016, covered various assets for a sum of Rs.1,06,70,27,356/- with a premium of Rs.2,44,349/-. On 14.05.2017, a fire incident occurred in the Secretariat building, and the OPs were informed and requested to assess the loss. The university provided all relevant documents to the Surveyor appointed by the OPs. It was revealed that at the time of renewal in 2015, the OPs mistakenly recorded the nature of assets covered. Despite this error, it was discussed that the policy was governed by "Designation of property clause," and the claim for assets like furniture, fixtures, computers, electrical appliances, etc. would be considered as covered in the previous policies. However, on 26.10.2017 the OPs surveyor informed the complainant that their claim was assessed as 'NIL'. The complainant, basing the policy on the depreciated value of assets, filed a claim for Rs.43,67,668/- against the original cost of Rs.48,59,610/-. However, the claim was settled as 'No claim' by OP-1 on 07.11.2017. The complainant averred that the OPs actions amounted to deficiency in service and unfair trade practice. Thus, they filed a complaint before the State Commission under Section 17 of the Consumer Protection Act, 1986, seeking Rs.43,67,668/- for the depreciated value of damaged assets, Rs.30 Lakhs as compensation for harassment and mental agony, and Rs.55,000/- as litigation costs.

4. In response, the OPs contended that the complainant has not taken a general insurance policy but a specific "Standard Fire and Special Perils Policy," which had different terms and conditions. Every policy issued was specific to the articles mentioned in it. The OPs contended that the complainant was fully aware of the policy conditions, had been provided a copy of the policy, and had failed to provide the necessary documents as requested by the Surveyor. The claim was repudiated based on the surveyor's report and the terms and conditions of the insurance policy, denying any deficiency in service or unfair trade practice.

5. The learned State Commission, vide order dated 25.04.2019 partly allowed the complaint and directed the OPs as under: -

> ***(i) To pay an amount of Rs.43,67,668/- to the complainant university alongwith interest @9% per annum (simple) from the date of repudiation of the claim i.e. 07.11.2017, within a period of 45 days from the date of receipt of a certified copy of this order, failing which, the said amount shall carry penal interest @11% p.a. (simple), instead of 9% p.a. (simple), from the date of default i.e. w.e.f expiry of period of 45 days, till realization.***
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> ***(ii) Pay compensatory/exemplary cost to the tune of Rs.5,00,000/- on account of deficiency in service and unfair trade practice and Rs.33,000/- as litigation costs to the complainant university, within a period of 45 days from the date of receipt of a certified copy of the order, failing which, the said amounts shall carry interest @9% p.a. (simple), from the date of filing the complaint till realization."***

6. Aggrieved by the impugned order of the State Commission, the Appellant/OPs has filed this present Appeal seeking the following:

(a) Set aside the final order and judgment dated 25.04.2019 passed by State Consumer Dispute Redressal Commission U.T., Chandigarh, in the C.C. NO. 412/2018, titled as Punjab University vs. New India Assurance.

(b) Award costs in favour of the Appellant and against the Respondents throughout; and/or

(c) Pass such other and/or further orders as this Honhle Commission May deem fit and proper in the light of facts and circumstances of the case.

7. In the Appeal, the Appellant mainly raised the following issues:

A. The claim of the complainant was handled according to the terms and conditions of the policy after due application of mind.

B. The State Commission erred by not appreciating the settled law regarding the contract of insurance. Insurance is a contract of indemnity and must be read in its originality without additions or subtractions. The policy for 2016-17 covered only the building superstructure and not furniture, fixtures, or electrical items, hence the NIL assessment by the Surveyors was correct.

C. The State Commission erred in awarding Rs.43,67,668/- without basis, substance, or supporting expert evidence. The exemplary cost of Rs. 5 Lakhs was arbitrary and unjust.

D. The State Commission failed to appreciate that the loss assessment by the independent Surveyor was reliable and just.

E. The State Commission overlooked that the policy coverage was modified with the respondent's consent from 2014-15 and renewed in subsequent years without any objections by the OPs.

F. The State Commission erred in its findings on policy renewal, terms and conditions, depreciation and compulsory excess clause, which were not based on valid reasons. The sum insured was based on the insured's yearly declarations. The changes were known and approved by the competent authority.

G. Different claims, showing inconsistencies in the claims. The workstations were improperly made part of the building. Many assets were unrecorded, and thus complicating the assessment.

8. Upon notice on the memo of the Appeal, the Respondent/ Complainant filed a reply reiterating the version in original complaint and claimed that the repudiation of the claim was without any cogent reason falls within the definition of “Deficiency in Service” and this has caused a great deal of injustice to the Complainant.

9. In his arguments, the learned Counsel for the Appellant admitted the insurance policy in question and reiterated the grounds of appeal. He contended that the insurance company was justified in repudiating the claim as per report of the surveyor on the basis of "no claim". He sought that the order of the learned State Commission be set aside with exemplary costs.

10. On the other hand, the learned Counsel for the Complainant reiterated the fact of the case and argued in favour of the order of the learned State Commission. He further contended that the Appellant resorted to repudiation of a genuine insurance claim under false grounds. The order of the learned State Commission, Chandigarh is just, proper and sustainable in law. He sought to dismiss the First Appeal with costs.

11. I have examined the pleadings placed on record, associated documents and rendered thoughtful attention to the arguments advanced by the learned counsels for both the parties.

12. The policy in question was a 'Standard Fire and Special Peril Policy' (SFSP) which is a conventional insurance cover that protects property and its contents against damages or losses due to fire and other hazards. The present policy as originally purchased and annually renewed, covered furniture, fittings, fixtures and other contents. The insured, an educational institution, has been taking the same policy from OPs for several years. The standard policy format issued by OPs has columns to suit the requirement of different types of customers. It is uncontested position that till the year 2014-15, the original policies obtained by them continued to cover the building and fixtures, furniture, appliances and other contents. It is the contention of OPs that in the subsequent policy renewals, assets like computers, electrical appliances, etc., were not covered, and only the Building super structure and FFF were insured and the same went unnoticed by the complainant till 2017. However, as observed by the learned State Commission in the subsequent policies the OP did not exclude, but merely bifurcated the sum insured as Buildings-Superstructure for Rs.3,76,64,700; and Furniture, Fittings, fixtures and other contents for Rs.94,33,75,119.

13. This bifurcation continued in the subsequent renewal for the year i.e. 2016-2017. The Surveyor while calculating the claim took only the amount towards building superstructure into consideration and declared the claim as 'Nil'. Admittedly, the bifurcation done was a deficiency on the part of OPs as nothing on record shows that the Complainant University had required them to do so.

14. Claim made by the complainant University with respect to the incident of fire and damages are as below:

Sr. No	Description of damaged assets	Original Cost (Rs.)	Depreciated Cost (Rs.)
1	Furniture	6,78,313	3,73,072
2	Electrical and sub main cables	5,15,350	2,88,745
3	Computer and peripherals	1,54,721	44,770
4	Printers and photocopiers	2,64,256	83,947
5	Ductable coolers & desert Coolers	2,29,458	1,94,924
6	Split AC	1,39,900	1,25,215
7	Work stations	28,77,612	20,14,328
8	Building	Not known	*12,42,667
	Total	48,59,610	43,67,668

15. The claim was repudiated on the ground that, as per the policy the claim is subject to deduction under excess clause @ 5% of the claim amount, subject to minimum Rs. 5,00,000/-. As per the report of the surveyor dated 07.11.2017 the net lability of the insurer was only Rs.2,78,069 i.e. the loss was less than the amount to be deducted under excess clause, thereby, making the liability of OP 'Nil'.

16. It is seen from the order of the learned State Commission that it had expressly clarified from the OP whether the policy in question, under which the claim was settled as 'No Claim', was a fresh policy or it was renewal of earlier policy. It was affirmed that it was the same policy which had been continuously renewed over the past 20 years. It was also admitted that no new proposal form had been submitted by the complainant for issue of the policy for 2016-2017 or any prior years. It was the same original policy that had been renewed annually. The finding of the State Commission is amply clear in this regard and we, therefore, see no reason to interfere in the same.

17. The Complainant/University is stated to have submitted all details, calculations and documents as sought by the surveyor. The surveyor considered the claim only with respect to the building and ignored other assets, such as computers, office equipment's electrical installation, furniture, fixture and fittings etc. In the process, while the loss for which the insurer was liable was determined vide surveyor report dated 07.11.2017 was Rs.2,78,069. At the same time, this amount was subject to deduction under excess clause @ 5% of the claim amount, subject to minimum Rs.5,00,000/-. Therefore, the liability of the insurer as determined by the surveyor was less that the amount due to be deducted under excess clause. Thus, making the liability of OP 'Nil'.

18. Hon'ble Supreme Court in ***Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited and Another,*** (2009) 8 SCC 507**,** decided on **24.08.2009** has held that:

> ***"32. There is no disputing the fact that the 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...***
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> ***35. In our considered view, 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."***

37. The option to accept or not to accept the report is with the insurer. 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."

19. Hon'ble Supreme Court in ***Khatema Fibres Ltd. v. New India Assurance Company Ltd., 2021 SCC OnLine SC 818,*** *decided on* ***28.09.2021 h***as held that:

"32. It is true that even *any inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or which has been undertaken to be performed pursuant to a contract*, will fall within the definition of the expression 'deficiency'. But to come within the said parameter, the appellant should be able to establish (i) either that the Surveyor did not comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as specified by the regulations made under the Act, in terms of Section 64UM(1A) of the Insurance Act, 1938, as it stood then; or (ii) that the insurer acted arbitrarily in rejecting the whole or a part of the Surveyor's Report in exercise of the discretion available under the Proviso to section 64UM(2) of the Insurance Act, 1938.

37. Two things flow out of the above discussion, They are *(i)* that the surveyor is governed by a code of conduct, the breach of which may give raise to an allegation of deficiency in service; and *(ii)* that the discretion vested in the insurer to reject the report of the surveyor in whole or in part, cannot be exercised arbitrarily or whimsically and that if so done, there could be an allegation of deficiency in service.

38. 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*."

20. Clearly, the Complainant/University had duly insured its assets which included furniture, fixture, fittings and other contents. The term 'other contents' as stipulated in the for

which the sum insured was to the extent of Rs.102,93,62,656, included the property that was burnt due to the fire incident. The specific details and breakdown of calculations were provided by the Complainant/University. Clearly, all the assets that were impacted in the fire incident are covered under the policy in question. Therefore, the action of the surveyor in not considering the damage occasioned in due compliance of the terms of the policy and limiting to only a few is untenable.

21. In the given circumstances, even if there is some ambiguity with respect to the scope of cover under the policy, the same shall be interpreted in the favor of the insured/complainant as clarified by the Hon'ble Supreme Court in ***Haris Marine Products versus export credit guarantee corporation (ECGC) Limited, 2022 SCC OnLine SC 509*** has held that when there is any ambiguity in the terms and conditions of the contract then the court has the discretion to interpret it in favour of the Insured by applying the principle of 'Contra Proferentem'. The relevant portion of the said judgment is as under:-

> ***"22.*** *Reconciliation of ambiguous terms in commercial contracts has been a contentious issue across jurisdictions. A 2011 decision by the Supreme Court of the United Kingdom (hereafter, "UK Supreme Court") in Rainy Sky SA v. Kookmin Bank was concerned with the interpretation of refund guarantees given by a ship builder to the buyers, and whether the same was triggered when the ship builder started facing financial difficulties and was subjected to a debt workout procedure. Allowing the appeal, the UK Supreme Court provided the guiding principle for resolution of such ambiguity, keeping the 'business common sense' as central:*
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> *"The language used by the parties will often have more than one potential meaning. I would accept the submission made on behalf of the appellants that the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other." (emphasis supplied)*
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> ***23.*** *This principle was further developed by the UK Supreme Court in Arnold v. Britton. The facts were that a 99-year lease specified that service charge of £90 levied every year was subject to 10% increase annually. The lessees submitted that by the end of the lease agreement, the service charge payable would be very high, exceeding the cost of providing the services. The UK Supreme Court refused to depart from the natural meaning of the clause, holding that:*
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> *"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd. v. Persimmon Homes Ltd. [2009] UKHL 38, [2009] 1 A.C. 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case*

clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. ***That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions****. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989 (2), 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v. Ali [2002] 1 A.C. 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30".*

(emphasis supplied)

24. *Thus, a decisive method was suggested to construe the ambiguity of a term used in a commercial contract. This was applied by the UK Supreme Court in Woods v. Capita Insurance.*[17] *The facts in brief are that the buyer of an insurance company relied on an indemnity clause to recover losses paid in the form of compensation to the customers of the insurance company to which the company has mis-sold products. According to the indemnity clause, any complaint to the Financial Services Authority (hereinafter "FSA") would be indemnified by the buyer. However, the contract did not clearly specify what would happen if the company itself raised a complaint before the FSA. The UK Supreme Court held that a literalist approach to resolving ambiguity in a commercial contract term would yield incorrect results, and a holistic reading was imperative to ascertain meaning of terms agreed to by parties. Dismissing the appeal, the UK Supreme Court finally held that the indemnity clause was in addition to the wide-ranging warranties specified elsewhere in the contract, which was not contrary to business common sense. The agreement might have become a poor bargain for the buyer, but it was not the Court's function to improve that bargain:*

"The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.

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Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may

be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. The iterative process, of which Lord Mance spoke in Sigma Finance Corpn (above), assists the lawyer or judge to ascertain the objective meaning of disputed provisions.

On the approach to contractual interpretation, Rainy Sky and Arnold were saying the same thing." *(emphasis supplied)*

***25.** On application of the above principle to this Policy, and taking into consideration all relevant documents, this Court is of the opinion that the date of loading goods onto the vessel, which commenced one day prior to the effective date of the policy, is not as significant as the date on which the foreign buyer failed to pay for the goods exported, which was well within the coverage period of the Policy. Thus, the claim could not be dismissed simply on such basis, especially given that the date of loading the goods onto the vessel was immaterial to the purpose for which the policy was taken by the appellant.*

B. Rule of contra proferentem

***26.** It is entrenched in our jurisprudence that an ambiguous term in an insurance contract is to be construed harmoniously by reading the contract in its entirety. **If after that, no clarity emerges, then the term must be interpreted in favour of the insured**, i.e., against the drafter of the policy. In deciding the applicability of a cover note on houses swept away by floods, a Constitution Bench of this Court in General Assurance Society Ltd. v. Chandumull Jain[18] held as follows:*

"In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of uberrima fides i.e., good faith on the part of the assured and the contract is likely to be construed contra proferentem that is against the company in case of ambiguity or doubt… (I)n interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves". *(emphasis supplied)*

22. In view of the foregoing deliberations, after careful perusal of material on record and the established precedents of the Hon'ble Supreme Court, the Appellant has not brought out anything substantial that warrants interference into the detailed and well reasoned order of

the learned State Commission dated 25.04.2019. The present First Appeal No.1004 of 2019 is, therefore, dismissed.

23. All pending application, if any, stand disposed of.

24. The Registry is directed to release the statutory deposit, if any due, in favour of the Appellant after compliance of this order.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER