

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1819 OF 2018

(Against the Order dated 04/04/2018 in Complaint No. 46/2017 of the State Commission
Punjab)

1. GULZAR MOHD. (M/S GULZAR MOHD. & SONS)
THROUGH ITS PROPRIETOR SAUDAGAR MOHD.W.NO.
5/138, AHMADGARH,SANGRUR
PUNJAB

.....Appellant(s)

Versus

1. SBI GENERAL INSURANCE CO. LTD.
THROUGH ITS MANAGER, 2ND FLOOR, SCB-7, CHHOTI
BARADARI,
PATIALA
PUNJAB

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT : MR. SHAANTANU JAIN, ADVOCATE

FOR THE RESPONDENT : MR. D. VARADARAJAN, ADVOCATE

Dated : 02 September 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 04.04.2018 of the State Commission in complaint no. 46 of 2017, whereby the complaint was partly allowed.
2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'complainant') and learned counsel for the respondent (hereinafter referred to as the 'insurance company') and perused the record.
3. There is a delay of 157 days in filing the present appeal.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

4. The facts, in brief, are that the complainant, through its proprietor, obtained SME Package Policy covering the stocks laying at the site for the period from 30.06.2016 to 29.06.2017 for sum assured of Rs. 45,00,000/-. During the subsistence of the insurance policy, in the intervening night of 27/28.07.2016, a fire incident had taken place and the complainant suffered huge loss. The matter was reported to the Fire Station as well as to the concerned Police Station. The insurance company was also informed. The insurance

company appointed a surveyor, who assessed the loss. It is alleged that the complainant fully cooperated with the surveyor and submitted all the documents as demanded by the surveyor. It is further alleged that the insurance company had settled the matter at Rs. 3,65,275/- only and directed the complainant to send his consent. The complainant vide email dated 23.12.2016, refused to accept the claim amount offered by the insurance company. Alleging deficiency in service on the part of the insurance company, the complainant filed a complaint seeking direction to the insurance company to pay the sum assured of Rs. 45,00,000/- alongwith Rs. 10,00,000/- towards mental agony and harassment and Rs. 55,000/- as cost of litigation before the State Commission.

5. The insurance company contested the complaint by filing reply stating that the complaint is false, frivolous and vexatious and is liable to be dismissed as the complainant has failed to make out a case of 'deficiency in service' or 'unfair trade practice' on the part of the insurance company. It is further stated that the complainant has no locus to file the present complaint as there is difference in the name of complainant i.e. "Gulzar Mohd. and the name shown in the balance sheet as "Gulzar Mohd. & Sons." It is further stated that the complainant had suppressed the material facts regarding prior minor incident of fire, which occurred on 25-26.7.2016. It is further alleged that after the minor incident of fire on 25-26.07.2016, no precaution or corrective measures were taken by the complainant and his gross negligence has resulted into 2nd fire of incident. Hence, his act of negligence ignoring first minor fire incident, disentitles him for any relief. It is further alleged that the complaint involves complicated questions of law and facts, which cannot be decided in summary proceedings by this Commission.

6. The State Commission, vide its order dated 04.04.2018, partly allowed the complaint and directed the insurance company to pay a sum of Rs.3,65,275/- alongwith interest at the rate of 9% per annum from 05.12.2016 till the date of payment. The State Commission also awarded Rs. 50,000/- towards compensation on account of mental and physical harassment and Rs.21,000/- as litigation expenses.

7. Being aggrieved by the order dated 04.04.2018 of the State Commission, the complainant has filed this appeal before this commission.

8. The main question for our consideration is as to whether the reliance of the State Commission on the surveyor report is correct.

9. Before this Commission, learned counsel for the complainant has argued that the State Commission has wrongly stated that the complainant has not submitted the details of the purchase and sales after 31.3.2016 to the date of incident while the complainant has submitted all the documents, including statement to the bank, balance sheet, trading account etc., asked by the surveyor and these statements clearly reflected a closing stock of Rs.66,46,158.63 as on 27.07.2016. He further argued that the surveyor's report in itself is contradictory, as at one place, the surveyor, despite referring the balance sheet and the trading account details, has mentioned that the stock lying is not more than 20 lakhs but at another place the total quantity of affected goods calculated is at Rs. 3,65,275/-, which has no basis and contrary to the documents evidences placed on record. He further argued that the surveyor did not take into account 800 bags of dasta and 200 bags of blades, which were completely damaged.

Further, the main argument advanced against the surveyor's report is that after arriving at the average cost of each Dattis from the sale bills at Rs.1784/- the surveyor multiplied the same to each bag of Datti. The surveyor had considered 250 bags of Dattis as loss. However, it was argued that each bag contained many dattis and the total number of Dattis was to be multiplied by the average price arrived at and by multiplying Rs. 1784/- by 250 bags, the loss assessed had been drastically reduced. If the correct amount is determined per Datti, the loss would be different.

10. Learned counsel for the insurance company has argued that the insurance company after considering the report of the surveyor, including his addendum report as also the investigator's report, took a reasoned decision with regard to quantum of claim and the surveyor's report cannot be discarded unless there are cogent evidence to the contrary. He further argued that the doctrine of indemnity clearly lays down that the insurer's liability is limited to the actual loss, which is, in fact, proved subject to policy terms and condition and the happening of the event itself does not entitle the insured to payment of the sum stipulated in the policy. The insured has to prove with clinching and credible evidence the loss sustained. In support of his contentions, he placed reliance on the decisions rendered in the case of **Oriental Insurance Co. Ltd. vs. Sony Cheriyan (1999) 6 SCC 451, United India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal (2004) 8 SCC 644; Vikram Greentech (I) Ltd. & Anr. Vs. New India Assurance Co. Ltd. JT (2009) 5 SC 579 and Suraj Mal Ram Niwas Oil Mills vs. Untied India Insurance Co. Ltd. (SC) in Civil Appeal No. 1375 of 2003**, decided on 08.10.2010.

11. The main contention against the surveyor's report raised is the valuation of 250 Datti bags by the surveyor. The surveyor assessed 250 bags of Dattis as having been lost in the fire. He then went on to multiply the average cost, he arrived at of Dattis into number of bags. Learned counsel for the complainant has argued in details that this was cost of each Datti, and the number of Dattis in each bag were to be taken into account to assess the loss.

12. Perused the record including *inter alia* the sale bills relied on by learned counsel for the complainant. It is seen that all the sale bills are for 'bags' of Dattis. In the bills a rate is prescribed for each bag to calculate the price of bags of Dattis. It is clear that the sales were done for the bags of Dattis and not of individual dattis and the pricing was also per bag. The complainant has not produced any cogent or credible evidence to show that dattis were sold as individual pieces and not as per bag of Dattis.

13. With regard to sanctity of survey report, we would like to rely on the judgment of the Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. Vs. Pradeep Kumar (2009) 7 SCC 787**, decided on 09.04.2009. The relevant para of which is reproduced below :-

"In the said decision, it is no doubt held that though the assessment of loss by an approved Surveyor is a prerequisite for payment or settlement of the claim, the Surveyor report is not the last and final word. It is not that sacrosanct that it cannot be departed from and it is not conclusive. The approved Surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured. On the said proposition, we are certain that there can be no quarrel. The Surveyor's report

certainly can be taken note as a piece of evidence until more reliable evidence is brought on record to rebut the contents of the Surveyor’s report.

14. In the instant case, the complainant has failed to produce any credible evidence to rebut the surveyor’s report and in the absence of any credible evidence to support the claim, the surveyor’s report cannot be said to be perverse or arbitrary.

15. In view of the discussion above, we are of the considered view that the Order of the State Commission does not suffer from any illegality. We, therefore, dismiss the appeal and uphold the Order of the State Commission.

16. Parties to bear their own cost. Pending application(s) if any, stand disposed of.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**