

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 144 OF 2016

(Against the Order dated 24/08/2015 in Complaint No. 1/2012 of the State Commission
Kerala)

1. PANCHAJANYAM HOSPITALITIESAppellant(s)

Versus

1. BRANCH MANAGER, UNITED INDIA INSURANCE CO.
LTD.

T.M. Buildings, Bank Road, Kayamkulam, KeralaRespondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. ABRAHAM MATHEWS, ADVOCATE WITH
MS. NISHE RAJEN SHONKER, ADVOCATE

FOR THE RESPONDENT : MR. MAIBAM N. SINGH, ADVOCATE

Dated : 19 August 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 24.08.2015 of the State Commission in complaint no. 01 of 2012, whereby the complaint was dismissed.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'complainant company') and learned counsel for the respondent (hereinafter referred to as the 'insurance company') and perused the record.

3. There is a delay of 48 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 company, a registered partnership firm, which is running a three star hotel in the name of "The Esquire Inn" at Charumoodu in Alappuzha District, had obtained an insurance policy for the said hotel for sum insured of Rs. 3,65,00,000/-. The policy was valid for the period from 25.04.2009 to 24.04.2010. It is alleged that during the existence of the insurance policy, on 05.04.2010 in the evening there was heavy storm and rain and, as a result, extensive damages were caused to the building roof, roof structure, MP tiles, furniture, machinery and accessories, interior decorations, lifts, fancy light accessories, electrical equipments and installation, three solar panels compound wall, car shed of the complainant company's hotel and the vehicles. It is alleged that the complainant company had sustained loss of Rs.25,00,000/-. The complainant company had

submitted the duly filled claim form, with all relevant documents in time on 10.04.2010. It is further alleged that after lapse of two years and three months, the insurance company issued a letter dated 25.07.2011 calling upon the complainant company, to sign settlement voucher, for settling the claim at Rs. 2,55,608/-, which, the complainant company wanted to accept under protest but the insurance company rejected the request of the complainant company to accept it under protest.

5. Being aggrieved, the complainant company has filed a complaint before the State Commission seeking following relief:

- “1. Allow the complainant to realize a sum of Rs. 25,00,000/- (Rupees twenty five lakhs only) from the opposite party the actual loss sustained together with 12% interest from the date of the claim i.e. 10-04-2010 till realization.
2. Allow the complainant to realize an additional compensation of Rs. 2,00,000/- (Rupees two lakhs only) from the opposite party for the deficiency of service with 12% interest from the date of the complainant till realization.
3. Allow the cost of the proceedings to be realized from the opposite party and their assets.
4. And to allow such other reliefs as may be prayed for by the Appellant during the course of the proceedings.”

6. The insurance company contested the complaint by filing written version stating therein that the surveyor has assessed the net liability at Rs.3,08,490/- less salvage value of Rs. 6,506/- which comes to Rs. 3,01,990/- and after deducting policy excess of Rs. 10,000/-, salvage value, depreciation and reinstatement premium, the amount payable is Rs. 2,55,608/- and for that amount, the insurance company sent a letter to complainant company with settlement intimation voucher for Rs. 2,55,608/- but the complainant company was not ready to accept the same and he wanted an amount of Rs. 25,00,000/-. It is further stated that an amount of Rs. 25,00,000/- is highly imaginary, excessive and has no legal or factual basis and the complaint is bad for non-joinder of parties as their financier S.B.T has not been impleaded in the party. It is further stated that there is no deficiency in service and the complaint is liable to be dismissed.

7. The State Commission, vide its order dated 24.08.2015, dismissed the complaint.

8. Being aggrieved by the order dated 24.08.2015 of the State Commission, the complainant company has filed this appeal before this Commission.

9. Before this Commission, learned counsel for the complainant company has argued that the policy covers loss, destruction or damage directly caused by storm, cyclone, typhoon, tempest, hurricane, tornado, flood or inundation and despite the fact that the surveyor has observed in para 2 of the report that “on physical verifications and keen observations, I confirmed all the above damages” and “no breach of warranties were observed”, the insurance company has sent a letter asking to complainant company to sign settlement voucher for settling the claim at Rs. 2,55,608/- while the complainant company has claimed an amount of Rs. 25,00,000/-. He further argued that the damage and the liability to pay the

compensation is admitted and the dispute was with respect to the quantification of damages. He further argued that the finding of the State Commission that the complainant company failed to prove the damages occurred due to storm is absolutely erroneous because the surveyor in his report has clearly confirmed all the above damages.

10. Learned counsel for the insurance company has argued that the surveyor had assessed the loss after considering each and every loss caused due to storm and heavy rain and the rates assessed in the report are PWD approved rates. He further argued that the State Commission has rightly observed that taking advantage of damage due to peril the complainant company is not entitled to renovate or improve the quality of pre-existing structure and derive profit in that way and the claim of the complainant company is exaggerated. He further argued that the State Commission has passed a well-reasoned order and the appeal is liable to be dismissed.

11. The main question for our consideration is as to whether there is any deficiency in service on the part of the insurance company.

12. It is not in dispute that the policy was valid at the time of incident. It is not in dispute that due to heavy storm and rain, damages were caused to the building. It is seen that the complainant has claimed a sum of Rs. 25,00,000/- towards the damage but he has not been able to substantiate the claim by filing relevant documents regarding value of the items so damaged. It is to be noted that this Commission, vide order dated 15.01.2024, had granted time to obtain documents in support of his claim but on 20.02.2024 it has been recorded that the complainant company has not been able to obtain the documents. The surveyor, vide its report dated 19.06.2010, has assessed the net liability at Rs. 2,18,493/-by relying on CPWD rates.

13. With regard to sanctity of survey report, we would like to cite an Order 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 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 company has failed to provide any documentary evidence to rebut the surveyor's report. In the absence of any credible evidence to support the claim, the surveyor's report cannot be discarded.

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