

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1809 OF 2017

(Against the Order dated 06/03/2017 in Complaint No. 1/2014 of the State Commission
Telangana)

1. UNITED INDIA INSURANCE CO. LTD.

REGIONAL OFFICE NO.-1, 18, BARAKHAMBA ROAD,
8TH FLOOR, KANCHENJUNGA BUILDING.

NEW DELHI-110001

.....Appellant(s)

Versus

1. M/S. JAYCOT INDUSTRIES

REPRESENTED BY ITS PROPRIETOR, SRI. PREM
KUMAR AGARWAL. S/O. PUROSHATTAM DAS. R/O. C-7
AND C-8, INDUSTRIAL ESTATE, CHANDULAL BARADRI.

HYDERABAD-500064

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. AMIT KUMAR SINGH, ADVOCATE

FOR THE RESPONDENT : MS. K. RADHA, ADVOCATE WITH
MR. K. MARUTI RAO, ADVOCATE

Dated : 19 August 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") by United India Insurance Company Ltd. (hereinafter referred as the 'insurance company') assailing the Order dated 06.03.2017 passed by the State Consumer Disputes Redressal Commission, Telangana (hereinafter to be referred to as 'State Commission') in complaint No. 1 of 2014 whereby the complaint was partly allowed.

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

3. There is a delay of 154 days in filing the present appeal.

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

4. The brief facts of the case are that the complainant company, a leading exporter of absorbent cotton wool IP/BP, cotton balls, gauze rolls, bandages, and surgical dressings etc. got insurance for its unit, stock etc. under Standard Fire and Special Risks Policy for a term of more than 20 years. Thereafter, the policy was renewed for the period from 10.06.2011 to 09.06.2012 for a sum of Rs. 2,50,00,000/- on payment of required premium. During the subsistence of the insurance policy, on 19.04.2012 at about 1:40 a.m., a fire broke out in the packing section and packing godown of the factory, which caused heavy loss to the complainant company. The fire was first noticed by the watchman, namely, Bhojraj, who stated that he heard some noise and saw fire in the godown and on his information, the fire brigade came and successfully extinguished the fire. The incident was reported to the police at Kamatipura, Hyderabad and a case under Cr. No. 48/2012 was registered on the same date. It is alleged that after assessing the damage, the total loss calculated at Rs. 56 lakhs was communicated to the insurance company through a letter dated 24.04.2012. The insurance company appointed a surveyor to assess the loss. The surveyor visited the factory, inspected the site, and estimated the loss at Rs.54,26,299/-. The complainant company submitted the claim form on 07.05.2012 along with the required documents. A certificate dated 25.04.2012 from the fire personnel was also provided. The surveyor's report dated 18.07.2012 certified the claim amount of Rs.46,69,643/-. On 24.06.2013, the insurance company repudiated the claim of the complainant company on the ground that the complainant company had violated conditions No. 1 & 8 of the policy, alleging that the fire was not caused by a short circuit and there is misrepresentation on the part of the complainant company.

5. Aggrieved by the repudiation made by the insurance company, the complainant company filed a complaint before the State Commission.

6. The insurance company contested the complaint by filing written statement stating that the complaint is not maintainable both under the law and facts and also that the matter requires elaborate evidence which cannot be decided summarily under the provisions of the Act and the same is liable to be dismissed. It is also stated that the plea of the complainant company that the fire was caused due to short circuit at transformer level and travelled about 100 feet through service cable by crossing 3 poles and entered into packing section is not correct. It is also alleged that the power distribution authority confirms that transformer is in good condition and there was no disruption of power. Apart from this, the Central Power Distribution Company vide their letter dated 17.04.2013 confirmed that the transformer was found to be in good condition and no short circuit took place at the transformer and the complainant company has intentionally misrepresented the cause of accident to be sort circuit from the public transformer. It is further stated that the complaint is liable to be dismissed.

7. After appreciation of the facts of the case, the State Commission partly allowed the complaint and directed the insurance company to pay a sum of Rs.46,69,643/- together with interest @9% from the date of complaint i.e., 05.12.2013 till realization together with costs of Rs.5,000/-.

8. Being aggrieved by the order of the State Commission, the insurance company has filed the present appeal before this Commission with the following prayer:

- a. Set aside judgment-dated 06.03.2017 in Consumer Complaint no. 1 of 2014 titled as M/S Jaycot Industries vs. United India Insurance Company Limited.

b. Pass such further and other orders as this Hon'ble Court may deem just, necessary, expedient and in the interest of justice in the facts and circumstances of the case.

9. Before this Commission, the counsel for the insurance company has vehemently argued that the cause of the fire was not a short circuit in the public transformer and the State Commission has failed to consider this point. He further argued that the complainant company breached the doctrine of '*Uberrimae fide*,' or the 'Doctrine of Utmost Good Faith', which is a fundamental principle in insurance contracts requiring honest disclosure of all material facts. The failure of the complainant company to disclose crucial details regarding the actual cause of the fire demonstrates a violation of this doctrine and the insurance company has rightly repudiated the claim of the complainant company. In support of the contention that the insurance contracts are based on the principle of utmost good faith, he placed reliance on the decision of the Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. v. M.K.J. Corpn., (1996) 6 SCC 428*** wherein it has been held that "The duty of good faith is of a continuing nature." Further reliance is placed on ***Life Insurance Co. Ltd. v. Rekhaben Nareshbhai Rathod, (2019) 6 SCC 175, Para 16-24, 26-30.***

Further, learned counsel contended that the State Commission should have acknowledged that the complainant company intentionally withheld significant information about the cause of fire and such suppression of material facts constitutes a serious breach of the insurance contract and critically impairs the insurance company's ability to properly assess the validity of the claim. Furthermore, it was argued that the power distribution authority confirmed that the transformer was in good working condition and there was no power disruption at the time of the fire. This confirmation directly contradicts the complainant company's claim of a short circuit in the public transformer. Additionally, the meter change report submitted by the complainant company to substantiate their claim was misleading as the meter was in the name of a different entity, MIS J. Pharma, with Account No. M31537. This act of misrepresentation underscores the complainant company's lack of good faith and justifies the repudiation of the claim. Moreover, the investigator's report dated 22.04.2012 contradicted the complainant company's assertion that the fire was caused by a short circuit in the public transformer. The letter from the Department officials dated 17.04.2013 along with the investigator's findings, strongly suggests that the complainant company fabricated the claim.

10. The learned counsel for the complainant company reiterated the facts of the case and argued that the insurance company failed to explain the reasons for appointing the investigator when the surveyor who after visiting the premises and considering the material documents, had assessed the loss at Rs.46,69,643/ observing that the claim is genuine. He further argued that the investigator after collecting the papers from the complainant company neither visited the premises nor enquired with the staff of the complainant company, hence, his report is of no value. It is further argued that without assigning any reason, appointment of second surveyor/investigator is arbitrary and not sustainable in the eye of law. In support thereof, he placed reliance on the decision rendered in the case of ***Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited & Another (2009) 8 SCC 507.***

Further, he argued that the surveyor categorically opined in his report dated 18.07.2012 that the cause of fire was 'mainly due the failure of public transformer short circuiting which travelled to the incoming supply service cable connected to the insured unit passing over the roof of the main packing section and adjacent to the main distribution panel room caused fire

since the materials are highly combustible for naked fire and immediately the fire spread to other areas". It was understood that fire broke out in the insured's premises on 19.04.2012 at about 1:40 hrs. in the packing Unit and eventually spread over rapidly to Packing material godowns, lobby and Partly to Boiler shed. The surveyor also observed that the fire, which was accidental in nature falls within the purview of the policy condition and hence this claim is admissible. Further, it was argued that the electricity department after investigation confirmed the short circuit and burning of LT Cable along with electric meter. Furthermore, it was argued that there is a conflict of opinion given by surveyor and investigator and the insurance company relied on investigator report. The insurance company needed to give satisfactory reasons for not accepting the report of the first surveyor. The Apex Court and this Commission, time and again, held that if two views are involved in the matter, the view which is favorable to the consumer is to be considered. Reliance is placed on *Sangrur sales Corp. Vs. UIIC 2020 (16) SCC 292*.

11. The question which falls for our consideration is as to whether there is deficiency in service on the part of the insurance company.
12. The undisputed facts of this case are that the complainant company, which is in the business of manufacturing and exporting items related to absorbent cotton wool, was insured for a period from 10.06.2011 to 09.06.2012. A fire took place on 19.04.2012 at the factory premises of the complainant company which was brought to the notice of the Police as well as to the insurance company.
13. The main contention in this case is regarding cause of fire. The complainant company's case is based on the surveyor's report of the insurance company wherein the surveyor has stated that the proximate cause based on inspection is mainly due to the failure of the public transformer short circuiting whereas the insurance company has relied on its investigator's report and the letter of the Central Power Distribution Company Limited dated 05.02.2013, which state that "transformer was found to be in good condition and no short circuiting took place at the Transformer. Hence, no repair work was attended at the Distribution Transformer. It is certified that there was no power loss to any neighboring industries".
14. At this stage, it is apposite to quote the observation of the State Commission in its order.

"14. Though the Opposite parties would deny the proximate cause of accident to be not due to short circuit, it failed to state the reason as to the cause of accident. To disprove the claim of the Opposite parties that the service connection is that of the Complainant, the complainant exhibited A25 which would show that the premises of M/s J. Pharma are taken on lease by the complainant from 1989 onwards and the same has been renewed from time to time. As such, the electricity connection stood in the name of M/s J. Pharma. A keen perusal of Ex. 25 goes to show that the lease of the premises being No. C-7 & C-8 bearing Municipal No. 19-2-239/17 and 18, situated at Industrial Estate, Chandulal Bardari (formerly known as J. Pharma) was taken on lease w.e.f. 11.09.1989 is extended for a further period of 7 years. Nowhere in the said lease deed, there is any mention of the electricity meter and it will be no way helpful to the

complainant. Admittedly, the fire accident took place on 19.04.2012 and the lease period would expire on 11.09.1997 even if it is taken for a period of 7 years, as such, there is no nexus to the period of lease and the date of accident. Even otherwise, the terms of lease does not contain the monthly rent and the mode of payment.

15.

15. It is seen that the investigator’s report along with letter of the Distribution Company was before the State Commission, however, neither it has been rebutted by the complainant company nor has the State Commission dealt with the same. It is also seen from the perusal of the order of the State Commission that although the State Commission has noted the discrepancies and lack of complete evidence filed on behalf of the complainant company but it has gone ahead and relied entirely on the surveyor’s report and passed the order. The onus of proving the cause of fire has been put on the insurance company whereas once the insurance company had brought the evidence on record rebutting the cause of fire claimed by the complainant company. The onus was on the complainant company to prove the same.

16. In this view of the matter, we are of the opinion that the matter has not been looked at in depth by the State Commission while passing the order and this is a fit case for remand to the State Commission for decision afresh, after providing opportunity of hearing as also to lead evidence to both the parties before the State Commission. Reliance is placed on the decision in the case of **National Insurance Company Ltd. vs. Harjeet Rice Mills (2005) 6 SCC 45**.

17. In the result, the appeal is disposed of and the order dated 06.03.2017 of the State Commission is set aside. The matter is remanded back to the State Commission to decide it afresh on merits, after affording opportunity of hearing as also to lead evidence to both the parties before the State Commission. The State Commission is requested to decide the complaint as expeditiously as possible, preferably, within a period of six months from the date of this order.

18. The parties are directed to appear before the State Commission on 12.11.2024.

19. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel immediately. The Registry is also requested to forthwith communicate this Order to the State Commission by the fastest mode available.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**