

Particulars	DD	MM	YYYY
Date of Judgment	10	09	2024
Date of Filing	18	06	2015
Duration	22	02	09

IN THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION

STATE OF GUJARAT

COURT - 4

COMPLAINT NO. 67 OF 2015

COMPLAINANTS:

[1]. MUKESH PARIKH,

Grahak Suraksha & Pagla Samiti
(Akhil Bhartiya)
132,318 Spectrum Com. Centre,
Near Relief Cinema, Relief Road,
Ahmedabad -1

[2]. JAIMIN H SHAH (Proprietor)

Shree Hari Packaging,
833/5, Kothari Industrial Estate,
Kothari Cross Road, Santej,
Ta: Kalol, District: Gandhinagar.

Versus

OPPONENT:

THE ORIENTAL INSURANCE CO. LTD.

3rd Floor, H J House,
Rambaug, Near Police Station,
Maninagar, Ahmedabad-8.

CORAM:

Mr R N Mehta Presiding Member
Ms P R Shah Member

Appearance:

Mr S A Thakor Advocate for Complainant
Mr G M Brahmhatt Advocate for opponent

(Order by Mr R N Mehta, Presiding Member)

[1]. The complainant no.1 is a voluntary consumer organisation through whom the complainant no.2 has filed this complaint under the provisions of The Consumer Protection Act, 1986 (herein after referred as "The Act" or "Act") and claimed Rs. 2229176/- (Rupees Twenty-two Lakh twenty-nine thousand one hundred and seventy six) being the short paid amount together with interest from 1/10/2014 @ 18 % p.a.

and also prayed for interest Rs. 381767/- (Rupees Three Lakh eighty-one thousand seven hundred and sixty-seven only) being the amount of interest @ 18 % on Rs 1767448/- which was paid with delay, Rs. 300000/- towards compensation for harassment, mental agony and Rs. 50000 towards cost of litigation.

[2]. It is the case of the complainants that complainant no.2 (herein after referred as "Insured") belongs to middle class person who runs a manufacturing unit to earn his livelihood through self-employment. The opponent is an insurance company indulged in the business of providing indemnification on payment of consideration known as Premium against the loss due to untoward incident. It is the case of complainants that the insured had availed financial facilities from his banker and to protect his and his financier's interest, also purchased an insurance policy known as "Standard Fire & Special Perils Policy" for the sum insured of Rs. 4600000/- on payment of premium of Rs.8967/- for the period from 12/1/2013 to 11/1/2014 for which the opponent insurer issued policy no. 141700-11-2013-1251. It is stated that in the said insurance policy the address was shown as the factory premises of the insured mentioned in the cause title.

(2.01). It is further stated by the complainants that the said insurance policy schedule supplied to insured was showing risk covered as under:

Description of Risk: Paper and Card Board Mills (including Lamination) / Disposable Diaper Manufacturing.

Risk Covered:	Furniture, Fixture & Fittings:	Rs. 100000
	Plant & Machinery	Rs.1200000
	Dyes wooder:	Rs.300000
	Stock.	Rs. 3000000

It is stated that above stated insurance was also having basic fire cover and Earthquake cover for Rs.4600000/-.

(2.02). It is stated in the Complainant that on 19th March 2013 there was an incident of fire and the insured suffered loss of about Rs. 4000000/- as stock (finished and raw material) lying in the factory which got burnt and caused loss to the machineries and wooden dyes. The incident of loss was intimated to the opponent insurer, fire brigade and local police authority. The fire brigade came and it took about six hours to douse the fire whereas police visited site, drawn punchnama, informed forensic science.

laboratory who took samples from the site. It is stated in complaint that on intimation, the opponent insurer deputed surveyor Mr Nilesh Bhimani who visited site and asked insured to submit documentary evidence in support of loss caused to him. It is alleged in the complaint that despite submission of all documents pertaining to loss, the surveyor delayed scrutiny of those documents and assessment of loss for a long period of time though duty bound to submit his report within the limited period as prescribed by the IRDA. It is further alleged that when the surveyor informed the insured about loss assessment to the extent of Rs. 1700000 /- the insured protested vide letter dated 21/10/2014 and to his shock and surprise, his bank account was credited for Rs. 1767448/- through ECS. The opponent insurer did not allow the claim of Rs.2329176/- arbitrarily and therefore complainant has filed this complaint. It is alleged that insurer was duty bound to settle claim at earliest but even offered amount was paid with delay of about 1 year six months from the date of incidence and for which alleged deficiency in service on the part of the opponent insurer.

(2.03). It is alleged in the complaint that complainant also had hired services of Chartered Accountant Mr Jagdishbhai B Shah to assist in assessment of the loss and according to him the complainant suffered loss of stock @ Rs.2901687/-, Loss to the machinery @ Rs.1088691/- and Rs.106260/- for loss to wooden Dyes. It is stated in complaint that insured was entitled to fire fighting expenses and therefore the said Chartered Accountant has shown total claim amount Rs. 4113638/- in his report. It is alleged in the complaint that the insurer had deducted salvage of Rs.100000/- for machinery. It is alleged that the surveyor had unnecessarily raised dispute with regard to cenvat credit and delayed the assessment of loss. It is alleged that complainants have informed to the surveyor that Excise department had asked for copy of survey report to claim credit but despite repeated reminder it was not supplied which caused harassment to the complainants. On the basis of aforesaid assessment made by his Chartered Accountant, the complainants have filed present complaint to claim balance outstanding amount together with interest.

- [3]. On receipt of complaint, this Commission vide its order dated 10th July 2015 ordered to admit complaint for further proceedings under The Act and also further ordered to issue notice to the opponent insurer and called upon it to submit its version and for final hearing. The opponent insurer, on service of notice, appeared through advocate and filed reply which was taken on record.

(3.01). It is contended in the reply that complaint is filed with malafide intention and it is misconceived and bad in law. It is denied that allegations made against the opponents are true. It is submitted that on receipt of premium with proposal for insurance, the opponent issued above referred policy for the period from 12/1/2013 to 11/1/2014 and risk covered mentioned in the Schedule of Policy. It is submitted that as and when the intimation of fire loss was reported, the opponent immediately appointed IRDA approved Surveyor Mr Nilesh Bhimani for assessment of loss. It is submitted that when the fresh quotations were submitted, after scrutiny of documents and discussions with insured the surveyor assessed Total Value at Risk for Plant and Machinery at Rs.1124325/- which was in confirmation with depreciated value of Rs. 1088681/- mentioned by Chartered Accountant Mr J B Shah appointed by insured whereas value of wooden dyes was assessed at Rs. 63755/- . The insured had submitted data for stock lying in the premises on the day of incident but since data was not tallying, the insured was asked to submit fresh data after scrutiny and applying correct method of accounting. However, this preliminary information received by surveyor revealed that insured was fully covered and therefore insured was asked to submit necessary supporting documents to assess the actual loss caused due to fire.

(3.02). It is submitted that based on fresh presentation, insured's trading account was showing closing stock of Rs.2901687/- which was inclusive of defective, slow moving stocks. The insured was therefore convinced to rework closing stock value which was finally arrived at Rs.1896746/-. It is submitted that even this value was inclusive of stock of Rs. 1463231/- which was manufactured but not traded in market since ten months. Therefore, the surveyor considered this stock at 25 % value and concluded that value of closing stock was Rs. 799326/- only. After considering the value of salvage and deductible excess Total assessment came to Rs. 1754125/- and fire fighting expenses allowed for Rs.17000/- making total Rs. 1771125/- and recommended for the same as liability under the policy. It is submitted that the insured had consented for the same and there was no case of coercion or any pressure on the insured while accepting the said assessment. When the insured submitted duly stamped voucher for "Full and Final Settlement" the amount was paid to insured by the insurer.

(3.03). It is therefore canvassed that there is no case of deficiency in service and this complaint is filed at a later point of time because of ill-advice. It is alleged that the insured through this complaint wants to extort more money from the insurer through misuse of provisions of this Act. It is submitted that delay caused in settlement of claim because the accounting data produced by the complainant insured was not tallying and therefore he was allowed to rework on his data and after production of fresh accounting data, the settlement was made at the earliest opportunity. It is submitted that when accounting data were not tallying, the surveyor intimated complainant insured and was advised to get help from competent accountant which he agreed and appointed C A Mr J B Shah who confirmed that data were defective and not properly maintained. The said Chartered Accountant prepared complete accounts and then it was produced before the surveyor which took little more time and it caused delay. Therefore, it is not true that delay was caused from the insurer side. The insured has accepted above said amount without any protest and signed voucher without observing any endorsement thereon. Therefore, it cannot be said that it is a case of deficiency in service or unfair trade practice by any stretch of imagination. In such a case, no cause of action has arisen for the insured to file this complaint. The insurer denied any liability for any further payment and submitted for dismissal of complaint. The insurer has placed on record certified copy of insurance policy, original claim intimation letter, correspondence from the surveyor to insured, original claim form, copy of claim settlement intimation sent to insured, Original Discharge voucher signed by insured, Original report submitted by Chartered Accountant of insured, original letter of insured dated 27/3/2014, copy of explanation letter from Chartered Accountant of insured for tax audit etc. purpose, Original letter of insured dated 22/8/2014 admitting value of stock, copy of surveyor report with affidavit of surveyor Mr Nilesh Bhimani.

- [4]. The complainants have filed counter affidavit to Mr Bhimani's affidavit and also submitted rejoinder affidavit to submit that it is not true and correct that the data given by the insured was not matching and it was defective in any sense. It is alleged further that surveyor has not considered data given by Chartered Accountant Mr J B Shah, data given by tax consultant R P Shah and also not considered sales purchase statistical details and assessed the loss. Therefore the report submitted by surveyor was incomplete as to actual loss suffered by the insured. The complainants have

submitted all supporting documents along with complaint and reiterated that those documents were not considered.

- [5]. Both parties have submitted written submissions and mainly reiterated their version of case. No oral evidence has been led in this matter.
- [6]. Mr S A Thakor advocate for the complainants vehemently argued that when the claim has been partially paid, there is no dispute with regard to admissibility of claim and there was no breach of condition on the part of the complainant insured. He further submitted that the surveyor is duty bound to carry out assessment of loss within the prescribed time limit but in the instant case, the surveyor took the period of about one and half year for assessment of loss. This shows that the surveyor has worked casually and caused delay in settlement of claim. He also further argued that when insured submitted his protest, the insurer credited account of insured through ECS just to show that insurer had settled claimed and voucher was signed without any protest. He submitted that data submitted by Chartered Accountant has not been duly considered and arbitrarily deducted value of stock treating it as slow moving item. He submitted that there was no base for deduction of 75 % of value of stock. The surveyor has not segregated stocks to carry out real assessment. He also submitted that surveyor has wrongly deducted value of wooden dyes in the name of depreciation. Therefore, the complainant is entitle to full amount of wooden dyes. Mr Thakor has drawn our attention to total value of stock that was ascertained by Chartered Accountant and submitted that it is not understood from where surveyor came to conclusion that stock was moving slow. He submitted that when the partial amount was offered, the complainant objected but thereafter insured was informed that it will cause further delay in settlement of claim. The insured was in financial crisis and therefore the surveyor asked him to submit letter of acceptance so as to recommend settlement of claim. The insured was left with no option and therefore submitted letter but immediately thereafter sent protest for the same. Therefore, merely because Full and Final settlement voucher has been signed it will not cause any prejudice to claim further since consent was not voluntary in nature. He therefore submitted to direct the insurer to pay outstanding balance amount with interest as prayed in the complaint and also cost.

[7]. Mr Brahmhatt, advocate for the opponent submitted that when the amount of loss assessed by the surveyor has been paid on receipt of "Full and Final Settlement" voucher, it cannot be said that the insurer has not performed its part of duty diligently and put the insured to suffer loss. He submitted that Mr Nilesh Bhimani is approved surveyor and he had assessed loss on the basis of documents produced before him. The assessment made by surveyor was explained to insured and thereafter he accepted it vide his letter dated 22/8/2014. Therefore, allegation of insured that he accepted assessment under coercion cannot be believed. He vehemently submitted that the accounting data initially furnished by insured were not matching and therefore insured was given opportunity and with the assistance of Chartered Accountant, he produced fresh data. During scrutiny it was observed that stock manufactured before ten months were not moving and its market value had been reduced. The insured himself has submitted that he is unable to say value of such stock which proves that stock was idle and therefore surveyor reduced its value and offered the amount of loss. When all these facts were admitted /supported by documentary evidence, it cannot be said arbitrary treatment. He referred to reply and submitted that how the assessment of loss has been arrived at is categorically explained and the complainant has not proved it wrong. In these circumstances, the complainant is not entitled to claim balance amount. Regarding claim of interest for delayed settlement of claim and on the amount of payment made, he submitted that it has been admitted facts in the documents on record that delay was caused due to non-submission of correct accounting data and there was not undue delay on the part of surveyor or insurer. Therefore, complainant is not entitled for the same. He then submitted that unless it is proved on record any arbitrary treatment during settlement of claim, complainant is not entitled for any relief and complaint is required to be dismissed.

[8]. We have read complaint, perused documents attached to it, considered reply of insurer affidavits filed by rival parties and documents placed on record by the parties. Our observations are as under:

(8.01). It is not in dispute that insured had policy and loss caused to him due to insured perils. It is also not in dispute that on the basis of recommendation made by the surveyor, the insurer has paid Rs. 1771125/- towards settlement of claim and insured has acknowledged the same. According to complainant, the amount was accepted under protest and objections were reported immediately whereas insurer says

that this complaint is afterthought and a result of ill advice. Page 131 of the compilation is the original intimation letter submitted to insurer on the day of incident i.e. 19th March 2013. In the said letter, the insured has reported fire and informed that according to his observation total loss (approx.) would be around 40 to 50 Lacs. Thereafter, on 17th September 2014, the insured had submitted claim form (Page 141) in which total claim is mentioned as Rs.4096624/- and details of claim submitted in tabular form which reads as under:

Description of article claimed	Value at the time of fire in Rupees.	Deduction for value of salvage. Rs.	Amount claimed. Rs.
Machinery	1088691/-	100000/-	988691/-
Wooden Dyes	106260/-		106260/-
Stock	2901687/-		2901687/-
Total	4096638/-		3996638/-

Therefore, it can be said that it was well within the knowledge of insured on the date of submission of claim form that total value of stock was Rs. 2901687/- which includes finish stock and stock in process. It is also clear that insured has not considered salvage value of wooden dyes while submitting claim form.

(8.02). Page 85 is a copy of letter written by Chartered Accountant Mr J B Shah to opponent insurer in which it has been admitted that representation of trading and profit & Loss account was not proper and was misleading. It is further stated therein that there is mistake of showing capital assets /machinery loss in profit and loss account. He has also shown wooden dyes as a consumable stores expenses in trading and profit and loss account. It is also mentioned that though insured was making profit, it was shown as running in loss. It is stated that fresh trading and profit and loss account was prepared and it shows that insured firm had profit and gross profit ratio have been ascertained. It is also mentioned that all these observations are based on documents produced and due to fire no sufficient record was produced. This observation makes it clear that the data produced by insured was not according to the standard accounting practice and therefore the surveyor was right in asking the insured to resubmit the accounting data. The Chartered Accountant wrote aforesaid letter on 21st December 2013. Thereafter, he also advised the insured to submit revised income tax returns. Thus, the allegation of the complainant that surveyor

caused delay is not sustainable in the eyes of law. Moreover it falsifies the denial allegation of the complainant that there was no mismatching or data were correct.

(8.03). Chartered Accountant Mr J B Shah also reported to insurer vide its letter dated 10th December 2013 that insured had purchased wooden dyes in 2010-11 for Rs.100500/- and in the year 2011-12 Rs.101162/- and though these dyes were existing on the date of fire he has not claimed even after it burnt to ashes. He however made it clear that in the year 2012-13, insured had purchased new wooden dyes costing Rs.106260/- and it was burnt therefore the same was included in fire claim. He also further clarified that stock burn down has no salvage value. In this letter it is mentioned that insured had submitted purchase bills/vouchers/confirmation from the parties except Universal Craft. We failed to understand this letter was written in December 2013 and claim form was submitted in September 2014 then why the loss ascertained by the Chartered Accountant of insured was not submitted in claim form. According to Chartered Accountant total loss comes to Rs. 4113638/-. This letter has attachment wherein trading account of 2010 -11 and 2011-12 is presented. In absence of actual documentary evidence, considering gross profit ratios of past year, closing stock of 2012-13 was assessed at Rs.2901686/-. If the last years closing stock is considered it was showing Rs.2230000/- and during the year total sale was made for Rs.4527567/- as against purchase during year 3449748/-. These data are of importance because it is stated by the surveyor that stock was containing low moving stock.

(8.04). In absence of accurate data it is very difficult to say what was the stock in fact lying at factory on the date of fire. Since comparative data is available one can estimate the real situation. Page 168 is statement of stock considered by surveyor but from where these data is derived is not clear. When complainant insured stated that all records have been burnt, these data cannot be treated as final data. Although in absence of accurate data it can be referred but valuation thereof is at stake. Page 97 and 98 are statements submitted by the insured showing different qualities of stock on the date of fire. If we look at the statement there are 15 sizes of 7 ply corrugated boxes and 14 sizes of 5 ply corrugated boxes. Comparing it with earlier years closing stock, it seems that very few sizes exists on the date of fire. This creates doubt on the claim of surveyor that stock was slow moving particularly when fire had taken place in the last month of the year ending.

(8.05). The Chartered Accountant has said that gross profit ratio is also not showing reducing trend. We are unable to find any answer in the report of surveyor that which stock was low moving. When he has not described it separately it is difficult to ascertain which stock was moving slow in market. It is also to be considered that surveyor stated that boxes were manufactured before ten months and lying there. The manufacturing unit is not expected to work only on order basis but it shall have to keep ready some stock. Now stock manufactured before ten months, if taken as it is, it means the same were manufactured in the same financial year. Manufacturing companies are always supposed to use product mix criteria to enable it to survive. In no business, every product of manufacturer receives same response from the market. Needless to mention that insured unit was manufacturing packaging industry where it has to keep ready various sizes so that when the order is received, it can be executed immediately. Therefore, just because stock was lying there which was manufactured ten months before must be considered as low moving stock and has lesser value is not acceptable.

(8.06). The surveyor has mentioned in his report that he had obtained data from the market but none of them is produced in the report so as to ascertain which product of insured was having what lesser value in market. All these indicates that surveyor has arbitrarily reduced the value of stock and allowed only 25 % of the stock value. List of finished stock of every description is mentioned but it does not reflect the number of pieces and it is mentioned in kilogram. Whereas the complainant has given information in boxes. Therefore it is not possible for us to ascertain what he had considered. How he came to reduced cost of Rs. 25 % is also not clear. As discussed, comparing data of previous year and remaining stock on the date of fire, makes it clear that very few sizes of stock had history of low moving. To prove reduction in value of stock, none of the invoices of the complainant insured was scrutinised by the surveyor in that case, it is nothing but mere presumption of surveyor that its value must have been decreased. When the complainant's data for different sizes of last year stock and stock on the date of fire indicates that out of 30 different sizes available on last year closing, about six sizes remains in stock on the date of fire but that too after manufacturing new stock. This means it cannot be said slow moving. On the contrary, it is to be considered as moving item and insured wanted it to have stock ready for immediate sale. Considering all these, we hold that surveyor had no data to reduce the

value of stock and though reduced it to the extent of 75 %. This is arbitrary treatment to insured.

(8.07). Mr Brahmhatt relied upon judgment of Hon'ble NCDRC in the matter between *Ashishkumar Jaiswal vs ICICI Lombard General Insurance Co.Ltd* wherein it was held that ordinarily the report of surveyor must be given due importance and his findings cannot be interfered lightly. With all due respect to the ratio laid down, we say that there are valid reasons here to differ with the way in which the assessment has been made. The surveyor in the instant case has not observed in its report that on what basis he had reduced 75 % of the value of stock. Presuming even for the sake of argument that it may be a slow moving stock, but because of slow movement in market whether it causes any effect on sale price or say the manufacturing cost and that too to the extent of 75 % of its value! When there is no iota of evidence! the purchase cost, expenses incurred thereon will not go away until any adverse effect is caused due to storage. It may reduce gross profit of insured and it might have effect on closing stock. In absence of any other documentary proof we would suggest reduction of one third value of stock to reduce gross profit thereon.

(8.08). In his report, surveyor has considered valuation of stock as under:

“Value of stock (Raw Material & WIP) of every description whilst stored in the premises at the time as per list attached. Rs.433518/-

Value of stock (Finished) of every description (as per list attached) whilst stored /lying in the premises at the time at Rs.1463231/- and reduced @ 75 % towards non/slow moving factor. Rs.365808/-

Total: Rs. 799326/-“

Out of this amount, surveyor has assessed salvage value of Rs. 5326/- and offered Rs. 794000/- towards loss of stock. We are unable to understand that product of insured is based on paper and how in fire it can be saved to estimate salvage value?

In such circumstances, we would allow reduction to the extent of gross profit ratio which comes to value of stock at Rs.949491/- (reduction of value of 35 % of Rs.1463231) instead Rs.365808/- taken by surveyor. As there cannot be any salvage, total amount payable would be Rs. 1383009/- (including Raw material stock & Rounded off to Rs.1383000/-). The surveyor has also depreciated value of wooden dyes and considered loss of Rs. 63756/- as against purchase price of Rs.106260/- in the same year. As per income tax, depreciation allowable is about 15 % for the same-

year. Therefore, the value of wooden clyes after deduction of depreciation would be Rs.90320/- (Rounded off to Rs.90000/-). From this it appears that the complainant insured is still entitled to Rs. 615244/- (1383000 + 90000 -794000-63756 = 615244) and it can be rounded off to Rs.615000/-

(8.09). Mr Brahmhatt has rightly submitted that once having executed full and final settlement voucher and after receipt of money, unless coercion or pressure is established, insured cannot get benefit under provisions of The C P Act. We are aware of judgments of Hon'ble Supreme Court to this effect. But if it is brought on record that consent given or voucher discharged was under duress, the insured has right to agitate the same before Consumer Disputes Redressal Agencies. In the instant case, it is established on record that insured was asked to submit a letter addressed to surveyor that he has been explained the assessment criteria and he is agreeable to the same and he will have no claim thereafter. This letter was submitted on 22/8/2014 and thereafter surveyor prepared and submitted his report to insurer. The surveyor's report is dated 3rd September 2014 which is subsequent to letter obtained from insured. The claim amount was offered only through voucher dated 1st October 2014 and thereafter amount was paid. All these indicate that insured had no option and he was in financial crisis which is mentioned in his letter. Moreover, the complainant through his letter intimated insurer for balance claim vide letter dated 21st October 2014. In such circumstances, it cannot be said that voucher was discharged voluntarily with free will and therefore complaint is maintainable before this Commission. Therefore, we pass following order:

ORDER

The complaint no. 67 of 2015 is hereby partly allowed.

The opponent insurer is hereby directed to pay to the complainant the sum of Rs. 615000/- (Rs. Six Lakh Fifteen thousand only) together with interest @ 7 % from the date of complaint till realization. Rest of the claim of the complainant is not proved and therefore dismissed.

The opponent insurer is also further directed to pay Rs.10000/- towards cost of this complaint. The aforesaid amount is to be paid within 60 days from the date of this

order failing which the complainant is entitled to 2 % additional interest on the aforesaid amount.

The office is directed to supply copy of this order to parties free of cost at earliest.

Pronounced on this 10th day of September 2024.

Prtee SRK
10/09/2024
Ms P R Shah

Member

R N Mehta
10/09/24
Mr R N Mehta

Presiding Member.