

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 176 OF 2015

(Against the Order dated 06/02/2015 in Complaint No. 12/2013 of the State Commission
Uttaranchal)

1. M/S. JINDAL & CO.

THROUGH ITS PROPRIETORS, NARENDRA JINDAL, D-
87, PARK ROAD,
DEHRADHUN, U.K

.....Appellant(s)

Versus

1. UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD.
& 5 ORS.

ITS HAVING BRANCH OFFICE, SHOP NO. 209/10,
CHANAKYA TOWER, RAJPUR ROAD, DILARAM BAZAR,
DEHRADHUN,
UTTRAKHAND

2. UNIVERSAL SOMPO-GENERAL INSURANCE CO. LTD.,
ALSO HAVING ITS REGISTERED AND CORPORATE
OFFICE AT UNIT NO. 401, 4TH FLOOR, ANDHERI KURLA
ROAD, ANDHERI (EAST)

MUMBAI-400059

3. ALLAHABAD BANK

ITS BRANCH OFFICE AT: NEHRU COLONY,
DEHRADHUN,
UTTRAKHAND

4. ARUN MISHRA (CHIEF MANAGER)

ALLAHABAD BANK DEHRADHUN,
UTTRAKHAND

5. CHHITRANJAN PANDEY (MANAGER)

UNIVERSAL SOMPO-GENERAL INSURANCE CO. LTD.,
DEHRADHUN BRANCH, HAVING ITS OFFICE SHOP NO.
209/10, CHANAKYA TOWER, RAJPUR ROAD, DILARAM
BAZAR,

DEHRADHUN,
UTTRAKHAND

6. ASHU BANSAL (EXECUTIVE)

UNIVERSAL SAMPO-GENERAL INSURANCE CO. LTD.,
HAVING ITS OFFICE SHOP NO. 209/10, CHANAKYA
TOWER, RAJPUR ROAD, DILARAM BAZAR,
DEHRADHUN,

UTTRAKHAND

7. PROTOCOL SURVEYOR'S & ENGINEER'S PVT. LTD

HAVING ITS OFFICE AT; A-56, SECTOR-7,
NOIDA-201301,
UTTAR PRADESH.

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER

HON'BLE MR. BHARATKUMAR PANDYA, MEMBER

FOR THE APPELLANT : MOHD. PARVEZ DABAS, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENT-1 : MR. RAJAT KHATTRY, ADVOCATE (VC)

FOR THE RESPONDENTS-2 & 3 : MR. DINESH CHANDRA TRIPATHI, ADVOCATE (VC)

Dated : 14 October 2024

ORDER

1. Heard Mohd. Parvez Dabas, Advocate, for the appellant, Mr. Rajat Khattry, Advocate for respondent-1 and Mr. Dinesh Chandra Tripathi, Advocate for respondents-2 & 3.

2. Above appeal has been filed against the order of State Consumer Disputes Redressal Commission, Uttaranchal dated 06.02.2015 passed in CC/12/2013 whereby the complaint has been dismissed. Office has reported one day delay in filing the appeal. The appellant has filed IA/1644/2015 for condoning the delay. For the reasons as stated in the IA, we condone the delay.

3. The appellant/complainant stated that Mr. Narendra Jindal is the proprietor of M/s Jindal & Company at 14th Gangotri Vihar, GMS Road, Dehradun, presently situated at D-87, Park Road, Dehradun. He has taken a loan from Allahabad Bank who is an agent of respondent-1 (insurance company). Mr. Arun Mishra, Chief Manager, Allahabad Bank and Mr. Ashu Bansal, Executive of Universal Sompo General Insurance Company Ltd. approached the complainant to take an insurance policy from Universal Sompo General Insurance Company Ltd. which was a joint venture with Allahabad Bank, who is also an agent & intermediary of respondent-1. Induced by their offer, the complainant took an insurance policy. They took signatures of Narendra Jindal on the proposal form with the promise to get the cover note/insurance policy from respondent-1. The complainant was not permitted to read the proposal form and the OPs promised that all risks would be covered by the policy. The complainant disclosed the entire facts to the OPs about his property, godown, basement. On 29.04.2012, the Allahabad Bank debited an amount of Rs.39419/- from the account of the complainant for stock insurance. The complainant requested for cover note from the OPs but there was no response from their side, due to which the complainant could not know about the risk covered by the policy.

3a. The godown and office of the complainant were closed at about on 03.08.2012 at 7.00 pm. On 03.08.2012, there was heavy rainfall in Dehradun which continued for many hours. On the next day when the premises were opened, it was found that the entire basement, godown and office of the complainant was flooded with rain water upto about 5 feet, due to which major portion of the stock of surgical goods got damaged. The complainant shifted the entire stock to the ground floor and first floor which were under construction and the entire documents as well as computer systems were also affected. The insurance company was informed about the loss. Chief Manager of Allahabad Bank assured the complainant that the insurance claim would be paid shortly by the insurance company. On repeated demands of

the complainant, the OPs provided the cover note on 26.12.2012. The complainant was shocked to read the cover note wherein inter alia it was stated that the storage and utility operations in the basement would be excluded from the policy. In the cover note the premium amount was Rs.29251/- and the Bank had debited an amount of Rs.39414/-. The insurance company and the bank had colluded with each other against the complainant, which is a breach of contract, breach of trust and deficiency in service. They have also cheated the complainant. The complainant had provided all necessary documents to the Surveyor. An incident of theft has also occurred in the premises of the complainant for which the complainant made a police complaint at Patel Nagar Police Station, Dehradun on 31.12.2012 and also informed the insurance company about theft. The complainant suffered a total loss of Rs.80/- to Rs.85/- lacs. On 30.11.2012, the complainant sent the information regarding survey report of sales tax department alongwith the list of spoiled goods to the Branch Manager, Allahabad Bank as well as the insurance company. Despite several emails sent to the insurance company as well as Allahabad Bank, the claim of the complainant was not settled. Then the complainant filed a complaint with the IRDA but no action was taken on that complaint. On 09.04.2013, the complainant sent a letter to the Allahabad Bank as well as the insurance company and a copy thereof was also sent to the IRDA. The insurance company, vide letter dated 14.03.2013, repudiated the claim of the complainant. The insurance company was fully aware about the basement and even inspected the factory premises before issuance of the policy. At the time of signatures, the proposal form was blank and it was not filled by the complainant. Even the complainant was not allowed to read the contents of the proposal form. The proposal form was filled by the agent of the insurance company. The complainant sent a legal notice to the insurance company on 27.03.2013, which was received in its office on 01.08.2013 but no reply has been given by the insurance company. Then the complainant filed the consumer complaint with the State Commission on 21.08.2013.

4. The insurance company and its executive (OPs-1, 4 & 5) filed their joint written version stating that the claim of the complainant was repudiated on the basis of the terms & conditions of the insurance policy, wherein it was specifically mentioned that the stock kept in the basement would not be covered under the policy. The complainant kept the stock in the basement in violation of the terms & conditions of the policy. Thus, the insurance company was justified in repudiating the claim. It is wrongly alleged that the policy was not supplied to the complainant. The same policy was renewed for another one year. It is denied that the Chief Manager of Allahabad Bank and the executive of the insurance company approached the complainant. The complainant himself opted to purchase the policy from the insurance company only after going through the terms & conditions of the policy. It is denied that the complainant was not permitted to read the proposal form. The complainant had taken two insurance policies, one fire policy and the other burglary policy. As the complainant was satisfied with the service of the insurance company, he got the policies renewed. Earlier the insured property was situated at B-10, Transport Nagar, Dehradun, Uttarakhand and after renewal of the policy, the complainant has shifted the stocks to another location i.e. 14, Gangotri Vihar, GMS Road, Dehradun, Uttarakhand. The intimation of shifting the stock with the request to change the location was given to the insurance company vide letter dated 15.06.2012 and an endorsement was also made in the insurance policy. Even in the letter dated 15.06.2012 there was no indication regarding storage of stock in the basement nor was there any request to cover the risk of the stocks stored in the basement. The premium of

Rs.39419/- was towards two policies i.e. Standard Fire and Special Perils Policy and the Burglary Policy. In view of the fact that the complainant has made a request to change the location of risk, the allegation of the complainant that he was not provided the cover note is incorrect.

4a. Allahabad Bank and its Chief Manager (OPs-2 & 3) filed their joint written version admitting the fact that the complainant had taken a loan from them. It is denied that the Chief Manager approached the complainant for taking the insurance policy. It is also denied that the complainant was not allowed to read the proposal form. It is denied that the complainant demanded the cover note from the bank. It is the responsibility of the insurance company to provide the cover note. However, on the request of the complainant the copy of the cover note was provided to him. It is denied that the complainant was not aware of the terms & conditions of the policy. It is denied that the premium amount was Rs.29251/- and an amount of Rs.39419/- was debited from the account of the complainant. In fact, the complainant took two insurance policies for which total premium of Rs.39419/- was debited from his account. In any case, the insurance policy is liable to settle the claim and the Bank has nothing to do with the settlement of claim.

4b. The surveyor (OP-6) filed its separate written version stating that the complaint was not maintainable qua OP-6. The surveyor was deputed by OP-1. The surveyor sent several letters and reminders to the complainant to segregate the damaged and saved items for assessment of loss. The surveyor made assessment of loss and it was found that the premises where the stock was kept was not insured as per terms & conditions of the policy.

6. The State Commission after hearing the parties, vide impugned order dated 06.02.2015 has dismissed the complaint. Aggrieved by the impugned order dated 06.02.2015, the complainant has filed the above appeal.

7. We have considered the arguments of the counsel for the parties and perused the record. The State Commission has dismissed the complaint on the finding that the stock kept basement was not covered under the policy rather the stock kept in the basement was specifically excluded from the policy as such the insurance company was justified in repudiating the claim. The Proposal Form for obtaining "Standard Fire and Special Perils Policy" and "Burglary Policy" dated 02.05.2011 has been filed (page-53 of the paper book of the appeal) which specifically mention as "stock of surgical and pharmaceutical items kept in the basement." The State Commission has ignored the important aspect of the matter that in the proposal form the complainant has sought for coverage of risk to the stock kept in the basement. In the proposal form, against the column of occupation/business activity, there are 7 items i.e. manufacturing industry, shop, warehouse, office, silent risk and cold storage. The complainant has tick in the box of 'warehouse' and 'basement'. Thus, from the proposal form it is clear that the complainant has sought for a policy covering the risk to the stock kept in the warehouse and basement. When the complainant has specifically applied for a policy covering the stock kept in the warehouse and in basement, the insurance company is not expected to issue a policy wherein the stock kept in the warehouse in basement is excluded from the risk. If the insurance company was not desirous to cover the risk kept in the warehouse in basement, it should not have issued the policy and should have returned the premium amount to the complainant. Supreme Court in the case of **Texco Marketing Pvt. Ltd. vs. Tata AIG General Insurance Co. Ltd. & Ors. (2023) 1 SCC 428** held that when

the exclusion clause is against the very object of the contract of insurance making it non-executable from its inception, the opposite party cannot be allowed to take benefit of the exclusion clause. Even the opposite party cannot be allowed to plead estoppel and take benefit of its own wrong. In the present case, the insurance company has knowingly entered into a contract notwithstanding the exclusion clause defeating the purpose of the insurance policy. The surveyor has assessed the loss at Rs.1603520/-

ORDER

In view of the above discussion, the appeal is allowed with cost of Rs.50000/- to be paid by the insurance company to the complainant. The order of the State Commission is set aside. CC/12/2013 is partly allowed. The insurance company is directed to make payment of the amount as assessed by the surveyor i.e. Rs.1603520/- with interest @ 9% per annum from the date of repudiation of claim i.e. 14.03.2013 till realization. The order be complied within two months from the date a certified copy of this order is produced before the insurance company.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER