

IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution : 20.05.2015
Date of Reserving the order: 23.09.2024
Date of Decision: 21.10.2024

CC No. 330/2015

IN THE MATTER OF

M/s GNE Exports Pvt Ltd.
Having its Branch Office at
B-223, Nariana Industrial Area,
Phase-I, New Delhi-110028
(Through its Director)

(Through Ms Malini Sud/Priya Deep, Advocates)

... Complainants

VS.

The New India Assurance Co. Ltd
BMC Chowk, Lally Building,
G.T. Road, Jalandhar-144001

(Through Mr Navdeep Singh, Advocate)

...Opposite Party

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

HON'BLE MS. BIMLA KUMARI, MEMBER (FEMALE)

Present: Ms Bhavi Midha, Ld counsel for the complainant
Mr Navdeep Singh, Ld counsel for the Opposite Party

MS. BIMLA KUMARI, MEMBER (FEMALE)

ORDER

1. Brief facts of the case are that the complainant company (herein after referred to as complainant) has taken various insurance policies from the opposite party and also purchased a Standard Fire and Special Peril Insurance Policy No.36090111120100000221 for a period w.e.f. 08.01.2013 to 07.01.2014 for a sum of Rs.One crore in respect of premises R.No.6-10, B-31-32, G-32, **Ground Floor** Masjid Moth, South extension, New Delhi-110049. The said insurance policy covered the stocks of all kinds of clothes such as fabrics, readymade garments, suits, F.S.F. goods, Goods in process, raw material used for manufacturing readymade garments and similar goods belonging to the complainant's trade. However, the address in the insurance policy was mentioned by the opposite party as R.No.6-10, B-31-32, G-32 **First Floor**, Masjid Moth, South extension, New Delhi-110049. Further, the location address was also mentioned as **Gurgaon**-110049, whereas the insurance policy was purchased by the complainant for **New Delhi**.
2. It is the case of complainant that before the policy was issued, the Officers of the Opposite Party, personally visited the premises and thereafter, the policy was issued. The said error on the part of the Opposite Party was immediately brought to the notice of the Opposite Party and Mr. Desh Raj, Branch Head of the Opposite Party accepted that there were errors in the policy and an endorsement regarding change of location in the Insurance Policy was made on 14.01.2013.

3. It is the further case of the complainant that it was not for the first time that the address in the policy was mentioned incorrectly because the policy issued for the period w.e.f. 06.01.2012 to 05.01.2013 being policy no. 36090111110100000227 **also mentioned the incorrect address of the premises as well as location.** It is the further case of the complainant that when he purchased another policy for a period 08.01.2014 to 07.01.2015 being policy no.36090111120100000218 **for the premises at Ground and First Floor, B-222 Phase-1, Naraina Industrial Area, New Delhi-110028 that time also, the location of the property was mentioned as Karol Bagh, New Delhi.** The said error was pointed out by the complainant to the opposite party, which was acknowledged by the Senior Divisional Manager of the opposite party.

4. It is the further case of the complainant that on 11.01.2013 at around 5:00 PM, a fire started from an air conditioner, due to an electrical short circuit, which was installed in the working room of the premises. The short circuiting produced sparks, which fell on the material/fabric, lying on the tables, which caught fire in no time. The workers working at that time could not escape immediately and three workers sustained burn injuries. The representatives of the Complainant informed the incident to Fire Services immediately and the Fire Brigade reached the site at 5:20 PM. The complainant also informed the Hauz khas police station and the Daily Diary no. 41A was recorded at the police station. The opposite party was also immediately informed regarding the incident and inspection of the premises was carried out by the

surveyor Sanjay Dwivedi & Associates, appointed by the opposite party on 15.01.2013, 16.01.2013 and 17.01.2013. Thereafter, the complainant lodged its claim with the opposite party on 21.01.2013 for an estimated loss of Rs.95 lakhs. Thereafter, the complainant wrote letter to the surveyor on 20.02.2013 and requested him to prepare the report. After a lapse of 6 months, the complainant received a report on 12.08.2013, wherein only a sum of Rs.73,57,656/- was estimated by the surveyor, to be payable by the opposite party to the complainant as against the claim of Rs.95 lakhs. Thereafter, the complainant regularly followed up the claim with the officials of the opposite party but of no avail.

5. It is the further case of complainant that on 22.11.2013 the complainant send an email to the Branch manager of the opposite party namely, Mr D R Ahir and requested him to process the claim, on urgent basis and the officials of the opposite party started assuring that the claim filed by the complainant would be processed before 31.03.2014. The Deputy General Manager of the opposite party, namely, Mr Malhotra also informed the complainant that it was a clerical mistake on their part and they would rectify the same at their end and would settle the claim on priority basis.

6. It is the further case of the complainant that thereafter the opposite party in order to avoid make payment started asking for the documents, which were available with them. On 22.05.2014 the complainant received an email from the Branch Manager of the opposite party whereby Rent Deed of the demised premises and balance sheets for the year 2010-11 onwards were

demanded to process the claim and the complainant promptly provided all the documents to the opposite party. On 12.07.2014, the complainant wrote a letter to the opposite party, showing its displeasure and requested the opposite party to settle the claim. Thereafter, the complainant requested the opposite party on several occasions to release the claim but the opposite party kept on delaying the claim on one pretext or the other. When, no response was received from the opposite party the complainant sent a notice dated 27.08.2014 to the opposite party, for releasing the claim amount.

7. It is the further case of the complaint that on 16.09.2014, the complainant received a letter dated 08.08.2014 issued by the branch manager of the opposite party, wherein it was informed that the claim of the complainant was repudiated as the fire occurred at premises R.No.6-10, B-31-32, G-32, **Ground Floor Masjid Moth, South extension, New Delhi-110049** and as per the policy the **location of risk was also Gurgaon**. Further, the endorsement regarding change of location was recorded on 14.01.2013, and the said endorsement same cannot date back to the date of the incident and the risk was not covered under the policy.

8. It is the case of the complainant that the said error in the insurance policy was informed to the officials of the opposite party on 08.01.2013 itself but the endorsement was effected by the opposite party only on 14.01.2013. Therefore, the complainant cannot be saddled with the responsibility and suffer on account of an error, which was committed by the officials of the

opposite party. The opposite party also replied to the legal notice dated 18.09.2014 sent by the complainant, wherein it denied the liability in a vague manner. Thereafter, the complainant approached the NCDRC but the National Commission was of the view that it was not having pecuniary jurisdiction to entertain the complaint. Therefore, the complainant withdrew the complaint. Since, liberty was given to the complainant by the National Commission to approach the appropriate state commission, the complainant filed this complaint before this commission, with the prayers that the opposite party be directed to make the payment of Rs.73,57,656/- as assessed by the surveyor of the opposite party along with interest at the rate of 18% per annum from the date of lodging the claim i.e. 21.01.2013 till realisation. The complainant has also prayed for awarding a sum of Rs. 4 Lakhs towards compensation as well as litigation costs.

9. The opposite party has filed written statement, wherein it is submitted that this commission has no jurisdiction to entertain the complaint as the complainant is not a 'consumer'. The facts of the case are highly complex and cannot be adjudicated upon without adducing elaborate oral as well as documentary evidence, which is not permissible in the summary proceedings. There is no 'deficiency in service' on the part of the opposite party and the claim of the complainant has been rightly repudiated by the opposite party. It is further submitted that on the receipt of information from the complainant, the opposite party immediately appointed the surveyor, who assessed the loss to the tune of Rs.73,57,656/-. The insurance policy no.

36090111120100000221 was issued, which covered the stocks at premises no. R.No.6-10, B-31-32, G-32 **First Floor**, Masjid Moth, South extension, New Delhi and the **location address as per policy was Gurgaon**. The endorsement regarding the change of location was recorded on 14.01.2013 and the said endorsement cannot date back to the date of fire and as such the risk was not covered under the insurance policy.

10. It is the further case of the opposite party that in the previous policy for the period w.e.f. 06.01.2012 to 05.01.2013, the insured address was as R.No.6-10, B-31-32, G-32 First Floor, Masjid Moth, South extension, New Delhi-110049 and the location address was mentioned as Gurgaon but no amendment was sought by the complainant in that policy. After the expiry of the said policy the complainant submitted the fresh Proposal Form dated 08.01.2013 and obtained the Standard Fire and Special Perils policy for the period 08.01.2013 to 07.01.2014 wherein the address of the premises was mentioned as R.No.6-10, B-31-32, G-32 First Floor, Masjid Moth, South extension, New Delhi-110049. A bare perusal of the Proposal Form makes it clear that the complainant wanted to insure the first floor of the premises. Accordingly, the opposite party issued the policy no.36090111120100000221 for the period 08.01.2013 to 07.01.2014 for a total sum of Rs.One Crore covering the stock at First Floor. The complainant on 14.01.2013 acknowledged that the location was correctly mentioned on the top portion of the first page of the policy but in the bottom portion of the first page of the policy the location was mentioned as Gurgaon instead of New Delhi.

Accordingly, the opposite party carried out the necessary amendment by way of endorsement and the complainant sought no other amendment. Since, the fire incident took place at ground floor of the premises and the policy covered the risk at the first floor of the premises, the opposite party has rightly repudiated the claim of the complainant by letter dated 08.08.2014. The opposite party has prayed that the complaint filed by the complainant be dismissed with costs.

11. The complainant has filed rejoinder to the written statement of the opposite party, wherein the complainant denied the averments and reiterated and reaffirmed the facts submitted by the complainant in the complaint.
12. The complainant filed the evidence by way of affidavit of Mr Anil Kumar Batra, the Director of the Complainant.
13. The opposite party has also filed the evidence by way of affidavit of Mr Deshraj, Manager of the opposite party.
14. The Complainant has filed the written synopsis.
15. However, the opposite party did not file the written synopsis despite various opportunities. Hence, the right of the opposite party to file written synopsis was closed on 28.02.2024.
16. We have heard Ld counsel for the parties and gone through the material on record.
17. First of all, we would like to deal with the Preliminary objections taken by the opposite party.

18. **Whether the complainant is not a 'consumer'.**

19. It is the case of the opposite party that complainant is not a consumer as he has availed the services of the opposite party for commercial purpose.

20. To deal with this contention, we would like to refer Section 2 (1)(d) of the Consumer Protection Act 1986, which is reproduced here for ready reference:-

(d) "consumer" means any person who,—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

21. Further, Hon'ble **National Commission in Harsolia Motors Vs National Insurance Company Ltd, MANU/CE/0083/2004; 1(2005) CPJ 27(NC) has held as under:-**

"In Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, (2000) 1 SCC 98, the Court elaborately considered the provisions of Section 2(1)(d) and 2(1)(o) as well as earlier decisions and held that the combined reading of the definitions of consumer and service under the Act and looking at the aims and object for which the Act was enacted, it is imperative that the words consumer and service as defined under the Act should be construed to comprehend consumer and services of commercial and trade-oriented nature only. Thus, any person who is found to have hired services for consideration shall be deemed to be a consumer notwithstanding that the services were in connection with any goods or their user. Such services may be for any connected commercial activity and may also relate to the services as indicated in Section 2(1)(o) of the Act."

22. In the present case, the complainant has obtained the Standard Fire and Special Peril Insurance policy no.36090111120100000221 to cover the risk of its stocks i.e. all kinds of clothes such as fabrics, readymade garments, suits, FSF goods, goods in process, raw material used for manufacturing readymade garments and similar goods belonging to the complainant's trade.

23. Since, the complainant has availed the services of the insurance policy for a consideration for the connection of its goods from fire and other dangers, thus, in view of settled law discussed above, it cannot be said that he availed the services of the opposite party for commercial purpose and was not a consumer. Thus, this contention of the opposite party is answered in negative.

24. **Whether the complaint involves complicated question of facts and law.**

25. It is the case of the opposite party that the case involves highly complex and complicated questions which cannot be adjudicated without elaborate oral as well as documentary, evidence which is not permissible in summary proceedings under Consumer Protection Act.

26. **To deal with this issue, we would like to refer the judgment of J.J. Merchant Verus Shrinath Chaturvedi (2002) 6 SCC 635 wherein** it was inter alia held by the Hon'ble Supreme Court as under:-

“Under the Act the National Commission is required to be headed by a retired Judge of this court and the State Commission is required to be headed by a retired High Court Judge. They are competent to decide complicated issues of law or facts. Hence, it would not be proper to hold that in cases where negligence of experts is alleged, consumers should be directed to approach the civil court.

It was further held that merely because it is mentioned that the Commission or Forum is required to have summary trial would hardly be a ground for directing consumer to approach the civil court. For the trial to be just and reasonable, long-drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the legislature has provided alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act provides sufficient safeguards.”

27. In the present case, the complainant has filed the complaint only for the recovery of the claim amount of Rs.73,57,656/- which was assessed by the surveyor, appointed by the opposite party. In these circumstances, we are of the considered view that the complaint does not involve any complicated questions which cannot be decided in the summary proceeding. Accordingly, this contention of the opposite party is also answered in negative.

28. **Whether there is 'deficiency in service' on the part of the opposite party and it was not right in repudiating the claim of complainant.**

29. To deal with this issue, we would like to refer *Section 2 (1) (g) of the CP Act 1986* which runs as under:

(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

30. In the present case, the opposite party has submitted that there is no 'deficiency in service' on its part and it has rightly repudiated the claim of the complainant. It is the case of opposite party that the premises in question was not covered under the insurance policy as the policy no.3609011112010000221 was issued in respect of premises at R.No.6-10, B-31-32, G-32 at **First Floor**, Masjid Moth, South extension, New Delhi and the incident of fire has taken place at the

ground floor of the premises. Further, the endorsement regarding the correction in the location of the premises was carried out by the opposite party on 14.01.2013 and the said endorsement cannot take back to the date of fire.

31. On the other hand, the complainant has submitted that policy was purchased by him in respect of premises at R.No.6-10, B-31-32, G-32 at **Ground Floor**, Masjid Moth, South extension, New Delhi. But, the officials of the opposite party committed factual errors and issued the policy for first floor. Further, the location was also wrongly mentioned by the opposite party in the said policy. The complainant has further deposed that after receiving the policy, the representatives of the complainant were immediately informed by the complainant and the branch head of the opposite party, namely, Deshraj Ahir also accepted that there were actual errors in the details in the policy and therefore, an endorsement regarding change of location was made on 14.01.2013, without correcting the address of the demised premises. Since, the errors were corrected by the opposite party regarding the location of the demise premises, the endorsement will relate back from the date of the policy and not from the rectification of such error or date of endorsement. The complainant has further deposed that it was not for the first time that the address and location of the insured premises were wrongly mentioned by the opposite party in the insurance policy as the insurance policy for the period w.e.f. 06.01.2012 to 05.01.2013 36090111110100000227 also bore incorrect address as well as the location. The opposite party was habitual in issuing policy with

wrong address and location, despite receiving documents and paying personal visits to the premises and the said errors used to be rectified by the opposite party only upon getting intimation from the insured, Thus, this fact itself speaks volume about the deficiency in service provided by the opposite party.

32. It is significant to note that the complainant has sent an email dated 11.10.2014 Ex-CW1/3 (colly)(page 18 of the affidavit of evidence) to Mr Deshraj, Branch Manager and Sunil Mahajan, Senior Divisional Manager of the opposite party regarding the errors in the policies issued by the opposite party to the complainant and Mr Sunil Mahajan has sent an email dated 13.10.2014 to Mr Deshraj Ahir wherein it is written as under:

“I am unable to understand why these type of mistakes are being repeated. We should thoroughly check the policy before signing and forwarding to insured. Pl rectify the mistakes as pointed out by insured immediately and inform. Also ensure that such type of mistakes in policy are not repeated in future”.

33. It is note worthy that after the intimation was given by the complainant to the opposite party regarding the incident of fire, the opposite party appointed the surveyor, who inspected the premises personally on three consecutive dates i.e. 15.01.2013, 16.01.2013 and 17.01.2013 and submitted his report EX-CW1/8(Page 36 to 55 of affidavit evidence of complainant). It is pertinent to mention that as per the report of surveyor (Point no.7.0, page 39 of the evidence) the **Affected premises** is also situated at R.No.6-10, B-31-32, G-32 **Ground Floor, Masjid Moth, South extension, New Delhi**. It is also mentioned in this report

that insured had taken the affected premises on rent for small scale manufacturing of material. Further, as per point 7.7 of the surveyor report (page 40 of the evidence) the surveyor has also enclosed the copy of the lease deed as Annexure-5. Further, as per the said lease deed the premises were given on rent by Ms Supriya Atree and Ms Barkha Atree to the complainant for a period 20.07.2011 to 19.07.2014 for a monthly rent of Rs. 90,000/-.

34. It is also worth noting that after the incident of fire, the complainant informed the Delhi Fire Service and the fire brigade reached at the premises at about 5:20 p.m. The Delhi Fire Service also issued a report Ex-CW1/4 (page 29 of the evidence of complainant). Now, a perusal of this **report submitted by Delhi Fire Service also shows that the incident of fire took place at the ground floor of the property and not at first floor.**

35. It is worth noting that the opposite party has not placed on record any material to show that **the first floor** was taken on rent by the complainant from Ms Supriya Atree and Ms Barkha Atree, from where the complainant was running its business. **It is a matter of common sense that nobody will pay the premium in respect of the premises which is not in possession of the insured.** Therefore, we do not find any force in the contention of the opposite party that the complainant wanted to ensure the first floor of the premises as per the Proposal Form. Thus, after going through the report of surveyor and Delhi Fire Service coupled with e-mail sent by the complainant to the officials of opposite party it becomes crystal clear that it was the ground floor of R.No.6-10, B-31-32, G-32, Masjid Moth, South Extention,

New Delhi which was insured vide policy no. 36090111120100000221 by the opposite party.

36. Since, the endorsement regarding the correction in the location of the premises was carried out by the opposite party on 14.01.2013 in respect of the policy in question, we are of the considered view that the endorsement will relate back from the date of policy and not from the date of rectification of the errors by the opposite party. Further, we find force in the contention of the complainant that the complaint itself pointed out the error on 08.01.2013 itself and the correction was made by the opposite party by way of endorsement on 14.01.2013. It is also worth noting that at the time of issuance of any insurance policy to the insured, the premises is always visited by the insurance company as a matter of practice. In view of above facts and circumstances of case, we are of the considered view **that there is 'deficiency in service' on the part of the opposite party** and the opposite party was not right in repudiating the legitimate claim of the complaint, on technical grounds.

37. Further, we would also like to refer the judgment of **Hon'ble Supreme Court in Oriental Insurance Co. Ltd. vs M/S Ozma Shipping Company & Anr Civil appeal no.6289 of 2001 decided on 25.08.2009, wherein it was inter-alia held as under:**

"The insurance companies in genuine and bona fide claims of the insured, should not adopt the attitude of avoiding payments on one pretext or the other. This attitude avoiding puts a serious question mark on their credibility and trustworthiness of the

insurance companies. Incidentally, by adopting honest approach and attitude, the insurance companies would be able to save enormous litigation costs and the interest liability."

38. Accordingly, the complaint filed by the complainant is allowed.

39. The opposite party is directed to refund the amount of **Rs.73,57,656/-** to the complainant as per the following arrangement:

40. An interest @**6%**. P.A. calculated from the date of filing the claim by the complainant till **21.10.2024** (being the date of the present judgment);

A. The rate of interest payable as per the aforesaid clause **(A)** is subject to the condition that the Opposite Party pays the entire amount on or before **21.12.2024**.

B. Being guided by the principles as discussed above, in case the Opposite Party fails to refund the amount as per the aforesaid clause **(A)** on or before **21.12.2024**, the entire amount is to be refunded along with an interest **9 % p.a.** calculated from the date on which each installment/payment was received by the Opposite Party till the actual realization of the amount.

41. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party is directed to further pay a sum of

A. Rs.1,00,000 /- as cost for mental agony and harassment to the complainant; and

B. The litigation cost to the extent of **Rs. 50,000/-**.

42. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

43. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

44. File be consigned to record room along with a copy of this Judgment.

(PINKI)
Member (Judicial)

(BIMLA KUMARI)
Member (Female)

PRONOUNCED ON 21.10.2024