

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 649 OF 2021

(Against the Order dated 28/12/2020 in Appeal No. 1943/2018 of the State Commission Uttar Pradesh)

1. S.P. SINGH YADAVPetitioner(s)

Versus

1. NATIONAL INSURANCE COMPANY LTD.Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER : FOR PETITIONER : MR. VIJAY KUMAR YADAV, ADV.

FOR THE RESPONDENT : FOR RESPONDENT : MS.AISHWARYA MISHRA, PROXY
COUNSEL

FOR MR. ANUJ CHAUHAN, ADVOCATE

Dated : 11 June 2024

ORDER

1. This Revision Petition No. 649 of 2021 challenges the impugned order of UP State Consumer Disputes Redressal Commission, Lucknow ('State Commission') dated 28.12.2020, vide which, the State Commission partly allowed the Appeal No.1926/ 2018 filed by the Insurance Company and dismissed the Appeal No.1943/2018 filed by the Petitioner/Complainant. In turn, the District Consumer Disputes Redressal Forum, Lucknow-I, UP ('District Forum') dated 26.09.2018 partly allowed the Complaint No.480/2009.

2. As per report of the Registry, there is 155 days delay in filing this Revision Petition. For the reasons stated in I.A. No.6188 of 2021, the Revision Petition is treated to have been filed within limitation.

3. Brief facts of the case, as per the Complainant, are that he took Rs.1.11 Crore from Allahabad Bank, Lucknow, for chicks, machinery, furniture, and working capital for his poultry farm named Naveen Shri Poultry (P) Ltd. The poultry farm was insured with Opposite Party (OP) Insurer under a fire policy from 19.01.2008 to 18.01.2009. A fire incident occasioned on 15.10.2008 in which the entire administrative building, including records and furniture got burnt. The Complainant promptly informed the police and the fire brigade, which responded to the incident. He also informed the insurance company and preferred the claim and completed all formalities. On 18.12.2008, he forwarded a letter to the insurance company requesting for settlement of his claim. The insurer did not respond to his letter. The Complainant later discovered that Rs.8,67,165 had been deposited by the

insurance company into his loan account without any prior notice. The insurer failed to provide a satisfactory explanation for this deposit. Aggrieved by the insurers actions, he filed a Consumer Complaint before the District Forum seeking a sum of Rs. 15,36,035/- with interest @ 12% per annum, Rs.1,00,000/- as compensation for mental agony and harassment and Rs.15,000/- towards litigation expenses.

4. In reply before the District Forum, the OP contended that the OP accepted the validity of the policy from 19.01.2008 to 18.01.2009, acknowledged the fire incident and his claim. A surveyor was appointed to investigate into the incident. Based on the Surveyor's report, Rs.8,67,165 was deposited into his bank account. OP denied that the deposit was made arbitrarily and argued that the complaint should be rejected. The District Forum, vide order dated 26.09.2018, partly allowed the complaint and directed the OP as under:

“ORDER

The complaint of the complainant is partly allowed and the opposite party is directed to paid Rs.2,14,758 with 9% interest since the institution of suit within 45 days along with mental agony and damages Rs.10,000/-. If the order is not being complied with in prescribed period then 12% interest will be imposed on total amount.”

(Extracted from translated copy)

5. Being aggrieved by the impugned order, the OP filed Appeal No.1926/2018. The Petitioner also filed Appeal No.1943/2018. The learned State Commission vide order dated 28.12.2020 partly allowed Appeal No.1926/2018 filed by the OP and dismissed Appeal No.1943/2018 filed by the Complainant with order as under:

“The earned counsel for the complainant made argue the actual damages was caused Rs.24,32,000/- in which Rs.8,67,165/- only was made payment in the complainant account. That due to fire incident damages causes Rs.24,32,000/- in which paid amount Rs.8,67,165/- be depreciate and balance amount Rs.15,36,035/- with interest be passed order and the order of the District Commission be modified.

The learned counsel for the Insurance company made argue the damage estimated by the insurance company's surveyor upon the basis of it the insurance company has paid Rs.8,67,165/- to the complainant and is not entitled to any claim and the order of the District Commission is not applicable and liable to be rejected. The version of the insurance company counsel is that the S.P. Singh Yadav have no right to file a case and the decision of the District Commission in not legally sustainable.

We considered both parties. The case was produced by Sri S.P. Singh Yadav, M.D. Naveen Sri Poultry private limited. Before the District Commission the Insurance company did not make any plea through his w.s. the S.P. Singh Yadav have no right to file the case. The fire incident damages Rs.8,67,165/- has been paid by the insurance

company through cheque No. 253469 to account of the Sri poultry private limited, so for the version is not acceptable the S.P. Singh Yadav have no right to file the case.

The surveyor of the insurance company has assessed damages Rs.10,81,923/-, which has believe the District Commission and passed the order impugned. The Insurance company did not paid the total estimated Rs.10,81,923/- of the surveyor report and paid only Rs. 8,67,165/-. The District Commission did not find it Justified and made order for payment of Rs. 10,81,923 in which Rs. 8,67,165/- has been already paid and the Insurance Company is liable to pay difference amount Rs.2,14,687/- which are legally sustainable

A report was prepared by Sri Ashok Kumar Agarwal was presented by the complainant through appeal no. 1943/2018/- in which damages of the poultry, firm was caused by Rs.24,32,000/- It is clear from the perusal of the District Commission order the report of surveyor Ashok Kumar Agarwal was not presented by the complainant before the District Commission, So for it is not believable the surveyor report of the insurance company the report of the Ashok Kumar Agarwal is an ex-parte.

We are considered this opinion the damages estimated Rs.10,81,923/- by the surveyor of the insurance company is being made recognize and therefore no illegality.

That in above finding the difference amount Rs.2,14,758/ for paying to the complainant is just & proper and 9% interest is also proper.

The District Commission has passed an order 12% interest if not deposited within 45 day, same is to be set aside and ordered for 9% Interest annual.

The damages amount Rs. 10,000/- in terms of the mental agony and litigation cost is not said to be improper.

That upon the above findings the appeal No. 1926/2018 [N.J. Co.](#) Vs S.P. Singh Yadav is partly allowed and the order of District Commission is to be modified and ordered to the Insurance Company he paid Rs. 2,14,758/- to the complainant with 9%

from the institution of the complaint and also be paid Rs. 10,000/- in terms of the mental agony and litigation cost.

The District Commission has passed an order if payment was not made within 45 days the insurance company is liable to paid 12% interest, same is to be set-aside.

That in view of the above finding the appeal No. 1943/2018 (S.P. Singh Yadav [N.I.Co.](#)) is here by rejected.

In both appeals the parties bear their own cost.

The statutory amount Rs. 25,000/- under section 15 of the C.P. Act, 1986 which was deposited by the insurance company in appeal No. 1943/2018 (N.I.C. Vs S.P.Singh Yadav) be sent to the District Commission for disposal in accordance with the decision.

If the amount deposited before the District Commission in pursuance of the interim order dated 19.11.2018 of this appeal then the disposal of the money and its interest will be make by the District Commission in accordance with this decision.”

(Extracted from translated copy)

6. In his arguments, the Counsel for the Petitioner/ Complainant reiterated the grounds in the Revision Petition and asserted that the loss from the fire incident amounted to Rs. 24,32,000/-, which was significantly higher than the compensation of Rs. 10,81,923 assessed by the surveyor. The amount assessed, Rs. 8,67,165 had already been received from the insurance company and deposited into the Complainant's loan account without prior notice. He argued for an enhancement of the compensation to reflect the actual loss incurred due to the fire, which was Rs. 24,32,000/-. He submitted that the current compensation did not adequately cover the full extent of the damages. The learned counsel cited the Supreme Court judgment in the case of **New India Assurance Co. Ltd. Vs. Pradeep Kumar, IV (2009) CPJ 46 (SC)**, which emphasizes the need for fair and reasonable settlement of insurance claims and highlights the insurer's duty to settle claims based on the actual loss incurred by the insured.

7. The learned Counsel for the Respondent/OP argued that the petitioner accepted the amount paid by the Respondent Insurance Company without protest. The addendum report dated 25.02.2009 has not been considered by the fora below. He submitted that the amount of Rs.8,67,165/- was justified qua the loss occurred in the incident as assessed by the surveyor. He sought to dismiss both the Revision Petition with costs. He relied upon the following judgments:

- i. Kanta Mathur vs. National Insurance Ltd. and Ors., MANU/CF/0934/2014;*
- ii. Sikka Papers Ltd. vs. National Insurance Co. Ltd. & Ors. (2009) 7 SCC 777;*
- iii. M/s. Sri Sarbati Steel Tubes Ltd. Vs. Oriental Insurance Co. Ltd. decided on 28.10.2013;*
- iv. Champalal Verma vs. Oriental Insurance Co. Ltd., decided on 28.03.2008;*
- v. Khatema Fibres Ltd. Vs. New India Assurance Co. Ltd., 2021 SCC OnLine SC 818.*

8. I have examined the pleadings and associated documents placed on record, including the orders of the learned District Forum and the learned State Commission and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

9. The main issue to be determined in the case is the quantum of compensation tenable under the policy for the loss claimed by the Petitioner/Complainant.

10. It is undisputed that, during the course of the policy in question, the Petitioner had preferred a claim for loss occurred in a fire incident and total loss to the tune of Rs.24,32,000 as assessed by the Valuer Engineer Shri Ashok Kumar. On receipt of the claim, the OP appointed a Surveyor and placed reliance on the Surveyor's Report dated 25.02.2019 wherein the Surveyor assessed the loss to the tune of Rs.8,67,165/-.

11. In the case of *Sri Venkateshwara Syndicate Vs. Oriental Insurance Company Limited (2009) 8 SCC 507*, the Hon'ble Supreme Court has further observed as under:

"22. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, of sub-sections

(2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.”

12. The Hon’ble Supreme Court in *Khatema Fibres Ltd. v. New India Assurance Company Ltd.*, 2021 SCC OnLine SC 818, decided on 28.09.2021 has held that:

“32. It is true that even ***any inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or which has been undertaken to be performed pursuant to a contract***, will fall within the definition of the expression ‘deficiency’. But to come within the said parameter, the appellant should be able to establish (i) either that the Surveyor did not comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as specified by the regulations made under the Act, in terms of Section 64UM(1A) of the Insurance Act, 1938, as it stood then; or (ii) that the insurer acted arbitrarily in rejecting the whole or a part of the Surveyor’s Report in exercise of the discretion available under the Proviso to section 64UM(2) of the Insurance Act, 1938.

...

37. Two things flow out of the above discussion, They are ***(i)*** that the surveyor is governed by a code of conduct, the breach of which may give raise to an allegation of deficiency in service; and ***(ii)*** that the discretion vested in the insurer to reject the report of the surveyor in whole or in part, cannot be exercised arbitrarily or whimsically and that if so done, there could be an allegation of deficiency in service.

38. A Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor’s report to forensic examination of its anatomy, just as a civil court could do. ***Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop.”***

13. In the recent case of *National Insurance Co.Ltd. Vs. M/s Hareshwar Enterprises Pvt. Ltd. & Ors.*, Civil Appeal No.7033 of 2009 decided on 18.8.2021, 2021 SCC Online SC 628, the Hon'ble Supreme Court has been held as under :

“17.....Therefore, in the facts and circumstances herein the surveyors report was submitted as the natural process, the conclusion reached therein is more plausible and reliable rather than the investigation report keeping in view the manner in which the insurer had proceeded in the matter. Hence, the reliance placed on the surveyor's report by the NCDRC without giving credence to the investigation report in the facts and circumstances of the instant case cannot be faulted. In that view, the conclusion reached on this aspect by the NCDRC does not call for interference.”

“18. ... Having considered this aspect, the rate of interest to be awarded in normal circumstance should be commensurate so as to enable the claimant for such benefit for the delayed payment. There is no specific reason for which the NCDRC has thought it fit to award interest at 12% per annum. Therefore, the normal bank rate or thereabout would justify the grant of interest at 9% per annum. Accordingly, the amount as ordered by the NCDRC shall be payable with interest at 9% per annum instead of 12% per annum. To that extent, the order shall stand modified...”

14. Based on the above, the learned District Forum issued a well-reasoned order based on evidence and arguments advanced before it. The learned State Commission, after due consideration of the pleadings and arguments, determined by its detailed order that no intervention is warranted in the District Forum's order, except for some modification. It is a well settled position in law that the scope for Revision under Section 21(b) of the Consumer Protection Act, 1986 and now under Section 58(1)(b) of the Consumer Protection Act, 2019 confers very limited jurisdiction on this Commission. In the present case, there are concurrent findings with well-reasoned orders. Therefore, the revisional jurisdiction of this Commission is limited. After due consideration of the entire material on record, I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the learned State Commission warranting interference in revisional jurisdiction under the Act. I place reliance on the decision of the Hon'ble Supreme Court in the case of *'Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., (2011) 11 SCC 269.*

15. In addition, Hon'ble Supreme Court in *'Sunil Kumar Maity vs. SBI & Anr.* Civil Appeal No. 432 OF 2022 Order dated 21.01.2022 observed as follows:-

“9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a

jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required.”

16. Similarly, in a recent order the Hon'ble Supreme Court in **Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31** has held that:-

As per [Section 21\(b\)](#) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record.

17. Based on the deliberations above, I do not find any merit in the present Revision Petition and the same is therefore, **Dismissed**.

18. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

19. All pending Applications, if any, also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER