

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1660 OF 2019

(Against the Order dated 04/07/2019 in Complaint No. 266/2015 of the State Commission
Uttar Pradesh)

1. UNIVERSAL SOMPO GENERAL INSURANCE
COMPANY LIMITED & 2 ORS.
REGD. OFFICE AT:- UNIT NO. 401, 4TH FLOOR, SANGAM
COMPLEX, 127 ASNDHERI KURLA ROAD, ANDHERI
(EAST), SURAKSHA, HAME AAPKE SATH.
MUM BAI-400059

2. UNIVERSAL SOMPO GENERAL INSURANCE
COMPANY LIMITED.
1ST FLOOR, M-82, SUKSHANTI COMPLEX, MANGAL
PANDEY NAGAR.
MEERUT-250004

3. UNIVERSAL SOMPO GENERAL INSURANCE
COMPANY LIMITED.
C-20, 1ST A, C-BLOCK, SECTOR-62.
NOIDA-2013003

.....Appellant(s)

Versus

1. M/S. UJALA PLASTIC & CASE COMPANY & 2 ORS.
THROUGH ITS PROP. MR. AJAB SINGH. SITUATED AT:-
DHARMPURI GALI NO.1, BEGUMBAD, MODINAGAR.
GHAZIABAD.
U.P.-201204

2. SHRI. RACHIT PCIS CRAWFORD, PURI CRAWFORD
INSURANCE SURVEYOR & LOSS ASSESSORS INDIA(P)
LTD.
714, ASHOK ESTATE, BARAKHAMBA ROAD,
CONNAUGHT PLACE.
NEW DELHI-110001

3. BRANCH MANAGER.
ALLAHABAD BANK RAILWAY, ROAD MODI NAGAR.
GHAZIABAD.
UTTAR PRADESH.

.....Respondent(s)

FIRST APPEAL NO. 390 OF 2020

(Against the Order dated 04/07/2019 in Complaint No. 266/2015 of the State Commission
Uttar Pradesh)

1. M/S. UJALA PLASTIC & CASE COMPANY
THROUGH ITS PROP. AJAB SINGH, S/O. SH. KABIR
SINGH, DHARMPURI GALI NO. 1, BEGUMBAD
MODINAGAR, DISTRICT-GHAZIABAD, U.P. 201204

.....Appellant(s)

Versus

1. UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD.Respondent(s)
& 4 ORS.

REG. OFFICE AT UNIT NO.103, 1ST FLOOR,ACKRUTI STAR, MIDC, ANDHERI EAST, MUMBAI CITY MH-400093

2. UNIVERSAL SAMPO GENERAL INSURANCE CO. LTD.

REG. OFFICE AT UNIT NO.103, 1ST FLOOR,ACKRUTI STAR, MIDC, ANDHERI EAST, MUMBAI CITY MH-400093

3. -

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4. UNIVERSAL SOMPO GENERAL INSURANCE CO.LTD.

C-20/1ST A, C-BLOCK,SECTOR-62, NOIDA-201303

5. SHRI RACHIT PCIS CRAWFORD, PURI CRAWFORD INSURANCE SURVEYOR & LOSS ASSESSORS INDIA 'P' LTD.

REGD. OFFICE AT:- 1,NORTH WEST AVENUE,FIRST FLOOR,CLUB ROAD, PUNJABI BAGH, WEST DELHI-110026

6. BRANCH MANAGER, ALLAHABAD BANK RAILWAYS, ROAD MODI NAGAR, GHAZIABAD, UTTAR PRADESH

BEFORE:

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

FOR THE APPELLANT : FOR UNIVERSAL SOMPO
GENERAL INSURANCE & 2 ORS. : MR. D. VARADARAJAN,
ADVOCATE
MR. RAJAT KHATTRY, ADVOCATE

FOR THE RESPONDENT : FOR UJALA PLASTIC : MR. PAWAN KUMAR RAY, ADVOCATE
MR. AJAB SINGH, IN PERSON

Dated : 14 June 2024

ORDER

1. This Order shall decide both the Appeals arising out from the impugned Judgment /Order dated 04.07.2019 passed by the learned State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow ("State Commission") in Consumer Complaint No. 266 of 2015, wherein the State Commission allowed the complaint.

2. As per the report of the Registry, there was 215 days delay in filing Appeal No. FA/390/2020. For reasons stated in the Application for condonation of delay, the delay in filing is condoned.

3. For clarity, the parties involved in this Appeal will be referred to as per their identification in the original Complaint filed before the learned State Commission. The Complainant, "M/s. Ujala Plastic & Case Company through its Proprietor Mr. Ajab Singh Dhariwal Industries," engaged in the business of 'Spectacles Cover', situated at Modi Nagar,

Ghaziabad. "M/s. Universal Somp General Insurance Co. Ltd" through its Branch Manager, Regional Manager & General Manager are referred to as the Opposite Parties No. 1 to 3/Insurer, Mr. Rachit P.C.I.S. Crawford, Puri Crawford Insurance Surveyors and Loss Assessor India Pvt. Ltd. is referred to as the OP-4 & Branch Manager, Allahabad Bank is referred to as the OP-5 Bank.

4. Brief facts of the case, as per the Complainant, are that the firm obtained a cash credit facility for Rs.14,10,000/- from OP-5 Bank. The Complainant commenced spectacles covers business at Dharmapuri, Gali No. 1, Begambad, Modi Nagar, Ghaziabad. OP -1 to 3 Insurance Company issued a Standard Fire and Special Peril Policy with Policy No. 2114/53763676/00/000 valid from 24.01.2014 to 23.01.2015. The policy had total sum insured Rs.40,00,000/-, allocated Rs.4,00,000/- towards Plant and Machinery; Rs. 1,00,000/- towards Furniture and Fixtures; and Rs. 35,00,000/- towards Stock of Plastic Covers and Cases. During policy validity, on the intervening night of 20/21.01.2015, fire broke out at the premises. The Fire brigade extinguished the fire within 2 hours. The Complainant informed the Insurer and Mr. Rachit Gupta was appointed as Surveyor to assess the loss. The Surveyor did not provide his report to the Complainant and only notified minimal loss information by email. The Complainant asserted that the loss was assessed at Rs. 33,08,584/- by the local Patwari/ Lekhpal from the Revenue Dept. Despite the Complainant's efforts and pursuits, the Insurer did not process the insurance claim. Thus, the Complainant served a legal notice dated 05.08.2015, which went unanswered. As a result, the Complainant filed CC No. 266 of 2015 seeking claim for total loss of Rs.23,17,128/- along with 18% interest; Rs.5,50,000/- as compensation and Rs.85,000/- as costs.

5. In reply, before the State Commission OP-1 to 3 have stated that upon information about the fire incident, they initially appointed M/s. Crawford Insurance Surveyor and Loss Assessors India (Pvt.) Ltd. to assess the loss. The Surveyor conducted an investigation and submitted its final report dated 22.09.2015, assessing the loss at Rs.2,75,269/-. As per OP-1 to 3, the Complainant submitted an inflated insurance claim, and failed to provide necessary records to the surveyor regarding the present insurance claim. OP-4, despite being served notice, failed to file any reply. Further, in its reply, OP-5 Bank admitted that it had earlier provided a cash credit facility of Rs.14,10,000/- in favour of the Complainant firm.

6. The earned State Commission, vide order dated 04.07.2019 allowed the complaint with the following Order: -

ORDER

The present complaint is partly allowed. The O.P. No. 01 to 03 are accordingly instructed that they within 45 days of the receipt of the present judgement release the payment of Rs.21,84,802/- in favour of the complainant. The O.P. No. 01 to 03 will also be additionally liable to pay simple yearly interest of 08 % on the aforesaid amount from the date of filing of complaint. There apart; the O.P. No. 01 to 03 are further directed to pay Rs. 10,000/- in favour of the complainant on the account of the cost of the case within such prescribed time period." (from true translated copy)

7. Aggrieved by the State Commission order, both the parties i.e., the Opposite Parties No. 1 to 3 and Complainant filed the present cross Appeals before this Commission seeking the following:

FA/1660/2019 - by OPs - 1 to 3- Universal Sompo GIC Ltd.-

- a. ***Pass an Order setting aside order dated 04.07.2019 passed in Complaint Case No.CC/226/2015 passed by the State Consumer Disputes Redressal Commission, U.P., Lucknow; and.***
- b. ***Pass such further and other orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.***

FA/390/2020-by Complainant- M/s. Ujala Plastic & Case Co.

- a. ***Modify the impugned order dated 04.07.2019 passed by the Learned State Commission, U.P in Complaint No. 266 of 2015 and enhance the payable awarded amount, the rate of interest payable on the total claimed amount, the compensation towards the mental harassment deficiency in service and the cost of litigation in terms of all the prayers made in the Consumer Complaint, in favour of the Appellant herein and against the Respondents;***
- b. ***Allow the complaint filed by the Complainant/ Appellant in terms all the prayers made in the complaint;***
- c. ***Call for the record of the case; and***
- d. ***Award the costs of these proceeding in favour of the appellant and against the respondent.***
- e. ***Pass such other or further order (s) as this Hon'ble Commission may fit and proper in the facts and circumstances of the case."***

8. In Appeal No. **1660 of 2019**, the Appellant/Complainant mainly raised the following grounds:

a) The Surveyor found it implausible that all stock was, lost in the fire was purchased merely 25 days before the incident. Despite the Surveyor's inquiry, no satisfactory explanation was provided. The Complainant introduced the claim of ill-health only in 2017 and as reason for stock statements anomaly. However, it lacks credibility, especially as significant quantity was purchased just before the fire.

b) The State Commission failed to recognize gross anomaly in the Complainant's books of accounts. There was unprecedented sales-to-purchase ratio spiked from 110% to 1159% during the year. Also, all stock purchases for the entire year purportedly occurred just 25 days before the fire, raising further doubts about accuracy.

- c) It is inconceivable that an entity inactive in purchasing stocks for 9 months would suddenly buy over 10 times its annual average within 25 days of fire. In such circumstances, neither the Surveyor nor any reasonable person would accept Complainant's version.
- d) The State Commission overlooked the Surveyor's inspection of the insured premises, where debris left after the fire did not align with Complainant's claim. The Surveyor deemed it improbable that stocks worth over Rs. 20,00,000 would produce such minimal debris, further questioning the validity of the claim.
- e) Due to fabricated accounts and incongruity between the stocks and debris, the Surveyor recalculated the statements of accounts as per performance in previous years to ascertain the actual debris.
- f) It is established legal position that courts should defer to the findings of expert Surveyor reports, unless compelling reason exist otherwise. There was no justification for the State Commission to discredit the Surveyor report and substitute it with its own findings.
9. In *Appeal No. 390 of 2020*, the Complainant mainly stated that the State Commission's decision to award interest at a lower rate necessitates enhancement to 18% per annum. The failure to grant compensation for mental anguish and distress requires rectification. Apart from these aspects, the State Commission order is appropriate.

10. The Counsel for the Appellants/OPs reiterated the grounds of appeal and asserted that the Surveyor had physically scrutinised the debris at the site and found that it did not correspond to the loss claimed. While the Complainant asserted that plastic cases were stored on both ground and first floors, no residue of the burnt stocks corroborating the claimed quantity was found. Despite repeated requests from the Surveyor to segregate the affected stocks as per type and damage, they failed to comply. There were significant discrepancies in stock statements. Also, there was an extraordinary purchase of stock in 25 days immediately before the fire, which was unprecedented. The table below highlights the inconsistencies:

Period (Year Ending)	Purchase (Rs.)	Sales (Rs.)	Pur Sales ratio %
31.03.2012	2,41,473	1,52,120	159%
31.03.2013	2,36,091	3,10,818	76%
31.03.2014	4,16,796	3,79,213	110%
01.04.2014– 20.01.2015	23,13,584	1,94,543	1189%

11. Given the Stock purchase anomaly, the Surveyor doubted the veracity of the account statements and reworked the stock value as Rs. 2,91,984, significantly lower than the Rs.22,18,543 claimed. The Surveyor assessed the total loss at Rs. 2,75,269 and submitted the Final Survey Report dated 22.09.2015. He observed that the debris left after the fire did not match the claimed loss of Rs.20,00,000, raising further doubts about the claim. Therefore, the burden of proof lies with the insured to show that the proximate cause of loss was an insured peril. The Complainant failed to provide satisfactory evidence. In 2017, the Complainant presented a medical certificate, claiming ill health from 07.07.2014 to 24.10.2014 to justify the stock anomalies. The Appellants argue that this explanation came too late and still did not account for the extraordinary stock purchases just before the fire.

12. The Counsel cited several judgments to support the argument that the findings of experts like Surveyors should not be disregarded without credible reasons:

a. Sri Venkateswara Syndicate v. Oriental Insurance Co. and Anr. (2009) 8 SCC 507.

b. Oriental Insurance Co. Ltd, v. Ishwar Singh (2015) 1 CPR 157 (NC).

c. New India Assurance Co. v. Pava Infrastructures Pvt. Ltd. (2015) CPJ 503 (NC)

d. Khateema Fibers Ltd. v. New India Assurance Co. Ltd. (2021) SC Online SC 818.

13. On the other hand, the learned Counsel for the Complainant asserted the need for adjustments in the interest rate compensation and the inclusion of compensation for mental anguish and physical distress. While acknowledging the overall appropriateness of the State Commission order in other aspects of the case, they contend that the interest rate should be enhanced to 18% per annum to adequately compensate for the loss suffered.

14. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

15. The primary issue in this case revolves around the assessment and processing of an insurance claim filed by M/s. Ujala Plastic & Case Company following a fire incident at their premises. The key contention is whether the assessment conducted by the Surveyor accurately reflects the extent of the Complainant's losses, considering discrepancies in account statements and inconsistencies in the reported loss. The case raises questions about the reliability of the Surveyor's findings, the adequacy of the compensation awarded.

16. The learned State Commission in its Order dated 04.07.2019 made the following observations: -

“It is after perusal of the case file records; it is clearly visible that it is in between 01.04.2014 to 25.12.2014; the complainant firm made no purchase. It is thereafter in between 26.12.2014 to 17.01.2015; the complainant firm purchased the goods amounting to Rs.23,13,584/-. It is further visible that it is on continuous 03 financial years prior to the incidence; the complainant firm was receiving continuous loss. It is on these circumstances; the showing of excessive goods stock by the complainant firm looks unnatural. It is however, it is not always impossible. The owner of the complainant firm Mr. Ajab Singh on his affidavit dated 31.01.2017; he has stated that he was ill from 07.07.2014 to 22.10.2014. It is in this respect, he along with his affidavit vide enclosure-1; the complainant filed the photocopy of the medical certificate. It is at page no. 40 of the case file is the photo copy of the letter dated 09.05.2015 duly issued by the complainant firm and duly addressed to Surveyor CA Mr Rachit Gupta. The complainant vide present letter informed before the surveyor that the owner of the complainant firm earlier contacted different suppliers from Chandni Chowk at Delhi so as to get the goods on credit. It is thereafter, M/s. Bharat Optical, Delhi agreed the respective proposal of the owner of the complainant firm. It is in that view the complainant firm purchased the optical goods from M/s Bharat Optical. The complainant firm in the aforesaid business strategy; it tried to revolutionize the business. It is however, it is due to unfortunate incidence of fire; his effort became fruitless. It is on these circumstances; the respective facts duly mentioned by the Surveyor in his report are unwarranted and it cannot be held as reliable. The grounds taken by the surveyor in his report is unwarranted and unreliable that as to why complainant purchased such huge quantity goods just 03 to 25 days prior to the incidence from 26.12.2014 to 17.01.2015. The question arise as to why the complainant firm purchased such huge quantity despite it was in continuous loss.

It is after perusal of the case file; it is visible that the complainant firm w.e.f. 26.12,2014 to 17.01.2015; it purchased goods from M/s. Bharat Optical vide bill photo copy page no. 26 to 88 of the case file. There apart, it is in respect of purchase of the goods for the year 2011 also; it filed its total bills thereof. It has filed the record of bank payment of Rs.65,000/- from the page 76 to 78 of the records which it made to M/s. Bharat Optical. It is in respect of goods sold out by M/ s Bharat Optical in favour of the complainant firm; it filed photo copy of the concern account of the M/s Bharat Optical which is available at page no. 90. It is in respect of payment of tax towards sale of goods by M/s Bharat Optical to complainant firm; the complainant filed the photocopy of the record thereof. The complainant also filed the records of truck transport invoices of the goods duly purchased by it from M/s Bharat Optical. It is on such transport invoice; it is therein mentioned the number of truck, name of the driver and licence numbers are mentioned. It is after perusal of the photo copy of the survey report duly filed by the O.P. Insurance Company; it is clearly visible that surveyor held the aforesaid documents as forged one. It is otherwise, the surveyor was independent to verify these documents from M/s. Bharat Optical. More so, the

surveyor did not deny the claim of receipt of fire incidence due to electric short circuit. It is in the survey report; the surveyor gave no findings of the direct and indirect involvement of the owner of the complainant firm or any of his associate. It is in the police investigation of the fire department also; no such opinion is expressed. It is despite the aforesaid; the surveyor without giving any logical grounds ignored the different records duly filed by the complainant and finally submitted the survey report arbitrarily. The Surveyor on its own prepared the trading account of the complainant firm for the year 2014 which is not found to have been assessed based on logic and basis of the same is also not clear. It is in this respect; the Ld. Counsel for the O.P. Insurance Company also became unable to clear the position. It is on these circumstances; it is in the light of the evidences led by the complainant in respect of the alleged incidence; it is based on the pleading of the complainant; it cannot be held that there was presence of unbelievable goods in the factory belong to the complainant firm.

It is based on the details of the account and other details; it is on 01.04.2014 the opening stock of the complainant firm was that of Rs.99,502/-. It on that made purchase of 23,13,584 and made sale of 1,94,583/-. It is hence, it is on 20.01.2015; it has closing stock of Rs.22,18,543/-.

It is as far as the statement of the Surveyor of the O.P. Insurance Company is concern; it recorded that in commensurate to the goods shown by the complainant; it earlier did not find presence of burnt out debris on the incidence spot. More so, it is admittedly the complainant firm was in the business of manufacturing of cover box of the spectacles. It is after perusal of the report duly submitted by the Fire Officials; it is clearly visible that the present fire was that of serious nature fire. More so, the main business of the complainant was that of goods made out of plastic. It is on these circumstances, it is when there caused huge and strong fire; it cannot be held unnatural that all such plastics articles would have certainly burnt completely on such fierce fire caused before the factory of the complainant. More so, it is in the survey report; the surveyor did not clarify as to in commensurate to the goods shown by the complainant as to what quantity of burnt residue should have been present before the incidence spot. Furthermore, it is also not clarified as to how much quantity of burnt out garbage was found available before the factory of the complainant when the surveyor made inspection of the factory. It is thus, it is in this respect the respective opinion of the surveyor towards availability of the burnt out residue; such opinion is found to be based on assumption merely based on conjecture and imagination.

The respective photocopy of the letter dated 09.05.2015 duly issued by the complainant and addressed to the surveyor which is available at page 40 of the case file; total of 197 dozen goods are saved in the fire. The photocopies of the details of the goods purchased by the complainant firm upto 2014 are filed at page no. 72 to 74

of the records. It is on these details shown the details of case and price value of the same. It is after perusal of the same; it is visible that maximum price of 1 dozen cases are shown @ Rs.330/-. It is in that view it is in respect of aforesaid duly saved articles of all these plastic cases are going to price @ Rs.65,050/-. It is in this way the total loss of the goods of the complaint firm in the alleged incidence amount to Rs.21,53,533/-. It is after perusal of the survey report, it is shown loss of furniture @ Rs.3,671/-. The loss of plant and machinery is shown @ Rs.27,598/-. It is in view of the aforesaid the total loss can be held @ Rs.21,84,802/-. It is in view of our opinion; the opposite party insurance company after failing to make payment of the aforesaid compensation; it has caused the deficiency of services. It is accordingly; the present consumer complaint is fit for partly allowing.

(Extracted from true translated copy)

17. It is an established fact that a fire occurred at the premises of M/s. Ujala Plastic & Case Company on the intervening night of 20/21.01.2015, fire broke out at the premises, causing damage to the stock, furniture, and machinery. The Complainant held an insurance policy with the OPs that covered losses due to fire. Following the fire incident, the Complainant filed a claim with the insurer and the insurer appointed a Surveyor, CA Rachit Gupta, to assess the damages and evaluate the claim. The Surveyor visited the insured premises, examined the debris, reviewed account statements and other records and reported significant discrepancies in the account statements pointing unusual purchase pattern and lack of debris commensurate with the claimed loss. The Complainant provided records showing substantial stock purchases from 26.12.2014 to 17.01.2015 for Rs.23,13,584/-. The Complainant firm submitted a medical certificate stating that the owner was advised to rest from 07.07.2014 to 24.10.2014, which was claimed to justify the delay in purchases. The State Commission partially allowed the claim awarding Rs.21,84,802/- plus 8% interest per annum from the date of filing the complaint and an additional Rs. 10,000/- towards litigation costs. Both parties filed appeals against the State Commission order. The insurer (OP- 1 to 3) appealed against the award, while the Complainant sought enhancement of the interest and compensation.

18. It is undisputed that from 01.04.2014 to 25.12.2014 no purchase was made by the Complainant firm. Thereafter, between 26.12.2014 to 17.01.2015, goods for Rs.23,13,584/- were purchased. It is also undisputed that for continuous 3 financial years prior to the incident, the Complainant firm was sustaining losses. Therefore, possession of excessive stock was considered intriguing. The Complainant firm owner vide affidavit dated 31.01.2017 has stated that he was ill from 07.07.2014 to 22.10.2014 and supported his contention by medical certificates. The Complainant informed the surveyor that the owner of the firm contacted different suppliers from Chandni Chowk at Delhi so as to get goods on credit. After M/s. Bharat Optical, Delhi agreed to the proposal, the Complainant purchased goods with a business strategy to restore the business. The fire incident impacted the same adversely. Evidently, from 26.12,2014 to 17.01.2015 the Complainant purchased goods from M/s. Bharat Optical. Such purchases were made in the past also. It is in respect of payment of tax towards sale of goods by M/s Bharat Optical to Complainant, the Complainant had filed a copy of the tax record as well as truck transport invoices of the goods purchased by it from M/s Bharat Optical, which included the truck details, driver details and license numbers etc. Apparently, the Surveyor considered these documents with specific details as not genuine,

albeit without requisite verification which was feasible. The survey report also did not contain findings of the direct and indirect involvement of the owner of the Complainant. Neither the Police Investigation nor the Fire Department report contained any adverse findings. As per Books of Accounts submitted, as on 01.04.2014 the opening stock of the firm was Rs.99,502/-. Purchase made was for Rs.23,13,584 and sale was for Rs.1,94,583/-. Thus, as on 20.01.2015 the closing stock was Rs.22,18,543/-. The report of surveyor ignored the records filed by the Complainant and submitted the final survey report by preparing the trading account of the Complainant firm for the year 2014, which was without basis and questionable.

19. It was the main concern of the Surveyor that the debris found were not commensurate to the stock claimed to have been held by the Complainant. Undisputedly, the Complainant was in the business of manufacturing of cover box of the spectacles. These are plastic items. The report submitted by the Fire Officials reveals that the fire was of serious nature and it took significant time to gain control. As the goods in question were made of plastic and subjected to huge and intense fire, it is highly probable that such plastic goods would burnt completely. Pertinently, in the survey report it was not clarified as to what quantity of burnt residue should have present at the site? And what was found available?

20. Under these circumstances, the learned State Commission considered the letter dated 09.05.2015 from the Complainant to the Surveyor available on record indicating that there are a total of 197 dozen goods are saved in the fire. It is on these the details of case and price value of the same are reflected and the maximum price of 1 dozen cases was @ Rs.330/-. Accordingly, the saved goods of all the plastic cases is Rs.65,050/-. Thus, the total loss to the Complainant in the fire incident was Rs.21,53,533/-. As per survey report, the loss of furniture was Rs.3,671/-; and loss of plant and machinery was Rs.27,598/-. The total loss, therefore, was Rs.21,84,802/-.

21. The Hon'ble Supreme Court in ***Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited and Another***, (2009) 8 SCC 507, decided on **24.08.2009**, has held that:

"32. There is no disputing the fact that the surveyor / surveyors are appointed by the insurance company under the provisions of the 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..."

35. In our considered view, the Insurance Act only mandates that while settling a claim, assistance of a surveyor should be taken but it does not go further and say that the insurer would be bound by whatever the surveyor has assessed or quantified; if for any reason, the insurer is of the view that certain material facts ought to have been taken into consideration while framing a report by the surveyor and if it is not done, it can

certainly depute another surveyor for the purpose of conducting a fresh survey to estimate the loss suffered by the insured."

37. The option to accept or not to accept the report is with the insurer. However, if the rejection of the report is arbitrary and based on no acceptable reasons, the courts or other forums can definitely step in and correct the error committed by the insurer while repudiating the claim of the insured. We hasten to add, if the reports are prepared in good faith, with due application of mind and in the absence of any error or ill motive, the insurance company is not expected to reject the report of the surveyors."

22. In *Khatema Fibres Ltd. v. New India Assurance Company Ltd., 2021 SCC OnLine SC 818*, decided on 28.09.2021 it was held:

*"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.***"

23. Based on the above discussions and on careful perusal of material on record and the established precedents, the detailed and well reasoned Order of the learned State Commission

is just and fair in the finding as well as the compensation awarded. Thus, I find no reason to interfere with the same. Both the Appeals are, therefore, dismissed.

24. There shall be no order as to costs. All pending Applications, if any, are also disposed of accordingly.

25. The Registry is directed to release the Statutory Deposit amount, if any due, in favour of the Appellant as per law, after compliance of the order of the learned State Commission.

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