

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA**

RBT/C.C. No.: 56/2019
Date of Presentation: 26.02.2019
Order Reserved on: 13.05.2024
Date of Order: 29.05.2024

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**M/s Himalyan Camping, Village Bahanu, Post Office
Jagat Sukh, Tehsil Manali, District Kullu, Himachal
Pradesh through its Sole Proprietor Rohit Sharma S/o
Sh. Ravinder Sharma, Resident of Bahanu, Post Office
Jagat Sukh, Tehsil Manali, District Kullu, Himachal
Pradesh**

..... Complainant

Versus

**Oriental Insurance Company Ltd. Vidhya Bhawan,
Hospital Road, Mandi, Himachal Pradesh through its
Divisional Manager.**

.....Opposite Party.

.....
Coram

**Hon'ble Justice Inder Singh Mehta, President
Hon'ble Mr. R.K. Verma, Member.**

Whether approved for reporting?¹ Yes

**For Complainant: Mr.Jia Lal, Advocate vice
Mr.Maan Singh, Advocate.**

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¹ Whether reporters of the local papers may be allowed to see the order?

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For Opposite party: Mr.Lalit K.Sharma, Advocate

Justice Inder Singh Mehta, President

ORDER

The complainant has filed the instant complaint seeking directions to the opposite party to pay a sum of Rs.65,56,800/- i.e. the amount of loss suffered, a sum of Rs.50,000/- for deficiency in service and Rs.30,000/- as litigation expenses alongwith interest @ 18% per annum.

Brief facts of Case:

2. Brief facts of the complaint are that complainant is sole proprietor of M/s Himalyan Camping. The complainant got the valuation of the said project done from Engineer Rohit, Class-A Valuator and total cost of the project was Rs.3,10,66,572/-. The complainant got his said project insured from the opposite party/insurance company for a sum of Rs.3,10,66,572/- vide policy No.263200/11/2019/108 and paid two premiums of Rs.40,000/- for 2017-18 and 2018-

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19. The said insurance cover was effective from 09.05.2018 to 08.05.2019.

Due to unprecedented rains resulting into flash flood in River Beas in 2018, on 23rd and 24th September, 2018, project of the complainant suffered damages i.e. basement of the project was flooded and carpets, huts, drywalls and furniture of the project were damaged. The police of Police Station, Manali also entered GDR entry on 26.09.2018 regarding damage caused to the project of the complainant. The Village Revenue Officer also submitted a report regarding damage to the tune of Rs.62,00,000/- to Rs.65,00,000/-. The complainant also got assessed the loss suffered from valuator Sh. Rakesh Rana, registered with Town and Country Planning Department and who has assessed the loss/damage to the tune of Rs.65,00,000/-. Intimation regarding loss was given to the insurance company and also submitted claim form. Certain documents were also submitted to the insurance company. However, as

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no repair works had been carried out, no bills of repair were submitted at that relevant point of time. Despite repeated requests and furnishing requisite documents to the insurance company, the claim of the complainant has not been settled. Hence, the present complaint.

3. The complaint is contested by the opposite party/insurance company by filing reply. The opposite party/insurance has taken preliminary objections of maintainability, there exists no insurable interest in favour of the complainant, complaint is bad for non-joinder and mis-joinder of necessary party, complainant is estopped to file the present complaint on account of his act of omission and commission and complainant has not approached this Commission with clean hands,

On merits, it stands admitted that complainant got insured the property i.e. M/s Himalyan Camping from the opposite party/insurance company. The complainant has not suffered loss to the tune of Rs. 65,00,000/- as report

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of the Village Revenue Officer is prepared at the instance of the complainant. Similarly, valuation report of valuator Sh.Rakesh Rana is not the report of an expert and same is non-speaking one and cannot be said to be conclusive proof for the alleged estimated cost. However, on receipt of intimation, insurance company has appointed surveyor cum loss assessor Sh.Sanjay Vaidya for preliminary survey. During preliminary survey, it was disclosed to the surveyor that property in question was leased to M/s Ananta Oorja Entertainment Pvt. Ltd. from April, 2017. It was also disclosed to the Surveyor that as the tourist season was approaching, the complainant had reconstructed the property and installed the furnishing items to minimize the loss. Thereafter, the final surveyor was appointed, but complainant did not supply the requisite documents to the surveyor despite repeated requests and reminders. The said surveyor has assessed the loss to the tune of Rs.1,35,846/-. There exists no insurable interest in favour of the

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complainant, as the complainant has leased out the property to "The Shivalya within" and as such no claim is payable to the complainant. Hence, a prayer for dismissal of complaint has been made.

4. Rejoinder denying the contents of the reply filed by the opposite party/insurance company and reiterating those of the complaint has been filed.

5. Thereafter, parties led evidence in support of their respective pleadings.

6. The complainant has tendered in evidence his affidavit Ext. C-1, affidavit of Draftsman Rakesh Rana, Ext.C-2 and affidavit of General Manager of M/s Ananta Orrja Entertain Pvt. Ext.C-3.

7. The opposite party/insurance company tendered in evidence affidavits of Surveyors CA N.S.Sidhu Ext. OP-1, Sanjay Vaidya as Ext.OP-2 and affidavit of Sh.Manohar Lal, Sr. Divisional Manager of Insurance company as Ext. OP-3.

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8. We have heard the learned counsel for the parties, perused the written submissions filed on behalf of the parties and have also gone through the record of case file carefully.

9. Learned counsel of the complainant has submitted that on 23rd and 24th of September 2018 due to unprecedented rain fall camping project of the complainant suffered huge damage as alleged in the complaint. Intimation of loss was given to the opposite party/insurance company. Insurance company appointed surveyor who assessed the loss to the tune of Rs.1,35,846/-. He further submitted that insurance company repudiated the claim of the complainant on the ground that complaint was without insurable interest. He further submitted that the complainant has also got assessed the loss from one Sh. Rakesh Rana who assessed the loss to the tune of Rs.65,56,800/-. He prays that the complaint of the complainant be allowed.

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10. On the other hand, learned counsel of the opposite party/insurance company has submitted that at the time of incident in question no insurable interest of the insured/complainant was existing as the property in question was leased out by the complainant and found in possession of M/s Ananta Oorjaa Entertainment Pvt. Ltd. He prays that the complaint of the complainant be dismissed.

11. In rebuttal, learned counsel of the complainant has submitted that insurance policy is in the name of complainant, therefore, the plea of the opposite party/insurance company that complainant does not hold the insurable interest loses its significance.

FINDINGS

12. The admitted fact which emerges on record is that complainant Sh.Rohit Sharma is sole proprietor of M/s Himalyan Camping. It is further an admitted fact that complainant got his said project insured from the opposite party/insurance company for a sum of Rs.3,10,66,572/- vide

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policy No.263200/11/2019/108 and paid two premiums of Rs.40,000/- for 2017-18 and 2018-19. The said insurance cover was effective from 09.05.2018 to 08.05.2019.

13. It is further an admitted fact emerging on record that thereafter complainant leased out the said project/camping site to M/s Ananta Oorja Entertain Pvt. Ltd.

14. It is coming on record that due to unprecedented rains resulting into flash flood in River Beas on 23rd and 24th September, 2018, project of the complainant suffered damages. Intimation regarding loss was given to the opposite party/insurance company, who appointed surveyor and the surveyor assessed the loss to the tune of Rs.1,35,846/-.

15. The insurance company has repudiated the claim of the complainant mainly on the ground that project/camping site which has sustained loss in flood was leased out by the complainant to M/s Ananta Oorja Entertainment Pvt. Ltd and as such, insurable interest of the complainant is not established.

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16. The said repudiation of claim of the complainant by the insurance company does not seem to be correct on the following grounds:-

- i). It is admitted fact emerging on record that complainant Sh. Rohit Sharma is sole proprietor of M/s Himalyan Camping and he got his said project insured from the opposite party/insurance company for a sum of Rs.3,10,66,572/- vide policy No.263200/11/2019/108 which was effective from 09.05.2018 to 08.05.2019.
- ii). It is further an admitted fact that due to unprecedented rains resulting into flood in River Beas in 2018, on 23rd and 24th September, 2018, project of the complainant suffered damages during existence of the insurance policy in question.
- iii). It is also an admitted fact that the complainant paid the premium of the insurance policy being insured/proprietor of the property. Therefore, the contract of insurance which is an independent transaction took place between the complainant and the insurance company.

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iv). What has been leased out in favour of the lessee M/s Ananta Oorja is the right of permissive use of Himalyan Camping alongwith fittings and fixtures and nothing else.

v). The General Manager of lessee M/s Ananta Oorja in his affidavit Ext.C-3 has specifically stated that M/s Ananta Oorja has not staked any claim against the said damages nor the property has been got insured by them with any other insurance company.

17. In view of the above stated facts, plea of the insurance company that the complainant does not hold any insurable interest in respect of the property in question is without any merit and substance.

18. The complainant has obtained the policy No.263200/11/2019/108 for covering all risks and complainant has filed the instant complaint for indemnification of loss suffered on account of flood. For that purpose, the complainant has paid the insurance premium to the insurance company. Therefore, the objection raised by

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the insurance company that the complainant is not a consumer at this stage loses its significance.

19 In the instant complaint, the complainant has claimed a sum of Rs.65,56,800/-/- on account of loss caused to the property in flood. In support of his claim, the complainant has placed on record detailed estimate cost amounting to Rs.65,56,800/- Annexure C-9 prepared by Rakesh Rana, Draftsman. The complainant has also filed affidavit of the said Rakesh Rana to prove the estimate cost.

20. The estimate cost Ext. C-9 prepared by Rakesh Rana does not seem to be correct as it does not indicate that on what date, it was prepared. Even in affidavit, Annexure C-2, Rakesh Rana has not deposed that on what date he visited the site of incident and when he prepared the said report.

21. The report of the Rakesh Rana also does not show average clause and other deductions, therefore, the

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said report seems to be prepared just to give exaggerated benefit to the complainant.

22. Per contra, the opposite party/insurance company has appointed Surveyor-cum-loss Assessor, who assessed the loss to the tune of Rs.1,35,846/-. The said surveyor in his report Annexure R-7 has specifically mentioned that no major damages caused to the building. He further mentioned that the complainant could not produce the damaged items for verification nor bills of the purchased/replaced items were placed before him.

23. The surveyor appointed by the opposite party/insurance company has assessed the net loss to the tune of Rs.1,35,846/- after applying average clause, depreciation, under insurance factor and other deductions. The complainant has not filed any interrogatories to the report of the surveyor appointed by the Insurance company. Therefore, report of the IRDA approved Surveyor & Loss

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Assessor prevails over the report of the loss assessor appointed by the complainant.

24. As far as Judgment relied upon by the insurance company is concerned, same is not applicable in the facts and circumstances of the present complaint.

25. In view of above discussion, the complainant is only entitled to the amount of Rs.1,35,846/- as assessed by the Surveyor-cum-loss assessor appointed by the insurance company.

26. Consequently, complaint of the complainant is partly allowed and the opposite party/insurance company is directed to pay a sum of Rs.1,35,846/-. (One lakh thirty five thousand eight hundred forty six) to the complainant alongwith interest @ 9% per annum from the date of filing of the complaint till realization of entire amount.

27. The opposite party/insurance company is further directed to pay a sum of Rs.50,000/- (Fifty thousand) to the

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complainant as compensation, besides litigation charges to the tune of Rs.20,000/- (Twenty thousand).

28. The opposite party/insurance company is directed to comply the aforesaid order within 45 days from the date of receipt of copy of order.

29. Certified copy of this order be sent to the parties and their counsel(s) strictly as per rules. Pending applications, if any, also disposed of. File after due completion be consigned to the Record Room.

Justice Inder Singh Mehta
President

R.K.Verma
Member

Manoj