

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1887 OF 2019

1. M/S. JAGDISH WOOLLEN'S (P) LTD.

Through its Director, Shri Raj Kumar Matta, Babail Road,
Panipat,

HARYANA

.....Complainant(s)

Versus

1. NEW INDIA ASSURANCE COMPANY LTD.

Through its authorized representative, Delhi Regional Office-I,
2nd Floor, R.G. City Centre, L.S.C. Block B, Lawrence Road,

DELHI-110035

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER
HON'BLE MR. ROHIT KUMAR SINGH, MEMBER**

FOR THE COMPLAINANT : MR. AFTAB SINGH KHARA, ADVOCATE

FOR THE OPP. PARTY : MS. SHUCHI SINGH, ADVOCATE (THROUGH VC)

Dated : 11 November 2024

ORDER

PER MR. ROHIT KUMAR SINGH

1. The present Consumer Complaint has been filed by the Complainant under Section 21 of the Consumer Protection Act, 1986.
2. The brief facts of the case, as per the Complainant, are that the complainant, a private limited company, sought indemnification of its insurance claim due to fire. The insured premises along with goods was valued at Rs.3.10 crores and the claim was lodged for Rs.1,03,83,335/-. The insurer paid only Rs.40,00,000/-. The insurance company appointed a surveyor and the indemnification amount of Rs.44,66,476/- was deposited without seeking discharge voucher from the Petitioner/Complainant on 29.06.2018. The Complainant approached an independent licensed surveyor as per the IRDA Guidelines and Insurance Act and the said surveyor was also an empanelled surveyor of the Respondent insurance company.
3. The Complainant approached the Hon'ble National Consumer Disputes Redressal Commission with the following prayers:

“a) To compensate the complainant for the actual loss suffered (amounting to Rs.1,03,83,335/-) and release the remaining claim amount for the loss due to fire amounting to Rs.60 Lakhs (Approximately) along with interest at the rate of 15% p.a. from the date of loss i.e. 22.05.2017 till its actual payment to the complainant.

- b) To compensate and make payment of Rs.25,00,000/- as compensation on account of unfair trade practice, harassment, mental agony caused to the complainant by the misleading and negligent acts of respondent/Insurance Company and not paying the insurance claim at reinstatement value basis as specified in the insurance policy.***
- c) To compensate for an amount of Rs.10,00,000/- for Punitive Damages against the respondent, in addition to compensation and costs.***
- d) To compensate for the unwanted litigation expenses incurred by the complainant amounting to Rs. 10 lakhs.***
- e) To set aside the surveyor report dated 24.02.2018 of Shri B.S. Chawla, Surveyor and Loss Assessor appointed by Insurance Company, which made a tailor-made report in favour of the Insurance Company.***
- f) To accept the report of an independent Surveyor & Loss Assessor, Shri Chand Kumar Bhatia duly licensed and approved surveyor as per Insurance Act.***
- g) Any other relief in addition to or in the alternative, which this Hon'ble Commission may deem fit and proper may also be awarded in favour of the complainant in the interest of justice."***

4. The Complainant in its complaint stated that the report of the independent Surveyor and Loss Assessor Shri Chand Kumar Bhatia should be read and the report of Shri B.S. Chawla, Surveyor and Loss Assessor of the insurance company be set aside, as it was tailor made in favour of the Respondent insurance company. It was submitted that the insurance policy docket states that the proposal is on Reinstatement Value Basis. However, the surveyor of the insurance company gave the assessment on a depreciated basis. The Complainant relied on the case of "***Oswal Plastic Industries v. Manager, Legal Deptt. N.A.I.C.O Ltd. Civil Appeal No. 83 of 2023***" wherein it was held by the Supreme Court that the NCDRC erred in observing that the insurance company should pay the depreciated value only and not the reinstatement value. It was further submitted that as per IRDA guidelines the claim was to be settled in a time-bound manner, but the surveyor report was submitted after a gap of more than 9 months and a lesser amount was paid to the Complainant without issuing the discharge voucher in July, 2018. The Complainant relied on the case of "***New India Assurance Co Ltd. v. Pradeep Kumar (2009) 7 SCC 787***" decided by the Hon'ble Supreme Court wherein it was held that "*The approved surveyor's report may be the basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured but such report is neither binding upon the insurer nor insured.*" The Complainant also placed reliance on the case titled "***New India Assurance Co. Ltd. v. M/S. Demm Auto Engineering Works First Appeal No. 458 of 2014***" decided by this Commission in which it has been held that the insured can also appoint a surveyor or loss assessor.

5. The Respondent in its written statement submitted that the Complainant has failed to submit copies of all the repairs/replacement bills along with payment proof which is the first and foremost condition for Reinstatement Value Basis assessment. It was further submitted

that reasonable adjustments were made towards cost adjustments, taxes etc. It was submitted that the Complainant got the second report made in accordance with its interest after a prolonged delay of 2 years of fire accident. It was submitted that the surveyor appointed by the Complainant did not carry a physical examination of the place of occurrence, and hence should be rejected. The Respondent placed reliance on a number of judgments including “*Consumer Education and Research Society & Anr. v. Sr. Branch Manager, LIC & Anr. CC No. 196/2000*,” and “*M/S. Sam Fine O Chem Ltd. v. Union Bank of India CC/39/2013*” to contend that the Complainant was not a consumer within the ambit of Section 2(1)(d) of the Consumer Protection Act since firstly, the purchase of policy was for indemnification of loss of any commercial activity and secondly, use of the claim amount accruing out of loss to further profit generating.

6. The Complainant, in its rejoinder stated that from the perusal of the report, the surveyor appointed by the Respondent gave the assessment on a depreciated basis which was in violation of terms and conditions of the insurance policy. It was further submitted that the loss of stocks has been equally wrongly evaluated for the assessment of loss. It was submitted that in the assessment of the building, depreciation was added by the said surveyor despite the insurance company having accepted the bills. It was submitted that the insurance company failed to show the methodology by which the deductions were made. It was also submitted that the report of the surveyor appointed by the Complainant was totally based upon the assessment of loss calculated by the surveyor of the Respondent. It was further submitted that the surveyor appointed by the Complainant has not taken into consideration any new documents or bills.

7. The Respondent in its written arguments contended that the Complainant took a lot of time in providing documents, and the assessment had to be done minutely. Hence the report of the surveyor appointed by the Respondent was delayed. It was submitted that the surveyor appointed by the Complainant did not visit the place of mishap and submitted his report after almost 2 years of the accident. It was further submitted that the loss of the building was assessed taking into consideration the bills provided and suitable adjustment was made towards cost adjustments, taxes etc. which was the most reasonable amount which could have been paid. Loss to machinery was assessed adjusting taxes, price negotiations etc. Loss to stock was adjusted as per available storage area and pattern of storage system followed by the insured. Suitable adjustments were made towards dead stock. The survey report of the authorized surveyor of the insurance company is prepared on the basis of market value and physical examination wherein the Complainant could not provide the purchase details of plants and machineries. Further, depreciation and salvage were also considered wherever applicable. It was submitted that there is no negligence or deficiency in service on the part of the Respondent.

8. The issues for consideration are (i) **whether the Complainant falls within the definition of a consumer as per the Consumer Protection Act;** (ii) **whether the appointment of the surveyor appointed by the Respondent insurance company is valid;** (iii) **whether the survey report of the surveyor appointed by the insured/Complainant can be relied upon in the instant case and** (iv) **whether the application of depreciation in the survey report of the surveyor appointed by the Respondent insurance company is**

contrary to the terms and conditions of the insurance policy. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for the Parties.

9. As per Section 2(7)(ii) of the Consumer Protection Act, 2019, *'consumer' means any person who hires or avails of any service 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 service 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 service for any commercial purpose. Explanation (a) For the purposes of this clause, the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.*

In the case of *“National Insurance Company Limited v. Harsolia Motors and Ors. 2023 SCC OnLine SC 409”* it was held by the Supreme Court that *“..ordinarily the nature of the insurance contract is always to indemnify the losses. Insurance contracts are contracts of indemnity whereby one undertakes to indemnify another against loss/damage or liability arising from an unknown or contingent event and is applicable only to some contingency or act likely to come in future.”* In the instant case, the Complainant company will be a consumer of the Respondent insurance company since the Complainant had purchased the insurance policy to indemnify the losses caused to the premises and goods due to fire.

10. In the present case, the total sum insured was of Rs.3,10,00,000/- and the claim lodged by the Complainant was of Rs.1,03,83,335/-. Hence, the appointment of a surveyor was necessary for the assessment of the claim amount as per Regulation 12 of the IRDAI (Insurance Surveyors and Loss Assessors) Regulations, 2015. As per Regulation 9(1) of IRDA (Protection of Policyholders' Interests) Regulation, 2002, in cases where a surveyor has to be appointed for assessing a loss/claim, it shall be so done within 72 hours of the receipt of intimation from the insured. The appointment of Surveyors and loss assessors shall be made by the insurers or the insured only and not by any other person. In the instant case, a surveyor was appointed by the insurer for the assessment of the claim amount. The surveyor visited the mishap/accident premises on 24.05.2017 and 26.05.2017 i.e. within 72 hours of the date of mishap. **Thus, the appointment of the surveyor appointed by the Respondent insurance company is valid.**

11. As per Regulation 13(2) of the IRDAI (Insurance Surveyors and Loss Assessors) Regulations, 2015 *“A surveyor or loss assessor whether appointed by insurer or insured, shall submit his report to the insurer as expeditiously as possible, but not later than 30 days of his appointment, with a copy of the report to the insured giving his comments on the insured's consent or otherwise on the assessment of loss. Where, in special*

circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension, in any case not exceeding six months from the insurer for submission of his report.” In the instant case, the surveyor appointed by the insurer submitted his report after almost 9 months of being appointed. The Respondent insurance company has cited the **delay in submission of documents by the Complainant** for the assessment of claim as a reason for delay. The Respondent states that the surveyor did not receive all the documents from the insured which were required for the calculation of claim on Reinstatement Value Basis. The Respondent in its written arguments admitted that the surveyor calculated the insurance claim on the basis of market value and physical examination where requisite documents and bills were not available and further depreciation and salvage was also considered wherever applicable. The calculation of the claim amount by the abovementioned methodology followed by the Respondent is contrary to the terms and conditions of the insurance policy mentioned in the proposal form, which states that the loss should be calculated on **Reinstatement Value Basis**.

12. In the case of “*New India Assurance Co. Ltd. Vs. Pradeep Kumar (2009) 7 SCC 787*” it was held that while the assessment of loss by an approved surveyor was a prerequisite for settlement of the claim, it was not the last and final word. Further, it was **not that sacrosanct so as not to warrant a departure if necessary**. Further, the report was not binding on either party, and could be taken on as evidence until more reliable evidence was brought on record to rebut the contents of the surveyor’s report. In the instant case, the surveyor appointed by the Respondent insurance company sent a letter dated 25.05.2017 to the Complainant requesting the Complainant to provide the required documents for assessment of claim amount. The survey report prepared by the surveyor appointed by the Respondent insurance company stated that “Insured has provided part of claim related documents in the month of July’17/August’17, which were sifted however not found comprehensive. Insured was again requested to provide the remaining documents/information.” Clause 7 of the said survey report further mentions that “Insured could not provide the purchase details of plant & machinery, in view of above loss is assessed on market value basis and as per physical inspection.”

13. Consequently, when the aforesaid remark of the Surveyor came to the notice of the Bench which at the relevant time (on 12.6.2024) was hearing the matter singly, the Opposite Party was granted liberty to place a Chart showing actually what were the documents required from the Complainants, and which were not supplied in accordance with the requirement. To this end, the Opposite Party on 12.9.2024 filed the Comparative Chart from which it transpired that only 3 documents were required from the Complainants by the Surveyor in his letter dated 25.5.2017 (Annexure-C 5). Those were the copy of the rent/Lease Deed, purchase details of affected Plant & Machinery and quotations of the new machines, which had been mentioned at Sl. Nos. 16, 17 & 18 of the Surveyor’s letter dated 25.5.2017.

14. The Complainants in response to such Chart filed by the Opposite Party submitted first of all that there is no copy of any rent/Lease Deed available, since the property in which the business was being carried on, as well as the damaged Plant belongs to the Complainant Company itself and has not been taken on lease/rent from any party. Regarding purchase

details pertaining to the affected Plant & Machinery as well as the quotations for new machines, Ld. Counsel for the Complainants submitted that all the requisite documents, which were to be considered in this regard also had been supplied from their side and have been placed on record being part of Ex. C-13 collectively which are on pages 290 to 309 of the Paper Book, and the same were to be considered in the light of the fact that this is a case for claim on a reinstatement value basis, and not for any loss sustained, to which the concept of depreciation would apply.

15. The said survey report further mentions in the context of building that “Insured has claimed Rs.20,97,097.60/- towards repair cost of building. Insured has submitted copies of bills/quotations of only Rs.12,70,597/- which is only being considered taking into account extent of damages.” The Complainant, in its letter dated 25.03.2019 requested the Respondent insurance company to pass the claim as per the claim lodged by the Complainant company and that the Complainant shall provide any document required by the Respondent for settlement of the claim. The Complainant, in its complaint mentions that he did not receive a response to the above mentioned letter dated 25.03.2019. **Thus, the insurance claim based on the said survey report is subject to revision.**

16. In the case of *Khatema Fibres Ltd. Vs. New India Assurance Co. Ltd., Civil Appeal No. 9050 of 2018, (2021) 9 SCR 268* it was laid down that “*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.*” In the instant case, calculation of the amount of the claim is the point of contention and **it cannot be subjected to forensic examination by this Commission.** We have gone through the survey report of the surveyor appointed by the Respondent insurance company and we are of the view that the Respondent ought to have taken into account the requisite bills and documents to be furnished by the Complainant and then revised the claim amount to be paid to the Complainant accordingly on Reinstatement Value Basis, as per the terms and conditions of the policy proposal.

17. In *New India Assurance Company Limited versus Sri Buchiyamma Rice Mill and Another (2020) 12 SCC 105*, the Hon’ble Supreme Court held that “*While determining whether the appointment of a second or successive surveyor is justified, one must take into consideration the necessity of doing so and it must be weighed in the context of relevant facts and circumstances including the deficiencies or omissions in the report of the first surveyor. Each case must be independently considered based on relevant facts and circumstances. There ought to be cogent reasons for appointing a second surveyor.*” In the instant case, **we do not find the necessity of appointment of another surveyor by the Complainant/insured party as the survey report of the surveyor appointed by the Respondent/insurance company is not being disregarded.** The surveyor appointed by the

Complainant submitted his report after almost 2 years of the date of the incident/mishap. The said surveyor did not visit the place of mishap/accident and relied only on the documents provided by the Complainant. Therefore, **we are of the opinion that the said surveyor report prepared by the surveyor appointed by the Complainant cannot be relied upon.**

18. The pertinent question of whether the **application of depreciation** in the survey report of the surveyor appointed by the Respondent insurance company is contrary to the terms and conditions of the insurance policy is dealt with further. The said policy was issued on Reinstatement Value Basis, as mentioned in the policy proposal form. In the case of “***Oswal Plastic Industries v. Manager, Legal Deptt. N.A.I.C.O Ltd. Civil Appeal No. 83 of 2023***” it was held by the Hon’ble Supreme Court that “*as per second part of Clause 9 of Section 2 of the policy, the complainant shall be entitled to the reinstatement value and not the depreciated value.*” The order passed by the NCDRC in the above-mentioned case (**Civil Appeal No. 83 of 2023**) awarding the depreciated value and not the reinstatement value was set aside by the Supreme Court in that case. In the instant case also, the insurance policy was issued on Reinstatement Value Basis and hence the Complainant is entitled to the claim based on the same and not based on depreciated value basis.

19. In view of the discussion above, the Complainant is directed to furnish to the Respondent the requisite documents necessary for the calculation of the amount of claim on reinstatement value basis. The Respondent insurance company is directed to take into account the requisite bills and documents to be - furnished by the Complainant in order to recalculate the claim amount. As per the judgment of the Hon’ble Supreme Court in the ***Oswal case (supra)***, if the insurance policy is issued on Reinstatement Value Basis, the insurance claim amount should be calculated and issued on the same and not on a depreciated value basis. As per the terms and conditions of the instant policy, it was issued on Reinstatement Value Basis. Therefore, the depreciation applied should be removed from the calculation of claim amount in the survey report prepared by the surveyor appointed by the Respondent. The insurance claim needs to be revised/recalculated on reinstatement value basis and the Respondent is directed to pay the additional claim amount to the Complainant within one month from the date of passing of this order.

20. Parties to bear their own cost. Pending application(s) if any, stand disposed of.

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SUDIP AHLUWALIA
PRESIDING MEMBER

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ROHIT KUMAR SINGH
MEMBER