

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 272 OF 2012**

(Against the Order dated 19/04/2012 in Complaint No. 7/2010 of the State Commission  
Chhattisgarh)

1. M/S. R.R. ENERGY LTD.

its Regsitered Office at. P.O. Garhumaria, National Higway No.  
200, Jharsuguda Raod, Raigarh, Tehsil and District Raigarh

RAIGARH

CHATTISGARH-496004

.....Appellant(s)

Versus

1. ORIENTAL INSURANCE CO. LTD.

at Oriental House, A-25/27, Aasaf Ali Road,

NEW DELHI-

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT : MR. RAVI BHARUKA, ADVOCATE

FOR THE RESPONDENT : MR. ROHIT GUPTA, ADVOCATE

(THROUGH VIDEO CONFERENCING)

**Dated : 14 May 2024**

**ORDER**

**DR. SADHNA SHANKER, MEMBER**

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 19.04.2012 of the State Commission in complaint no. 7 of 2010, whereby the complaint of the complainant was dismissed.
2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'complainant company') and the learned counsel for the respondent (hereinafter referred to as the 'insurance company') and perused the record including the State Commission's impugned Order dated 19.04.2012 and the memorandum of appeal.
3. The brief facts of the case are that the complainant company had established a husk and coal based Power Plant having capacity of 14 MW, which commenced commercial production of power on 13.07.2007 and as per the statutory requirement, the complainant company had also installed at the aforesaid Power Plant an Electro Static Precipitator (ESP), as a pollution control measure, installed by M/s Thermax Babcock & Wilcon, Pimpri Pune, a renowned manufacturer of ESP. The function of the ESP is to separate dust and ash particles, contained in the smoke, which emitted while burning of coal and husk, through chimney. The complainant company had obtained a Machinery Breakdown Insurance Policy for the period

from 12.07.2007 to 11.07.2008 covering 13 items including the ESP. The premium of Rs. 1,70,335/- was paid and the copy of the policy schedule along with money receipt and list of 13 items covered by the said insurance policy was issued but the terms and conditions of the policy was not issued. The policy was valid for the period from 12.7.2007 to 11.07.2008. It is alleged that on 13.02.2008, the ESP installed in the complainant company's Power Plant suddenly broke down and stopped functioning in the midnight. The complainant company informed the insurance company as also the manufacturer of the ESP. An initial survey of the damaged ESP was carried out on 14.02.2008 in the presence of engineers of M/s Thermax Ltd. and it was found during survey that first and second field of the ESP had been extensively damaged due to accident, requiring at least 2-3 months' time frame to complete replacement of collecting plates etc. It was also duly intimated to the insurance company in time. The complainant company had also received quotations from their suppliers and was in the process of placing orders for materials required for replacing the damaged parts of the ESP. The complainant intended to restart the Power Plant by using the 3<sup>rd</sup> field of the ESP because it was not practicable and viable to shutdown the plant for 2-3 months for want of materials required for replacement. Therefore, the plant was restarted after initial survey where it was found that the replacement of ESP will cost about 30 lakhs. On 10.09.2008 the insurance company sent a printed claim form, which was submitted along with necessary documents on 15.09.2008 in the office of the insurance company claiming thereby amount of Rs. 67,83,000/- under the subject Machinery Breakdown Insurance Policy. In the meantime, the complainant company had received the components for replacement of damaged parts and therefore, intimated to the insurance company on 16.07.2009 that plant would be shutdown for repairing of ESP on 19.07.2009. After completion of replacement of damaged parts, it was again intimated to the insurance company that the plant would be restarted on 04.08.2009 and the insurance company was called upon to send surveyor for final inspection of the ESP and thereafter final survey was carried out by Mr. N. K. Gupta, surveyor but his report was not furnished to the complainant despite repeated requests. It is alleged that the surveyor obtained signature of the complainant on several printed and typed papers and assured the complainant that their claim would be settled soon. But the insurance company vide letter dated 31.03.2010 repudiated the claim of the complainant on the ground that the loss falls under the policy exclusion. It is alleged that copy of the exclusion clause or terms and conditions of the policy was never supplied by the insurer to the insured and it was unfair on the part of the insurance company to repudiate the claim on such ground.

4. Aggrieved by the repudiation made by the insurance company, the complainant filed a complaint before the State Commission.

5. The insurance company contested the complaint by raising preliminary objection that the complainant company is not competent to file complaint and the complaint is barred by limitation. Apart from this, the insurance company stated that the complete policy document containing policy schedule along with terms and conditions, was forwarded to the complainant company. It is also stated that the surveyor Mr. N. K. Gupta has found that the cause of the damage was gradual wearing away and wasting /corroding of Gas Distribution plates, electrode plates, tadpoles etc. and no signs of fire or electrical melting were noted. It is also stated that the probable cause of corrosion/erosion to gas distribution plate is atmosphere of low temperature, excessive amount of sulphur trioxide gas, failure of hopper heater, moisture etc. in the ESP. Consequently, erosion / corrosion damage in bottom portion

of GD plate caused improper / uneven gas, concentrated in bottom portion of ESP. Thus, flue gas and smoke flow was concentrated in bottom portions of ESP causing corrosion / erosion. Thus, loss falls under exclusion of policy and the damage to the electrodes, plates and rigitrodes were minimized after repairs / fabrication of inlet GD plate by insured in February 2008. As per claim form dated 16.03.2008 only two fields were damaged, but in their subsequent statement it was also stated that 3<sup>rd</sup> field was also damaged to the extent of 20%. This, statement shows that entire portion of inner components, electrical and non-electrical, were gradually wasting, eroding and wearing out. It has also been stated that the purchase order for replacement of the damaged parts was already placed, as back on 13.10.2007 whereas the reported event was that of 13.02.2008. Thus, the damage cannot be attributed to the reported event of 13.02.2008 and the breakdown did not necessitate the replacement of their claimed items.

6. The State Commission vide impugned Order dated 19.04.2012 dismissed the complaint.

7. Feeling aggrieved by the Order of the State Commission, the complainant filed the instant appeal before this Commission.

8. Learned counsel for the complainant company has argued that the State Commission had erred in appreciating that the insurance company had supplied complete policy documents along with the terms and conditions of the policy while the insurance company has supplied only a policy schedule in six sheets covering thirteen items. He further argued that in the preliminary survey, the surveyor has estimated the repairing cost of the damaged parts as around Rs. 30 lakh and has opined that the peril comes under the Machinery Breakdown Insurance Policy. He further submits that the State Commission has erred in relying on clause 4.2 of the Machinery Insurance Policy because under the section 24A of the Consumer Protection Act, 1986, a claim can be made within two years from the date of repudiation. He further submits that the repudiation by the insurance company was based on Engineering Policy while the Machinery Breakdown Policy was obtained. It was further pointed out that in discharge of its burden to bring on record the terms and conditions of the policy, the insurance company filed an unsigned format of Machinery Insurance Policy and not a copy of Machinery Breakdown Insurance Policy issued in the name of the complainant. Further, it was pointed out that in the final survey report, the surveyor had under the head 'cause of damage and insurer's liability' stated that "Thus, loss falls under exclusion 7 of policy". It is seen that clause 7 of the Machinery Insurance Policy filed by the insurance company does not deal with the exclusion clause on which the said repudiation is based. It was further argued that the repudiation was on the basis of some policy, which was not related to the complainant. He further argued that the corrosion and erosion are two different things and as per the affidavit filed by the Director of the complainant company the corrosion is a process of gradual wear and tear due to natural chemical process and erosion is a wear and tear due to natural chemical process and erosion is a wear and tear when acted by some external force. He further states that the spare parts are always kept in stock as they have to be procured from Pune or Bangalore and the complainant company cannot wait for months long to get the spares as they are heavy and are carried on big trailers and takes many days for the trailer to reach Raigarh, Chhattisgarh from Pune or Bangalore. He further argued that the ESP cannot be shut down permanently as the power plant is running continuously and

therefore, the complainant company in intimation to the insurance company after making repairs started running the ESP on low efficiency as the third field was working at 80% efficiency.

9. Learned counsel for the insurance company has argued that the as per the routine practice complete set of policy schedule along with terms and conditions were supplied to the complainant at the time of effecting the policy. He further argued that the as per surveyor's report, the cause of the damage was gradual wearing away and wasting / corroding of gas distribution plates electrode plates, tadpoles etc. and no signs of fire or electrical melting were noted. He further argued that as per surveyor's report, the probable cause of corrosion/erosion to gas distribution plate is atmosphere of low temperature, excessive amount of sulphur trioxide gas failure of hopper heater, moisture etc. and the erosion / corrosion damage in bottom portion of GD plate caused improper / uneven gas concentrated in bottom portion of ESP and the loss falls under exclusion of policy and the damage to electrodes, plates and rigitrodes were minimized after repairs / fabrication of inlet GD plate by insured in February 2008. He further argued that the purchased order for replacement of the damaged parts was already placed, as back on 13.10.2007 whereas the reported event was that of 13.02.2008, thus, the damage cannot be attributed to the reported event of 13.02.2008 and the breakdown did not necessitate the replacement of their claimed items i.e. electrodes, tadpoles guide frames, structural steel members etc. He further argued that these items did not suffer sudden and unforeseen loss breakdown so that damages were beyond the scope of machinery breakdown policy. It is also stated that the complainant company had not followed the manufacturer's instructions and did not regularly checked hopper, plates electrodes etc. which resulted in heavily corroded electrodes for more than 6 months. As per manufacturer's instructions, the distorted / misaligned / corroded components / parts were to be checked and avoided but the complainant company operated ESP with heavily corroded electrodes for more than 06 months which was contrary to the instructions of the manufacturer and hence, the policy stood null and void. It is further argued that the insurance company is not liable for any amount to the complainant because the damage was on account of gradual corrosion / erosion and wearing / wasting away of different components which were not timely attended and maintained by the complainant company.

10. The main question for our consideration is as to whether there has been deficiency in service by the insurance company in repudiating the claim of the complainant.

11. At the outset, the matter of limitation has to be dealt with since the State Commission has held that in view of clause 4.2 of the Machinery Breakdown Policy, if no action or suit is commenced within three months, then all benefits under this policy shall be forfeited. Reliance was placed by the complainant on the decision in the case of **Grasim Industries Limited vs. State of Kerala (2018) 14 SCC 265** wherein it has been held that agreement / clause specifying a limitation period lesser than the period statutorily available to raise claims is unenforceable and void to such extent. The period of limitation under the Consumer Protection Act, 1986 is two years and such period cannot be curtailed by the insurance company by entering a clause in the policy document.

12. In this case, it is observed that the policy schedule, which covers 13 items, that was admittedly issued to the complainant, is in respect of "Machinery Breakdown Insurance Policy". The repudiation letter dated 31.03.2010 has been made mentioning particulars "B.B.

loss under Engineering Policy”. Further, the policy’s terms and conditions that have been placed on record by the complainant as the policy document provided by the insurance company, which has not been controverted, is an unsigned, unstamped and unnamed proforma policy document of the insurance company in respect of a “Machinery Insurance Policy” as recorded in the State Commission’s Order at page 3. It is not in dispute that the complainant had obtained a “Machinery Breakdown Insurance Policy” for the relevant period. It is further seen from the record that the final surveyor’s report has recommended that the loss being claimed falls “under exclusion 7 of the policy”. It is seen that clause 7 of the policy document filed regarding Machinery Insurance Policy reads as under:-

**“GENERAL EXCEPTIONS:**

7. Liability assumed by the Insured by agreement unless such liability would have attached to the insured notwithstanding such agreement.”

13. From the perusal of the above, it seems to us that there is no clarity as to under which the policy the claim has been repudiated. Admittedly, the complainant had taken a Machinery Breakdown Insurance Policy. However, the repudiation has been done under a non-existent engineering policy and the surveyor has recommended dismissal of the loss claimed on the basis of non-existent clause 7 in a totally different policy which is Machinery Insurance Policy. The insurance company has not replied to these grounds taken by the complainant in its submissions before us.

14. In the circumstances, we are of the view that the repudiation is based on either a non-existent policy or some other policy which was never taken by the complainant, who is before us. This clearly amounts to deficiency in service on the part of the insurance company as they have repudiated the claim without applying their mind as to which policy is being used for repudiation of the said claim.

15. The final surveyor’s report, upon which the State Commission has relied, has also relied on some non-existent clause or a policy which is not on record and is not issued to the complainant.

16. It is settled law that the survey report is not the last and final word and can be departed if there are sufficient reasons to rebut the same. Reliance is placed on the Hon’ble Supreme Court’s judgment in the case of **New India Assurance Co. Ltd. v. Pradeep Kumar** 2009 (7) SCC 787.

17. In view of the above, we are of the opinion that the surveyor’s report is based on some other policy and hence cannot be relied upon, being arbitrary, and the same deserves to be discarded.

18. It is seen that the insured has claimed a total sum of Rs. 67,83,160/- in the complaint but having regard to the fact that the preliminary surveyor has estimated the repair at Rs. 30 lakh and opined that the loss comes under the Machinery Breakdown Insurance policy, we are of the opinion that the insurance company is liable to pay the insured a sum of Rs. 30 lakh with interest at the rate of 9% per annum from the date of repudiation till the date of

realization, to the complainant and the impugned order of the State Commission is liable to be set aside.

**18.** In the result, the appeal is allowed in part and the order of the State Commission is set aside. The insurance company is directed to pay a sum of Rs. 30 lakh with interest at the rate of 9% per annum from the date of repudiation till the date of realization to the complainant within a period of eight weeks from today. All pending applications, if any, stand disposed of.

.....  
**SUBHASH CHANDRA**  
**PRESIDING MEMBER**

.....  
**DR. SADHNA SHANKER**  
**MEMBER**