

First Appeal No. Smt. Amita Singh, Proprietor, M/s Uttaranchal Haat 07.06.2024
12 of 2012 Versus
State Bank of India and another

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 24.01.2012
Date of Final Hearing: 21.05.2024
Date of Pronouncement: 07.06.2024

FIRST APPEAL NO. 12 / 2012

Smt. Amita Singh
Proprietor, M/s Uttaranchal Haat
C-15, Shopping Plaza, Chandracharya Chowk
Ranipur More, Haridwar

(Through: Sh. V.K. Srivastava, Advocate)
..... Appellant

Versus

1. State Bank of India
Main Branch, Ranipur, BHEL
Haridwar through its Branch Manager
(Through: Sh. S. Parashar, Advocate)
2. The New India Assurance Company Limited
Branch Ranipur More, Haridwar
through its Senior Divisional Manager
(Through: Smt. Savita Sethi, Advocate)
..... Respondents

Coram:

**Ms. Kumkum Rani,
Mr. B.S. Manral,**

**President
Member**

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against the impugned judgment and order dated 16.12.2011 passed by learned District Consumer Disputes Redressal Forum, Haridwar (hereinafter to be referred as “The District Commission”) in consumer complaint No. 358 of 2010, styled as Smt. Amita Singh, Proprietor, M/s Uttaranchal Haat Vs. State Bank of India

and another, wherein and whereby the consumer complaint filed by the complainant (appellant herein) was dismissed.

2. The facts giving rise to the present appeal, in brief, are, as such that the firm of the appellant / complainant was insured with respondent No. 2 / opposite party No. 2 (insurance company) for the period from 30.06.2009 to 29.06.2010. For the renewal of the insurance policy, the amount of premium was tendered by respondent No. 1 / opposite party No. 1 (bank) to the insurance company on dated 13.08.2009, but the insurance company did not issue the renewed insurance policy for the period from 30.06.2010 to 29.06.2011. In the meanwhile, on 19.07.2010, on account of entrance of water and mud into the subject shop due to heavy rain, the complainant sustained a loss of Rs. 2,21,639/-. The complainant made a request to the opposite parties for indemnification of the aforesaid loss, but no action was taken by the opposite parties. Therefore, the consumer complaint was submitted by the complainant before the District Commission for getting the claim amount.

3. The bank (opposite party No. 1 to the consumer complaint) did not file any written statement before the District Commission, hence on 25.11.2010, the District Commission passed an order to proceed the consumer complaint ex-parte against the bank.

4. The insurance company (opposite party No. 2 to the consumer complaint) submitted its written statement before the District Commission, pleading that the insurance policy was not renewed on the ground that the premium amount for renewal of the insurance policy was tendered by the bank much earlier before the expiry of the existing

insurance policy. On the date of loss, there was no insurance policy in subsistence. Therefore, the consumer complaint is liable to be dismissed.

5. Learned District Commission, after hearing the parties and after taking into consideration the material available on record, dismissed the consumer complaint vide impugned judgment and order dated 16.12.2011.

6. On having been aggrieved by the impugned judgment and order, the present appeal has been submitted on behalf of the complainant as an appellant, alleging that the complainant's firm was having CC Stocks (SBF) bearing Account No. 00000010667996122 with respondent No. 1 – bank and the bank had insured the complainant's firm with respondent No. 2 – insurance company under Shopkeeper's Insurance Policy for the period from 30.06.2009 to 29.06.2010 and the bank has suo moto deducted the amount of premium to the tune of Rs. 2,758/- from the account of the complainant's firm for insurance purpose. It was also stated in the grounds of appeal that learned District Commission has failed to appreciate that the bank has suo moto deducted an amount of Rs. 2,758/- from the aforesaid account to insure the complainant's firm with the insurance company for the period from 30.06.2009 to 29.06.2010 and thereafter the bank has again suo moto deducted an amount of Rs. 2,708/- from the aforesaid account on 13.08.2009 for insuring the complainant's firm for the subsequent year and the amount was sent by the bank to the insurance company, which was deposited in the account of the insurance company. It was further contended on behalf of the appellant that learned District Commission has failed to appreciate that the appellant should not suffer for act or

omission of the bank. Learned District Commission has also failed to appreciate that the appellant's firm has been insured every year by the insurance company through the bank and the bank has suo moto deducted the amount of insurance premium every year from the aforesaid bank account, but the said fact was overlooked by learned District Commission. It was further stated that learned District Commission has also failed to appreciate that due to heavy rain, water and mud entered into the shop of the appellant, on account whereof, the gift items kept therein were totally damaged and the appellant had suffered a loss of Rs. 2,21,639/-. Therefore, the bank and the insurance company are jointly and severally liable for their negligence and deficiency in service. Learned District Commission has failed to exercise the jurisdiction vested in it under law. Therefore, this Commission be pleased to allow the appeal & set aside the impugned judgment and order.

7. We have heard Sh. V.K. Srivastava, learned counsel for the appellant; Sh. S. Parashar, learned counsel for respondent No. 1 & Smt. Savita Sethi, learned counsel for respondent No. 2 and have also perused the record.

8. It is an admitted fact that the firm of the complainant had CC Stocks (SBF) Account No. 00000010667996122 with the bank. It is also established on record that the bank had deducted the premium amount of Rs. 2,758/- from the aforesaid account for obtaining the insurance policy from the insurance company for the period from 30.06.2009 to 29.06.2010. It is further established on record that the bank had also deducted an amount of Rs. 2,708/- from the aforesaid

account on 13.08.2009 for insuring the firm of the complainant for the subsequent year, i.e., from 30.06.2010 to 29.06.2011.

9. It is also not disputed that the amount of premium of Rs. 2,708/- sent by the bank to the insurance company on 13.08.2009 for insuring the complainant's firm for the subsequent year, i.e., for the period from 30.06.2010 to 29.06.2011, was refunded by the insurance company vide cheque No. 367888 dated 05.08.2010. It is further admitted that due to heavy rain, water and mud entered into the shop of the complainant, due to which, the gift items kept inside the shop were totally damaged, causing loss of Rs. 2,21,639/- to the complainant. It is also established on record that the bank had deducted the premium amount of Rs. 2,708/- from the account of complainant's firm on dated 13.08.2009 and the same was remitted by the bank to the insurance company for insuring / indemnifying the complainant's firm for the subsequent year, i.e., for the period from 30.06.2010 to 29.06.2011. It is also admitted that the complainant had informed the insurance company about the occurrence, whereupon the insurance company had appointed surveyor – Sh. Ajay Kumar Arora, Surveyor & Loss Assessor, for assessing the loss occurred to the shop of the complainant. It is contended by the complainant in the consumer complaint that the complainant has submitted the details / list of the loss to the surveyor of the insurance company. Paper No. 64 on the record of the appeal has shown that the aforesaid surveyor was appointed by the insurance company, who had issued letter dated 24.12.2010 to M/s Archies Gallery, stating that under the instructions received from M/s The New India Assurance Company Limited, Haridwar, the undersigned contacted yourself on dated 20.07.2010 and conducted the survey as well as collected the required

documents. The undersigned requested you verbally to complete the following papers, but the same were not submitted:

1. Proof of the values claimed for Rs. 21,639/- in the bill.
2. Last year balance sheet copy.
3. Last year loss & profit account.
4. Last year sale tax / income tax return.
5. F.I.R. / Fire Brigade / Paper cutting.
6. Telephone / electricity bill copy.
7. Metrological Department Report.
8. Statement of occurrence.

You are requested to kindly send the same within 15 days' of the receipt of this letter, otherwise, it will be understood that you are no longer interested in the claim and accordingly, the undersigned will recommend the claim as No Claim.

10. Letter (Paper No. 65) was issued by the Senior Divisional Manager, The New India Assurance Company Limited, Divisional Office, Ranipur More, Haridwar M/s Archies Gallery, wherein in reference to surveyor's aforesaid letter dated 24.12.2010, certain documents were called for, with a request to submit the required documents within 7 days' of receipt of the letter, otherwise it will be presumed that you are not interested in taking claim and claim file will be closed as No Claim.

11. Now the question arises as to whether the amount of premium sent by the bank to the insurance company towards renewal of the insurance policy for the subsequent year, before the expiry of the

subsisting insurance policy, can not be accepted by the insurance company, because the existing insurance policy has not expired.

12. Learned counsel for the insurance company has contended that the insurance policy is in the nature of contract and the contract comes into force on a proposal being submitted by the insured in the form of application and further that the contract is not complete unless & until the proposal made is unconditionally accepted by the insurance company. Learned counsel has further contended that in the case of **Chukkapalli Suresh Vs. Met Life India Insurance Co. Ltd.** reported in **III (2017) CPJ 107 (NC)**, it has been held by Hon'ble National Commission that the insurance policy is in nature of contract and contract comes into force on a proposal being submitted by insured in form of application and that if the insurance policy was not issued by the insurance company, then there being no insurance contract in existence, the complainant can not be termed as consumer of the insurance company and he has no locus standi to file the consumer complaint. Learned counsel has also cited another decision of Hon'ble National Commission in the case of **Life Insurance Corporation of India Vs. Shubhra Bhabri** reported in **(2017) 3 CPJ 365 = (2017) 2 CPR 293**, wherein it has been held that merely on the basis of retention of premium by the insurance company, the complainant does not get right to claim amount under the policy in absence of concluded contract and mere delay in not accepting proposal, can not construe as acceptance.

13. Per contra, learned counsel for the appellant / complainant has cited decision of Hon'ble National Commission in the case of **New India Assurance Co. Ltd. Vs. Suresh Singh Thakur and another**

reported in **(2016) 1 CPJ (NC) 100**, wherein deficiency in service committed by the insurer by not renewing the policy despite receiving consolidated premium from the bank, has been discussed and the issue of excess premium and lack of details provided by the bank leading to the insurer returning the excess amount, was also highlighted. The court's decision emphasized the responsibility of the insurer to renew the policy and the need for clear communication and documentation regarding premium payments and excess amounts. In the case of **Pradeep Kumar Jain Vs. The Citi Bank and another** reported in **(1995) 2 CPJ (NC) 219**, also cited by learned counsel for the appellant, it has been held by Hon'ble National Commission that when the bank failed to deliver renewal premium cheque to insurance company, although undertaken by it, it amounts to deficiency in service and bank is liable to make good loss in absence of valid insurance policy. The principle laid down in the above cited case of **Pradeep Kumar Jain** (supra) is not applicable to the case in hand because in the instant case, the bank has duly tendered the amount of premium to the insurance company, which remained with the insurance company, as has also been admitted by the insurance company. It is evident from the record that the amount of Rs. 2,708/- towards premium was deducted by the bank from the account on 13.08.2009 and remitted to the insurance company. Hence, no deficiency in service can be attributed to the bank.

14. Learned counsel for the insurance company has further contended that the premium for renewal of the insurance policy for the period from 30.06.2010 to 29.06.2011, could not have been accepted by the insurance company, as the same was tendered about 10 months' in advance and during the subsistence of the running / existing insurance policy.

15. We have also perused the original record of the District Commission, which was summoned by this Commission. Paper No. 16/11 of the original record is the letter dated 27.08.2010 issued by the insurance company to the complainant, stating therein that since the policy for the period from 30.06.2009 to 29.06.2010 had already been renewed through bank, there was no question of issuing another policy in the month of August, 2009, whereas the said policy was in force. It was further stated that since the policy had expired and no further request was made by the bank for renewal of aforesaid policy after 29.06.2010, hence, there was no risk coverage on the date of flood loss, i.e., 19.07.2010. Paper No. 16/12 is the letter dated 10.09.2010 issued by the insurance company to the bank, wherein it was stated that since the insurance policy in respect of M/s Uttaranchal Haat for the period from 30.06.2009 to 29.06.2010 had already been issued, there was no need to issue another policy in the month of August, 2009. Therefore, as per the system procedure, the amount of premium sent by the bank for the renewal of the borrower's policy, was automatically kept in collection excess and due to transfer of dealing officer, it could not be refunded before. It was further stated that as it is not possible to renew the policy from the back date, hence we are enclosing herewith cheque No. 367888 dated 05.08.2010 for Rs. 3,464/- only of Corporation Bank towards refund of excess collection.

16. From above, it is clear that there was no concluded contract between the insured and the insurer and since the insurance policy for the period from 30.06.2010 to 29.06.2011 did not see the light of the day, hence the subject loss was not covered and the insurance company can not be held liable to reimburse the loss occasioned to the insured in

