

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 943 OF 2016**

(Against the Order dated 02/06/2016 in Complaint No. 144/2013 of the State Commission  
Punjab)

1. ORIENTAL INSURANCE COMPANY LTD.

THROUGH ITS REGIONAL MANAGER, SAI MARKET,  
LOWER MALL,  
PATIALA, PUNJAB-147001

.....Appellant(s)

Versus

1. M/S. S. P. SINGLA CONSTRUCTION PVT. LTD.

THROUGH ITS DIRECTOR, MR. VIPAN KUMAR, HOUSE  
NO. 47, CONSTRUCTIONS PVT LTD., HOUSE NO. 47,  
SECTOR-9,  
PANCHKULA  
HARYANA

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. SADHNA SHANKER, PRESIDING MEMBER**

FOR THE APPELLANT : MR. DEV BHARDWAJ, PROXY COUNSEL WITH  
AUTHORITY LETTER FOR MR. AMANDEEP SINGH,  
ADVOCATE

FOR THE RESPONDENT : MR. VIPUL KUMAR, ADVOCATE

**Dated : 20 June 2024**

**ORDER**

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 02.06.2016 of the State Commission in complaint no. 144 of 2013, whereby the complaint was allowed.
2. Heard the learned counsel for the appellant (hereinafter referred to as the 'insurance company'); the learned counsel for the respondent (hereinafter referred to as the 'complainant company') and perused the record including the State Commission's impugned Order dated 02.06.2016 and the memorandum of appeal.
3. There is a delay of 08 days in filing the present appeal.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

4. The brief facts of the case are that the complainant company, who is engaged in construction of bridge, had submitted tender for construction of the bridge and when the tender was granted, the complainant company, in order to secure this project against any loss,

obtained 'Contractors All Risk Insurance Policy' for the period from 14.12.2009 to 13.06.2013 from the insurance company. The complainant had been paying all the premium installments and the construction work was going on in due course in the month of September 2011 when there was devastating flood in river Sone, which was overflowing. It is alleged that due to rains, the gates of Inderpuri Barrage, built on the upstream River Sone, was opened, which resulted in sudden increase of water flow on 11.09.2011 and thereafter, on 25.09.2011, there was again sudden increase in the high level water flow in the river. When the water receded, it was found that loss had occurred as two steel temporary bridges one measuring 12 meters long and the other measuring 66 meters long and plain cement concrete were washed away. The insurance company was informed vide letter dated 04.11.2011 but the insurance company did not give any reply nor conducted any survey. Further reminders were sent to the insurance company on 26.11.2011 and 29.11.2011. Thereafter, the insurance company got conducted survey for the assessment of loss on 10.12.2011 and 11.12.2011 through Rohit Kumar and Company. It is further alleged that two claim forms on the asking of the surveyor regarding two bridges were submitted separately. The surveyor had filed a detailed report dated 02.11.2012 along with various materials collected by him and observed that the complainant company's claim is tenable under the policy, however the underwriters were not liable to pay the same by applying excessive underinsurance and two excess clauses against one loss caused to it and its claim was reduced to 'nil'. Thereafter, the complainant company vide letter dated 04.02.2013 requested for the status report and the surveyor's report. The insurance company vide letter dated 22.02.2013 repudiated the claim of the complainant company, expressing the inability to make any payment.

5. Being aggrieved, the complainant filed a complaint before the State Commission with the following prayer:

“(I) Award the claim of Rs.72,83,400/- i.e. Rs.1,47,83,400/- as reduced by the excess clause amount of Rs.75,00,000/- i.e. (Rs.1,47,83,400/- (-) Rs.75,00,000/- = Rs.72,83,400/- as claimed and proven by the complainant.

(II) Hold that the respondents are liable to pay the complainant Rs.72,83,000/- along with interest at the rate of 18% on account of deficiency in the insurance claim due to the complainant.

(III) Award the claim of Rs. 5 lacs on account of loss in business due to delay on the part of the respondent insurance company and their surveyor.

(IV) Award the claim of Rs.2,00,000/- on account of harassment, mental agony caused by the present respondents.

(V) Award claim of Rs.33,000/- on account of litigation expenses.”

6. The insurance company contested the complaint by filing written statement raising the preliminary issue that the complainant company is a commercial entity and do not fall under the definition of 'consumer' within the meaning of the Act and hence, the complaint is not maintainable. It is further stated that no cause of action has been arisen in favour of the complainant company and against the insurance company. It is also stated that the complaint

involves complicated question of law besides disputed facts and the same cannot be decided in summary proceedings by the State Commission. It is further stated that the surveyor has assessed the liability of the insurance company as 'Nil' keeping in view the terms and conditions of the insurance policy, therefore, the insurance company is not liable to pay any amount to the complainant company. It is further stated that there is no deficiency on the part of the insurance company.

7. The State Commission vide its impugned Order dated 02.06.2016 allowed the complaint and directed the insurance company to pay a sum of Rs.72,83,400/- along with interest at the rate of 12% per annum from 12.12.2011 till its realization and Rs. 11,000/- as litigation expenses.

8. Being aggrieved by the impugned Order dated 02.06.2016 of the State Commission, the insurance company filed the instant appeal before this Commission.

9. Learned counsel for the insurance company has argued that the surveyor has assessed the loss at Rs. 1,47,83,400/- and after applying the under insurance @21.07% and excess of Rs. 1.50 crores since the claim form was filed, liability of the insurance comes as 'nil'. Therefore, there is no liability on the part of the insurance company to pay the claim and the repudiation made by the insurance company was correct. He further argued that since the complainant company has submitted two claims forms for two separate incidents dated 11.09.2011 and 25.09.2011, the excess is to be applied twice as per the condition of the policy and the State Commission has incorrectly interpreted the policy in allowing only one excess.

He further argued that the rejection of 21.07% as the rate of underinsurance applied by the surveyor and adoption of 9% by the State Commission was incorrect. It was further argued that the escalation amount applied by the government department that had given the contract was not binding on the insurance company.

He further argued that it is well settled law that in a contract of insurance, rights and obligations are strictly governed by the terms of the policy and no exception or relation can be given on the ground of equity. In support of its contention, he placed reliance on the following decisions.

1. United India Assurance Co. Ltd. vs. Sushil Kumar Godra,

MANU/SC/0743/2021,

2. Dharmanandan Diamonds Pvt. Ltd. vs. New India Assurance Co. Ltd.

MANU/CF/0441/2020

3. Suraj Mal Ram Niwas Oil Mills P. Ltd. vs. United India Insurance Co. Ltd. and Ors.

MANU/SC/0814/2010

4. Deokar Exports Private Limited vs. New India Assurance Co. Ltd.

MANU/SC/8093/2008

5. United India Insurance Co. Ltd. vs. Harchand Rai Chandan Lal MANU/SC/0803/2004

10. Learned counsel for the complainant company has argued that the loss suffered to the complainant company was due to 'one single occurrence' of sudden persistent floods

between 11.09.2011 and 25.09.2011 and it is evident from the surveyor's report itself as also from the 'River Water Level Data and Newspaper Report that there was sudden increase in water level. Therefore, the treatment of claims of the complainant company as two separate claims is incorrect and arbitrary. He further argued that Sh. Vipin Kumar, Director of the complainant company has stated on affidavit that these two separate forms were submitted only upon asking of the surveyor and this deposition is not rebutted by the insurance company, therefore, the excess applied twice is not sustainable in the eye of law. He further argued that the submission of two forms cannot lead to unreasonable inference that there were two separate 'occurrence' of flooding. He further argued that the surveyor could have invoked the CPWD index in a case where other evidence was not available to him but in the case at hand, the escalation cost at 9% was before the surveyor, therefore, the underinsurance value as 21.07% applied by the surveyor is erroneous.

Further, he relied on a judgment of the Court of Appeal dated 11.10.2000 appearing in Lloyd's Law reports Part I (2001) Vol. 1 in the matter of Mann and Holt vs. Lexington Insurance Co. wherein they have quoted 'An "occurrence" (which is not materially different from an event or happening, unless perchance the contractual context requires some distinction to be made) is not the same as a loss, for one occurrence may embrace a plurality of losses.'

**11.** The main issue to be decided is as to whether there were two occurrences leading to separate losses.

**12.** From a perusal of the record including the surveyor's report and the River Water Level Data and Newspaper Report, it is evident that the river Sone had a flash flood on 11.09.2011 and then the river water remained higher than normal and again on 25.09.2011 the river water rose very high. It was only after the water receded, the complainant company could have assessed its losses i.e. the washing away of two bridges. The river water admittedly remained high between 11.09.2011 to 25.09.2011. Further, it is seen that the surveyor has also spoken about one 'occurrence' and has also assessed the loss as one in the report.

**13.** Therefore, considering the facts and circumstance of the case, I am of the opinion that this is clearly a case of one occurrence, with loss of two bridges. I am also of the opinion that filing of two claim forms for the bridges separately does not take away the true nature of the occurrence and loss. Therefore, the finding of the State Commission on this count is upheld. Once there is only one occurrence that has led to two bridges being washed away, there is no question of the excess clause being applied twice in the assessment. Therefore, the application of excess twice by the surveyor is not sustainable in the eye of law.

**14.** As regards the rate of underinsurance, it is seen that the surveyor has gone through the work contract of the insured and discussed the escalation clause mentioned therein. He has not mentioned any reason for not considering the escalation clause to calculate the percentage of underinsurance.

**15.** In view of the same, I am inclined to agree with the State Commission that under insurance could be taken at 9% and not at 21.07% based on the CPWD index.

**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.** As regards the interest at the rate of 12% per annum on the awarded amount is concerned, I am of the view that the interest at the rate of 9% per annum would be just and appropriate and commensurate with the loss and injury suffered by the complainant company.

**18.** In view of the above discussion, the order dated 02.06.2016 of the State Commission is modified to the extent that the insurance company shall

i) pay a sum of Rs. 72,83,400.00 along with interest at the rate of 9% per annum from 12.12.2011 till the date of payment of that amount.

ii) pay Rs. 11,000/-, as litigation expenses.

The order be complied with within a period of six weeks from the date of order, failing which the rate of interest shall be enhanced to 12% per annum.

**19.** The appeal is disposed of with the above directions. All pending applications, if any, stand disposed of.

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