

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 834 OF 2015**

(Against the Order dated 05/08/2015 in Complaint No. 7/2014 of the State Commission  
Maharashtra)

1. SANJAY FOODS INDIA PVT. LTD.

THROUGH ITS CHAIRMAN, PRADEEP KUMAR, S/O.  
CHHAGANLAJI AGRAWAL, OFFICE AT: E-62, MIDC  
AREA,  
JALGAON

.....Appellant(s)

Versus

1. UNITED INDIA INSURANCE COMPANY LIMITED &  
ANR.

THROUGH ITS DIVISIONAL MANAGER, 28,  
HARESHWAR NAGAR, RING ROAD,  
JALGAON-425002

2. UNITED INDIA INSURANCE CO. LTD.,

THROUGH ITS MANAGING DIRECTOR, REGD. OFFICE-  
24, WHITES ROAD,  
CHENNAI-600014  
TAMIL NADU

.....Respondent(s)

**BEFORE:**

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

FOR THE APPELLANT :

**Dated : 08 April 2024**

**ORDER**

For the Petitioner            Mr Sunil Goyal and Ms Shivan Tayal,

Advocates

For the Respondent            Mr A K De and Ms Ananya, Advocates

**ORDER**

**PER SUBHASH CHANDRA**

1. This appeal under section 19 of the Consumer Protection Act, 1986 challenges the order dated 05.08.2015 of the Maharashtra State Consumer Disputes Redressal Commission, Aurangabad Bench in Complaint Case no. CC/14/7 which had dismissed the complaint.
2. The relevant facts of the case in brief are that the appellant had a factory at E 5/1B, MIDC, Jalgaon dealing in manufacturing of oil and oil cakes, using cotton seeds purchased from Ginning and Pressing units. The appellant obtained a Standard Fire and Special Perils Policy (in short, 'the Policy') for the period 06.03.2011 to 05.03.2012 covering the building for Rs.95.00 lakhs, plant, machinery and accessories for Rs.40.00 lakhs and stock comprising of cotton seed, oil seed, washed oil, oil cake, gunny bags, by-products of oil mill, stores and spares, raw material, finished goods, stock in process and goods held in trust and or on commission either inside and outside the premises for Rs.2.00 crores. In the early hours of 04.06.2011 the appellant was informed of a sudden fire in the factory which was controlled with the help of the Fire Brigade. An FIR was lodged with the MIDC Police Station on 04.06.2011 and the respondent insurance company was informed and an officer of the insurance company visited the site on the same day. However, despite the report of the Fire Brigade, Jalgaon Municipal Corporation and the Electrical Inspector, a claim was lodged by the appellant on 23.11.2011 claiming Rs.37,28,168/- which amounted to a net claim of Rs.29,56,823/- after deducting salvage value of Rs.7,71,345/-. Documents were sought by the respondent on 13.12.2011 and 09.12.2011. In view of delay in the settlement of the claim, a legal notice was also issued to the respondent on 31.10.2011. A legal notice was also sent on 23.03.2012 seeking early settlement. However, the respondent repudiated the claim on 10.04.2012 on the grounds that after verifying the documents submitted and based on the report of the surveyor, it was found that the claim was not covered under the policy. The appellant sought a copy of the survey report from the respondent which was not provided and had to be obtained through an application under the Right to Information Act (RTI). Despite the IRDA guidelines making it mandatory, that findings of the surveyor be conveyed within 30 days and the surveyor being required to furnish a report within six months, the surveyor delayed his submission of the report which was not provided to the appellant.
3. The appellant approached the State Commission in CC no. 14/7 under Section 12 which was contested by the respondents on the grounds that the claim was repudiated as the cause of fire was 'spontaneous combustion'. The investigation report dated 16.04.2012 was relied upon. The State Commission dismissed the complaint on the grounds that the probable cause of fire was 'spontaneous combustion' despite the reports of the Fire Department, Electrical Inspector and the Police authorities that the fire was caused due to short circuiting. This order is impugned before us on the grounds that it is perverse and arbitrary and based on surmises and conjectures.
4. We have heard the learned counsel for the parties and have perused the records the carefully.
5. The grounds of appeal are that (i) the conclusion that the loss occurred due to spontaneous combustion was not supported by any expert opinion or authentic information;

(ii) the respondent had violated the directions of the IRDA to furnish a copy of the Surveyor Report to the appellant and to finalise settlement of the claim within 30 days of receiving the survey report; (iii) the investigation report dated 16.04.2012 after the repudiation of the claim is contended to be fabricated and the State Commission to have erred in not appreciating the available evidence that the fire was not due to a short circuit; (iv) the report of the investigating officer that the fire was extinguished with the help of one water fire fighter was contrary to the certificates given by the Fire Department on 06.06.2011 and 16.06.2011 that four such tankers were deployed to extinguish the fire; (v) the Surveyor did not cooperate with the appellant and did not get any consent signed by the appellant; and (vi) the finding of the Surveyor that no smoke and fumes were found on the site was false and contrary to the affidavit of witnesses filed before the State Commission wherein it had been recorded that the witnesses had seen smoke and fumes at the time of fire. It was therefore prayed to set aside the impugned order and allow the complaint with cost and any other relief deemed fit and just.

6. During oral submissions the appellant argued on the above lines and relied upon the judgment of the Hon'ble Supreme Court in *New India Assurance Co. Ltd., vs Zuari Industries Ltd., and Ors.*, Civil Appeal no. 4436 of 2004 decided on 01.09.2009 (2009) 9 SCC 70 to argue that the duration of the fire was not relevant for claim to be maintainable and that the claim was maintainable as long as it was fire which caused damage. It was contended that the State Commission erred in holding that the Fire Brigade arrived at 10.00 AM whereas the fire incident occurred at 06.30 AM and the statement of witnesses to hold that the time of the fire was not specific.

7. *Per contra*, the learned counsel for the respondent argued that the Policy in question had a specific Exclusion Clause as per which loss/damage due to spontaneous combustion was excluded as under:

“Fire : Excluding destruction or damage caused to the insured by

- a. (i) its own fermentation, natural heating or spontaneous combustion;
- hi.
- b. Burning of property insured by order of any public authority.”

8. It is was submitted that the respondent had immediately on intimation of the fire, appointed Mr Shekhar Malhara, Surveyor who visited the premises with the Divisional Manager of the respondent. The Surveyor had stated in his report dated 12.12.2011 that the cause of fire was due to spontaneous combustion/ self heating which was not covered under the policy. He had estimated the loss at Rs.1,17,500/- on 10.04.2012. The claim was repudiated on the basis of the survey report and on the grounds that:

THE HEAP OF STOCK REPORTED AS AFFECTED BUT FOUND THE OUTER LAYER & UPPER LAYER WAS SAFE & NOT AFFECTED HOWEVER, INSURED CALLED THE JCB & UNLOADER TO SHIFT STOCK FROM GODOWN, ON REMOVING UPPER/ OUTER LAYER BAGS IT WAS OBSERVED THAT BAGS IN SIDE WERE SEEN DEEP BROWNISH. ON OPENING BAGS WHEN CONTENTS IE COTTON SEED WAS INSPECTED, IT WAS OBSERVED THAT COLOR HAS CHANGED AND IT BECAME DEEP BROWNISH ON ENQUIRING,

INSURED DESCRIBED THAT SELF HEATING IS INHERENT PROPERTY OF COTTON SEED AND SOMETIMES HEAT GENERATED REACHES TO HIGH TEMPERATURE AND COTTON SEED GETS IGNITED. THE PHENOMENON IS OF SPONTANEOUS COMBUSTION. THE SELF HEATING, WHICH IS INHERENT VICE, AFFECTS THE QUALITY OF SEED BY WAY OF CHANGING ITS COLOR AND OIL CONTENTS, HOWEVER DURING ENTIRE REMOVAL OF STOCK, NO FIRE AFFECTED SEED WAS FOUND.

It means the probable cause of loss is a spontaneous combustion, self heating of cotton seeds, due to high humidity, which is inherent vice, gradual process and not fortuitous. In short the damage caused to the cotton seeds not due to self but to fire heating, i.e. spontaneous combustion, which is excluded peril under the said policy, the standard fire policy does not cover the subject loss, which is occurred due to the reason narrated by the surveyor."

9. It was contended by the respondent that the impugned order had noted that the surveyor had extensively inspected the site of the fire and found that no heat or fire, flame or smoke emanated from the heap of affected cotton seeds and that the roof and wall colour was also not affected. Electrical wiring passing above the heat was also found intact. The labourers deployed were removing the damaged/ affected stock outside the factory manually and very easily. It was also noted that the Fire Brigade had doused the fire with water. No smoke/ fumes were visible according to observations and findings of the surveyor. The respondent had repudiated the claim as being excluded under the policy on account of self combustion which an inherent vice of the stock insured. Reliance was placed on this Commission's judgment dated 08.04.2022 in *United India Insurance Co. Ltd., vs Dalas Biotech Limited* in RP No. 2096 of 2013, which had relied upon the judgment of the Hon'ble Supreme Court in *Oriental Insurance Co., vs Sony Cheriyan* (1999) 6 SCC 451, wherein it has held that

"The insurance policy between the insurer and the insured represents a contract between the parties. Since the insurer undertakes to compensate the loss suffered by the insured on account of risk covered by the insurance policy, the term of agreements have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy."

10. In the impugned order the State Commission has held as under:

In our view, policy was simply for Standard Fire and Special Perils. **The loss occurred due to spontaneous combustion is not at all included in the policy. In the present case though complainant alleged that incident of fire had occurred in the factory due to which he suffered the loss but said fact could not be proved by the complainant.** As the fire fighter arrived at the spot at 10.00 am, while alleged incident had occurred in the morning at 06.30. **Therefore we are to accept the conclusion of surveyor that there was no fume, no fire, no smoke in the factory premises as fire**

**was due to spontaneous combustion only.** There are so many discrepancies in the pleadings and so called evidence brought before us by the complainant is not authentic. We are therefore not willing to allow the complaint.

[Emphasis added ]

**11.** The issue which falls for our consideration is whether the proximate cause of fire was covered under the policy terms and if so, whether, the cause of fire was on account of short circuit or self combustion.

**12.** The State Commission's order has noted that the policy in question was a Standard Fire Peril Policy and that no additional coverage for self combustion had been obtained. The surveyor's report is based upon the evidence on site with regard to the fire which, if caused by short circuiting, would have resulted in smoke and fumes and there was no evidence of such a fire by way of smoke and marks on the walls/ interior of the factory premises. There was no justification provided for the repudiation by the respondent of the claim to have been delayed despite receiving the surveyor's report on 12.12.2011. It is evident that the respondent has relied upon the report of the surveyor to repudiate the claim. There is evidence of the appellant and the surveyor having been in contact with regard to the production of various documents. It has been held by the Hon'ble Supreme Court in *Sri Venkateswara Syndicate Vs. Oriental Insurance Company Limited & Anr*, in Civil Appeal No. 4487 of 2004 decided on 24.08.2009, (2009) 8 SCC 507 that a surveyor's report is mandatory under section 64 UM of the Insurance Act, 1938 in case a claim exceeds Rs.20,000/- and that such a report has to be necessarily given due weightage. It has also been held by the Hon'ble Supreme Court in *New India Assurance Co. Ltd. Vs. Pradeep Kumar* (2009) 7 SCC 787, that a surveyors report is not the final word or so sacrosanct that it cannot be departed from. However, it is also apparent that the appellant has failed to bring on record categorical evidence to establish that the proximate cause of fire was not on account of spontaneous combustion and was due to external reasons such as an electrical short circuit. In the light of the fact that the appellant has not been able to provide any evidence to controvert the statement of the Fire Department and Electrical Inspector and the police, the repudiation of the claim by the respondent cannot be found fault with. Lapses alleged on part of the surveyor/ insurance company regarding delay in finalisation of the report and repudiation cannot by itself by the basis to reject the same. The conclusion that the proximate cause of fire was not due to external source but due to spontaneous combustion or self heating as a result of an inherent vice cannot be disregarded in view of the evidence on record. Admittedly, the appellant has not been able to indicate that the cause was on account of a fire caused by flames. Also, in view of the fact that the policy represented a contract between the parties the terms of which cannot be altered as held by the Hon'ble Supreme Court in *Sony Cherian* (supra), the State Commission's order does not warrant any interference.

**13.** In view of the discussion above, we do not see any reasons to interfere with the order of the State Commission. The appeal is found to be without merit and is according dismissed. No order as costs.

**14.** Pending IAs, if any also stand disposed of with this order.

**15.** Registry is directed to return the original record to the State Commission.

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

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