

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 246 OF 2009

(Against the Order dated 23/03/2009 in Complaint No. 49/2005 of the State Commission
Andhra Pradesh)

1. UNITED INDIA INSURANCE CO. LTD.

Through its Regional Office No.1, Kanchanjunga Building,
Bara Khamba Road, New Delhi, Having its Regd. & Head
Office at 24, Whites Road

CHENNAI

.....Appellant(s)

Versus

1. SHREE SAI LAXMI POULTARY FEEDS & ANR.

Pandalapaka, Bikkarvolu Mandal, East Godawari District,
ANDHRA PRADESH

2. BRANCH MANAGER

ANDHRA BANK, HEAD OFFICE, DOOR NO.5-9-11,DR.
PATTABI BHAVAN, SECRETARIAT ROAD, SAIFABAD,
KHARATABAD, GYDERABAD TELENGANA-500004

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING
MEMBER**

FOR THE APPELLANT : MR. V.S. CHOPRA, ADVOCATE

FOR THE RESPONDENT : FOR THE RESPONDENT-1 : MR. K. MARUTHI RAO,
ADVOCATE

FOR THE RESPONDENT-2 : NEMO

Dated : 13 June 2024

ORDER

1. Heard Mr. V.S. Chopra, Advocate, for the appellant and Mr. K. Maruthi Rao, Advocate, for respondent-1.

2. Above appeal has been filed against the order of State Consumer Disputes Redressal Commission, Andhra Pradesh, dated 23.03.2009, allowing CC/49/2005 with cost of Rs.10000/- and directing the appellant to pay Rs.3090521/- with interest @9% per annum from 09.06.2004 till the date of realisation, as the insurance claim and a compensation of Rs.20000/-.

3. Sri Sai Lakshmi Poultry Feeds (respondent-1) filed CC/49/2005, for directing the appellant to pay (i) Rs.3153195/- with interest @18% per annum from 30.06.2004 till the date of realisation, as the insurance claim; (ii) Rs.100000/- as compensation; (iii) litigation costs; and (iv) any other relief which is deemed fit and proper in the facts and circumstances of the case.

4. The complainant stated that it was a partnership firm, engaged in production of Poultry Feed. The complainant used to keep its stock of raw material and finished materials in Building Door No.4-141/3, Pandalakapa Village, Bikkarvolu Mandal, East Godavari District. For preparing Poultry Feed, the complainant used raw materials of meat meal, minerals, maize, broken rice, wheat, soya doc, sajja, Vitamins and De-oiled bran. The raw materials and finished materials are kept in gunny bags in above building. The complainant took financial assistance from Andhra Bank, Rayavaram Branch as such the stock of the complainant was hypothecated with the Andhra Bank, who obtained Standard Fire and Special Perils Policy No.151102/11/03/0045, from United India Insurance Company Limited for the period of 10.01.2004 to 09.01.2005, for a sum of Rs.9017000/- for Building and Rs.6000000/- for stock. By paying additional premium, risk of 'spontaneous combustion' was covered w.e.f. 27.05.2004. The area of the manufacturing shed was 6000 sq. feet. Raw materials of de-oiled bran, de-oiled soya and dry fish were stored side by side in manufacturing shed. On 30.06.2004 at 15:30 hours, the workers engaged in production of poultry feed noticed heat waves from de-oiled rice bran stock, in which, the flames were engulfed for short period. At that time, Padala Venkata Reddy, the production supervisor and other collie workers were present there. Due to unbearable heat and flames, the workers present there could not go to the spot to douse the fire. They immediately informed Karri Venkata Dhana Reddy, the managing partner about the incident, who in turn informed to Fire Service Station, Anaparthi, from where fire engine were sent, reaching on the spot at 16:15 hours and doused the fire in 3 hours. The Insured immediately informed about the fire incident to Andhra Bank, from where Mandal Revenue Officer, Bikkavolu visited the spot on 30.06.2004. Andhra Bank intimated the incident of fire to the Insurer on 30.06.2004, who instructed K.N.S. Satyanarayanan, for preliminary survey, who reached the spot at about 17:00 hours and inspected the fire affected stock, who submitted Preliminary Survey Report dated 07.08.2004. The Insurer appointed V. Satya Sai Baba, Insurance Surveyor, Rajahmundry, as the surveyor on 01.07.2004. The surveyor visited the spot on 02.07.2004, and on subsequent dates, inspected and verified the burnt stock etc. The surveyor asked the Insured to segregate the damaged stock and undamaged stock. The process of segregation took 10 days. After segregation of the stock, the Insured submitted Claim Form on 27.07.2004, claiming loss of 404665 kg de-oiled bran, 15800 kg of de-oiled soya, 276000 kg of brans and 12000 kg of dry fish (total loss of Rs.3153195/-). The surveyor, vide letter dated 06.07.2004, reminder dated 18.07.2004 and one more reminder demanded papers for assessment of loss, which were supplied time to time. The surveyor again vide letter dated 16.09.2004, demanded daily book, ledger etc., which were supplied. The Insurer appointed M.S. Prasad, Investigation Services, Secunderabad as the Investigator. The Investigator collected the papers relating to purchase of the raw materials from the Insured. He made investigations at various places from where raw materials were purchased. The surveyor asked for inviting tender through publication for disposal of salvage as such publication was done on 11.12.2004. The tender of Deevee Agencies was accepted with the approval of the surveyor, which was for Rs.62674/-. The Insurer, vide letter dated 18.09.2005, demanded man script account copies apart from computer statement. The complainant has supplied all information and documents as required by the surveyor and the Investigator. The Insurer, instead settling the claim, was delaying and harassing the Insured. Then, the complaint was filed on 25.10.2005.

5. The appellant filed its written version and contested the complaint. The appellant admitted issuing of Standard Fire & Special Perils Policy No. No.151102/11/03/0045, for the period of 10.01.2004 to 09.01.2005, for a sum of Rs.9017000/- for Building and Rs.6000000/- for stock and endorsement, covering 'spontaneous combustion' peril w.e.f. 27.05.2004. The appellant stated that Andhra Bank informed about the fire incident on 30.06.2004 then the Insurer immediately instructed K.N.S. Satyanarayana, for preliminary survey, who reached the spot at about 17:00 hours on 30.06.2004 and inspected the fire affected stock, who submitted Preliminary Survey Report dated 07.08.2004. The Insurer appointed V. Satya Sai Baba, Insurance Surveyor, Rajahmundry, as the surveyor on 01.07.2004. The surveyor visited the spot on 02.07.2004, and on subsequent dates. The Insured submitted Claim Form on 27.07.2004, claiming loss of 404665 kg de-oiled bran, 15800 kg of de-oiled soya, 276000 kg of brans and 12000 kg of dry fish (total loss of Rs.3153195. The surveyor, vide letter dated 06.07.2004, reminder dated 18.07.2004 and one more reminder demanded papers for assessment of loss, some of which were supplied. However, the documents mentioned at Serial Nos. 6 to 10 and 15 were not supplied. The surveyor again vide letter dated 16.09.2004, demanded daily book, ledger etc., which were supplied. After examining the papers of the complainant, the surveyor recommended for an investigation in respect of purchase of huge amount of de-oiled bran, 10 days before endorsement of 'spontaneous combustion'. The Insurer appointed M.S. Prasad, Investigation Services, Secunderabad as the Investigator on 01.09.2004. The Investigator inspected the fire affected work place on 03.09.2004 and noticed that 700 tons of raw material could not be stored in the area of work place. There was no trace of smoke/blackening/charring/soot on the wall and AC sheet of the work place. 90% of damaged stock of de-oiled bran was shown to be purchased from M/s. Sudha Agro Oil Industry, Samalkota and M/s. Chakra Enterprises, Anaparthi but when the Investigator visited M/s. Chakra Enterprises for checking their Bill books, they avoided to show his Bill books on the pretext that Bill book was handed over to the accountant, who was out of station. When the surveyor inquired from M/s. Sudha Agro Oils & Chemical Industries Limited, Samalkot, on 26.04.2006, they informed that the Insured had neither purchased 109.600 tons from them in May, 2004 nor 721.400 tons of de-oiled bran during 16.12.2003 to 19.03.2004 but they refused to give in writing. The Investigator and the surveyor asked the Insured to give proof of payment of the above purchased materials to M/s. Sudha Agro Oil Industry, Samalkota and M/s. Chakra Enterprises, Anaparthi, then neither the Insured nor its banker supplied any proof. Due to non-cooperation of the Insured, its banker and the suppliers of the raw material, the Investigator could not proceed further with investigation and returned the papers to the Insurer, vide letter dated 16.05.2005. The Insured claimed to purchase de-oil bran of Rs.1092595/- just before the fire incident, which was not proved. The surveyor submitted Final Survey Report dated 03.06.2006, finding that loss was not proved. In the Insurance Policy, location was mentioned as Door No.1-141/3 while fire affected location was Door No.1-140/3/A. The Insurer, vide letter dated 09.06.2006, repudiated the claim invoking clauses- 6 and 8 of the General Condition of Standard Fire and Special Perils Policy. There is no deficiency in service on the part of the Insurer. The complaint is liable to be dismissed.

6. State Commission, by the impugned order dated 23.03.2009, held that K.N.S. Satyanarayana, the preliminary surveyor reached the spot at about 17:00 hours on 30.06.2004, inspected the fire affected stock and submitted Preliminary Survey Report dated 07.08.2004. Fire Officer and Mandal Revenue Officer confirmed the fire incident and loss.

The surveyor V. Satya Sai Baba admitted about the loss of stock due to fire and had supervised segregation of the damaged stock. For 'spontaneous combustion', flame and smoke are not necessary. The Insurer has not produced the materials, on the basis of which, the surveyor has concluded that the purchase invoices of the Insured were fictitious. The surveyor has not doubted about location of the loss. On these finding the complaint was allowed and order as stated above has been passed. Hence this appeal has been filed by the Insurer.

7. I have considered the arguments of the parties and examined the record. K.N.S. Satyanarayana, in his Preliminary Survey Report dated 07.08.2004, mentioned that the fire was allegedly started at 15:30 hours, Fire Tender was arrived at 16:15 hours and he reached the fire affected place at 17:00 hours on 30.06.2004. In the center portion of the godown, stocks were affected and turned into black. The stock stacked beside door were covered with cobwebs and formed fungus. The Insured had shifted approximately 475 bags of bran from upper layer of affected stock to another place. Godown cum mixing plant measurement was 138996 cubic feet. Fire affected heap was 15876 cubic feet and 11808 cubic feet. As per Stock Register, there was no production from 25.06.2004. In paragraph (3)(c) of the complaint, the Insured took plea that the worker had noticed heat waves from the de-oiled rice bran stock, which in a short while engulfed with flame. State Commission ignoring the admission of the Insured recorded finding that for 'spontaneous combustion', flame or smoke was not necessary.

8. If there was no flame and smoke and due to natural heat generated in de-oiled bran, its colour was changed, then the findings of Preliminary Surveyor that 475 bags of bran from upper layer of affected stock were removed to another place, could not have been ignored by State Commission. So far as report of Mandal Revenue Officer dated 21.07.2004 (Ex-A-4), was concerned, it was based upon visual assessment and no reliance can be placed upon it, for determining the quantity of the damaged material.

9. The Insured in Claim Form filed on 27.07.2004, claimed loss of 404665 kg. de-oiled bran, 15800 kg. of de-oiled soya, 276000 kg. of brans and 12000 kg. of dry fish (total loss of Rs.3153195/-). The Surveyor in his report has mentioned the item-wise details as under: -

A. De-Oiled Bran Account:

	<i>After considering investigation result</i>	<i>As per extract of stock register</i>
<i>Opening balance as on 01.04.04</i>	<i>227900 kgs</i>	<i>449300</i>
<i>Total purchase during 04-05</i>	<i>NIL</i>	<i>126910</i>
<i>Total stock of DOB</i>	<i>227900 kgs</i>	<i>576210</i>
<i>Less consumption during 04-05</i>	<i>121800</i>	<i>121800</i>
<i>Closing stock as on 30.06.04</i>	<i>106100 kgs.</i>	<i>454410 kgs.</i>

B. Bran Account:

1. 2002-03 *No bran purchases*
2. 2003-04 *No bran purchases*

3. 2004-05 *No bran purchases upto May/04 but after taking the Mid-term cover during 02.06.2004 to 18.06.2004 bran purchases found.*

C. De-Oiled Soya:

<i>Opening balance as on 01.04.2004</i>	=	<i>NIL</i>
<i>Total purchases during 01.04.2004 to 30.06.2004</i>	=	<i>60000 kgs.</i>
<i>Total stock of de-oiled soya</i>	=	<i>60000 kgs.</i>
<i>Less consumption during</i>		
<i>01.04.2004 to 30.06.2004</i>	=	<i>38800</i>
<i>Closing stocks as on 30.06.2004</i>	=	<i>21200 kgs.</i>

D. Dry fish:

<i>Opening balance as on 01.04.2004</i>	=	<i>NIL</i>
<i>Total purchases during 01.04.2004 to 30.06.2004</i>	=	<i>18000 kgs.</i>
<i>Total stock of dry fish</i>	=	<i>18000 kgs.</i>
<i>Less consumption during</i>		
<i>01.04.2004 to 30.06.2004</i>	=	<i>6000</i>
<i>Closing stocks as on 30.06.2004</i>	=	<i>12000 kgs.</i>

(i) As per Claim Form, weight of damaged material as 708645 kg. In physical verification weight of damaged material was found to be 349320 kg. There was big difference of 359145 kg. If there was no flame or smoke and only discolouration of the material, then after soaking water, its weight could not be reduced.

(ii) *It is stated that the bills of Sudha Agro for the purchase of De-Oiled Bran to the extent of 109.2 MT amounting to Rs.291920/- are not found genuine and the same has been confirmed by the management of Sudha Agro. The Surveyor has further stated that 17310 kg of wheat dust has been accounted for as DOB. The closing stocks almost tallied with DOB stock available at insured unit and showed as heat damage DOB 107230 kgs. 352 bags of 60 kg each DOB were also found totally in good condition. Hence NIL.*

(iii) *The respondent has claimed that the bran weighing 276000 kg @ 6.20 ps amounting to Rs.1711200/- has been subjected to loss. The preliminary surveyor K.N.S. Satyanaraina in his report Exh. Annexure P-2 (pages 62-67) has categorically stated that there were no traces of bran. The respondents have claimed to purchase 3000 Qtl. of bran from M/s Sri Chakra Enterprises during the period 02.06.2004 to 18.06.2004. Bills (pages 128-146) Annexure P-11. These bills appear to be totally fictitious. No payment, whatsoever, has been made. M/s Sri Chakra Enterprises have refused to assist in the investigations. The bank record of the respondents of Andhra Bank does not show that any payment have been made to them. No claim has been made by the respondent before the Commission that they have made any payment for the so called purchase.*

(iv) *The respondents have failed to prove as to whether they have purchased the bran reported to have been lost in the fire of 30.06.2004. The surveyors and investigators in their reports have categorically stated that there is no trace of bran at the site of loss. Hence, the claim of the respondent on this item is not tenable because they have failed to substantiate the purchases and the loss but appear to have made entries in the stock register to make the claim.*

(v) *Out of 21200 kgs 15800 kgs of de-oiled soya was burnt according to insured manager Sri P.S. Reddy information during survey. From 01.04.2004 to 21.05.2004 there was no de-oiled soya consumption as per stock register. Purchase of de-oiled soya starts during May 2004. No traces of de-oiled soya in salvage. Hence loss not proved.*

(vi) *Entire 12000 kgs. of dry fish was burnt according to insured manager Sri P.S. Reddy information during survey. From 01.04.2004 to 04.06.2004 no dry fish consumption was found. Purchase of dry fish starts during June 2004. Production entries and stock purchases also found to be not in order. All the above factors directly indicate that the production using this material is not functioning. No traces found in the alleged damaged material. Hence, loss not proved.”*

10. The complainant claimed Rs.1092595/- for de-oiled bran of 404665 kg. but Purchase Invoices of M/s. Sudha Agro Oils & Chemical Limited, Samalkot and M/s. Chakra Enterprises, Anaparthi of this material were not confirmed by M/s. Sudha Agro Oils & Chemical Limited, Samalkot and M/s. Chakra Enterprises, Anaparthi. The surveyor, in the final survey report, has noticed that M/s. Sudha Agro Oils & Chemical Limited, Samalkot did not give confirmation letter and M/s. Chakra Enterprises, Anaparthi avoided on the pretext that their record had been with their accountant, who was out of station. The surveyor asked the Insured and Andhra Bank to give proof of payment of this material, which was not given.

11. The appellant has stated that purchase of de-oiled bran from M/s. Sudha Agro Oil Industry, Samalkota and M/s. Chakra Enterprises, Anaparthi were not verified and purchase invoices were not genuine. Burden of proof was upon the Insured to prove by adducing evidence of payment that these transactions were genuine and its payment was made or had to be made. State Commission disbelieved this finding of the surveyor only on the ground that the Insurer could not produce any letter of M/s. Sudha Agro Oils & Chemical Limited, Samalkot. Without verifying its payment, findings of the surveyor in this respect has been illegally ignored by State Commission. Supreme Court in **Khatema Fibre Limited Vs. New**

India Insurance Company Limited, 2021 SCC OnLine SC 818, held that 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 vitiates by arbitrariness, then the jurisdiction of the consumer forum to go further would stopped. Although in **New India Assurance Company Limited Vs. Pradeep Kumar (2009) 7 SCC 787**, it has been held that the report of the surveyor is not a sacrosanct. But the Insured was liable to adduce convincing evidence to prove genuineness of the transactions.

12. The Insured claimed to purchase de-oil bran of Rs.1092595/- just before the fire incident, which was not proved. In the background of the case that (i) huge purchased from M/s. Sudha Agro Oil Industry, Samalkota and M/s. Chakra Enterprises, Anaparthi were done during 12.04.2004 to 18.06.2004, whose payments have not been proved by the Insured; and (ii) peril ‘spontaneous combustion’ was added on 27.05.2004, while damage due to ‘spontaneous combustion’ was reported on 30.06.2004, raise a grave doubts in respect of genuineness of these transaction. There was vast difference in weight of damaged stock as claimed and the weight found in physical verification, the Insurer has rightly invoked Condition-8 of the General Condition of the policy is quoted below:-

“8. If the claim be in any respect fraudulent, or in any false declaration be made or used in support thereof or any fraudulent means or devices are used by the Insured or any one acting on his behalf to obtain any benefit under the policy or if the loss or damage be occasioned by the wilful act, or with the connivance of the insured, all benefits under this policy shall be forfeited.”

13. In the light of the principle laid down by the Supreme Court, State Commission was required to objectively examine the evidence on record to ignore the surveyor report, which was not done by State Commission. In view of the fact that actual weight of the damaged stock was not tallied from books of the account, the huge purchases made during two months of the incident, which were not proved by adducing evidence relating to its payment, exaggeration of the claim was fully proved. In such circumstances, the whole claim was liable to be repudiated under clause-8 of the General Terms and Condition of Standard Fire and Special Perils Policy. The repudiation letter does not suffer from any illegality. The order of State Commission is illegal and liable to be set aside.

ORDER

In view of aforesaid discussions, the appeal is allowed. The order of State Consumer Disputes Redressal Commission, Andhra Pradesh, dated 23.03.2009, allowing CC/49/2005 is set aside. CC/49/2005 is dismissed. This Commission shall release the amount deposited by the appellant in compliance of the order dated 06.07.2009, along with accrued interest on it within 15 days of this judgment, to the appellant.

.....J
RAM SURAT RAM MAURYA
PRESIDING MEMBER