

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1791 OF 2018**

(Against the Order dated 02/08/2018 in Complaint No. 399/2016 of the State Commission  
Haryana)

1. NEW INDIA ASSURANCE CO. LTD.

THROUGH ITS REGIONAL MANAGER, OPP. KAMLA  
NEHRU PARK GURUDWARA ROAD  
GURGAON

.....Appellant(s)

Versus

1. M/S MADHAV AUTOMOTIVE FASTENERS PVT. LTD.  
THROUGH ITS DIRECTOR SHRI ASHOK MEHTA, PLOT  
NO 87-90, SECTOR 37, PHASEVI, UDOG VIHAR  
GURGAON

.....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 P K Seth, Advocate (Physical)

For the Respondent         Mr Neeraj Khanna, Advocate (VC)

**ORDER**

**PER SUBHASH CHANDRA**

1. Challenge in this appeal under Section 17 of the Consumer Protection Act, 1986 is against the order dated 02.08.2018 by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, 'the State Commission') in complaint no. 399 of 2016 whereby the State Commission has allowed the appeal.

2. The relevant facts are that the respondent obtained a Standard Fire Special Peril Policy for Rs.4.46 crores covering risk of building, plant and machinery, stocks etc., situated in the insured factory premises at plot no. 87-90, Sector 37, Phase IV, Udyog Vihar, Gurugram. A claim for loss due to fire in the intervening night of 21<sup>st</sup>/22<sup>nd</sup> December 2014 was filed for Rs.32,75,028/-. The appellant insurance company after deputing the Surveyor and loss Assessor, intimated the assessed loss at Rs.1,70,712/- and remitted the amount to the Bank account of the respondent. The surveyor's report was not provided to the respondent which was subsequently obtained through Right to Information Act (in short 'the RTI'). The respondent approached the State Commission seeking entire sum of Rs.43,46,157/- and Rs.32,75,028/- with interest @ 9% from the date of fire with damage of Rs.5.00 lakh with interest, Rs.1.00 lakh for mental agony and harassment of Rs.1.00 lakh as litigation cost. The complaint was disposed of on contest by the impugned order directing the appellant herein to pay Rs.27,76,208/- as the insured claim with interest @ 9% per annum from the date of filing of the complaint till realisation with Rs.25,000/- as compensation for harassment and mental agony and Rs.10,000/- towards litigation expenses.

3. We have heard the learned counsel for the parties and perused the records including the written argument submitted by the parties.

4. The appellant has challenged the impugned order as being bad in law and the facts are based on presumption, conjectures and surmises and stated that the State Commission has erred in disregarding the surveyor's report which is mandated under section 64 UM of the Insurance Act 1938, and has been held by the Hon'ble Supreme Court and this Commission to be considered and accepted unless proved their evidence to be based on non-application of mind and contrary to the material documents; (ii) the State Commission has erred in concluding on the basis of assumption and presumption that the surveyor has made all possible efforts to reduce the insurance claim without any material and cogent evidence to this effect; (iii) The State Commission has failed in not considering that the deduction by the surveyor was based on reasons which were liable to be accepted; (iv) the impugned order has erred in concluding the deduction of Rs.2,41,747/- towards taxes and duties was based on the surveyor's assessment; (v) the order erred in holding the deduction of 50% the cost of PLC Control of Rs.1,75,000/- which was based on clause 7 of the general exclusions; (vi) in ignoring the relevant terms and conditions of the policy which provided for deduction for under insurance and excess clause as per the terms and conditions of the policy. It was also contended that the complaint was not maintainable for want of jurisdiction since the value of the insurance policy was Rs.4.46 crores and was beyond the pecuniary jurisdiction of the State Commission in view of the decision of this Commission in CC no. 97 of 2016 in ***Ambreesh Kumar Shukla vs Ferrous Infrastructure Pvt. Ltd.***, decided on 07.10.2016.

5. *Per contra*, the counsel for the respondent contended that the policy in question included the risk to the builder for Rs.1.50 crores, plant and machinery and accessories for Rs.2.40 crores, furniture fittings etc. for Rs.6.00 lakh and stocks in process Rs.50 lakh. The claim was for Rs.52,75,028/-. The claim of Rs.32,75,028/- had been incorrectly assessed by the surveyor and loss assessor in his reply which had not been made available to the respondent, despite the respondent providing all the documents sought by the surveyor. The report of the surveyor could not be obtained even after filing under RTI with the appellant. The entire stocks, electrical wiring, raw material including the finished and semi-finished

goods, plant and machinery had been burnt on account of fire and the respondent claimed a total loss of Rs.43,46,157/- due to fire incident and for non-settling of the claim of the respondent. It was contended that the State Commission had rightly allowed the complaint since the surveyor's report had itself mentioned that the insurance claim was reasonable. However, the deductions were stated to be irrational. The surveyor had estimated the value of stocks, building, plant and machinery to Rs.32,75,028/-. The application under insurance factor towards the loss of plant and machinery was contested to be incorrect and baseless since the sum assured of the plant was Rs.2.46 crores while the surveyor has calculated the market value of the stock from 2007 to 2015. The insurance policy was taken for the period from 13.06.2014 to 12.06.2015 which included the market value of goods of Rs.1,34,02,256.12 is less than the sum assured and therefore, the surveyor had incorrectly applied the under insurance factor of 0.535. It was submitted that the cost of the plant and machinery as per claim of Rs.25,17,242/- had been found to be reasonable by the surveyor in his report. However, Rs.2,41,747/- towards taxes and duties, Rs.1,75,000/- towards 50% of costs of PLC Control Panel, Rs.2,10,049.50 is 10% adjustment towards cost of disallowance and Rs.2,83,566.82 is depreciation of 15% was submitted to be incorrect and without any basis. Deduction of 50% of the surveyor of the PLC Control Panel was also incorrect since this deduction was on the basis that PLC Control Panel was the cause of fire whereas the surveyor's report itself stated that the cause of fire was unknown. The claim included the cost of building repairs of Rs.3,27,426/- which was found to be reasonable towards repairs and reinstatement by the surveyor. However, Rs.65,485.20 was deducted towards the estimation error, cost of estimation taxes and disallowance which amounted to 20% and was without base, since no details of estimation error has been provided. The deduction of taxes was also not justified since the report did not mention whether any specific amount was deposited as tax by the insurance company on behalf of the complainant. Further, deduction of Rs.1,30,970.40 towards depreciation @ 50% was stated to be without basis since no formula or provision of law or rule for these deduction has been provided. Lastly, the excess clause deduction of 5% applied was stated to be incorrect since the police did not mention any excess clause. It was therefore, prayed that the appeal be dismissed.

**6. The State Commission has held as under:**

13. In this case, the complainant/ claimant submitted insurance claim total amounting to Rs.32,75,028/-. The surveyor although found the insurance claim of the complainant as mentioned in Clause 6.1, 6.2 and 6.3 of the surveyor's report reasonable. But it is strange that the surveyor mentioned that the insurance company is liable to pay only an amount of Rs.9,88,618/-. It is strange that the surveyor himself has mentioned that the insurance claim of the complainant was found reasonable after cross checking but after so many deductions mentioned that the complainant is entitled to receive only an amount of Rs.9.88.618/- It will be pertinent to mention here that the surveyor did not supply copy of the surveyor report to the complainant, rather, the opposite parties/Insurance Company also refused to supply copy of the surveyor report to the complainant. The complainant made all possible efforts, rather sought information under Right to Information Act (RTI) also but surveyor report was not supplied to the complainant, which is evident from the application under Section 6 of the Right to Information Act, 2005 Exhibit C-10. The Insurance Company was one step ahead and took a decision to transfer only an amount of Rs.1,70,712/- in the

account of the complainant without giving any good reason for deduction of so much amount from the amount claimed and without mentioning proper calculations.

14. From the above mentioned circumstances it clearly appears that the Insurance Company as well as surveyor who was appointed by the Insurance Company made all possible efforts to reduce the insurance claim to be paid to the complainant company. Total insurance claim is amounting to Rs 32,75,028/- The surveyor in his report justified payment of only an amount of Rs 9,88,618/- to the complainant as insurance claim after so much un-necessary deductions and the Insurance Company made payment of only an amount of Rs. 1,70,712/-.

7. The State Commission has also given reasons for disagreeing with the report of the surveyor under various heads as detailed as under in the said impugned order.

19. From the observations made by the surveyor as mentioned above in his report, there appears to be confusion in the mind of the surveyor himself. There also appears to be lack of confidence while giving opinion by the surveyor in his report. In the beginning, he says that exact cause of fire incident could not be ascertained but prima facie it appears that the fire originated due to short circuiting in the electrical wiring on the first floor. It is also found that the fire had generated from the electrical control panel. In fact, the surveyor could not make it clear that the fire incident took place due to short circuiting in the electrical wiring in the panel control. The surveyor also did not place reliance upon any document or oral statement of any other person in this regard. On the basis of opinion that it only prima facie appears findings cannot be given that the cause of fire incident was short circuiting in the electrical wiring or that the fire generated from the electrical control panel. In our view when the surveyor himself was not definite regarding cause of fire incident, the deduction of an amount of Rs. 1,75,000/-, 50% cost of the PLC control panel was not justified.

8. The surveyor's report under section 64 UM in the case of any claim of insurance exceeds Rs.20,000/- is mandatory requirement under section 64 UM of the Insurance Act, 1938 as held in catena of judgments, notably ***Sri Venkateswara Syndicate Vs. Oriental Insurance Company Ltd. & Anr.*** in CA No. 4487 of 2004 dated 24.08.2009 (2009) 8 SCC 507, the report of the surveyor registered with the IRDA is to be given due cognizance unless the report is found to be perverse, arbitrary or to be not based on information/ documents provided by the insured. While the report of the surveyor is an essential requirement for settlement of the claim under the contract of insurance. The Hon'ble Supreme Court in ***New India Assurance Co. Ltd. Vs. Pradeep Kumar*** (2009) 7 SCC 787, has also held that surveyor's report is not the final word or sacrosanct that it cannot be departed from. Needless to say that in such a situation the report itself would need to be established to be unacceptable on account of perversity or arbitrariness in the process of assessment. It is only to be accepted that the deductions from a claim shall be as per the terms and condition of the policy in question especially with regard to under insurance and excess clauses.

9. The Report of the surveyor Er Baldev S Chawla, Surveyors and Valuers dated 10.06.2015 records that the fire originated due to short circuiting of electrical wiring on 1<sup>st</sup> Floor of the building and spread to entire floor. The above fire has in fact damaged the building and plant machinery including stocks which were extensively burnt and damaged. It

also mentioned the exact cause of fire could not be established. The origin of the fire is stated to be through short circuiting of electrical wiring on the first floor and as per the investigation, it was originated in the electrical control panel. It has also stated that no FIR was reported to be lodged by the insured and no newspaper has reported the incident.

**10.** While the surveyor's report mentions that no FIR was lodged, the case set up by the appellant does not rely upon this purported fact. In view of there being no pleadings on this account the same is to be necessarily excluded.

**11.** The case of the appellant is that deductions were as per the report of the surveyor and the policy conditions. However, no copy of the policy has been brought on record except the cover note of the policy which is appended to the surveyor's report. This document does not set out exclusions or any other clause or deduction for items such as under insurance, policy excess etc. The only relevant clauses mentioned in the policy is with regard to *Clause 3: Designation of property clause; Clause 4; Reinstatement value policy clause; and Clause 5: Local Authorities clause.* These clauses are not pertinent to the instant case.

**12.** As regards the issue of maintainability on the grounds pecuniary the appellants contention is that the State Commission lacked jurisdiction since the policy was for Rs.4.46 crores cannot be sustained, since the claim of the respondent under the policy was for Rs.32,75,028/- along with interest as held by this Commission in *Ambarish Kumar Shukla and 21 Ors vs Ferrous Infrastructure Pvt. Ltd.*, I 2017 CPJ 1 (NC) and reiterated in *Renu Singh vs Experion Developers Pvt. Ltd.*, CC no.1703 of 2018 no claim was to be the basis for determining the pecuniary jurisdiction and not the value of the insurance policy itself.

**13.** It is not in dispute that neither the copy of the surveyor's report was made available to the respondent. The appellant admitted that the copy was not provided even under the Right to Information Act to the respondent. It is also not in dispute the amount is determined by the insurance, the appellant insurance company had directly remitted the amount to the Bank account of the respondent without obtaining a voucher for full and final settlement that was mutually acceptable. These actions also reflect unfair trade practice on the part of the appellant. As regards the deduction made on the basis of various claims, under the terms and conditions of the policy in the absence of policy document, being brought on record detailing the various clauses relied upon by the appellant, the claim cannot be considered to be valid.

**14.** In view of the fact that the surveyor's report itself stated that the cause of the fire was not precisely determined the rationale for deduction of 50% towards PLC Control is not justified since, there is no evidence on record to establish that the fire originated from short circuiting in the PLC. There is also a similar note detailing the deductions towards taxes and duties which have been disallowed in the claim. The contention of the appellant that the impugned order is based on presumption and assumption that the appellant and its surveyor acted together and disallowed various items to the rates quantum of the claim cannot be concluded to be conjectural or assumptive. On the other hand, in the absence of any evidence on record to justify such deductions, the calculation appears to be based on an unsustainable basis which cannot be countenanced. There is no averment by the appellant that the respondent had been un-cooperative in the investigation/ loss assessment process by the surveyor. It is not the appellant's case that the details sought by the surveyor were not

provided by the respondent. Therefore, in the absence of any criteria laid down in the policy, the rationale for such deductions cannot be appreciated.

**15.** In view of the foregoing, the order of the State Commission found to be well-reasoned and cogent which has dealt with various contention in a detailed and unbiased manner. We therefore, do not find any reason to warrant interference in the same.

**16.** The impugned order has awarded Rs.25,000/- as compensation for unnecessary harassment and mental agony, in addition to directing the appellant to refund Rs.27,76,208/- with interest @ 9%. In view of the fact that compensation of 9% that subsumes compensation under all heads has been awarded by the State Commission, in view of the law laid down by the the Hon'ble Supreme Court in *DLF Homes Panchkula Pvt. Ltd., vs D S Dhanda* (2020) 16 SCC 318, decided on 10.05.2019 that multiple compensation for a singular default is not warranted, award of Rs.25,000/- towards mental agony is not considered to be justifiable and is directed to be set aside. The Appeal is dismissed and the order of the State Commission is affirmed with the following modifications:

- i. The appellant is directed to pay the respondent Rs.27,76,208/- with 9% interest per annum within eight weeks failing which it shall carry interest @ 12% per annum;
- ii. Payment of Rs.25,000/- as compensation to be paid to the respondent as awarded by the State Commission is set aside;
- iii. Appellant is also directed to pay the respondent litigation cost Rs.50,000/-.

**17.** All pending IAs, if any, stand disposed of by this order.

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

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