J&K STATE CONSUMER DISPUTES REDRESSAL COMMISSION, SRINAGAR

F.A.: 83 OF 2025
[Against the order dated 28/10/2025 passed by the Ld. District Commission, Srinagar in C.C. No. 76/2022]
DT OF INSTITUTION: 12/12/2025
DATE OF DISPOSAL: 29/07/2026
Case Title:

AREA MANAGER, M/S BAJAJ GENERAL INSURANCE LIMITED (FORMERLY KNOWN AS BAJAJ ALLIANZ GENERAL INSURANCE CO. LIMITED

--- APPELLANT

Versus

MOHD. ALTAF BHAT S/O ABDUL GANI BHAT

--- RESPONDENT

Coram:
Smt. Nighat Sultana, President (O)
Sh. Maheep Gupta, Member

PARTIES REPRESENTED BY:
Adv. N.A. SHALLA, Ld. Counsel for the Appellant.
Adv. M.A. BAQAL, Ld. Counsel for Respondent.

29/07/2026 PER: MR. MAHEEP GUPTA, MEMBER.

1. This appellant is before us to assail the order dated 28/10/2025 passed by Ld. District Commission, Srinagar in the Complaint case No. 76/2022 (Complaint filed under CPA, 2019)
2. Heard the counsels, perused the records.
3. The main grounds for preferring the appeal are as under:
   i. That the loss was caused by some unexplained reasons and not by the named peril of “Subsidence of the land beneath the building” as claimed by the Insured (complainant).

Unlike in the case of an "All Risk Policy", in the case of a "Named Perils Policy" the primary duty of proving (onus of proof) that the loss was caused by the operation of a named peril policy lies squarely with the insured (complainant). Since, the insured (Complainant) failed to discharge the burden, company should not have been saddled with any liability.

The Ld. District Commission, has failed to take into consideration as such the order is liable to be set aside.

ii. That the Ld. District Commission had put undue reliance on a scientific report placed on records by the insured (complainant) which actually is based on a study conducted of a place situated 2KMs away from the insured premises.

iii. That the Ld. District Commission has erred by ignoring the Survey report outrightly.

4. We shall now first proceed to express our opinion on the grounds taken by the appellant one by one.

i. **Burden of Proof:** The statement made by the Ld. Counsel for the Appellant Insurance Company is only partially true.

As per the established market practice, admittedly the burden of initial proof and establishing a link of the loss with the peril named in the policy lies with the insured (complainant) <u>and if he succeeds in discharging the onus cast upon him, the onus of proving otherwise then shifts to the insurer (O.P.)</u>

ii. **Undue reliance on the Scientific report by the Ld. District Commission:** Ld. Counsel for the Appellant Insurance Company argued that the scientific report placed on records by the respondent (complainant) to substantiate pertains to Rainawari which is 2 KMs away from the area where the insured building was situated and the said report simply could not and should not have been relied by the Ld. District Commission.

We are of a considered opinion that a study conducted at a place situated at a distance of 2 km is too far to serve as a direct substitute

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for a site-specific soil test. Nonetheless, a distance of 2 KMs is not too far as well that would justify outright rejection of the said report and its importance as an indirect piece of evidence.

iii. **Survey Report:** It is not under dispute that the Survey Report is one of the vital documents that cannot be ignored outrightly, however, at the same time, it is also not under dispute that it is not that sacrosanct that cannot be challenged.

It is always open for the courts/tribunals to evaluate the survey report and outrightly ignore/ modify it in case of some apparent error/ mistake/ apparent bias/ failure of the Surveyor to consider some vital facts or wrong appreciation of some facts.

5. Having expressed our opinion on the issues raised by the appellant, we shall now proceed to adjudicate the appeal in hand.

From the perusal of the cross-examination statement of Mr. Fayaz Ahmad, Sub Inspector (Batch No. 1097/S) posted at P/S Nowhatta who had prepared the case diary report we find that whilst he was unable to throw any light on the exact cause of the loss, he confirmed that three other houses in the vicinity also collapsed at the same time.

The fact that multiple non-adjacent buildings fell down suddenly in the same vicinity points strongly to macro-environmental ground movement (regional land subsidence) or a shared geological trigger, rather than isolated flaws in the specific building's materials used in the construction of the insured building &/or defective workmanship.

It can be, thus, fairly concluded that there is a strong a strong spatial and temporal alignment between the historic subsidence risk history of the area of Rainawari and the structural damage occurred at Nowhatta resulting in the sudden fall down of four buildings including the building owned by the complainant.

We are, therefore, of a considered opinion that the complainant fairly succeeded in fairly establishing his case that the loss was caused by subsidence which is a named peril in the policy.

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Once the Insured succeeded in fairly establishing that the loss was caused by a named peril, the onus gets shifted to the Insurance Co. to prove the Complainant wrong.

A mere expression of opinion by the Surveyor that the loss is not caused by the subsidence on the basis of his casual inspection of the site not backed with any scientific study/ soil test cannot be justified for denial of liability/ repudiation of claim.

It is also not under dispute that the Surveyor in his cross examination opined that the loss could have been caused by defective workmanship.

It will not be out of context to mention here that this apprehension of loss having caused by defective workmanship was never raised earlier by the Insurance Company/ Surveyor.

The sequence of events leads us to infer that the Surveyor is also somehow inclined to believe that the loss was caused by subsidence and has come with this new excuse just to ensure that even if the loss is concluded to have caused due to subsidence still falls out of the scope of the policy due to the specific policy exclusion.

Under these circumstances, we do not find any reasons to interfere with the order of the Ld. District Commission of holding the appellant Insurance Company guilty of deficiency of service.

Neither are we inclined to interfere on the quantum of award as it is established beyond an iota of doubt that the house under question was a case of "total loss" and in absence of any quantification of the loss by the loss by the surveyor, the Ld. District Commission had no other option but to rely on the estimate of loss/ Policy Sum Insured as the basis for its award. We also find that the Ld. District Commission has not only restricted itself to the Policy S.I. being lower than the estimate submitted by the respondent (complainant) but has also taken the reasonable care to provide for the salvage deduction @ 15%

<u>Judgment:</u>

A. Appeal is devoid of merits and is hereby dismissed.

B. Impugned order dated 28/10/2025 is upheld.

C. Interim relief/ stay, if any, granted earlier stands rescinded.

D. Appellant Insurance Company is at liberty to adjust the statutory deposit for filing the appeal along with interest, if any, against its discharge of its liability towards the Complainant.

E. Parties to bear their own costs.

F. Office is directed to provide a certified copy of this order to all the stakeholders & consign the file to records after due compilation.

Announced: 29/07/2026

(Maheep Gupta)
Member, JKSCDRC

(Nighat Sultana)
President (O), JKSCDRC

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