

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 185 OF 2013

(Against the Order dated 13/12/2012 in Complaint No. 17/2011 of the State Commission
Haryana)

1. M/S. JAIN RUGS, THROUGH PROPRIETOR MR. PAWAN
JAIN (NOW DECEASED) THROUGH LRS.
ACROSS KACHCHA KABRI FATAK, INDUSTRIAL AREA,
PANIPAT
HARYANA

2. (I) SMT. SHAKUNTLA JAIN, THROUGH LR
W/O SH. PAWAN JAIN R/O H NO. 971, AGGARWAL
MANDI , PANIPAT.

3. (II) NIKESH JAIN, THROUGH LR
S/O LATE SH: PAWAN JAIN , R/O - H NO. 971, AGGARWAL
MANDI , PANIPAT.

4. (III) ADISH JAIN , THROUGH LR
S/O LATE SH: PAWAN JAIN , R/O - H NO. 971, AGGARWAL
MANDI, PANIPAT.

5. (IV) ARCHANA JAIN, THROUGH LR
W/O SUNIL JAIN , R/O - H NO. L-29, NAVIN SAHDRA,
DELHI.

6. (V) NISHA JAIN, THROUGH LR
W/O SH: KAPIL JAIN , R/O - H NO. J.P. NAGAR GONDA,
DELHI

7. (VI) SHALINI JAIN ,THROUGH LR
W/O SH: KAMAL JAIN R/O- H NO. 60/24, NEAR HINDU
COLLEGE SHIV NAGAR, SONIPAT.

.....Appellant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD. & 2 ORS.
THROUGH ITS REGIONAL MANAGER, SCO 36-37,
SECTOR-17-A,
CHANDIGARH

2. THE SENIOR DIVISIONAL MANAGER,
THE NEW INDIA ASSURANCE COMPANY LIMITED
NEAR S.D. COLLEGE, G.T. ROAD,
PANIPAT

3. CONSOLIDATED SURVEYOR PVT. LIMITED,
THROUGH ITS DIRECTOR N.S. SIDHU, 171, SECTOR-36-
A,
CHANDIGARH

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MR. RAKESH HANDA, ADVOCATE

FOR THE RESPONDENT : MR. S. M. TRIPATHI, ADVOCATE

Dated : 31 January 2024

ORDER

DR. SADHNA SHANKER, MEMBER

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 in challenge to the Order dated 13.12.2012 of the State Commission in complaint no. 17 of 2011, whereby the complaint of the complainant was disposed off.
2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'complainant') and the learned counsel for the respondent no. 1, no. 2 and no. 3 (hereinafter referred to as the 'insurance company' and 'surveyor') and perused the record including the State Commission's impugned Order dated 13.12.2012 and the memorandum of appeal.
3. The appeal has been filed with reported delay of 20 days.

In the interest of justice, *inter alia* considering the reasons given 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 proprietor of the complainant, a proprietary concern engaged in manufacturing of Woolen Carpet Yarn, got its unit insured from the insurance company. The premium was paid and the policy was valid from 13.04.2010 and 12.04.2011. The said policy covers the risk as under:

| | |
|-------------------|-------------------------|
| Building | Rs. 10,00,000/-. |
| Plant & Machinery | Rs. 25,00,000/- |
| Stock in trade | <u>Rs. 35,00,000/-</u> |
| Total | <u>Rs. 70,00,000/-.</u> |

During the subsistence of the insurance policy, on 03.05.2010 a fire took place in the factory premises and the stock, plant, machinery and building were damaged resulting into a loss of Rs. 61,08,700/-. The complainant informed the insurance company. The insurance company appointed a surveyor-cum-loss-assessor, who visited the factory premises but survey report was not submitted and the claim of the complainant was not settled. It is stated by the complainant that the complainant came to know through Right to Information Act that surveyor had assessed a meager amount of Rs. 11,49,908/- whereas the actual loss as per the version of the complainant was of Rs. 61,08,700/-. The complainant protested the survey report by writing a letter dated 29.12.2010 to the insurance company but no heed was paid. The complainant sent reminder dated 17.02.2011 to the insurance company. The insurance company replied the complainant that the insurance company had sought some clarification from its surveyor regarding settlement of the claim and stated that they have discussed the matter with surveyor and surveyor assured them that he will submit his reply at the earliest.

The grievance of the complainant is that the insurance company is sleeping over the matter rather than to honour the claim of the complainant.

5. Aggrieved by the inaction on the part of the insurance company, the complainant filed a complaint before the State Commission.

The complaint was contested by the insurance company stating that the complainant has not made the Zonal Manager, New India Assurance Company Limited a party, hence, the complaint is not maintainable and that too, the complainant's claim is still under adjudication, therefore, the complaint is pre-mature and the fault lies with the complainant because he has not deposited the required documents on time. It is further stated that the State Commission did not have territorial jurisdiction. It is also stated that the surveyor has assessed the loss at Rs. 11,49,908/- and not of Rs. 61,08,700/- and the complainant wanted to extract money from the insurance company by showing a huge loss without any genuine documents. It is further stated that on the one hand the complainant had claimed a huge amount towards the claim, on the other side, at the time of filing his Income Tax Return for the year 2007-20008 and 2009-2010, the taxable income was shown as 'Nil', therefore, the version of the complainant is self-contradictory and there was no deficiency in service on the part of the insurance company.

The State Commission vide impugned Order dated 13.12.2012 disposed of the complaint as under:-

“Keeping in view the aforesaid facts and circumstances of the case, we are of the considered view that the complainant is only entitled to get Rs.11,49,908/- as per surveyor report. Accordingly, the complaint stands disposed off.”

6. Aggrieved by the said Order of the State Commission, the complainant filed the instant appeal before this Commission.

7. Learned counsel for the complainant has challenged the findings of the survey report specifically with regard to the value of the closing stock and submitted that the complainant was having stock to the tune of Rs. 33,13,300/- in the shape of yarn and waste on date of fire and produced all the relevant documents to substantiate his claim in the shape of stock statement supplied to the bank, balance sheets duly audited by chartered accountant for the financial year 2008-09, 2009-2010 showing closing stock of Rs.38,32,786/- on 31.03.2010 and also statement of stock on relevant date of fire and naturally this figure of Rs. 38,32,786/- remains the same as the opening stock on the next day i.e. 01.04.2010. He further submitted that the complainant had made a purchase of Rs. 4,25,750/- and also made a sale of Rs. 12,21,946/- in between 01.04.2010 till the date of fire i.e. 03.05.2010 and thus subtracting the above said sale of Rs.12,21,946/- total stock was of Rs. 33,13,300/- on 03.05.2010. The complainant gave all the details in the shape of purchase bill as well as bills of sale from 01.04.2009 to 03.05.2010 to the surveyor as well as to the insurance company and also sale tax return for the period from 01.04.2009 to 31.03.2010, but surveyor did not consider the above said genuine details furnished by the complainant rather he assessed the loss of complainant in respect to stock on the basis of assumption and presumption estimating the quantity of damages stock by volumetric analysis. He also pointed out the contradictions in the survey report wherein the surveyor in sub para 13.02 of para no. 13

under head of assessment of loss has categorically admitted that stock was badly burnt and it was not possible to physically to verify the quantity of damaged stock but in para no. 13.4 of his report it has been stated that upon physical verification it was found that actual quantity was much less in comparison to that claimed by the insured.

8. Learned counsel for the insurance company has argued that the survey report was submitted on 17.10.2010 and on the first visit the surveyor found that the damaged stock was not capable of being physically verified and requested the complainant for segregation and only after segregation the surveyor physically counted the damaged cones of yarn. He further argued that the surveyor examined the balance sheet and the trading account for the period from 31.03.2010 to 02.05.2010 and found that the stock balance as per financial statements does not tally with the actual stock and there was a huge difference in the stock balance and the balance sheet and the actual stock balance was even less than half the figure as shown in the trading account and after considering each and every aspect of the loss, the surveyor had assessed the loss. He furthermore submitted that the State Commission has passed a well-reasoned order and the appeal is liable to be dismissed.

9. The whole controversy swirls around the question as to whether the survey report is correct or not in this case.

10. It is seen that as per the survey report dated 17.10.2010, the assessment of loss as regards the stock has been narrated as under:-

“3. ASSESSMENT OF LOSS

LOSS OF STOCK:

3.1 On 05.05.2010, the undersigned visited the factory premises of the insured and visually inspected the site of loss and observed that a fire had operated in the insured's factory. The fire originated in the carding section and spread over to the adjoining godown causing extensive damage to stock, machines and the building.

3.2 The extent of damage caused by the fire to the machine and building was noted down. The stock was badly burnt and it was not possible to physically verify the quantity of damaged stock. However, we have estimated the quantity of damaged stock by volumetric analysis. The burnt cones of yarn were counted by us and the average weight of yarn cones was computed. The area of the building roof sheets, glasses and quantity of steel required to restore the trusses etc. was also computed.

3.3 The insured was requested to arrange for the segregation and physical verification of the damaged quantity, but the insured showed his inability to do so for the reasons best known to them only. We were in constant contact with the insured and finally on 07.05.2010 the insured agreed for segregation of the stock and accordingly, we again visited their premises on 08.05.201. The damaged cones were physically counted by us and were loaded in a trolley to get the same weighed. The average weight of a cane was computed by physically counting the cones and thus the weight of total affected quantity was computed. The dimensions of the stacks of waste (pulled

rages) too were physically measured and the waste stock from one stack was got weighed and average weight was ascertained.

3.4 The insured claimed highly exaggerated quantity of stock as damaged in fire. But upon physical verification of the same, it was found that the actual quantity was much less in comparison to that claimed by the insured. Therefore, the loss has been allowed as per our physical verification of the stock. The average weight of the yarn and waste was worked out by taking a batch sample and weighment of the same. The detail of the same is as under:

Average Weight of Cones:

Sample Size 1300 Cones

Weight 1315 Kgs.

Average weight per Cone 1.011 Kg

Volumetric Weight of Wool Waste

Volume of the Stack No.5=188.53 Cu. Ft.

Weight of stack No.5=1410 Kg.

Weight per cubic ft= 7.48 Kg per Cu. Ft.

Cost price of the damaged stock has been verified from the records maintained by the insured and cross checked from the open market. The costing of the stock has been computed on the basis of FIFO method of costing. The loss has been assessed on cost price and no element of profit has been allowed to the insured.

3.6 The salvage value of the damaged stock has been deducted at the prevailing market rates. The damaged stock could be used for filling in mattresses or for manufacturing of yarn after shorting and segregation.

The loss is assessed as under, subject to policy terms and conditions and amount of the policy of insurance;

Total value of Damaged Stock = Rs. 9,36,298.82

(As per Annex. A)

Less : Dead Stock 5% 46,814.94

Rs. 8,89,483.88

Less:Salvage Value 75,530.94

(As per Annexure C)

Assessed Loss

8,13,952.94”

11. It is seen that the surveyor had admitted that the stock was badly burnt and it was not possible to physically verify the quantity of damaged stock. However, later on, he had noted that the loss has been allowed as per physical verification of the stock and he estimated the quantity of the damaged stock on some volumetric analysis for which no details or justification has been provided. No reasons have also been given to discard all the documentary evidence that had been brought on record by the insured before the surveyor, which included certified copies of audited balance sheet and profit loss account and purchase an sale bills and sales tax returns to substantiate his claim that the stock at the time of fire was of the value of Rs. 33,13,300/-.

12. It is also seen that the State Commission has relied on the copies of income tax returns and came to the conclusion that if the return was for ‘Nil’ tax payable the stock could not be of the value that was being claimed. It is not clear as to how such an inference can be drawn without referring to the accounts on which the income tax returns are based and calculation of taxable income are made. To compute the tax payable, many deductions from the trading account are allowed to arrive at the net profit and the credit is given for the taxes already paid and no conclusion to the quantum of stock can be drawn from the amount of tax payable in a return, without looking at supporting documents.

13. In view of the above, we are of the opinion that the surveyor report is not based on justiciable reasons and facts and cannot be relied upon, being arbitrary. Since the surveyor’s report is based on arbitrary valuations and has cited no reasons for discarding the documents provided by the insured as regards valuation of loss in stock, the same deserves to be discarded.

14. 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. The Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. v. Pradeep Kumar** 2009 (7) SCC 787 held as under:

"In other words although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured."

15. In view of the foregoing, the appeal is partly allowed. The State Commission’s Order is modified in respect of the loss value of the stock on account of fire as under:

| | |
|------------------------|------------------|
| Value of damaged stock | Rs. 33,13,300.00 |
| Less: Dead Stock 5% | Rs. 165,665.00 |

