

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 207 OF 2012

(Against the Order dated 03/02/2012 in Complaint No. 84/2006 of the State Commission
Maharashtra)

1. NATIONAL INSURANCE CO. LTD.

National Insurance Co. Limited., Ambar Plaza, Opp. S.T.
Stand, Station Road,
Ahmednagar-414001

.....Appellant(s)

Versus

1. M/S. NITIN INDUSTRIES & ANR.

Through its Proprietor, Shri Nitin Champalal Bora, R/o
Yashwant Colony,

Ahmednagar-
Maharashtra

2. AHMEDNAGAR MERCHANTS CO-OPBANK
LTD.,

Gulmohar Road, Branch, Opp. Civil Hospital, Saveeli
Road,

AHMEDNAGAR-414001

Maharashtra

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

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

For the Appellant : Mrs. Nanita Sharma, Advocate
Mr. Faek-Ul-Farook, Advocate

For the Respondent : For the Respondent No.1 :
For the Respondent No.2 : Mr. Nitin Bora (In Person)
Ex-Parte

Dated : 24 May 2022

ORDER

1. The present Appeal is filed against the order dated 03.02.2012 passed by Maharashtra State Consumer Disputes Redressal Commission, Circuit Bench at Aurangabad (in short 'State Commission') in Consumer Complaint No.84 of 2006 whereby the Consumer Complaint filed by the Complainant/Respondent No.1 was partly allowed.

2. Alongwith the First Appeal, IA/2/2012, an application for condonation of delay has also been filed by the Appellant. In the application, the Appellant had not mentioned the number of days of delay. As per computation done by the Registry, there is a delay of 36 days. For the reasons stated in the application and in the interest of justice, IA/2/2012 is allowed and delay condoned.

3. Complainant/Respondent No.1 is a proprietorship firm engaged in the business of plastic reprocessing. Appellant/Opposite Party No.1 is National Insurance Company. Respondent No.2/Opposite Party No.2 is Ahmednagar Merchant Co-op Bank.

4. Case of the Complainant is that they took Standard Fire & Special Perils Insurance Policy No.271900/11/03/31/02847 for the period 10.03.2004 to 09.03.2005 for Rs.29 lakhs insuring the following:

i. Building	Rs.5 lakhs
ii. Machineries	Rs.8 lakhs
iii. Stock of plastic goods, raw materials & finished goods	Rs.16 lakhs

Total Rs.29 lakhs	

On 30.07.2004 at about 10.45 am, there was loud sound in the electric transformer in front of the factory premises. Proprietor of the Company came out of the factory and noticed that there was sparking from the transformer. He immediately returned to the factory and found that main switch of the factory burst causing huge sound and fire. The stock of plastic kept in the factory premises caught fire and the fire spread rapidly. He immediately called the Fire Brigade, which took many hours to extinguish the fire. The Complainant also intimated the Insurance Company. The Insurance Company deputed Mr. Thombre as Surveyor, who inspected the factory premises on 31.07.2004. The Surveyor sought Fire Brigade Certificate, FIR, Panchnama, Certificate of the Electrical Inspector, Income Tax Returns, Books of Account, Stock Books, Statement of Account and the documents of hypothecation etc. On 28.06.2005, the Insurance Company repudiated the claim of the Complainant on the ground that it was a fraudulent claim. The Complainant approached the Insurance Ombudsman. Though on 17.03.2006, the Insurance Ombudsman allowed the claim, on 31.03.2006, the claim was dismissed as non-sustainable. The Insurance Ombudsman, vide order dated 31.03.2006, clarified that as in the earlier order the word "None" remained un-typed, he replaced it. Aggrieved by dismissal of the claim, the Complainant filed Complaint before the State Commission with the following prayer: -

“This Hon’ble commission direct, order/decree that the Opposite Party Insurance Company, to pay a sum of Rs.26,00,000/- (Rupees Twenty Six Lacs only) together with interest @ 18% from 30.07.2004 till payment and/or realization.”

4. The State Commission after hearing the proprietor of the Complainant in person and the Learned Counsel for the Opposite Parties and perusing the record, partly allowed the Complaint with the following order: -

“1. Complaint is partly allowed.

2. Opponent Insurance Company is directed to pay Rs.13,30,000/- with 9% interest from the date of repudiation of the claim i.e. 28.06.2005 within a period of 30 days from the date of receipt of copy of this order, failing which the opponent shall be liable to pay the interest @ 9% p.a. on the entire amount due on the date of order till the realization of the entire amount.

3. Opponent is directed to pay Rs.10,000/- for mental agony and Rs.5,000/- as cost of the complaint.”

5. Aggrieved by the impugned order of the State Commission, the Opposite Party/Insurance Company has filed the instant First Appeal with the following prayer: -

“(a) set aside the order and judgment dated 03.02.2012 passed by the Hon’ble State Commission, Mumbai Circuit Bench at Aurangabad in Complaint Case No.84/2006.

(b) Pass any other order or orders as may be deem fit and proper in the interest of justice.”

6. Heard the Learned Counsel for the Appellant and Respondent No.1 and carefully perused the record. This Commission, vide order dated 08.03.2022, observed that Respondent No.2 was not present on 04.11.2019, 20.01.2020, 11.08.2020 and 08.03.2022. Respondent No.2 was, therefore, proceeded ex-parte. Learned Counsel for the Appellant submitted that the State Commission failed to appreciate that the claim filed by the Complainant was fraudulent. The Appellant, on the basis of the documents submitted by the Complainant as also the Survey Report, repudiated the claim of the Complainant, vide letter dated 28.06.2005. The Insurance Ombudsman also, vide order dated 31.03.2006, dismissed the claim. The State Commission failed to appreciate the fact that the claim was covered under exclusion clause 8 of the Insurance Policy that in case of fraudulent claim, the Insurance Company would not be liable to honour it. He submitted that report of the Maharashtra State Electricity Board dated 10.01.2005 showed that on 30.07.2004,

there was no explosion in the transformer and there was no fire in the Complainant factory premises.

7. Proprietor of Respondent No.1/Complainant submitted that the Appellant had not filed any document to establish that the claim filed by the Complainant was fraudulent. The incident of fire was also investigated by Thombare and Company. The Opposite Party totally ignored the investigation report and accepted the Surveyor's Report. The Surveyor had not mentioned the cause of fire. The Survey Report regarding cause of action was, therefore, not acceptable. The Opposite Party on the basis of the Survey Report observed that the incident of cause of fire was concocted and repudiated the claim, which was not justified. There was, thus, no violation of clause 8 of the Insurance Policy. The Impugned order was justified and the Appeal deserved to be dismissed.

8. It is admitted that the Complainant had taken an Insurance Policy from Opposite Party No.1. On the date of the incident, the Policy was effective. The incident of fire is also not disputed by Opposite Party No.1. The cause of fire is disputed by the Insurance Company. In this regard, the observation of the Surveyor is relevant, which reads as follows: -

"We disagree with Insured's approximation as regards to the proximate cause. The exact cause could not be ascertained.

We have discussed the issue i.e. the exact origin of fire, spread or travel, if any of fire and finally the proximate cause is discussed separately elsewhere.

...

REMARKS

2) The origin of fire and the proximate cause could not be ascertained."

9. From the above, it is clear that the Surveyor observed that the exact cause of fire could not be ascertained. Surveyor also observed that the proximate cause was discussed separately elsewhere. This Commission, vide order dated 06.06.2017, passed the following order: -

"It transpires that it is not clear whether there are two reports, one by the Surveyor and one by the Investigator. Counsel for the Appellant seeks time to obtain clarification on this and submit a copy of the investigator report, if such a report exists."

10. In compliance of the order dated 06.06.2017, the Appellant/Insurance Company filed a copy of the Investigation Report by the same Surveyor, wherein it was observed as follows: -

"A) The M.S.E.B. transformer installed to feed the electricity to Nitin Industries developed technical snag causing fluctuation in current and sparking on 30.07.2004 this snag further percolated to the domestic switch

board in the premises of the factory causing short circuit, sparks and big noise. The sparks caused fire to the board up and engulfed the entire factory premises fanned by the blowing wind.

B) The fire was accidental and not caused intentionally because,

a) The police concluded that the fire was accidental and not intentional.

b) The electrical Inspector opined that it was due to short circuit and technical fault.

c) There was a recurring technical snag causing fluctuations in current and sparks in the M.S.E.B. transformer.

d) The raw material used in production was highly inflammable which rapidly caught fire due to sparks emanating from the switch board.

...

We conclude that the fire was accidental.”

11. In the aforesaid report the Surveyor had specifically observed that the fire was accidental. The aforesaid report is a vital document on which the entire case rests. It appears that the Insurance Company deliberately tried to conceal the separate report submitted by the Surveyor regarding cause of fire and did not file the same alongwith the Appeal. The same was filed only on 06.07.2017, after direction of this Commission dated 06.06.2017. There is, thus, clear concealment of material fact on the part of the Insurance Company. Repudiation of the insurance claim on the ground that the Complainant filed a fraudulent claim was certainly not justified.

12. Regarding quantum of claim, the Surveyor assessed the loss to the building at Rs.3,59,600/-; value of damaged machinery at Rs.75,000/-; value of damaged stock at Rs.22,500/-, totaling to Rs.4,57,100/-. After applying depreciations, the net loss was assessed at Rs.1,00,100/-.

13. As per balance sheet ending on 31.03.2004, the value of the building was Rs.3,69,900/-. The State Commission, after applying necessary depreciation assessed the loss at Rs.3,20,000/-.

13. The Complainant claimed Rs.8 lakhs towards loss to the machinery. The Surveyor observed that the Complainant had given an imaginary figure of loss without filing any evidence and assessed the loss to the machinery at Rs.75,000/-. In the balance sheet ending 31.03.2004, the cost of the machinery was shown at Rs.7,68,320/-. However, in the statement given to the Police, the loss was claimed at Rs.6 lakhs. The State Commission, therefore, considered Rs.6 lakhs towards loss to the machinery, which in our view seems to be justified.

14. The Complainant claimed loss of stock at Rs.13 lakhs. The Surveyor, however, assessed the loss to the stock at Rs.22,500/-. The Surveyor observed that all transactions were imaginary and no evidence was placed by the Complainant. The State Commission, however, observed that in

balance sheet of 31.03.2004, the value of stock was shown as Rs.10,10,000/-. When in the balance sheet the value of the stock was clearly shown as Rs.10,10,000/-, the observation of the Surveyor, that the transactions were imaginary and no evidence was placed by the Complainant, was not correct. We find that the State Commission was justified in relying on the balance sheet and assessing the loss at Rs.10,10,000/-.

15. The State Commission, thus, assessed the total loss at Rs.19,30,000/- (Rs.6 lakhs towards machinery, Rs.3,20,000/- towards building plus Rs.10,10,000/- towards stock). The Surveyor assessed the cost of salvage at Rs.2,60,000/-. The State Commission, therefore, deducted the salvage cost of Rs.2,60,000/ from the net loss and assessed the loss at Rs.16,70,000/-. The State Commission also observed that the Complainant had not carried out any safety measures against the fire such as fire extinguisher piped water arrangement etc. For this reason, the State Commission found contributory negligence on the part of the Complainant and made 20% deduction on the amount of Rs.16,70,000/- and finally assessed the loss at Rs.13,30,000/-. We do not find any reason to disagree with the finding of the State Commission.

16. For the foregoing discussion, the Appeal stands dismissed. As observed in para-11 above, there is concealment of material fact on the part of the Appellant. A cost of Rs.50,000/- is imposed on the Appellant, which shall be paid to the Complainant within two months from the date of this order.

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C. VISWANATH
PRESIDING MEMBER
.....J
RAM SURAT RAM MAURYA
MEMBER