

Appeal No.  
172 of 2016

National Insurance Company Ltd.  
Vs.  
Sh. Triveni Prasad Thapliyal

22.09.2023

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 10.08.2016  
Date of Final Hearing : 23.08.2023  
Date of Pronouncement : 22.09.2023

**First Appeal No. 172 / 2016**

National Insurance Company Ltd.  
Divisional Office : 65-A, Rajpur Road, Dehradun  
Through its Regional Manager  
Rajpur Road, Dehradun

(Through: Sh. Deepak Ahluwalia, Advocate)  
.....Appellant

VERSUS

1. Sh. Triveni Prasad Thapliyal S/o Sh. Tika Prasad Thapliyal  
R/o Majri Mafi, Vishwanathpuram  
Mokhampur, Dehradun

(Through: Sh. H.C. Dobhal, Advocate)  
.....Respondent No. 1

2. State Bank of India  
Through its Branch Manager  
I.I.P. Mokhampur, Dehradun

(Through: Sh. Ravinder Singh, Advocate)  
.....Respondent No. 2

**Coram:**

**Ms. Kumkum Rani,  
Mr. B.S. Manral,**

**Judicial Member II  
Member**

**ORDER**

**(Per: Ms. Kumkum Rani, Judicial Member II):**

This appeal under Section 15 of Consumer Protection Act, 1986 has been directed against judgment and order dated 13.07.2016 passed by the

District Consumer Disputes Redressal Forum, Dehradun (hereinafter to be referred as the District Commission) in consumer complaint No. 289 of 2012 styled as Sh. Triveni Prasad Thapliyal vs. National Insurance Company Ltd. & Anr., wherein and whereby the complaint was allowed.

2. The facts giving rise to the appeal, in brief, are as such that the complainant had filed a complaint for getting the insured amount from the opposite party No. 1 – insurance company. According to the complaint, it is also pleaded that on dated 30/31.07.2010, the insured house of the complainant was badly damaged due to the flood and the floor of the lobby and Vramada subsided and loss to the tune of Rs. 1,50,000/- was caused to the complainant. The intimation about such loss was immediately given to the opposite party No. 1 – insurance company and the opposite party No. 1 has deputed its surveyor, who has inspected the insured property and captured the photographs of the damaged portion of it. The insurance company has repudiated his claim as per the observation made by the surveyor and intimated the claimant on dated 01.11.2010. By repudiating the claim, the insurance company has committed deficiency in service, therefore, the complainant brought the complaint.

3. The opposite party No. 1 – insurance company has submitted its written statement stating that the property was insured for Rs. 10 Lacs with the premium amount's cheque through the opposite party No. 2 – State Bank of India, Mohakampur, Dehradun Branch vide fire policy No. 461000/11/04/3100000608 under the risk of Standard Fire and Special Perils commencing the risk Rs. 10 Lacs covering risk from 11.01.2005 to 10.01.2015 of insured residential building situated at 254/230, East Patel Nagar, District Dehradun and the policy was issued by the answering opposite party as per the terms and conditions of policy. It is also averred

that the address / location given in the insurance policy of the insured property is Sh. Triveni Prasad Thapliyal S/o Late Sh. Tika Prasad Thapliyal, 254/230, East Patel Nagar, Dehradun whereas the address / location of alleged damaged building / property where the alleged loss reported occurred is situated at Majri Mafi, Vishvanathpurm, Mohakampour, Dehradun, so this house / property is not covered under the said policy. It is further averred that the cause of subsidence was due to faulty soil and at the time of construction, proper soil testing was not done and the flood water is not the cause of loss as the marble floor was apparently intact without any water marks, only the land soil of the flooring had subsided. Therefore, the surveyor has observed that the subject loss is a case of constructional fault due to unfit soil in that particular place and address of property was totally different and recommended the above claim as 'No Claim', as per the terms and conditions of the policy. There was no deficiency in service on the part of the answering opposite party, therefore, the claim is liable to be dismissed.

4. The opposite party No. 2 has alleged that the answering opposite party has not made any pressure upon the complainant to get the property insured. When the proposal form was filled in by the answering opposite party, the insured property was shown Majri Mafi, Vishvanathpurm, Mohakampour, Dehradun. On dated 28.10.2010 the answering opposite party has also written a letter to the opposite party No. 1 that the house shown in the proposal form was of Mauja Majri Mafi, P.O. I.I.P., therefore, the answering opposite party has no objection if the claim is given to the complainant. The answering opposite party has no concern with the matter in dispute and there is no relationship between the consumer and service provider between the complainant and the opposite party No. 2, hence the

answering opposite party has no concern with the matter in dispute and the complaint is liable to be dismissed against the answering opposite party.

5. The District Commission after hearing both the parties and taken into consideration the pleadings and evidence available on record, passed the impugned judgment and order on dated 13.07.2016 wherein it is held as under:-

“परिवादी द्वारा योजित यह परिवाद विपक्षी बीमा कम्पनी के विरुद्ध स्वीकार किया जाता है। विपक्षी बीमा कम्पनी को आदेशित किया जाता है कि वह परिवादी को धनराशि अंकन एक लाख छत्तीस हजार चार सौ आठ रुपये तथा वाद व्यय अंकन सात हजार रुपये का भुगतान 30 दिन में किया जाना सुनिश्चित करें।

यदि निर्दिष्ट अवधि में धनराशि की अदायगी नहीं की जाती है तो परिवादी समस्त धनराशि पर निर्णय तिथि से वसूली तक 8% वार्षिक ब्याज भी पाने का पात्र होगा।”

6. On having been aggrieved by the impugned judgment and order, the present appeal has been preferred by the opposite party – insurance company. Learned counsel for the appellant has contended that as per the policy, the description of the insured property is given as 254/230 East Patel Nagar, Dehradun and the insurance was not for the property situated at Majri Mafi, Vishvanathpuram, Mokhampur, Dehradun, therefore, the insured property where the loss is alleged to have been occurred, is totally different from the address / location of the insured property as contained in the impugned policy. Therefore, on such ground, the claim of the complainant was repudiated.

7. The learned counsel for the respondent No. 1 – complainant has contended that in the proposal form, the correct address of the insured property was Majri Mafi, Vishvanathpuram, Mokhampur and the correct address was given in the proposal form but the same has neither been filed by the appellant in the District Commission, nor before this Commission, therefore, in the absence of such document / proposal form, it cannot be decided whether in the proposal form, the description of the insured property was written as situated at 254/230 East Patel Nagar, Dehradun.

8. It is an admitted fact that the property in dispute was insured for Rs. 10 Lacs vide insurance policy No. 461000/11/04/3100000608 under the Standard Fire and Special Perils Policy which was purchased by the respondent No. 1 – complainant for the risk coverage from 11.01.2005 to 10.01.2015.

9. The main dispute between the parties is whether the description of the insured property was written in the proposal form as 254/230 East Patel Nagar, Dehradun or not.

10. It is true that the complainant has neither filed the proposal form of the policy in the District Commission nor in this Commission.

11. This Commission has also directed to the appellant to submit the proposal form before this Commission. Vide letter dated 18.08.2022 (paper No. 36 of the appeal record), filed by the appellant, it was alleged as under:-

“As per our company, Policy on Maintenance of insurance records, the proposal form submitted by insured for Fire Policy, is kept for 03 years after the expiration of Policy. And it was already destroyed.

The Policy on Maintenance of insurance records is Private & Confidential, therefore, it cannot be provide to the outer agencies.”

12. As per the above letter, the proposal form is not available in the office of the appellant company and as per the version of the insurance company, the same is destroyed. If the proposal form is not submitted in the record, then it cannot be assumed that in that proposal form, the description of the property for covering the policy was mentioned as 254/230 East Patel Nagar, Dehradun. The opposite party No. 2 – State Bank of India has clearly stated in the written statement that in the proposal form the description of the property for insurance was mentioned as Majri Mafi, Vishvanathpuram, Mokhampur, Dehradun. The insurance company has been unable to prove the fact by filing the cogent evidence that in the proposal form, the description for property was given as 254/230 East Patel Nagar, Dehradun.

13. Thus, in the absence of proposal form, it is assumed that the proposal form was filled-in mentioning the description of the insured property as Majri Mafi, Vishvanathpuram, Mokhampur, Dehradun for the coverage of the policy for the period from 11.01.2005 to 10.01.2015.

14. Apart from it, the opposite party No. 2 Bank is situated at Mokhamapur, Dehradun, so the property under insurance also relates to the Majri Mafi, Vishvanathpuram, Mokhampur, Dehradun.

15. Thus, we are of the view that the insurance company has wrongly repudiated the claim of the respondent No. 1 vide letter dated 01.11.2010

on the basis that the description of the insured property is different from the property where the loss is alleged to have been occurred.

16. Learned counsel for the appellant has stated that only the land soil of the floor had subsided, thereby subsiding was due to mud filling without proper compaction when construction was negligently done as a result whereof it subsided at one place only.

17. Learned counsel for the appellant has also stated that the flooring was done without proper soil testing of mud of the floor, but here it is pertinent to mention that the surveyor has not enclosed any such soil testing report, which has mentioned that the subsiding of the floor was due to mud filling without proper compaction and the flooring was done without mud testing. Learned counsel for the appellant has submitted a cited case law in the case of **V.K. Kariyana Store vs. Oriental Insurance Co. Ltd. & Anr., III (2014) CPJ 182 (NC)**, wherein the Hon'ble National Commission has held that :-

“Admittedly, the complainant had insured his shop with address M/s. V.K. Kariyana Store, 31/9, Ram Nagar, Karnal whereas the incident of fire had occurred at Shop No. 29/1, Main Bazar, Ram Nagar, Karnal which shop/premises was not insured with the appellant-insurance company. The complainant has failed to prove that he has insured the shop No. 29/1. More so there is nothing on the record to show that the complainant had ever written any letter to the insurance company to get the address changed on the policy and neither have ever informed the

insured company with regard to shifting of his insured business premises.”

18. The facts narrated in the above cited case law are different from those mentioned in the case in hand, because the claimant has not alleged in the complaint that he has informed about the shifting of the insured premises.

19. So with due respect, the principles as laid down in the above cited case law are not applicable to the case in hand. Thus, in the absence of the proposal form on record, we assume that the description of the insured property was properly given as Majri Mafi, Mohakampur, Dehradun in the proposal form, but the insurance company – appellant has written down the incorrect address of the insured property in the insurance policy coverage note.

20. We are of the view that the insurance company has repudiated the claim on the incorrect ground and by rejecting the claim of the complainant – respondent No. 1, the insurance company – appellant had committed deficiency in service. Therefore, we are of the view that the impugned judgment passed by the District Commission perfect and in justified manner and there was no illegality and infirmity in the finding of the impugned judgment. The impugned judgment is devoid of merits. Therefore, we are not inclined to interfere with the finding of the impugned judgment. We are of the view that the impugned judgment is liable to be affirmed and the appeal is also liable to be dismissed.

21. Accordingly, the appeal is dismissed. Impugned order dated 13.07.2016 passed by the District Commission, Dehradun is affirmed. No order as to costs of the appeal.



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22. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 /2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. The copy of this order alongwith original record of the District Commission, Dehradun be sent to the District Commission concerned for record and necessary information.

23. File be consigned to record room along with a copy of this Order.

**(Ms. Kumkum Rani)**  
**Judicial Member II**

**(Mr. B.S. Manral)**  
**Member**

Pronounced on: 22.09.2023