

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 70 OF 2014

(Against the Order dated 01/11/2013 in Complaint No. 02/2013 of the State Commission
Goa)

1. BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
7TH FLOOR, BLOCK NO. 4, DLF TOWER 15, SHIVAJI
MARG,
NEW DELHI-110015

.....Appellant(s)

Versus

1. BHUPENDER GAHLAWAT
S/O. SH. PREET SINGH, R/O. GH-9/135, PASCHIM VIHAR,
NEW DELHI-110087

.....Respondent(s)

BEFORE:

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

FOR THE APPELLANT : MS. SUMAN BAGGA, ADVOCATE
FOR THE RESPONDENT : MS. TANISHQ MEHTA, ADVOCATE

Dated : 10 November 2023

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 01.11.2013 of the State Commission in complaint no. 02 of 2013, whereby the complaint of the complainant was allowed, directing the appellant - insurance company to pay Rs. 17,63,265/-, with pending and future interest at the rate of 9+2% from 10.09.2012 till payment along with compensation of Rs. 50,000/- towards harassment, mental pain and agony etc. and cost of Rs. 10,000/-.
2. We have heard the learned counsel for the appellant – insurance company and the learned counsel for the respondent - complainant and perused the record including the State Commission's impugned Order dated 01.11.2013 and the memorandum of appeal.
3. The appeal has been filed with reported delay of 26 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 on 11.01.2012 the complainant – respondent obtained a 'Standard Fire and Special Peril Policy' in respect of shack / restaurant, namely, 'Kneez Up' situated at 8/7A, Chally Village Pale, Velsao, Goa, by paying a premium of Rs. 26,031/- for sum insured of Rs.40,00,000/-. The policy was valid from 11.01.2012 to 10.01.2013. During the subsistence of the insurance policy, on 15.05.2012 at about 02.15 hrs.

a major fire occurred in the said shack / restaurant and the shack / restaurant got entirely damaged and the loss occurred to the complainant. The information about the said incident was given to the police, the State Fire and the emergency services as also to the insurance company. The insurance company appointed the independent surveyor and the investigator to conduct the survey and the investigation of the case. The investigator submitted his report on 06.07.2012. The surveyor vide its survey report dated 10.08.2012 assessed the loss at Rs.17,63,265/- and concluded that the fire brigade and the police authorities had not been able to identify the cause of fire. The complainant submitted the insurance claim form to the insurance company. The insurance company vide its letter dated 16.07.2012 repudiated the claim of the complainant on the ground that the complainant had misrepresented the material facts and non-disclosure of material facts to the insurance company while obtaining the insurance policy.

5. Aggrieved by the repudiation by the insurance company, the complainant filed a complaint before the State Commission. The State Commission vide impugned Order dated 01.11.2013 allowed the complaint and directed the insurance company to pay Rs. 17,63,265/-, the loss assessed by the surveyor, with pending and future interest at the rate of 9+2 % from 10.09.2012 till payment. The compensation of Rs. 50,000/- towards harassment, mental pain and agony etc. along with cost of Rs. 10,000/- were also awarded. The amounts were ordered to be paid within 30 days, failing which, the amounts as ordered would carry interest at the rate of 9% per annum till payment.

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

7. Learned counsel for the appellant – insurance company has submitted that at the time of obtaining the insurance policy, complainant had concealed the fact that the property in question was illegal as show cause notice dated 05.01.2012 was issued to the complainant for illegal construction of the temporary structure. He also suppressed the fact that the Panchayat had issued a show cause notice of demolition of temporary shack on 07.03.2012. He further submits that the descriptions of the property to be covered under captioned policy as ‘Restaurant’ in Annexure – I and ‘Super structure building’ in Annexure – II and the temporary shack gutted in the fire was neither a restaurant nor a super structure building, hence the loss was not payable to the complainant. He furthermore submits that the NOC issued from Department of Tourism to erect one temporary shack for six months i.e. upto 31st May, 2012 was not brought to the knowledge of the insurance company and had the said information been provided, the insurance company would not have issued the insurance policy.

8. Learned counsel for the respondent – complainant submits that the appeal of the appellant – insurance company is not maintainable as the same has been filed under section 15 of the Consumer Protection Act, 1986. He further submits that the complainant has not received the show cause notice dated 05.01.2012 before purchasing the policy and that the demolition order of the shack dated 07.03.2012 of the Panchayat had been passed after the policy was issued and also that the said demolition order had been stayed by the Director of the Village Panchayat. He furthermore submits that as the policy was obtained for a restaurant and the restaurant is the part and parcel of the shack, therefore, the appellant is liable to indemnify the loss occurred to the complainant.

9. In so far as the preliminary objections regarding maintainability of the appeal under section 15 of the Consumer Protection Act, 1986 is concerned, we are of the view that it is a technical ground and only on this ground the right to appeal of the insurance company cannot be closed.

10. The main issue in this appeal is whether the insurance policy was obtained by misrepresenting the material facts and non-disclosure of material facts or not. In this regard, it is established that before obtaining the insurance policy the complainant obtained the N.O.C. dated 27.10.2011 for erection of Temporary Shack/Huts/Structure from the Department of Tourism, Government of Goa, also obtained N.O.C. dated 01.11.2011 from the office of Village Panchayat of Velsao for erecting Temporary Shack. From the above, it is apparent that the complainant has completed all the formalities before obtaining the insurance policy. It is an admitted fact, as recorded in the Order of the State Commission, that the officers of the insurance company have perused the aforesaid documents and had inspected the premises / shack before issuing the policy in respect of his shack / restaurant.

11. As regards the show cause notice dated 05.01.2012, it is seen from the documents filed by the insurance company before this Commission that the said show cause notice is addressed to the Deputy Collector, Mormugao, Vasco-da-Gama, Goa by the Sarpanch V. P. Velsao-Pale-Issorcism and a copy of the same has not been marked to the insured. The insurance company has not produced any documentary evidence that the said notice was received by the complainant and this show cause notice was in his knowledge while filling up the proposal form or prior to 11.01.2012 i.e. before obtaining insurance policy. It is seen that the complaint regarding illegal activities against the complainant was made on 09.03.2012, the letter to the Chief Electrical Engineer for disconnection of temporary electrical connection issued to the complainant was sent on 09.03.2012 and the demolition notice was issued on 07.03.2012. All these communications are subsequent developments and could not have been brought to the knowledge of the insurance company at the time of obtaining the insurance policy.

12. From the above, it is clear that the insurance company has failed to establish any misrepresentation or non-disclosure of material facts while obtaining the insurance policy. Further, since the policy was issued after due perusal of the documents and inspection of the premises, objection with regard to descriptions of the property to be covered under captioned policy as 'Restaurant' in Annexure – 1 and 'Super structure building' in Annexure – 1 and the temporary shack gutted in the fire was neither a restaurant nor a super structure building is concerned, cannot be raised at a later stage when the entire structure was gutted in fire, the insurance company is liable to indemnify the loss to the complainant.

13. In view of the foregoing, we find no reason to interfere with the impugned Order dated 01.11.2013 of the State Commission. Therefore, the Order passed by the State Commission is sustained and the appeal is dismissed.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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DR. SADHNA SHANKER
MEMBER