

**KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
BASAVA BHAVAN, BANGALORE.**

**Complaint Case No. CC/208/2013
(Date of Filing : 06 Dec 2013)**

1. Chemmanur Jewellery

Corporate Office at NO. 19, 3rd Cross, KCD Complex, Mission
Road Cross, Bangalore 560027 Rep. by its General Manager,
Jagadish C. .

.....Complainant(s)

Versus

1. The New India Assurance Co. Ltd.

Regional Office at No. 2-B, Unity Building Annexe, 1st Flor,
West Wing, Mission Road, Bangalore 560027 Rep. by its
Manager .

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE Huluvadi G. Ramesh PRESIDENT
HON'BLE MR. Krishnamurthy B.Sangannavar JUDICIAL MEMBER
HON'BLE MRS. Smt. Divyashree.M MEMBER**

PRESENT:

Dated : 13 Jul 2023

Final Order / Judgement

Date of filing:06.12.2013

Date of Disposal:13.07.2023

**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, BENGALURU (PRINCIPAL BENCH)**

DATED: 13th Day of July 2023

PRESENT

Mr. K B SANGANNANAVAR: JUDICIAL MEMBER

Mrs.M.DIVYASHREE : LADY MEMBER

CONSUMER COMPLAINT NO. 208/2013

Chemmanur Jewellery,
Corporate Office at No.19,
3rd Cross, KCD Complex
Mission Road Cross,
Bangalore-27

Rep. by its General Manager,
Mr.Jagadish C..... **Complainant**

y Mr.B.S.Gnana Prakash, Adv.)

-Versus-

The New India Assurance Company Limited,
Regional Office at No.2-B,
Unity Building Annexe,
1st Floor, West Wing
Mission Road, Bangalore-560027.

Rep. by its Manager..... **Opposite Party**

(By Mr.C.R.Ravishankar, Adv.)

ORDER

BY Mr. K. B. SANGANNANAVAR: Pri. Dist. & Session Judge (R)- JUDICIAL MEMBER

1. This is a complaint filed under Section 17 of Consumer Protection Act, 1986 to direct OP to pay actual losses to complainant amounting to Rs.79,86,728/- along with interest and to pay Rs.10,00,000/- as compensation for the suffered losses and mental agony.

2. The Brief facts of the case of the complainant are: Complainant is doing their business as Retail Traders of Gold Jeweler and Silver Articles, having its showroom at No.13, S.M.Road, T Dasarahalli, Bengaluru, under the name and style of Chemmanur Jewellers, insured with OP for the period from 10.03.2011 till midnight on 09.03.2012 against the goods being in the said showroom, including gold and silver articles. The value of the insurance is sum of Rs.09 Crore and while in such relationship between parties to the complaint on 07.12.2011 two miscreants came to their premises where the aforesaid showroom at about 7:50pm and they were beaten the watchmen and assaulted the staff and robbed the gold and silver articles and this incident was immediately informed by Mr.K.J.Raju, who was the employee of the said showroom to Peenya Police Station and the Peenya Police have registered the crime case as Cr.No.770/2011 for the offence U/s 394 R/w Sec.34 of IPC. Pursuant to the said complaint have also intimated the robbery taken place in their showroom to the OP i.e., to their insurer and submitted Jewelers Block Insurance Claim form on 17.12.2013. Accordingly, OP/insurer visited their showroom and enquired about the commission of robbery and thereby estimated the total loss of golden ornaments robbed at Rs.79,83,780/-. The OP insurer had issued a letter dated 11.07.2013 to the complainant and they have stated in their letter that they were ready to indemnify in a sum of Rs.48,86,947/- against the actual loss of Rs.79,86,728/- which according to complainant is unfair trade practice and amounts to deficiency of service.

3. The OP/insured had issued another letter dated 01.08.2013 to the complainant, wherein stated OP Company has been forwarded the letter dated 14.09.2012 to their Head Office along with their claim recommendation note for settlement. The Competent Authority after studying the claim submitted by the complainant considered that under insurance clause applicable as per policy condition and approved Rs.36,65,210/- (being 75% of total liability of Rs.48,86,947/- under the policy) and the balance of 25% of the liability shall be paid on production of Final Investigation Report. They have communicated the working of liability in their earlier letter dated 11.07.2013. The OP is trying to escape from their liability to indemnify the complainant as against the insurance coverage. At the time of entering into the insurance agreement it was not imposed these kind of terms and conditions but now they have created these types of condition is nothing but violation of natural justice amounts to unfair trade practice and rendering deficiency of service.

4. The complainant is a customer of the OP Company. OP had manipulated the estimation of the loss of the gold ornaments for its convenient without giving effect to their insurance coverage. The policy of the complainant is worth up to Rs.09 Crores. Now the actual loss or damages caused to the complainant is Rs.79,86,728/-. As per Sec.01 of the Insurance Policy stock in the premises had been fully insured. The insured amount was at Rs.09 Crores and the

stock in the premises was Rs.08,20,00,000/-and therefore complainant is legally entitled for claim of Rs.80 Lakhs towards the loss or damages incurred on account of commission or robbery taken place on 07.12.2011 at 7:50pm and to that effect sought an award to be passed against OP.

5. OP put appearance through learned counsel submitted version, admitted issuance of Jewelers Block Insurance Policy, covering various risks for the period from 10.03.2011 to 09.03.2012. Initially, the insurance coverage U/s I, policy was Rs.06 Crores for jewelers inside and other premises, Rs.10 Lakhs for coverage towards silver stock and Rs.05 Lakhs coverage for cash and currency and U/s II, covering the jewelers outside the premises with agents, goldsmith etc was Rs.05 Lakhs for any one loss and U/s IV, coverage for Rs.10 Laksh covering furniture and fixtures. The complainant requested for increase in coverage U/s I from Rs.06 Crores to Rs.09 Crores as they have moved into a larger premises and the price of gold has also gone up. Accordingly, U/s I was increased to Rs.09 Crores with effect from 19.09.2011 with other terms and conditions remaining unchanged. OP admits complainant reported that on 07.12.2011 at about 7:50pm some miscreants assaulted their watchmen, beaten the staff and robbed gold and silver articles kept in the business premises. Mr.K.J.Raju gave informatin to OP and also to the police. A case is registered in Cr.No.770/2011 U/s 394 R/w Sec.34 of IPC. The complainant informed about the incident on 08.12.2011 to OP. Immediately Mr.M.V.Radhakrishnan, CA, the designated surveyor visited the premises of complainant and after verification of the records and interacting with the complainant right through the period of survey and finally submitted their report dated 31.12.2011. The surveyor opined that there was an under insurance to an extent of 37.92% and assessed loss at Rs.48,86,947/-. According to complainant, the loss of jewelers reduced in terms of gold stock was to the extent of 2,680.200 grams. The surveyor had taken the value of the said loss and market rate of gold as on that date. The policy taken by the complainant covered the stock which was available not only in the premises but also elsewhere. The books of account also indicated that the complainant was included the stock elsewhere. As per that 17,802.470 grams of pure gold was lying with goldsmith as on 07.12.2011. Though, it is stated that dealing with goldsmith were done by Chemmanur Impex and it had not insured the above stock in it, obviously belonged to complainant who has a suffering insurance cover for the stock and to that extent complainant will be deemed as a self insurer and any loss will be proportionately borne by him. The surveyor gave an addendum report dated 27.02.2013 wherein he had assessed the loss the net loss at Rs.78,72,015/- wherein he had not taken into account the aspect of under insurance and the gold stock pertaining to complainant lying with goldsmiths. The head office of OP considered all aspects and had admitted a total liability to an extent of Rs.48,86,947/- and agreed to release Rs.36,65,200/- being 75% of the total liability and also agreed to release the balance 25% liability on production of final investigation report. However, complainant demanding payment of Rs.79,86,728/- which is untenable in view of the specific condition. It is not open for him to approach the Commission to pass and award to that effect.

6. Further contended that the dispute involves a detailed and extensive examination of various documents and books of accounts and the practices of complainant. It may not be appropriate to consider the same in summary proceedings under Consumer Laws. The bonafide actions of OP cannot be deemed as deficiency in services, warranting to invoke jurisdiction of the Commission to pass award to the extent of Rs.79,83,780/-. The coverage U/s 02 was only to the extent of Rs.05 Lakhs for any one loss. However the value of gold with the goldsmith was to the extent of Rs.05,20,90,027/-. Though it was stated that a sister concern - Chemmanur Impex deals with goldsmiths, the Chemmanur Impex had not insured this portion of the gold belonging to the complainant. Therefore, the surveyor has worked out the percentage of under insurance and in terms of policy conditions the complaint is liable to be dismissed.

7. In view of rival contentions of the parties to the complaint Commission held an enquiry by receiving affidavit evidence of both parties and documents marked as Ex.C1 to Ex.C13 and Ex.R1 to Ex.R6 and after closure of enquiry, Commission heard learned counsels on record for the complaint and now points arise for consideration:

Whether complainant has made out grounds to obtain an award to be passed against OP for Rs.79,86,728/- or as proposed by the OP-Insurer for the loss or damage caused on account of robbery committed on 07.12.2011 at 7:50pm in their showroom and that OP rendered deficiency in service in settling the insured claim?

8. It is an admitted fact that OP has taken Jewellers Block Insurance Claim policy covering various risks for the period from 10.03.2011 to 09.03.2012. It is not in dispute that policy issued by OP in favour of complainant was covering various risks to the tune of Rs.06 Crore. It is not in dispute that complainant shifted business premises to new premises with effect from 19.09.2011 by paying an additional premium, covering the risk for Rs.09 Crores. According to complainant on 07.12.2011 at about 7:50pm during business hours some miscreants entered into the shop premises, assaulted their watchmen and staff, robbed gold jewelers which was not only reported to police but OP. In so far as registration of a crime case by Peenya Police Station, pursuant to the information given by one Mr.K.J.Raju is not disputed by OP. It is found from enquiry that in Cr.No.770/2011 case was registered for the offence U/s 394 R/w Sec.34 of IPC and this incident was reported to OP on 08.12.2011 and on 17.12.2011 had submitted claim form to OP for the loss incurred to the tune of Rs.79,86,728/-. It is not in dispute that surveyor was appointed by OP, inspected the premises, verified the records and submitted report. He also submitted addendum report to the OP. In other words, said surveyor submitted report dated 31.12.2011 and 27.03.2013 respectively and they have to be considered conjointly by us to decide the disputed issue between parties to this complaint.

9. Learned counsel for complainant submits that OP ignored the addendum report and stick-on to the main report forwarded to pay a sum of Rs.36,65,200/- and remaining 25% would be payable later and by deducting 37.92% as against the net loss of Rs.78,72,015/- which give rise to raise the complaint. On the contrary, counsel for OP would submit that Rs.48,86,947/- assessed by the surveyor is towards full and final claim made by the complainant and it is this settlement arrived by OP is strongly disputed by complainant on the ground that addendum report was totally ignored and would submit that complainant on conjoint consideration of surveyors report had sustained loss to the tune of Rs.78,72,015/- which has to be settled by OP as per their claim pursuant to the burglary taken place in their shop premise on 07.12.2011, since policy obtained was in force on the date of incident and the OP is liable to indemnify Rs.78,72,015/- has some considerable force.

10. Learned counsel for complainant further submits that complainant is a reputed company dealing with jewelery articles and allied ornaments in retail business, having its Head Office at J.C Road, Bengaluru and shop premises across the city and one of its shops is at Jalahalli, Bengaluru and they are insured the shop premises with the OP. Further submits complainant is having another registered company by name Chemmanuru Impex Limited which deals with process of making ornaments from gold and in control of gold received by concerned shop. In other words they entrust gold to goldsmith and after return of the gold to concerned shop, which were in control of Chemmanur Jewellery and to find support produced extract of stock registered as on 07.12.2011 which in our view was not considered by the Surveyor before submitting first report and was considered in the addendum report, since we also examined the stock register particulars and found as on 07.12.2011, 18,618.310 grams of gold at their credit.

11. According to complainant Chemmanur Jewellery and Chemmanur Impex Limited are distinct and separate entity having their business activities in their field and both entities have insured with OP and the OP issued separate and distinct policy to both units. Further, the register maintained by complainant indicates, the gold in its custody and assigned to Chemmanur Impex Limited for ornaments from goldsmith and it will directly entrust gold to goldsmith. Once gold sent to Chemmanur Impex Limited, it alone having control and responsibility of it would play a vital importance was not considerable by OP. The details of gold retained is reflected in the register was subsequently verified by the Surveyor lead him to submit addendum report. It is therefore, on this vital document namely the stock register the surveyor in his addendum report clearly stated that from the movement gold is received from branch till return gold ornaments to the branch, Chemmanur Impex Limited had control on all activities of the goldsmith, even though ownership of gold is with respective branches, however they do not have either direct or indirect contacts with goldsmiths. This is how they are dealing retail business under two separate entity.

12. In the above such circumstances, insurable interest of gold either given or lying with goldsmith rest with Chemmanur Impex only, was not at all considered by OP and they went on sticking to the main report ignoring addendum report submitted by the same surveyor amounts to rendering deficiency of services as contended by complainant has considerable force.

13. The survey report specifies that gold jewels weighing 2,680.200 grams were robbed from the said premises. The surveyor has calculated stocks in Jalahalli shop at Rs.8,20,76,782/- and stock worth of Rs.5,20,90,027/- is with goldsmith. According to complainant actually it was with Chemmanur Impex Limited. Thus total worked out to Rs.13,41,66,810/-. In such circumstances, the surveyor in his first report opined and made under valuation to an extent of 37.92%. However, on clarification by the complainant the surveyor on his due verification of stock registered rectified the mistake crept in his main survey report that the stock at Chemmanur Impex is distinct and separate, thereby calculated that actual stock at Jalahalli shop is at Rs.9,20,00,000/- and accordingly re-assessed the net loss caused to the complainant due to the commission of burglary at their shop premised at Rs.78,72,015/- was not considered by OP-Insurer, is not appreciated, when they accept that insured is their esteemed customer.

14. It is found from enquiry that in the said burglary 40 items gold chain weighing 1,072.080 grams and 28 items of necklace 1,608.120 grams totally 2,680.200 grams robbed by miscreants and the crime case registered by the jurisdictional police is still under investigation and when OP admitted policy for the period from 10.03.2011 to 09.03.2012 covering jewellery to the tune of Rs.06 Crores and after shifting of the said shop to new premises complainant paid additional premium covering the policy for Rs.09 Crores cannot be said that complainant had under insured, when it is shown that Chemmanur Jewellery and Chemmanur Impex Limited are distinct and separate entities having their business activities in their filed and both of them have insured with OP which is shown during the course of enquiry within the knowledge of OP and it is really an appreciable job done by their surveyor, since, submitted addendum report, yet OP instead to settle the dispute left the dispute to be decide by the Consumer Commission is not appreciated.

15. Learned counsel for complainant placed a reliance in FA/1439/2014 decided by the Hon'ble National Consumer Disputes Redressal Commission in the case between G.N.Halmarking and Refinery Pvt. Ltd. v. National Insurance Company Limited and another wherein on similar facts directed insurance company to settle the claim of the complainant along with interest @ 09% p.a. from the date of repudiation of claim till realization and held incident of theft comes under the deficiency of service and the OP under the terms and conditions of the policy is bound to indemnify the loss sustained by complainant in its entirety, since enquiry discloses Chemmanur Jewellers and Chemmanur Impex Limited are two distinct entities, having separate insurance risk coverage obtained by OP and to find support not only the evidence of

Mr.Jagadish C, General Manager of complainant, but also the affidavit evidence of the surveyor Mr.M.V.Radhakrishnan, come to the assistance of complainant to prove that OP consciously ignored addendum report, which was based on the statement made by the insured that with regard to the gold outside the premises under the control of Chemmanur Impex, which is also having a separate insurance cover and sister concern of the insured. Therefore, the value of the gold outside the premises should not be taken into account while determining adequacy of insurance coverage. We have also examined not only the extract of stock register, statement furnished by Chemmanur Impex but also invoices, which would corroborate not only the addendum report submitted by surveyor but also the affidavit evidence of Mr.Jagadish C, General Manager and Mr.Aloshious, S/o K.P.Paul. It is to be noted herein that Mr.M.V.Radhakrishnan, authorized surveyor submitted addendum report dated 27.02.2013 is marked through OP as Ex.R7 yet was ignored as opined very consciously, is nothing but rendering deficiency in service and it comes within the purview of CPA, 1986. In other words, OP is amenable to CPA, 1986 for not settling the insurance claim submitted by complainant as per terms and conditions of the policy admitted by OP. We have examined terms and conditions of policy issued by OP, Copy of Report made to Police, Copy of FIR submitted by Mr.K.J.Raju who was in-charge of shop, Claim submitted by complainant to OP which are marked as Ex.C1 to C13. We have also examined Ex.R1 proposal form dated 10.03.2008, Terms and Conditions of insurance policy marked as per Ex.R2, Additional Endorsement marked as Ex.R3, Surveyor Report dated 31.12.2011 marked as Ex.R4. Two letters, one is dated 11.07.2015 and another is dated 06.02.2013 marked as Ex.R5 and R6 and Addendum Report dated 29.08.2012 marked as Ex.R7, which of course support the case of the complainant as discussed by us above.

16. The contentions of learned counsel for OP that under General Conditions of the insurance policy, if there is any dispute or difference with contempt to be paid after admitting their liability it has to be resolved through the process of arbitration does not arise at all in view of not initiating arbitration proceedings by parties in right time and when complainant had invoked Sec.03 of CPA, 1986 by raising complaint under Sec.17 of CPA, 1986, now, OP cannot contend that Consumer Commission has no jurisdiction to try the complaint case initiated by complainant. Learned counsel for OP placed a decision reported in AIR 2009 Supreme Court 2834 in the case of Sikka Papers Limited v. National Insurance Co. Ltd. and others wherein held - *there was an element of under insurance in complainant's policy - in view thereof, Surveyor applied pro-rata formula and deducted 25.71% from the loss so assessed - Such deduction cannot be faulted.* Such deduction cannot be pointed as no relevance herein this case since when complainant had shown that Chemmanur Jewellery and Chemmanur Impex Limited are distinct and different entities having obtained separate policy for the stock coverage. In other words, in so far as facts of the case of the complainant is concerned, as rightly rectified by authorized surveyor in his addendum report, as such deduction to the extent of 37.92% of Rs.78,72,015/- does not arise at all and the ratio did not come to the assistance of OP. Learned counsel further placed reliance reported in II (2013) CPJ 383 (NC) in the case of Kali Ram Goyal v. Union Bank of India and another wherein held - *Damage to stock - Surveyor appointed - Loss assessed - Claim repudiated - Further deduction of 15% permitted on account of depreciation apart from 45.84% already deducted*

due to under insurance of insured has no bearing on the point in dispute in view of the discussion made above since on facts question of depreciation of gold does not arise at all.

17. In view of the discussion made above and in consideration of survey report dated 31.12.2011, submitted by Mr.M.V.Radhakrishnan, CA, Authorized Surveyor and Loss Assessor and his addendum report dated 29.10.2012, submitted to OP, net loss assessed by him as against gross loss assessed at Rs.79,83,780/- by complainant has to be assessed at Rs.78,72,015/- and for such amount claim has to be allowed for simple reason as OP had also obtained the below mentioned policies:

Chemmanur Jewellers Ltd., Doddaballapura Rs.5,50,00,000/-

Chemmanur Jewellers Ltd., DoddaballapuraRs.6,00,00,000/-

Chemmanur Jewellers Ltd., MandyaRs.8,47,00,000/-

Chemmanur Jewellers Ltd., BhatkalRs.3,82,00,000/-

18. The above policies could be seen from pages 53 to 61 of the report. These 04 policies have taken for other shops of Chemmanur Groups, wherein Sec.20 is not covered. In such circumstances, as reported by authorized surveyor, since Chemmanur Jewellers, sends old gold ornaments for making of pure gold to Chemmanur Traders and receives it back purified and standard gold is sent to Chemmanur Impex Private Limited for making it into ornament gold and receives it back. As per records, Chemmanur Jewellery does not deal with gold stocks, either in the movable of stocks or in the financial matter on going through the proposal form and policy issued. It is found there is inconsistency in underwriting of Chemmanur Jewellery Policy in respect of Sec.02. As such, gross loss assessed including making charges for 2,680.20 grams at the rate of Rs.2,780.80/-, Rs.79,83,780/- is assessed in this existing stock through count on 15.12.2011, 37.22 grams was deducted and gross loss after deductions of excess stocks would comes to Rs78,72,015/- which has to be indemnified by OP/Insurer by virtue of admitted insurance policy. As per policy terms and conditions which was in force as on the date of burglary reported immediately not only to the insurer but also to the jurisdictional police and on those issues no dispute at all between parties. It is therefore, contention of OP that it was under insured is held unacceptable. In other words, under insurance of Rs.29,85,068/- having not be substantiated by any other evidence, report of authorized surveyor by way of addendum report could be acceptable and its non acceptance by OP, is held rendered deficiencies of service considering the reputation of the complainants company in the field of retail gold and jeweler business.

19. The gold rate as per the survey report as on 15.12.2011 was Rs.2,978.80/-. The claim is made immediately after completion of all formalities. The surveyor report was submitted on 31.12.2011 and addendum report submitted on 29.10.2012 and as OP/insurer failed to settle

the claim in terms of policy, complainant raised consumer complaint on 06.12.2013 and we are deciding the complaint in the month of July 2023, almost after 10+ years after filing complaint. As on the day gold rate per gram in Bengaluru City of 22k Rs.5,415/- and Rs.5,907/- for 24k. It is therefore, OP is liable to compensate the complainant as to this difference for non settling claim in time. In other words, complainant is entitling for compensation for suffered loss and mental agony. Further also entitled for litigation cost. In such conclusion we proceed to direct OP/insurer to pay Rs.78,72,015/- along with escalated price of gold from 16.12.2011 till the date of settlement. Further directed to pay compensation of Rs.1,00,000/- for mental agony and physical inconvenience and do pay Rs.50,000/- as litigation cost within 45 days.

20. Furnish free copy of this order to both parties.

Lady Member

Judicial Member

GGH

**[HON'BLE MR. JUSTICE Huluvadi G. Ramesh]
PRESIDENT**

**[HON'BLE MR. Krishnamurthy B.Sangannavar]
JUDICIAL MEMBER**

**[HON'BLE MRS. Smt. Divyashree.M]
MEMBER**