

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI**

**RESERVED ON: 23.12.2024
PRONOUNCED ON: 21.05.2025**

FIRST APPEAL NO.418 OF 2016

(Against the Order dated 17.02.2016 in Complaint No. 82/2010 of the State
Consumer Disputes Redressal Commission, U.P.)

WITH

IA/5277/2017 (Stay) & IA/3874/2016 (Con. of delay)

New India Insurance Co. Ltd.
Delhi Regional Office
Jeevan Raksha Building,
12/1, IInd Floor, Asaf Ali Road,
New Delhi-110002.

... Appellant

Versus

M/s. N.S. Industries,
Corporation Office:
D-81, Hosiery Complex,
Industrial Area, Phase-II Extn.,
Noida-201305, U.P.
Having its registered office at
Khatakpura Siddiqui,
Farukhabad-209625, U.P.
India, through its
Authorized Signatory/Proprietor

... Respondent

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM, VSM (RETD.), MEMBER**

For the Appellant : Mr. Maibam N. Singh, Advocate
For the Respondent : Ms.Nistha Gupta, Advocate

JUDGMENT

Air Vice Marshal J Rajendra AVSM VSM (Retd)

1. This First Appeal u/s 19 of the Consumer Protection Act, 1986 (the Act”) is filed by the Appellant/OP against the Order dated 17.02.2016 of the State Consumer Disputes Redressal Commission U.P. (State Commission) in CC No.82 of 2010 allowing the Complaint and directing the OP to pay Rs.45 Lakh along with interest @ 12% p.a. from date of filing the complaint till actual realization and Rs.50,000/- as Compensation towards mental agony and Rs.5000/- as litigation costs.

2. As per Registry report, there is 35 days delay in filing this Appeal. For reasons stated in I.A. No.3874 of 2016, the said delay is condoned.

3. For convenience, the parties in present matter are hereinafter referred to as per position held in the Consumer Complaint.

4. Brief facts of the case, as per the complainant, are that the complainant, M/s NS Industries, a Government of India recognized star export house engaged in manufacture and export of home furnishing items since 1987, obtained a Fire and Special Perils Policy (Material Damage) Policy No. 421200/11/01/11/00001949 from the New India Assurance Company Ltd. (OP) for sum insured of Rs. 50,00,000, valid

from 29.12.2001 to 28.12.2002. On 24.10.2002 a fire broke out at their premises located at Khatakpora Siddiqui, Farukhabad due to an electric short circuit. The fire was reported to the Fire Brigade, the local police station and the insurer without delay. Fire Service promptly responded and extinguished the fire. As per the fire brigade's report, the total value of damaged property was approximately Rs. 42 lakhs, while property worth Rs. 38 lakhs was salvaged. Subsequently, the complainant lodged a claim with the insurer. The OP appointed Mr. PC Shukla as Surveyor to assess the loss. The Surveyor conducted an inspection and sought various documents including accounts, invoices, and purchase records from the complainant. The complainant alleges that despite repeated assurances, the Surveyor failed to submit his report for several months, resulting in undue harassment and delay. Numerous reminders and representations by the complainant to OP yielded no result. Aggrieved by the inaction of the insurer and alleging harassment, the complainant filed a Consumer Complaint before the State Commission seeking Rs.45 Lakhs along with 12% interest from 23/24.10.2022, Rs.1,00,000 compensation for mental agony and Rs.50,000 as costs.

5. The OP appeared and filed objections, denying the complainant's allegations as false and baseless. They contended that the complainant failed to provide the documents requested by the Surveyor, which caused delays in the final report. Despite repeated communications and assurances from complainant, the required details were not submitted. Consequently, the claim was closed on 08.06.2007. OP asserted that multiple efforts were made to process the claim, but due to the complainant's non-compliance with policy terms, the claim was rightly rejected, and there was no deficiency in service on their part.

6. The learned State Commission vide order dated 17.02.2016 allowed the complaint with the following observations:

“ORDER

The complaint is being allowed. The opposite parties-insurance company is being directed to make payment of Rs. 45,00,000/- to the complainant firm on account of the eruption of fire within the premises of M/s N.S. Industries, situated at Khatakpora Siddiqui, Farukhabad against the Insurance Policy No. 421200/11/01/11/00001949 along with 12% interest per annum within a period of two months. The calculation of the interest shall be made from the date of filing of this complaint. In case this order is not complied with within the stipulated period, 14% interest shall be paid per annum on the aforementioned amount directed from the date of filing of this complaint till the date of actual payment.

The opposite party-insurance company is being directed to ensure the payment of Rs. 50,000/- to the complainant for the mental agony which it had suffered and Rs. 5,000/- for the litigation expenses.

The certified copy of this judgement/order shall be made available to the parties as per rule.” (Extract from translated copy)

7. Being aggrieved by the State Commission order dated 17.02.2016, the OP filed this Appeal No. 418 of 2016 seeking:

“a) Set aside the impugned order/judgement of the Hon'ble State Consumer Disputes Redressal Commission U.P. Lucknow dated 17.02.2016 passed in Complaint No. 82/2010;

(b) Allow the present appeal;

(c) Dismiss the complaint filed by the Respondent/ Complainant before the Hon'ble State Commission, U.P. Lucknow;

(d) Award the costs of the present appeal to the appellant;

(e) Pass such other and further order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.”

8. In his arguments, learned Counsel for the Appellant/OP reiterated the written version filed before the State Commission and the grounds taken in the present First Appeal. He asserted that the impugned order passed by the State Commission awarding compensation of Rs.45,00,000 is ex facie unsustainable, being devoid of any reasoning or reference to the surveyor's report or relevant material on record. The State Commission has failed to apply its mind while granting the award. He further argued that the Appellant had promptly appointed a surveyor upon receiving intimation of the alleged fire loss. The surveyor undertook multiple site visits to assess the damage. Repeated requests were made, both by the surveyor and the Appellant, to the complainant

for furnishing requisite documents, but the complainant failed to comply. He submitted that as per General Condition No. 6(i) of the insurance policy, the insured is obligated to provide all relevant documents and information. The failure of the complainant to do so disentitles him from claiming compensation. Furthermore, under General Condition No. 6(ii), the claim was rightly closed by the Appellant vide letter dated 08.06.2007, and could not be reopened after an inordinate delay of over five years. He further contended that notwithstanding the closure of the claim, the Appellant, on the complainant's request, reconsidered the claim and submitted an additional affidavit enclosing the survey report. However, the State Commission neither referred to nor dealt with the said report or affidavit, and instead awarded compensation solely based on the complainant's assertions. He argued that the impugned order is also violative of principles of natural justice as it failed to afford the Appellant an opportunity to address the findings or content of the survey report or other relevant correspondence. He further contended that the finding of deficiency in service is erroneous and contrary to the record. The Appellant acted diligently throughout, and the complainant himself admitted delays on his part. Lastly, the complaint is barred by limitation. The cause of action arose in 2002, and again in 2007 upon rejection of the claim. The complaint filed after substantial delay is not maintainable

in law. In view of the foregoing, it is prayed that this Commission may be pleased to set aside the impugned order and allow the Appeal in the interest of justice. He relied *Sri Venkateswara Syndicate v. Oriental Insurance Co. Ltd. (2009) 8 SCC 507*; and *Khatima Fibres v. New India Assurance Co. Ltd. (2019) 9 SRC 268*.

9. Per contra, the learned counsel for the complainant reiterated the facts from the complaint and argued in favour of the impugned order passed by the State Commission. The OP arbitrarily repudiated the Respondent's valid insurance claim, citing Clause 6(i) of the General Conditions of the Policy (GCC), despite full compliance by the complainant in submitting all requisite documents in a timely manner. The OP repeatedly and unjustifiably demanded additional documents over six years, thereby engaging in unfair trade practices and adopting delaying tactics, as is evident from the correspondence and the belatedly disclosed Final Survey Report dated 14.10.2008. The existence of the said Final Survey Report was not disclosed during the proceedings before the State Commission. It surfaced only during final arguments, which evidences mala fide intent. Notably, the report contains glaring errors, including references to dates prior to the incident itself, rendering it unreliable and unworthy. The OP failed to

justify the inordinate delay of six years in preparing and disclosing the Survey Report and cannot now be permitted to rely on documents not disclosed in its Written Statement, as such conduct is contrary to settled legal principles and defeats the sanctity of pleadings under the Consumer Protection Act, 1986. The State Commission rightly relied upon the independent assessment of the fire department, especially in light of the undisputed occurrence of the fire and loss suffered by the complainant, corroborated by police and fire authority reports. The contention that the Surveyor required more documents, despite multiple submissions and personal visits by the Respondent, is meritless and only highlights the OP's dereliction of duty. The OP's allegation of not being afforded adequate opportunity to respond is patently false. Sufficient opportunity was granted to file its Written Statement and present its defence. The OP consciously chose to conceal the Final Survey Report, and now seeks to rely on it belatedly only to cure the deficiency in service. The invocation of Clause 6(ii) of the GCC is misplaced. The claim remained "under process" till 08.06.2007 and was finally repudiated on 08.04.2009. Hence, it was clearly "subject of pending action," and the complaint filed thereafter is within limitation under Section 24A of the CPA, 1986. The Appellant's claim of diligent conduct is belied by its own conduct failing to submit the final report

within a reasonable time, refusing to act on documents submitted, and engaging in piecemeal document requests over years. The survey report was eventually prepared on the same documents previously claimed to be inadequate. The Respondent has at all times acted diligently, provided all relevant documents, and cooperated fully. The Appellant's unjustifiable delays, wrongful repudiation, and concealment of documents constitute clear deficiency in service and unfair trade practices. In view of the above, he sought the Appeal be dismissed with exemplary costs.

10. We have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

11. It is not in dispute that the Complainant M/s. N.S. Industries had obtained a Fire & Special Perils Policy from the OP/Insurance Company vide policy No. 421200/11/01/11/00001949 for a cover of Rs.50,00,000 from 29.12.2001 to 28.12.2002. It is also undisputed that due to electric short circuit fire broke out at the insured's premises on 24.10.2002 resulted in large scale damage and the complainant had preferred a claim of Rs.45,00,000. On receipt of information pertaining to the incident, the OP/insurer appointed M/s. Surveyors India as a surveyor

to ascertain the damage and file a report thereon. The Surveyor had visited the premises and thereafter sought certain details from the complainant with respect to the claim, the incident as well as the circumstances under which the fire incident had occasioned. It is a matter of record that there were multiple mails between the surveyor and the complainant wherein the surveyor had sought a copy of FIR filed; a copy of Fire Brigade report; photographs; and copy of income tax/sales tax assessment orders for the last three years to determine the stocks and associated records. The Bank Statements of the complainant, accounting documents, invoices were also sought. Intriguingly, while these essential records ought to have been readily made available, there was significant delay and that entailed protracted correspondence between the complainant and the surveyor. The OP also made efforts to coordinate and provide for necessary information. Despite multiple reminders between the parties and correspondences dated 10.01.2003, 03.04.2003, 29.05.2003, 17.06.2003, 22.04.2003, 29.05.2003, 29.07.2003, 27.08.2003, 26.09.2003 and 25.10.2003, the details were not made available. As against a reminder for providing records, the complainant wrote to Appellant/Insurance Company on 05.08.2003 stating that his father was very serious and in hospital and, therefore, there has been delay in forwarding the information. However,

even thereafter till 10.08.2004, the correspondences as well as list of documents that was sought by the insurer were not provided. The surveyor once again, approached the complainant on 05.12.2004. On 18.12.2004 the complainant/respondent stating that most of information required by the surveyor had already been submitted. As regards the balance documents, he informed the surveyor that the as regards trial balance, the books of accounts are manually being maintained and that the CA of the company will visit along with necessary information. In the absence of the complainant, providing necessary feedback, the surveyor once again approached the complainant on 06.01.2005. On 03.01.2005, the surveyor had a meeting with Mr. Sanjay Agarwal, the Chartered Accountant of the company who agreed to provide requisite accounting documents within a period of 15 days. However, the same has not been provided to the surveyor till 08.06.2007. Consequently, in the absence of necessary reports, the OP/insurer closed the claim of the complainant informing that despite letters and reminders sent to him, the complainant has not complied with the required papers/documents and the claim was closed on account of- 'Non Compliance of Claim Formalities'.

12. Examination of the pleadings on record reveals that for some strange reason, notwithstanding multiple requests from the surveyor, the complainant failed to provide necessary details. The OP has brought on record most of the correspondence between the parties, wherein the complainant failed submit necessary details sought by the surveyor for over 5 years, which has resulted in significant delay and at the end the claim was closed. It is the contention of the complainant that the documents that have been sought were of limited purpose towards the settlement of the claim and that he has been harassed by seeking multiple documents, which are disconnected with the claim, with main aim of delaying of insurance claim of the complainant. on the other hand, the learned State Commission considered that there was delay on part of the surveyor in filing the report and that adequate information was available with the surveyor to submit the report in time. the surveyor report on record reveals that the same is comprehensive with respect to cause of fire and loss that has occasioned. The report reveals details with respect to the incident as well as details of loss occurred to the complainant in the accident on 24.10.2002 as Rs.33,22,785.49, which, after deducting sound value of sewing machines and value of sound cloth as per physical verification was Rs.72,000 and Rs.15,88,294 respectively. Therefore, the value of the

stocks which were burnt in the incident was determined as Rs.16,62,491 of which salvage was deducted @ 2.5% amounting to Rs.41,562.29. Policy excess was to be considered as Rs.10,000. Therefore, the Net Assessed Loss determined by the surveyor was Rs.16,10,929.20. As regards, determining the liability of the parties in question, the surveyor left it to the decision of OP/Insurer, subject to terms of insurance policy. The OP insurer closed the claim and thus repudiated the claim.

13. Careful examination of the survey report reveals that, in the given circumstances, the surveyor has endeavoured to go into details of the case and bring out relevant and material aspects of the claim and determined the loss and Net Assessed Loss. We are of the considered view that the report of the qualified and independent surveyor deserves due consideration. In catena of judgements the Hon'ble Supreme Court observed that the assessment made by a surveyor in such cases holds significant importance. The relevance of considering the Surveyor's Report was elucidated in *Sri Venkateshwara Syndicate Vs. Oriental Insurance Company Limited (2009) 8 SCC 507*, wherein the Hon'ble Supreme Court has observed as under:

“22. The assessment of loss, claim settlement and relevance of survey report depends on various factors. Whenever a loss is reported by the insured, a loss adjuster, popularly known as loss surveyor, is deputed who assess the loss and issues report known as surveyor report which forms the basis for consideration or otherwise of the claim. Surveyors are appointed under the statutory provisions and they are the link between the insurer and the insured when the question of settlement of loss or damage arises. The report of the surveyor could become the basis for settlement of a claim by the insurer in respect of the loss suffered by the insured. There is no disputing the fact that the Surveyor/Surveyors are appointed by the insurance company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the insurance company cannot go on appointing Surveyors one after another so as to get a tailor made report to the satisfaction of the concerned officer of the insurance company, if for any reason, the report of the Surveyors is not acceptable, the insurer has to give valid reason for not accepting the report. Scheme of Section 64-UM particularly, of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a matter of course. If for any valid reason the report of the Surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated etc., it must specify cogent reasons, without which it is not free to appoint second Surveyor or Surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of Surveyor/Surveyors. There is no prohibition in the Insurance Act for appointment of second Surveyor by the Insurance Company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first Surveyor and the need to appoint second Surveyor.”

14. The Hon'ble Supreme Court in ***Khatema Fibres Ltd. v. New India Assurance Company Ltd., 2021 SCC OnLine SC 818***, decided on **28.09.2021** has held that:

“32. It is true that even ***any inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or which has been undertaken to be performed pursuant to a contract***, will fall within the definition of the expression ‘deficiency’. But to come within the said parameter, the appellant should be able to establish (i) either that the Surveyor did not comply with the code of conduct in respect of his duties, responsibilities and other professional requirements as specified by the regulations made under the Act, in terms of Section 64UM(1A) of the Insurance Act, 1938, as it stood then; or (ii) that the insurer acted arbitrarily in rejecting the whole or a part of the Surveyor’s Report in exercise of the discretion available under the Proviso to section 64UM(2) of the Insurance Act, 1938.

...

37. Two things flow out of the above discussion, They are ***(i)*** that the surveyor is governed by a code of conduct, the breach of which may give rise to an allegation of deficiency in service; and ***(ii)*** that the discretion vested in the insurer to reject the report of the surveyor in whole or in part, cannot be exercised arbitrarily or whimsically and that if so done, there could be an allegation of deficiency in service.

38. A Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor’s report to forensic examination of its anatomy, just as a civil court could do. ***Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop.***”

15. The contention of the complainant that the surveyor's Final Report was not shared with it, has been considered. In the absence of any denial that information sought from it on several occasions was not provided to the surveyor, the mere fact that the report was not provided to it cannot be a valid ground to challenge the repudiation of the claim. When the details sought were admittedly not provided to the surveyor, as required under the terms and conditions of the Policy, the challenge to the surveyor's report cannot be considered on ground of being perverse or arbitrary. The OP insurer's repudiation of the claim based on the surveyor's report therefore cannot be faulted.

16. In a recent case of **National Insurance Co.Ltd. Vs. M/s Hareshwar Enterprises Pvt. Ltd. & Ors.**, Civil Appeal No.7033 of 2009 decided on 18.8.2021, 2021 SCC Online SC 628, the Hon'ble Supreme Court has been held as under :

“17.....Therefore, in the facts and circumstances herein the surveyors report was submitted as the natural process, the conclusion reached therein is more plausible and reliable rather than the investigation report keeping in view the manner in which the insurer had proceeded in the matter. Hence, the reliance placed on the surveyor's report by the NCDRC without giving credence to the investigation report in the facts and circumstances of the instant case cannot be faulted. In that view, the conclusion reached on this aspect by the NCDRC does not call for interference.”

“18. ... Having considered this aspect, the rate of interest to be awarded in normal circumstance should be

commensurate so as to enable the claimant for such benefit for the delayed payment. There is no specific reason for which the NCDRC has thought it fit to award interest at 12% per annum. Therefore, the normal bank rate or thereabout would justify the grant of interest at 9% per annum. Accordingly, the amount as ordered by the NCDRC shall be payable with interest at 9% per annum instead of 12% per annum. To that extent, the order shall stand modified...”

17. In view of the foregoing, after due consideration of the entire facts and circumstances of the case, we consider it appropriate to rely upon the detailed and comprehensive surveyor report dated 14.10.2008 filed by M/s. Surveyors India as regards the Net Assessed Value of the loss in the incident and reject the repudiation of the claim by the OP Insurer.

18. Accordingly, the order of the learned State Commission dated 17.02.2016 is modified as under:-

I. The Opposite Party is directed to pay the complainant Rs.16,10,929 along with simple interest @ 6% per annum from the date of filing the complaint till the date of payment. This payment shall be made within a period of two months from the date of this order. In the event of delay, the simple interest applicable for the entire period shall be @ 9% p.a.

II. There shall be no order as to costs.

19. With these directions, First Appeal No.418 of 2016 is disposed of.

20. All pending Applications, if any, are also disposed of accordingly.

(SUBHASH CHANDRA)
PRESIDING MEMBER

(AVM J. RAJENDRA, AVSM, VSM (RETD.)
MEMBER

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