

SC/5/A/13/310

New India Assurance Company  
Limited  
Vs.

26.05.2025

Sh. Rajender Singh (Deceased)

Smt. Laxmi Devi & Ors.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND,  
DEHRADUN

Date of Admission : 06.11.2013

Date of Final Hearing : 20.05.2025

Date of Pronouncement : 26.05.2025

**SC/5/A/13/310**

New India Assurance Company Limited

Registered Head Office at 87-Mahatma Gandhi Road,

Fort Mumbai – 400001

Branch Office at Bapu Ashram Palace, 29 Dehradun Marg

Rishikesh, District Dehradun

Regional Office at 8-6/7 Astley Hall Dehradun

(Through: Smt. Savita Sethi, Advocate)

.....Appellant

VERSUS

1. Sh. Rajender Singh (Deceased)

1/1. Smt. Laxmi Devi W/o Late Sh. Rajender Singh

1/2. Sh. Surya Pratap S/o Late Sh. Rajender Singh

1/3. Sh. Bhanu Pratap S/o Late Sh. Rajender Singh

1/4. Sh. Akshay Pratap S/o Late Sh. Rajender Singh

(Through: Sh. Pradeep Bartwal, Advocate)

....Respondent Nos. 1/1 to 1/4

2. State Bank of India

Through Branch Manager, State Bank of India

Narayanbagar, Tahseel – Tharali, District Chamoli, Uttarakhand

.....None for Respondent No. 2

**Coram:**

**Ms. Kumkum Rani,**

**Mr. C.M. Singh,**

**President**

**Member**

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**ORDER****(Per: Ms. Kumkum Rani, President):**

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against judgment and order dated 28.09.2013 passed by the learned District Consumer Disputes Redressal Forum, Chamoli (hereinafter to be referred as the District Commission) in consumer complaint No. 8 of 2011 styled as Sh. Rajender Singh vs. The New India Insurance Company Limited and Anr., wherein and whereby the complaint was allowed directing the opposite party to pay Rs. 50,000/- insured amount alongwith Rs. 2,000/- for mental and financial loss and Rs. 1,000/- towards cost of litigation to the complainant within a month from the date of judgment and order, failing which the complainant is entitled to get interest @ 6% per annum on the said amount from the date of this judgment and order till the date of actual payment.

2. The facts giving rise to the present appeal, in brief, are as such that the complainant had taken a loan from the opposite party No. 2 – State Bank of India (in short ‘Bank’) of Rs. 50,000/- under subsidy granted by the Government for construction of building. The said building was insured from the opposite party No. 1 – The New India Assurance Company Limited (in short ‘Insurer’) for Rs. 50,000/- for the period from 18.01.2007 to 17.01.2017; that between 17.09.2010 to 20.09.2010 continuous heavy rain fall triggered land slide that completely damaged the said building. The matter was immediately reported to the Tahsildar Tharali, Patwari Chhekuda and the Bank, thereupon the Bank informed the Insurer. The Insurer neither paid the insured amount to the complainant, nor arranged any officer for conducting its spot survey. Finally, on dated 25.11.2010, the Insurer repudiated the insurance claim of the complainant. This denial of

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the claim resulted in significant mental agony and financial hardship for the complainant, compelling the initiation of the complaint before the District Commission on the ground of deficiency in service.

3. In the written statement, the opposite party – Insurance Company has denied all the allegations made by the complainant stating that they received the information regarding the damages very late on dated 23.11.2010. They contended that according to the terms and conditions of the policy, such incidents should have been reported immediately to facilitate timely site inspection. They further stated that the damage to the complainant's building was caused due to continuous heavy rain fall, which is not covered under the policy and as such the claim was repudiated by them on dated 25.11.2010. Thus, there has been no deficiency in service on their part, hence, the complaint is liable to be dismissed against them.

4. Opposite party No. 2 – State Bank of India in its written statement has admitted to grant loan to the complainant and the complainant's building for Rs. 50,000/- was insured with the opposite party No. 1. They stated that the Insurer was informed about the incident on dated 13.11.2010. They further stated that the amount has to be paid by the Insurer. Thus, there has been no deficiency in service on their part and hence, the complaint is liable to be dismissed against them.

5. After hearing both the parties and after taking into consideration the facts and evidence on record, the District Commission has passed the impugned judgment and order on dated 28.09.2013 whereby the District Commission has partly allowed the complaint in the above terms.

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6. Aggrieved by the aforesaid judgment and order of the District Commission, the opposite party No. 1 has preferred the present appeal as appellant.

7. In the appeal, the learned counsel for the appellant has contended that the District Commission has failed to appreciate that the respondent No. 1 – complainant has entered into a contract with the appellant for purchasing a 'Earthquake (Fire & Shock)' policy and that policy is subject to certain terms, conditions and exclusions. The Commission below has failed to appreciate that as is the case of respondent No. 1 that due to incessant and excessive rain from 17.09.2010 to 20.09.2010 and due to subsidence, his residential house got completely damaged, but the Commission below has tried to improve the case of respondent No. 1 by explaining the word 'Earthquake' which as per contract was not covered. The District Commission has failed to appreciate that insurance company does not lack in words and for every different peril, there is a different coverage and accordingly the premium is charged. The District Commission has failed to appreciate that the appellant and respondent No. 1 are liable to follow those terms and conditions which are part of the contract in which respondent No. 1 and appellant have entered rather those terms and conditions are binding on both the parties. The District Commission has failed to appreciate that the respondent No. 1 did not inform the insurance company immediately after occurrence of the loss and thus has violated the policy conditions. The District Commission has failed to appreciate that the appellant has come to know about the loss from the letter dated 15.11.2010 of State Bank of India Narayan bagar, Chamoli which was received in the Branch office Rishikesh on 23.11.2010 and without any delay, company informed the respondent No. 1 vide letter dated 25.11.2010 that the company received the information very late only on 23.11.2010 and loss is

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to be informed immediately for spot verification and since the loss to the house is due to incessant rain which is not covered under the policy. Thus, there is no delay on the part of the appellant. The District Commission has failed to appreciate that no third party even if it is 'Court' can rewrite the contract as has happened in the present case and tend to give benefit which was not mentioned in the policy since loss due to incessant rain was not covered under the policy and the respondent No. 1 has stated this fact in his complaint and has verified those facts even in the affidavit and this is the case of the respondent No. 1. The District Commission has failed to appreciate that there is no cause of action for respondent No. 1 to file the complaint. The District Commission has failed to appreciate that there was no deficiency in service of the appellant.

8. Learned counsel Smt. Savita Sethi for the appellant as well as learned counsel Sh. Pradeep Bartwal for respondent No. 1 has appeared. None has appeared on behalf of respondent No. 2, hence vide order dated 20.05.2025 the appeal was proceeded ex-parte against the respondent No. 2.

9. We have heard and perused the pleadings, evidence & documentary evidence available on record.

10. During the course of the arguments, learned counsel for the appellant has argued that the building of the respondent No. 1 was damaged due to land slide after continuous heavy rainfall. As the building was insured for damage caused by Earthquake, fire and shock, hence the appellant is not liable to pay any insured sum to the respondent No. 1.

11. Learned counsel for respondent Nos. 1/1 to 1/4 (respondent No. 1 deceased) stated that the building in question was not only insured for the

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loss due to Earthquake, but was also insured for the damages due to other calamities. Hence, the appellant is liable to pay the insured amount.

12. It is admitted fact that the respondent No. 1 took a loan of Rs. 50,000/- from the Bank for constructing the building. The said building was insured by the Insurer from 18.01.2007 to 17.01.2017 for the amount of Rs. 50,000/-. It is also admitted that the said insured building was damaged during the currency of the insurance due to land slide after heavy rainfall from 17.09.2010 to 20.09.2010.

13. We have perused the record available before us. On perusal of the said insurance policy (paper No. 23), it is evidently clear that the policy in question was issued for the coverage of Standard Fire & Special Perils policy. Further an add on cover for Earthquake (Fire and Shock), over and above, the Standard Fire & Special Perils policy, was also provided by the appellant and the premium of both the coverages was also recovered / received from the respondent No. 1. We have also perused the document which provides key information about the Standard Fire & Special Perils policy of the Insurance Company – appellant. At Serial No. 6 (paper No. 71) of this document, Title – Policy Coverage, Description – Perils Covered, it is clearly mentioned at Item No. 8 that the perils in respect of Subsidence / Landslide including rockslide are covered under the Standard Fire & Special Perils policy. Further at Serial No. 7 of the same document Title - Add-on Covers, perils under Earthquake are covered. As the subsidence / land slide including rock slide is covered under the Standard Fire & Special Perils policy, we do not find any force in the arguments of the appellant – Insurance Company that the policy was covered for the damages due to Earthquake only. The facts of the instant case clearly indicates that building of the complainant was damaged due to subsidence

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/ landslide which was a direct result of continuous heavy rainfall and such damages to the building comes under the purview of subsidence / landslide as mentioned in the insurance policy issued by the appellant. Thus, the appellant is liable to pay damages caused to the building of the complainant.

14. Hence, we are of the definite view that the impugned judgment and order passed by the District Commission, Chamoli is perfect; there is no illegality and infirmity in passing of the same. The District Commission has not exceeded its powers vested in it. Hence, on such count, the impugned judgment and order is liable to be affirmed. We hold that the appeal is liable to be dismissed.

15. Accordingly, the appeal is dismissed. Impugned judgment and order dated 28.09.2013 passed by the District Commission, Chamoli is hereby affirmed. Costs made easy.

16. 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. A copy of this Order alongwith original record of the District Commission, Chamoli be sent to the concerned District Commission for record and necessary information.

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

**(Ms. Kumkum Rani)**  
**President**

**(Mr. C.M. Singh)**  
**Member**

Pronounced on: 26.05.2025