**(1992) 01 NCDRC CK 0003**

**In the National Consumer Disputes Redressal Commission**

Gupta Chemicals Pvt Ltd — APPELLANT

Vs

UNITED INDIA INSURANCE CO LTD — RESPONDENT

**Date of Decision :** 23-01-1992

**Acts Referred:**

**Citation :** 1992 2 CPJ 739

**Hon'ble Judges :** S.K.MAL LODHA , DAMODAR THANVI , SARIA KHAN J.

## Judgement

1. M /s. Gupta Chemicals Pvt. Ltd. has filed this complaint against the opposite parties who will hereinafter be referred to as the ''Insurers'' for indemnifying the loss etc. amounting to Rs. 4,13,860/ - before the State Commission on

2. 1.1990. THE complainant is manufacturers of insecticides and selling goods throughout India either from the factory located at Jaipur or through its various branches/depots located at Indore, Delhi and Sri Ganganagar. THE complainant (insured) obtained an insurance policy from the insurers covering road risk, rail risk, TPND, all risk including leakage and SRCC risk for transit from Jaipur and/or Indore, and/or Delhi and/or Sri Ganganagar to any place in India including deposit transfer of goods. THE insurance was extended to cover warehouse to warehouse risk with extension of storage cover for 14 days at destination. THE policy was for the period 1.1.1986 to 1.12.1986. THE sum originally assured was Rs. 3,20,00,000/ - vide Marine Cargo Cover Note No. NA 81 No. 64560 dated 1.1.1986. THE sum assured was increased from time to time by payment of additional premiums for additional 50 lacs each time vide receipt No. 988298 dated 3.9.1986, Receipt No. 039255 dated 6.10.1986, receipt No. 039373 dated 20.10.1986 and receipt No. 002960 dated 17.11.1986. Ultimately the sum assured was increased to Rs. 5,20,00,000/ -. THE amount of premium paid was Rs. 88,001/ - for the original sum assured and on each further extension for additional 50 lacs a sum of Rs. 13,750/ - was paid with each of the extensions by 50 lacs in insured amount. THE case of the complainant is that the total premium paid was Rs. 1,43,001/ - and policy covered the risk of Rs. 5,20,00,000/ -. THE complainant transported the goods in 33 consignments during the currency of

the policy. THE complainant has alleged that due to leakage and/or shortage of the goods, loss occurred which according to it was assessed at Rs. 2,48,551/ - by the surveyors. THE insured had paid a sum of Rs. 17,597/ - as survey fee for the survey conducted by the surveyors. THE insured filed a claim for Rs. 2,66,148/ - with the Insurers. According to the insured the claim was not settled until the date of the filing of the complaint. Schedule -1 was appended to the complaint containing details of claims lodged with the insurers during the year 1986 which remain unsettled. THEre were 38 consignments sent to different buyers at different places on different dates. Dates of arrival at destination range from 31.5.1986 to 8.8.1986 date of delivery to the buyers are from 31.5.1986 to 8.8.1986 and the dates of survey are from 7.6.1986 to 14.8.1986. THE loss is said to have occurred on account of leakage and shortage during transportation and it was assessed by Mr. Rajkatia who is surveyor and loss assessor. It may be mentioned at this stage that Shri Rajkatia was not appointed by the insurers. What the complainant has stated is Mr. Rajkatia were licenced Surveyor and being generally appointed as surveyor on behalf of the insurers for survey and assessment of loss. THE complainant approached the insurers for settlement after due verification. Letters were also addressed but the insurers avoided the settlement under one pretext or the other such as that investigation is under progress or that matter was in trusted to M/s. J.N. Sharma and Co., Chartered Accountant for investigation. THE complainant has further alleged that time was gained by the insurers to coerce to Shri Rajkatia to withdraw the finding given in the survey reports. THE complainant had intimated the necessary facts to M/s. J.N. Sharma and Co. vide letter dated 15.6.1987 in regard to the appointment of Shri Rajkatia surveyor. A letter was sent to the insurers dated 23.6.1987 informing that they have taken up the matter with surveyors and are hopeful of quick disposal of the claims. In para 7 of the complaint the insurers had alleged that by letter dated 30.12.1987 the insurers informed the complainant that Shri Rajkatia had withdrawn his findings. Hence the matter could not be proceeded further. THE complainant pursued the matter further vide letter dated 27.9.1988 and thereafter the memorandum of the meeting dated 30.11.1988 was drawn which is said to have been signed by the insured as well as by the insurers, in which it was stated that the Regional Manager of the insurers had agreed to look into the matter de novo and the claim would be settled on merits. THE complainant sent reminders vide letter dated 16.2.1989 and 11.3.1989. THE letters dated 15.3.1989 and 21.3.1989 were received. THE complainant sent a reply vide letter dated 30.3.1989 but the claim was not settled. THE case of the complainant is that the goods were insured against all risks including leakage and upon proof thereof the opposite parties were under legal obligation to compensate the complainants for the loss. As the claim was not settled the complainant filed the complaint as stated above claiming - (1) Loss occasioned due to leakage/shortage during transportation as verified by surveyors report Rs. 2,48,551/ - (2) Fee paid to surveyors Rs. 17,597/ - (3) Damages in lieu of interest for deprivation of use of settlement amount since lodging of claims till date of complaint calculated @ 18% p.a. Rs. 4,13,860/ - Total Rs. 1,47,712/ -

 

THE complainant relied on the documents mentioned in para 10 of the complaint. To quote from the complaint the relief sought was as under: ''THE relief which complainant claims. THE 33 pending claims lodged by the Complainant under the Marine Cargo Insurance Policy in question for the period 1.1.1986 to 31.12.1986 may please be accepted and the sum of Rs. 2,66,148/. claimed there under and damages amounts of Rs. 1,47,712/ - claimed in paras 3(9) totally Rs. 4,13,860/ - be awarded to the complainant. For non -settlement of the claims till date such further amount be awarded by way of damages/interest @ 18% p.a. pendente till date of actual payment of claimed amount and costs be awarded.'' With the complaint five documents and complainants invoices which were 33 in number, and 33 surveyors reports were submitted. 2. A version of the case with documents was filed. THE insurers opposed the complaint. Preliminary objections under the head additional pleas are as follows: ''Additional Pleas: (12) It is submitted that the complainant does not fall within the definition of the consumer as given in Sec. 2(1)(d) of the Consumer Protection Act, 1986 (Act No. 68 of 1986); (13) That the dispute relates to the contractual liabilities (rights and obligations) which can be decided only in the ordinary Civil Courts and not in the summary manner envisaged under the Consumer Protection Act, 1986; (14) That the cause of action having if at all arisen much prior to the establishment of the State Commission under the Act and, therefore, the complaint of the complainant cannot be entertained by this Honble Court.'' Preliminary objections regarding the maintainability of the complaint were taken up for arguments on 17.5.1990. Order on the preliminary objections was dictated and pronounced on 19.6.1990 and the preliminary objections were rejected.

3. IN the version of the case, the opposite parties have stated that an insurance policy No. 140301/83/1/00008/86 was insured in pursuance of the cover note in favour of the complainant. It was produced with the version of the case. It was denied that 33 consignments were transported. The facts of leakage or any shortage of the goods and/or that any loss whatsoever occurred to the complainant were denied. Payment of surveyors fee was also denied. It was stated that Shri Rajkatia was not appointed as surveyor by the insurers to assess the alleged loss due to leakage/shortage during the transportation of consignments. The survey reports were denied. It was submitted that according to the terms and conditions of the marine policy cage it was the duty and obligation of the complainant that in the event of any loss or damage which may involve a claim under the insurance, immediate notice thereof should have been given and an application for survey ought to have been made to the nearest office of the insurers of the destination. It is said that no notice was given to the opposite parties or to any of its branches near the destination before taking delivery of the goods from the transporter. The complainant did not apply for the appointment of a surveyor for the assessment of the loss due to leakage and/or shortage. On account of these facts it was submitted that the insurers are not liable for the alleged loss muchless so claimed on the basis of the alleged reports of the said surveyor Shri Rajkatia. It was submitted that according to the terms

 

and conditions of the policy ''it was the condition precedent for making any claim that the complainant shall make due observance and fulfilment of the terms and conditions of the open policy by the assured before the liability of the company to make payments thereunder may be fastened''. The matter was referred to M/s. J.N. Sharma and Co. They surveyed the whole matter relating to all the 33 claims, and reported to the opposite parties (insurers) that in view of the clean delivery taken at the end from the transporters and the surveyor Shri Rajkatia having withdrawn his findings that the loss had actually arisen in transit and that there being no evidence linking damage to the consignments, the claims failed. By letter dated 31.12.1987 as admitted by the complainantthe report of M/s. J.N Sharma and Co. was given to the complainant. Meeting was of course admitted. Para 8 of the version of the case is as follows: ''(8) That the contents of Sub - para (8) are not admitted. The complainant was required to satisfy the opposite party regarding the observance of the terms and conditions of the policy as to when in respect of each consignment the notice regarding the claim was given and application for survey was made to the nearest office of the company to the destination. The complainant did not satisfy as to how after a clean delivery having been taken from the transporter by the consignee the certificates from the transporter about the leakage and/or shortage were obtained. The certificates of the transporters were simply ex -culpatory having no detailed particulars of the insecticides/chemicals put in the various containers. Similarly, the certificates of survey given by Shri Rajkatia, the alleged surveyor, were also of no value and did not inspire any confidence of a genuine and correct survey having been made of the alleged losses. It maybe stated that though there were long distances between the places where the goods were alleged to have been taken of delivery by the various consignees, such survey could be made within a single day, and as a matter of fact, Shri Rajkatia having withdrawn his findings as to the causes of the loss not having been based on his own personal survey but rather on the information supplied by the consignee and as such there being no material before the opposite party to have finally processed for payment of the alleged losses to the complainant and consequently the claims were rejected. Even otherwise, it may be stated that according to the terms of the policy the liability of the Insurance Company was excluded in cases of ordinary leakage, ordinary loss in weight or volume or ordinary wear and tear of the subject - matter insured, loss, damage or expense caused by insufficiency or unsuitability pf packing or preparation of the subject -matter insured etc. and there being no case of the alleged leakage and/or shortage giving rise to the claims made by the complainant having been caused none of the grounds otherwise than such clauses as mentioned above the conditions as to insurance making liability of the Insurance Company were excluded. It may also be stated that in the facts and circumstances as mentioned above, the complainant, the transport company M/s. Wadhwa Golden Carriers and Shri Raj Katia the surveyor, are in collusion with each other and the circumstances as mentioned above clearly establish that this has all been done with a view to wrongfully cause loss to the opposite party - a public sector company wholly owned by the Central Government and to wrongfully gain for themselves. The claim as laid in its entirety is not maintainable and the same deserves to be dismissed.''

4. IN support of the complaint, the complainant submitted affidavits of Sarva Shri B.L. Gupta, Managing Director, Jagtar Singh, D.N. Vijai, Sudershan Chawla, Om Prakash, Ram Singh, Dharam Pal, Satish Kumar, Jagdish Kumar, Ved Prakash, Suresh Kumar, B.L. Kakkar, Raj Kumar, Vijai Kumar, Rajendra Jain, and Subhash Chand. On behalf of the opposite parties, affidavits of Sarva Shri S .N. Shah, Sr. Divisional Manager, and Shri J.K. Sharma were submitted. Shri Raj Katia was examined as a Commissions witness. Sarva Shri Ved Prakash, Jagtar Singh, Jagdish Kumar, Suresh Kumar, Ram Singh, Dharam Pal, Vijai Kumar, Rajendra Jain, D.N. Vijai, B.L. Gupta were cross -examined on their affidavits. The deponents of the opposite parties Sarva Shri S.N. Shah and J.K. Sharma were also cross -examined on their affidavits. After the close of the evidence of the parties, oral arguments commenced. Thereafter it was considered proper that both the parties may state the points involved in the case in brief after exchanging their copies with each other. Both the learned Counsel for the parties were agreeable to this. Both the parties submitted written arguments after exchanging their copies. We have carefully considered the complaint, reply thereto, documents submitted by the parties and the affidavits of the deponents and their cross examination on their affidavits. The complainant has produced documents as mentioned in para 10 of the complaint. The main documents are survey reports of the surveyor Shri Rajkatia which are Ex. B/1 to Ex. B/33, claim covering letters Ex. C/1 to Ex. C/33 and the transporters shortage damage certificate Ex. C/34 to Ex. C/64. The opposite parties have produced the policy Annex. R/1 and marked as Ex. B/01, copies of the lettter of the surveyor Shri Rajkatia dated August 11, 1987 marked as C.W. 1/1. The survey report of M/s. J.N. Sharma and Co. dated 29.8.1987 and his findings and the letter of intimating that Shri Rajkatia has withdrawn his findings and it is difficult to proceed further in the matter, letter of repudiation dated 30.11.1987 and letter of repudiation dated 15.3.1989

5. THE complainant filed on the ground of deficiency in service is maintainable in view of I (1991) CPJ 3 (NC), 1990 CSMR CAS 98, I (1991) CPJ 694 and Pink City Textiles v. United India Insurance Co. Ltd., I (1992) CPJ 109 (Complaint Case No. 152/1990 decided on 16.3.1991).

6. ON behalf of the opposite parties it was submitted that 33 claims were lodged by the complainants and they were repudiated by the insurers vide letter dated 30.12.1987 which is as follows: ''On the above referred subject we note that 33 marine claimes were reported and all the losses were surveyed by one surveyor only Sh. Raj Katia from Bhatinda. Keeping in view the above fact files were given for investigation to M/s. J.N. Sharma & Co., Delhi. Subsequent to investigation surveyor Shri Raj Katia has withdrawn his findings. Considering the above fact it is very difficult for us to proceed further on the matter. However, we enclose herewith a copy of investigation report and withdrawal letter from Surveyors.

 

Assuring you of our best attention at all times.'' It appears from the record that subsequently at the request of the complainant meeting was arranged and the matter was further investigated but by letter dated 15.3.1989 the claim was also repudiated. Four reasons have been mentioned for the repudiation of the claim. The letter dated 15.3.1989 relating to repudiation is as follows: - '' This has reference to your letter dated 11th March, 1989 addressed to our Regional Manager in connection with the settlement of your pending claims. Your would recall the discussions our Regional Manager, Senior Divisional Manager and Branch Manager had with you some time in November, 1988 when we assured you that we will surely review the pending claims but no commitment was made by us that all the claims will be settled. Now on reviewing all your pending claims we found that these cannot be settled because of the following shortcomings: 1. No shortage certificate from the carriers has been obtained. 2. Surveyor has been appointed by you or your suppliers without our knowledge. 3. No photographs establishing the loss has been taken by the Surveyor appointed by you. 4. Finally the Surveyor has withdrawn his findings in writing against the assessment of loss. In view of the above we regret our inability to settle the pending claims''. It is submitted on behalf of the insurers that as they have repudiated the claim after investigation and consideration and reasons for repudiation have been given the State Commission (Redressal Forum) should not make an enquiry and the party should be left to get the complicated and complex questions involved in the complaint of law and fact requiring detailed examination to be determined by a Civil Court. In support of that reliance was placed on I (1991) CPJ 234 (NC), I (1991) CPJ 17, II (1991) CPJ 254, 1991 CSMR CAS 91, 1991 CSMR CAS 323 and II (1991) CPJ 538. We have already adverted above the oral and documentary evidence produced by the parties in this connection. It was observed in Janta Machine Tools v. Oriental Insurance Co. [I (1991) CPJ 508 (NC)] as under: - ''From the facts disclosed by the record and particularly the averments contained in the counter affidavit filed by the first respondent it is seen that the Insurance Company had fully investigated into the claim put forward by the complainant, got surveys conducted and had finally come to the conclusion that the claim put forward by the complainant was false and accordingly informed the complainant that his claim was rejected. Thus this is not a case where the Insurance Company did not take prompt and necessary steps for deciding the claim under the policies of insurance. It may be that the complainant is not satisfied with the said rejection of his claim by the Insurance Company. Having regard to the facts and circumstances of this case and the nature of the controversy between the parties we consider that this is a matter that would be adjudicated before a Civil Court where the complainant as well as the respondent will have ample opportunities to examine witnesses at length, take out commission for local inspections etc. and have an elaborate trial of the case. Without prejudice to the right of the complainant to take resort to the remedy by way of civil suit before the proper Court, we dismiss this petition.'' This case was explained by the National Commission in S.K. Abdul Sukur v. State of Orissa and Others, II (1991) CPJ 202 (NC) wherein the Commission observed as follows: ''The mere fact that witnesses may have to be examined and their cross -examination may also be necessary is not by itself a valid ground for refusing adjudication of the dispute before the Redressal Forums constituted under the Consumer Protection Act. It is to be remembered that the very purpose of which the statute has to be enacted is to provide a cheap and speedy remedy to aggrieved consumers by way of an alternative to the time consuming and expensive process of civil litigation. Section 13(4) of the Act (the provisions of which are made applicable to the State Commission by Section (18) specifically invests the Redressal Forums with the powers vested in a Civil Court under the Code of Civil Procedure in respect of the summoning and enforcing attendance of witnesses and examining them on oath, the discovery and production of documents and other materials produce able as evidence, the reception of evidence on affidavits, the issuing of Commissions for the examination of any witness etc. The statute thus clearly contemplates that the Redressal Forums constituted under it are to decide cases filed before them after taking such oral and documentary evidence as the circumstances of any given case may require. Unless a Redressal Forum constituted under the Act finds after a careful scrutiny of the pleadings and the documents etc. relied upon by the parties that a satisfactory adjudication of the matter cannot be conducted by it in proceedings under the Act because of the exceptionally complicated nature of the factual and legal issues involved, it will not be just or proper to decline to adjudicate upon a complaint filed by an aggrieved consumer. The question whether or not there was negligence on the part of the Opposite Parties in relation to the performance of a particular item of service is not by itself too complicated to be determined by the Redressal Forums constituted under the Act on a consideration of the relevant oral and documentary evidence. If jurisdiction is declined by the special Redressal Forums set up under the Act in all such cases on the mere ground that examination and cross -examination of witnesses would be necessary, it would amount to unjust denial of the benefits of the Act to the aggrieved consumer by erroneous abdication of its jurisdiction by the Forums. 6. It is true that in M/s. Special Machines v. Punjab National Bank and Ors., O.P. No. 32 of 1989 I (1991) CPJ 78 (NC) this Commission did decline to adjudicate upon the disputes brought before it and referred the complaint to the remedy by way of suit. But that was an exceptional case where transactions of borrowings from banks extending over a long period of many years in different accounts were sought to be re -opened on allegations of fraud, misappropriation, manipulation of accounts, violation of banking norms etc. This Commission found after its preliminary examination of the case that the issues arising therein could not be satisfactorily adjudicated upon without elaborate scrutiny and rendition of accounts in relation to transactions of borrowing which the complainant had with the respondent Bank under different heads spread over a long period of many years. The observations contained in the order passed by this Commission in that case have to be understood against the background of the special facts relating thereto which were of an exceptional nature. The said decision is not to be understood as lying down any general preposition that in all cases where the examination and cross -examination of witnesses is involved the proper forum for adjudication of the dispute is only the Civil Court. Another important point that weighted with this Commission in the M/s. Special Machines case was that the subject -matter of the complaint in that case was already subjudice in suits pending before the Civil Court and there was a clear overlapping and inter wining of the questions arising for determination in the suits and those sought to be adjudicated in the complaint. It was under these special circumstances that the complaint therein was referred by this Commission to pursue his remedy by way of suit.'' The matter was again examined in II (1991) CPJ 241 (NC) wherein the National Commission observed as follows: ''As the upshot of the facts recorded above is that the appellant has reasonable grounds to doubt the genuineness of the claim, as such the non -payment of the insurance amount under the policies cannot be deemed to be a deficiency in service arising from negligence. Under Sec. 14 of the Consumer Protection Act, 1986 compensation can be granted to a consumer for loss or injury arising from deficiency in goods supplied or services rendered provided the same is due to negligence. Such a presumption or neglience cannot normally arise where the factum of deficiency is established on the basis of balance of evidence or preponderance or probabilities. Hence the order of the State Commission is set aside and the parties are left to pursue their claims through States Investigating Agencies and the Courts of Law.'' While following M/s. Janta Machines Tools cass (supra), the State Consumer Disputes Redressal Commission Delhi observed in M/s. Continental Chemicals Ltd. v. Oriental Insurance Co. Ltd. [II (1991) CPJ 354] as under: ''The question that arises for determination is as to whether, the State Commission constituted under the Consumer Protection Act has got the jurisdiction to decide the present complaint. The facts of the case as pleaded by the parties have been given in detail above. From the perusal of the pleas, it is evident that respondent No. 1, after making investigations through surveyor, rejects the claim of the complainant. In order to determine as to whether in view of the aforesaid situation, the complainant still can recover the amount from respondent No. 1 it requires leading of detailed evidence and examination and crossexamination of the witnesses. In the circumstances, it is appropriate that the matter should be decided by the Civil Court. In the said view, we are fortified by a decision of the National Commission in M/s. Janta Machine Tools v. Oriental Insurance Co. Ltd. (Original Petition No. 12/1990) - I (1991) CPJ 234 (NC) decided on August 21, 1990.'' The same view was taken by the State Consumer Disputes Redressal Commission Delhi in M/s. Krishan Chand and Others v. Oriental Insurance Co. Ltd. [I (1991) CPJ 678]. In M/s. Rajdeep Leasing and Finance Pvt. Ltd. New Delhi v. New India Assurance Co and Others, First Appeal No. 61/91 decided on 14.11.1991, I (1992) CPJ 36 (NC), the National Commission has summed up the position as under: - ''It is not necessary for us to express any opinion on the merits of this contention in view of the conclusion reached by us that the Slate Commission was right in holding that on the facts and circumstances of the present case it cannot be said that the Insurance Company had repudiated the claim without proper/application of its mind after holding an investigation and hence if the complainant feels aggrieved by the decision of the Insurance Company that the claim was false and fabricated the proper remedy to be resorted to is only the institution of a Civil Suit. As and when such a suit is instituted the probative value of the final report made by the police is one of the aspects which will fall for consideration by the Court. All that need be stated for our present purpose is that the rejection by the Insurance Company of the claim put forward by the complainant after obtaining and considering two separate survey reports from qualified Surveyors and three legal opinions from different eminent Counsel cannot be said to constitute a deficiency in service so as to give rise to a cause of action for a complaint under the Consumer Protection Act. The present case is directly governed by the dictim laid down by this Commission in M/s. Janta Machine Tools v. Oriental Insurance Company Ltd.'' It is therefore, clear that after obtaining opinion from M/s. J.N. Sharma & Co. claim was repudiated by earlier repudiation letter dated 30.12.1987. Undoubtedly a further investigation was done. A meeting was held between the representative of the complainant and the insurers. It Was repudiated vide lettter dated 15.3.1989. We may mention at this stage that this will not nullify the effect of earlier repudiation. The claim was repudiated by the insurers after obtaining report from M/s. J.N. Sharma & Co. It was stated in that report is under: - ''In the end we would conclude that in view of the Clean delivery taken and the Surveyor withdrawing the finding that the loss had factually arisen in Transit and there being no evidence linking damage to the Consignment the claim fails. The report is however being submitted for taking a decision on the matter keeping in view, the Terms and Conditions of the Policy.'' Shri Rajkatia was appointed as surveyor by the Complainant and had submitted 33 reports in respect of the loss. According to the insurers he has withdrawn the reports. A letter was submitted by the insurers to show that. In that letter dated 11.8.1987 Shri Raj Katia has stated : ''As advised by the consignees the damages/ losses had taken place during transit which statements have been relied upon in our reports. We in the circumstances had no means to establish the exact cause of damages.'' When the claim of the insured was rejected/repudiated after investigation and further investigation by two letters dated 30.12.1987 and 15.3.1989 as observed by the National Commission it cannot be said to constitute a deficiency in service so as to give rise to a cause of action for a complaint under the Act. We have considered the facts that have emerged on the record and the averments made in the affidavits of the parties that full investigation into the claim was done and thereafter the insurers came to the conclusion that the claim put forward by the complainant cannot be accepted and accordingly informed it and repudiated the claim. It cannot be said that insurance Co. has failed to decide the claim under the policy. To use the words of the National Commission ''It may be that the complainant is not satisfied with the repudiation of the claim by the Insurance Co.'' The National Commission after considering the facts and circumstances of the New Jaipur Dyeing and Test Works case (supra) and the nature of the controversy between the parties held that that was a matter that should be adjudicated before a Civil Court where the complainant as well as the insurers will have ample opportunities to examine, witness at length take out commission etc. and have elaborate trial of the case. It was submitted by the learned Counsel for the opposite parties (insurers) that no evidence has been produced by the complainant that 33 consignments were actually despatched to the respective consignees or that they had taken delivery or them in the damaged conditions or that the damage has been caused during transit. The complainant has not produced the original copy of the receipt from the various consignees. It was pressed that no goods transport receipts or copies thereof as issued by the despatching transporter have been produced. It appears that all despatches were made through Wadhwa Golden Carriers. No delivery memos/receipts of delivery of the goods to the respective consignees by the delivery office of the Transport Co. or even the copies thereof have been filed. It was submitted that no evidence has been produced that the delivery was made in the damaged condition inasmuch as no letter informing the claimant about loss by the consignees was produced. Any correspondence or information sent by the delivery office of the Transport Co. to the despatch office or the claimant or the consignees has not been produced. Insurance Policy provides that ''In the event of any loss which may give rise to a claim under this Open Policy. Immediate notice thereof in writing should be given to this office of the Company at ........and also to the Companys Divisional Office nearest to the destination or the place of loss for holding a survey, if necessary.'' No information/notice was even given to the Divisional Office of the Insurance Company about the loss or damage caused in transit not any request made for deputing the surveyor for assessment of damages. Attention was also drawn to special conditions and warranties No. 4 ''Each and every despatch to be declared to the Co. in the monthly statement''. As such terms of the open policy were not fulfilled. It was pressed that fulfillment of all terms and conditions was a condition precedent to the liability of the Co. Attention was drawn to The report of Shri Rajkatia about the damaged goods on the ground that vide letter dated 11.8.1987 the surveyor Shri Rajkatia informed M/s. J.N. Sharma and Co, that as per information given by consignees they had taken clean delivery, which means no damage disclosed at the time of delivery and the damages alleged to have been caused during transit also mentioned as per version of the consignees. It is significant to note that the damage certificate were issued by Wadhwa Golden Carriers on 8.11.1986. These certificates are said to have been enclosed with the various claims, when the claim had already been submitted in the months of August or October 1986 as two claims submitted on 29.8.1986, seven claims on 1.10.1986, four claims on 9.10.1986, five claims on 11.10.1986, eight claims on 17.10.1986 and seven claims on 18.10.1986. It was admitted by Shri Raj Katia that he took photos of the damaged consignments but he did not make mention of those photos in his report. It was admitted by him that for the assessment of loss, no photographs have been produced. It is admitted by him that there were other consignments of the other customers when the photos were taken. Shri Jagtar Singh had admitted that in regard to 28 consignments delivery record/receipts were sent by the delivering agency and that record contains description of the damage caused to the consignment. He has admitted that the shortage certificates were given on different dates. But the shortage certificates submitted on the record are of one date. It is significant to note that Shri Raj Katia has admitted about the clean delivery. Various discrepancies were pointed out in regard to the affidavits of the complainant. It appears from the statements of the deponents that the complainant has not produced primary evidence to prove the damage or the papers relating to the actual survey. It was submitted on behalf of the complainant that plea of opposite party regarding clean delivery is not supported. Mr. Jain referred to the statement of Shri Jagtar Singh. In this connection attention was drawn to the cross -examination of Sarva Shri Vijai Kumar, Ved Prakash, Suresh Kumar and Dharampal. He also submitted that there is evidence linking the damage of the consignments for it stands supported by transporters damage certificates. Survey report, Statement of Shri Raj Katia. Jagtar Singhs statement is to the effect that the goods were suitably packed. No evidence whatsoever has been placed on record by the complainant other than that of the surveyor Shri Raj Katia that leaked and damaged goods were buried. From the facts stated above it appears that the insurers had reasonable grounds to doubt the genuineness of the claim and when such is the case non -payment of the insurance amount under the policy cannot be deemed to be deficiency in service arising from negligence.

7. IN view of the principles laid down by the National Commission in the cases referred to hereinabove and having regard to the facts and circumstances of this case and the nature of the controversy between the parties, we are of opinion that this is a matter which should be adjudicated before a Civil Court, as there the complainant as well as the opposite parties will have opportunities to examine witnesses at length and have elaborate trial of the complaint. The parties are left to pursue their claims in a Court of law.

8. CONSEQUENTLY we dismiss the complaint subject to observations that the complainant may file a Civil Suit for recovery of the disputed amount if so advised. No costs. It is however made clear that nothing said hereinabove will affect prejudicially any of the parties. Complaint dismissed.

 