

(2017) 03 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

Case No : 260 of 2011

**MADAN LAL GUPTA & Anr Vs DIVISIONAL MANAGER, NATIONAL?
INSURANCE CO. LTD.**

Date of Decision : 15-03-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 395](#),
[Section 457](#) - Punishment for dacoity - Lurking house-
trespass or house-breaking by night in order to commit offence punishable with
imprisonment
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Citation : 2017 2 CPR 334

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Shakti K. Pattanaik, Shashank Kumar, Ravi Bakshi

Judgement

1. By these two First Appeals, under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"), the Complainants call in question the correctness and legality of the two orders, both dated 30.05.2011, passed by the Odisha State Consumer Disputes Redressal Commission at Cuttack (for short "the State Commission") in CD Cases No. 75 and 76 of 2003. By the impugned orders, which have been passed on identical lines, the State Commission has dismissed the Complaints, inter alia , observing that the Respondent Insurance Company was justified in repudiating their claims.

2. Since the Complaints, involving, more or less, similar facts and common issue, have been dismissed by the State Commission on identical lines, though by different orders, and the Opposite Parties, namely, different functionaries of National Insurance Co. Ltd. (for short "the Insurance Company"), are also same in both the matters, these First Appeals are being disposed of by this common order. However, for the sake of convenience, First Appeal No. 260 of 2011 is treated as the lead case and the facts, referred to hereinafter, are taken from the said Appeal, which would govern both the cases.

3. Succinctly put, the facts giving rise to the present Appeal(s) are that: 3.1 In order to insure his stocks in trade (i.e. biscuit, cake, snacks, pickles, sauce etc.)

against the risks of burglary and house-breaking, the Complainant had obtained the insurance policies in question from the Insurance Company. During the validity of the said policies, on 02.11.1999, taking advantage of super cyclone, which had hit coastal belt of Orissa on 29.10.1999, where the factory of the Complainant is situated, a group of miscreants looted the stocks in the factory. The incident was reported to the local Police on 03.11.1999. On being intimated about the loss caused to the Complainant on account of the said burglary/theft, the Insurance Company appointed one Sri I.K. Pandhi, Surveyor and Loss Assessor, for carrying out the preliminary inspection and survey in respect of the loss suffered by the Complainant. The said Surveyor made necessary inspection on 04.11.1999. In the meanwhile the Complainant also submitted the claim form etc. with the Insurance Company. Subsequently, the Insurance Company appointed another Surveyor, namely, Sri Saradindu Patranabis, for assessment of the loss suffered by the Complainant. On due verification of the books of accounts maintained by the Complainant, the Surveyor submitted his report with the Insurance Company on 12.07.2000, assessing the net loss/net liability at 10,47,635.28 p. The observations of the Surveyor relating to the damage/loss read as follows:

"8. INSPECTION & DAMAGE/LOSS

The undersigned visited Bharak first on 6.1.2000 and inspected the godown. There were ample evidences of forcible entry as revealed from broken shutters of the godowns, which were lying in same condition without any repairing. The insured had also shifted from the said premises following the incident. On examination of the empt godowns, it appeared that water level inside the godowns was about 2 ft during the flood. There was as such no residue of damaged/left out stock lying on floor.

The Insured had produced various photographs of the godowns covering the incident of flood and looting as far as possible. It appeared from the photographs that water damaged cartons/packets and materials were lying on floor of the godowns being completely destroyed after looting incident. The said wet stock was damaged/smashed by stampede during the incident. Photographs also revealed that mob basically lifted and bagged the entire sound stock as far as possible leaving the empty paper cartons in the godowns. However, beside this round level damaged stock, all other products of Britannia, Nestle, Omfed etc. were looted by mob. Photographs submitted by insured are enclosed."

3.2 For the sake of ready reference, the general remarks by the Surveyor are also extracted below:

"16. REMARKS

A. On discussion with insured, local people, police personnel and in terms of circumstantial evidences, the undersigned could be convinced that insured had suffered a genuine loss under insured peril.

A. The stock loss by floodwater was not covered under the fire policy and hence, 15% stock was deducted on reasonable basis on account of flood.

A. Final police report was not yet received by insured from Bhadrak police station but police authority strongly confirmed the incident and case during undersigned's list visit. They also produced a list duly certified regarding the ultimate recovery of looted goods. Hence, there was no problem in assessment of loss when the said list was available.

A. It may be noted here that no anomaly was observed while assessing the loss on basis of insured's documents records.

XXX XXX XXX"

3.3 On receipt of the report, the Complainant was asked to submit certain other documents, like FIR and police investigation report, which were submitted on 29.11.2000. Having failed to elicit any response from the Insurance Company on his representations dated 16.01.2001, 24.04.2001, 01.05.2001 and 13.06.2001, the Complainant once again requested the Insurance Company for settlement of the claim. Vide its communications dated 06.12.2001 and 10.12.2001, the Insurance Company informed the Complainant that his claim was under consideration and had been referred to their Corporate Office. Even thereafter, the claim was not settled by the Insurance Company, necessitating the Complainant to issue reminder dated 05.09.2002 to the Insurance Company. Ultimately, on 12.12.2002 the Insurance Company repudiated the claim, stating as under:

"This has reference to your claim for alleged Burglary of goods from your godown. The claim have been minutely examined taking into consideration the Police Report, Policy conditions, Court Order and your letter dt. 03.11.1999. Besides the above we have also considered the legal opinion of Ld. Advocate Mr. Panch Deo Prasad and have come to conclusion that your claim is not payable as it comes within exclusion Clause 4(a) of the above policy.

Further, please note that this is not a case of theft. Loss in this connection was occurred due to looting as admitted by you in your cited claim letter is not covered under our Policy.

Hence, your claim for loss occurred due to looting is repudiated.

(Emphasis supplied)"

3.4 In the aforesaid background, alleging deficiency in service in taking more than three years in considering the claim and ultimately rejecting it on an erroneous ground, the afore-noted Complaint came to be filed before the State Commission, wherein the Complainant had prayed for a total compensation of 23,22,925.66 on various counts, mentioned in the Complaint. In the second Complaint, subject matter of First Appeal No. 261 of 2011, wherein the Complainant had prayed for a total compensation of 20,94,000/-, the claim was

for the loss suffered by him on 02.11.1999, on account of theft/dacoity by miscreants, who had entered his premises by breaking open the locks by violent means and took away stocks worth 10,96,161/-.

4. Upon notice, the Complaint(s) was contested by the Insurance Company, by filing its Written Version. Inter alia, it was pleaded on its behalf that after receipt of the claim intimation from the Complainant, the Surveyor was appointed, who assessed the loss and submitted its report on 12.07.2000; since the incident in question had occurred due to a cyclone and there was waterlogging in the Complainant's premises, there was some delay in assessing the loss suffered by the Complainant; the settlement of a claim depended not only on the Surveyor's report but also on the policy conditions and other relevant documents, viz. the FIR and police investigation report; in the instant case, on perusal of the said documents, it was revealed that the loss had not occurred due to the theft but it was a case of looting, on account of which the Police had registered a case under Sections 395 and 457 of IPC; in such a situation, it could not be said that it was a case of burglary and, therefore, the claim of the Complainant was covered under the Exclusion Clause 4(a) of the Policy. It was, thus, asserted that there was no deficiency in service on the part of the Insurance Company in considering/repudiating Complainant's claim in due time.

5. Upon consideration of the evidence adduced by the parties before it, as noted above, by cryptic orders, the State Commission has dismissed the Complaints, observing thus: "It is evident from policy condition as provided under the Operative Clause for Burglary and House Breaking Policy that :-

"the company hereby agreed subject to terms, conditions and exclusions herein contained or endorsed or otherwise expressed hereon to indemnify the insured to the extent or intrinsic value of:

a. Any loss or damage to property or any part thereof whilst contained in the premises described in the Schedule hereto due to Burglary or House Breaking (theft following upon an actual forcible and violent entry to and/or exit from the premises and Hold-up.

a. Damage caused to the premises to be made good by the Insured resulting from Burglary and/or House Breaking or any attempt threat any time during the period of Insurance.

Provided always that the liability of the company shall in no case exceed the sum insured stated against each item or Total Sum Insured stated in the Schedule.

Complainant is not entitled to claim under the policy as his case does not fall under the policy condition as described above. In the present case the loss caused was not due to any violent entry of the miscreants nor there was any act done by force during the loot of his godown.

From the above discussion, we are of the opinion that O.Ps. have rightly repudiated the claim of the complainant."

6. Hence, the present Appeals.

7. Having heard learned Counsel for the parties and perused the documents on record, including the afore-stated final report submitted by the Insurance Company's own Surveyor, we are of the opinion that both the Appeals deserve to be allowed.

8. In our view, the plea of the Insurance Company that the claim was hit by Clause 4(a), which excludes any claim arising out of direct or indirect proximity with riots or floods, is clearly untenable, in the light of the findings/observations of the Surveyor, extracted above. Admittedly, it was a case of burglary committed by the miscreants by taking advantage of the exposure of the premises due to the cyclone. The loss was not on account of cyclone. Besides, we also find that in the instant case, the Insurance Company has completely violated the statutory provisions contained in the Insurance Regulatory and Development Authority (Protection of Policy Holders' Interests) Regulations, 2002, framed under Sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999. Regulation 9 lays down the claim procedure in respect of general insurance policy and prescribes the time limit to be adhered to for processing the claim from the stage commencing with the issue of notice of loss by the Insured, arising under a contract of insurance, till the rejection or acceptance of the claim. Undoubtedly, it is a time bound exercise. Sub-regulations (5) and (6) of the said Regulation, which are material for adjudication on the issue read as follows:- "(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be.

(6) Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within seven days from the date of acceptance of the offer by the insured. In the case of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2 per cent above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it.

(Emphasis supplied)

9. It is manifest from a bare reading of the said provisions that the Insurer is bound to accept or reject the claim within 30 days from the receipt of the survey report. If the claim is to be rejected, reasons therefor have to be recorded in writing and communicated to the Insured within the said period, otherwise offer for settlement in terms of the report has to be made within the said time.

10. In the present case, admittedly the Surveyor submitted his report to the Insurance Company on 12.07.2000. The Insurance Company, after a stoic silence of over two years, vide its letter dated 12.12.2002, repudiated the claim on the

afore-noted ground. It is not in dispute that its reasons for disagreeing with the Surveyor's report were neither disclosed to the Complainants nor mentioned in its Written Version, which, in terms of Section 64 UM (2) of the said Act, it was obliged to communicate to the Complainants. Under the circumstances, we have no option but to hold that the repudiation of the claims in question by the Insurance Company, being in clear breach of the mandatory statutory provisions, amounts to deficiency in service on its part.

11. For the foregoing reasons, the Appeals are allowed; the impugned orders are set aside, with a direction to the Insurance Company to pay to the Complainants the amounts claimed towards the loss suffered by them on account of the burglary, as assessed by its Surveyor vide reports dated 12.07.2000 and 08.06.2000, along with interest @ 6% p.a. from the date of the filing of the Complaints till realization, within four weeks from the date of receipt of a copy of this order, failing which they shall be liable to pay interest @ 9% p.a., instead of 6% p.a.

12. Resultantly, both the Appeals are allowed with costs, quantified at 10,000/- in each set of the Appeals.