

**(2007) 05 NCDRC CK 0024**

**In the National Consumer Disputes Redressal Commission**

NATIONAL INSURANCE CO LTD

APPELLANT

Vs

DASHMESH PAPER BOARD MILLS

RESPONDENT

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**Date of Decision :** 29-05-2007

**Acts Referred:**

**Citation :** 2007 4 CPJ 14

**Hon'ble Judges :** K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

**Advocate :** Lalit Sharma , Munish Goel

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**Judgement**

1. THIS appeal has been directed by opposite party-National Insurance Company against order dated 12. 9. 2001 passed by the Consumer Disputes Redressal Forum, Faridkot (hereinafter to be referred as District Consumer Forum), vide which National Insurance Company was directed to pay a sum of Rs. 14,000 to the respondent M/s. Dashmesh Paper Board Mills, (complainant) for the loss of switches and Rs. 1,000 as compensation for mental tension and costs of litigation within two months from the receipt of copy of the order.

2. BRIEFLY stated the facts are that M/s Dashmesh Paper Board Mills, Jaitu-respondent (complainant) is partnership firm carrying on business at Jaitu and Devi Dayal one of its partners is entitled to file complaint. It was next averred that respondent got electric appliances used in the factory insured from National Insurance Company. Before acceptance of offer, National Insurance Company had sent Surveyor Sh. L. K. Tayal to the factory who inspected all the electric appliances thoroughly and assessed value of each and every appliance including two switches and further assessed the value of one switch at Rs. 6,000 and another switch at Rs. 8,000. He assessed the market value of electric appliances of the factory at Rs. 4,23,000 and consequently National Insurance Company insured appliances at Rs. 4,23,000 after accepting premium of Rs. 7,350 and issued insurance policy No. 4400006/99 for a period of one year from 6. 1. 2000 to 5. 1. 2001.

It was next averred that unfortunately two switches were burnt and respondent informed appellant (opposite party) at its office at Bathinda about the burning of

switches and further it lodged claim vide application dated 14. 8. 2000. Opposite party appointed Sh. Dinesh Kumar Goyal, Surveyor for assessment of loss and he visited the premises on 15. 8. 2000 and inspected two burnt switches. But ultimately Surveyor filed false and frivolous report and on the basis of that report, Insurance Company repudiated the claim vide letter dated 18. 9. 2000 as it could not grease the palm of Surveyor.

3. ALLEGING deficiency in service, the complaint was filed. National Insurance Company contested the complaint and filed written reply. It stated that its liability was limited to Rs. 3,750 as per Surveyor report at the maximum but it is not liable to pay that amount. It admitted issuance of insurance policy but denied other allegations. It next stated that the supply coming from the transformer was rotated or controlled through switches and both the switches were working without any kit kat and factory was in operation at the time of inspection. All the three HRC fusing system of 400 Amps switch and kit kat of 100 Amps switch were found missing. Devi Dayal told that these parts were missing for the last 4-5 months. Even Malkiat Singh @ Jagga Singh of M/s. Vishal Electricals Works Baja Road, Jaitu who was working as electrician in the factory of respondent when contacted informed that switches under consideration were working direct in the factory without kit kat for the last two months and as such the Surveyor concluded that no loss ever took place to the said switches and at best the loss was only of Rs. 3,750 and consequently the claim was repudiated.

4. PARTIES adduced their evidence by way of affidavits. After hearing Counsel for the parties, District Consumer Forum accepted the complaint and directed the appellant to pay Rs. 14,000 to the respondent on account of loss of switches besides Rs. 1,000 as compensation for mental tension and costs of litigation within two months from the receipt of copy of the order. Aggrieved by the said order, opposite party has filed the present appeal.

5. WE have heard Counsel for the appellant Mr. Munish Goel, Counsel for respondent Mr. Lalit Sharma and carefully gone through the file.

6. ANNEXURE -A is copy of the insurance policy. It shows that respondent (complainant) had got insured the machinery for the period 6. 1. 2000 to 5. 1. 2001 for a sum of Rs. 4,23,000 and had paid premium of Rs. 7,350. The policy obtained by the respondent was machinery breakdown policy. The allegation of respondent is that unfortunately two switches were burnt and it had lodged claim vide application dated 14. 8. 2000 with the appellant. The appellant on receipt of the claim had appointed Sh. Dinesh Kumar Goyal, Surveyor for assessment of loss. Sh. Dinesh Kumar Goyal visited the premises of factory of respondent on 15. 8. 2000 in the presence of Devi Dayal, a partner of respondent firm and inspected the two burnt switches. The copy of the letter dated 14. 8. 2000 vide which appellant was informed is Annexure A-2. In it, it is stated that its two switches serial No. 1 of 100 Amp and serial No. 2 of 400 Amp had been burnt. Annexure G is report of Surveyor Dinesh K. Goyal dated 6. 9. 2000. He had visited the spot on 15. 8. 2000 and found that both the switches under claim

were working direct without kit kat or HRC and factory was in operation at the time of inspection. All the three HRCs /fusing system of 400 Amps switch and kit kat of 100 Amps switch which was main and expensive part of a switch were found missing. On inquiry, the insured Sh. Devi Dayal could not produce these parts for inspection and told that these parts were missing for the last 4-5 months. Surveyor contacted Sh. Malkiat Singh @ Jagga owner of M/s. Vishal Electric Works, Baja Road, Jaitu, who was working as an electrician with the insured factory on contract basis. He confirmed that the switches were working direct in the factory for the last few months. He had assessed the value of switches to be Rs. 3,750 by applying 50% depreciation as well as excess clause. The depreciation value to our opinion cannot be applied because the Insurance Company had appointed Surveyor Sh. L. K. Tayal before issuing insurance policy. He assessed the value of two switches at Rs. 6,000 and Rs. 8,000 i. e. Rs. 14,000 in all. Now Insurance Company cannot turn around and say that the value of two switches was only of Rs. 3,750. Now only question to be seen is whether respondent had kept the switches properly or there was some negligence on its part. The photographs Annexures H, I, J and K have been placed on file. A perusal of photographs shows that there were no kit kats to the sockets and the switches were working directly without any kit kat or HRC. The kit kat contains fuse wire which is very thin and if some defect takes place with the working of equipment of machinery then the fuse wire is burnt and does not cause any damage to the equipment of the machinery. Since, kit kats were not fixed as reported by the Surveyor, so, switches were working directly. Certainly there is negligence on the part of respondent for which appellant cannot be held liable. The photographs placed on file prove this fact. The photograph Annexure-J clearly shows that cables/wires were directly fixed to the socket without kit kat. The affidavit of Ajit Singh Namdhari-Annexure R-1 also proves this fact.

Therefore, we hold that the claim has been rightly repudiated. Consequently, the appeal is accepted and the impugned order, being illegal, is set aside and the complaint is dismissed.

7. COPIES of this order be communicated to the parties, free of charge. Appeal allowed.