

**(1998) 12 NCDRC CK 0061**

**In the National Consumer Disputes Redressal Commission**

PUNEET INDUSTRIES CO. (P) LTD.

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

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**Date of Decision :** 14-12-1998

**Acts Referred:**

**Citation :** 1999 1 CPJ 701

**Hon'ble Judges :** A.P.Chowdhri , Desh Bandhu J.

**Final Decision :** Complaint disposed of

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**Judgement**

1. BRIEF facts of the case are that M/s. Puneet Industries (P) Ltd., complainant, obtained three cover notes ensuring against fire, (a) stocks, (b) building and (c) machinery break-down insurance. Claim with regard to (a) and (b) have been settled. The only surviving question is with regard to machinery break-down insurance for Rs. 3,60,000/- for the period 9.7.1993 to 8.7.1994. Admittedly the prescribed premium had been paid. There was a serious fire in the factory on 27.11.1993 resulting, inter alia, damage to the voltage stablizer due to short circuiting/fire. The complainant informed the Insurance Company by sending a telegram and the Insurance Company appointed M/s. Adarsh Associates as Surveyor. The Surveyor submitted his report dated 11.11.1994. A copy of the report is available at page 75 of the paper-book. The relevant figures are mentioned at page 79 (internal page 5) of the report. The conclusion reached by the Surveyor was that the Insurance Company, should settle the claim by paying Rs. 67,773.84 rounded off to Rs. 67,774/-. On 15.9.1997, the Insurance Company sent a voucher for Rs. 59,400/- to the insured as against the amount of Rs. 67,774/- recommended by the Surveyor without disclosing the reasons for the deduction. This was followed by a reminder dated 28.10.1997. The complainant did not accept the aforesaid payment and his contention is that in the absence of any cogent reasons, the Insurance Company was bound to accept the recommendation of the Surveyor and pay him Rs. 67,774/-. We have heard Mr. R.K. Aggarwal, A/Rep, of the complainant and Mr. Rajan Khanna, Advocate and Mr. Yogesh Malhotra, Advocate for the Insurance Company and have perused the records.

2. THE main contention of learned Counsel for the Insurance Company is that the Surveyor had taken into consideration the cost of Rs. 500 Itrs. of transformer oil @ Rs. 45/- per Itr. which, according to the Insurance Company, was not payable to the insured. Linked with the above, according to the learned Counsel, is the item deducting 17.04% towards under insurance worked-out in this case. Mr. R.K. Aggarwal, authorised representative of the complainant, on the other hand, submitted that he does not dispute deduction of Rs. 15,000/- on account of salvage and Rs. 1,000/- on account of terms of the policy but contends that there was no reason to deduct the cost of transformer oil as the voltage stablizer including the transformer were damaged by fire and the insured was entitled to be indemnified about the actual loss suffered. On a careful consideration we find force in the contention of Mr. Aggarwal. In the nature of things the fire took place when the transformer in question was in actual use. THE Insurance Company has not set- up a special case that the transformer did not contain any oil at the time of alleged loss. THERE is no justification, therefore, to deduct the cost of 500 Itrs. of transformer oil and we, therefore, direct the Insurance Company to settle the surviving claim by payment of Rs. 67,774/- recommended by the Surveyor. The remaining controversy between the parties is regarding payment of compensation and interest etc. The contention of learned Counsel for the Insurance Company is that the claim could not be settled earlier as the insured failed to produce the original invoice and this fact was duly noted in our order dated 16.5.1997. It was also submitted that way back on 15.9.1997, the Insurance Company had sent a discharge voucher for Rs. 59,400/-. This was followed by a reminder but the Insurance Company failed to elicit any reply from the complainant and in these circumstances, the Insurance Company should not be burdened with payment of interest on the whole of the amount.

Mr. R.K. Aggarwal pointed out that his undertaking to produce the original invoice in the order dated 16.5.1997 was based on mis- conception of facts and, in fact, the documents including the invoice had already been made available to the Surveyor and the Surveyor in his report dated 11.11.1994 noted at page 79 (internal page 5) of his report that he was enclosing the documents along with the claim form of the insured (please see the last line at that page). In other words, the complainant had furnished the invoice to the Surveyor without any delay. Mr. Aggarwal further submitted that tender of Rs. 59,400/- without disclosing the reason for the deduction made out no case for the complainant to accept the said amount in full and final settlement against the recommended claim of Rs. 67,774/-. After considering the respective pleas we are of the view that there was no delay on the part of the insured to submit the invoice which was duly forwarded by the Surveyor alongwith his report dated 11.11.1994. The so-called admission made in the undertaking in the order dated 16.5.1997 is, thus, erroneous and is allowed to be retracted. For these reasons, in addition to Rs. 67,774/- the Insurance Company shall pay interest @ 12% p.a. from two months after the date of the report which works out to say 15.1.1995 till date of payment. In addition to the above, Insurance Company shall pay Rs. 1,500/- as

costs. This order shall be complied with within six weeks of the receipt of a copy of this order failing which it is liable to be in force under Section 27. Copy of the order be furnished to both sides. Complaint disposed of.