

---

**(2000) 11 NCDRC CK 0018**

**In the National Consumer Disputes Redressal Commission**

RAMESH FLOWERS LTD.

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

---

**Date of Decision :** 15-11-2000

**Acts Referred:**

**Citation :** 2000 0 KASHLJ 656 : 2001 1 CLT 663 : 2001 1 CPC 409 : 2001 1 CPJ 18 : 2001 1 CPR 31

**Hon'ble Judges :** S.C.Sen , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

**Advocate :** Anoop Bose , Alok K.Agrawal , Sunil Kumar , K.P.Menon

---

**Judgement**

1. THIS is a complaint filed against. the insurer and the Tamil Nadu Mercantile Bank Ltd., who is also the beneficiary under the policy, in question and has, therefore, been impleaded as co-respondent. The complainant is a joint-venture Company in which a German Company holds 51% of total equity shares. It is alleged that the complainant is a pioneer in the field of business of, inter alia, processing of dried flowers, leaves, pods, dried mushroom etc. used for floral arrangements and exporting the same to various countries such as Germany, France, Holland, Italy, Japan, USA, Taiwan, Hong-kong, Srilanka etc. It has a factory located at A-62 (A), Sipcot Industrial Complex, Therku Veerapandiapuram PO, Tuticorin - 628 003 (hereinafter referred to as the Factory). It has also godowns and processing units in the around Tuticorin. Respondent No. 2, M/s. Tamil Nadu Mercantile Bank Ltd., is only a proforma party and on relief was sought against it. It has been made a proforma party as the insured goods in respect whereof the claim was made were hypothecated with the said Bank on account whereof the insurance policies were in the name of both the Bank as well the complainant. It is stated that at all material times all stock of finished goods, semi-finished goods and raw- material located in the complainant's factory and processing units of the complainant have stood hypothecated to the said Bank by way of security for repayment of various loans. The stock in Question, were finished products, semi- finished products, raw-materials which were insured with the opposite party No. 1 under the Fire Insurance Policy No. 501205/11/13/

2100040/ 95 for a period of one year commencing from 5th May, 1995. The total sum insured was Rs. 4,60,00,000/-. The factory and the list of godowns are also set out in the policy. The value of the insured goods was enhanced to Rs. 5,10,00,000/- vide Endorsement No. 501205/ 11/13/E.025/95 which was further enhanced to Rs. 5,60,00,000/- w.e.f. 31.1.1996 vide Endorsement No. 501205/11/13/E.057/95.

2. ON 25.12.1995 the godown of the complainant covered by the said policy caught fire and the alleged to have been completely gutted and destroyed. The said fire was extinguished by the fire brigade only in the afternoon of the following day i.e., 26.12.1995. ON that day an FIR in respect thereof was also lodged with the police and a claim was submitted to the opposite party No. 1, who appointed M/s. Mehta Padamsey, Surveyor Pvt. Ltd., Madras, who carried out the survey of the damage caused by the said fire. The cause of fire was attributed to the bursting of crackers by the locals who were celebrating Christmas. The Insurance Company despite submission of the estimate by the Surveyors had maintained silence and did not reject or accept the claim of the claimants. As a result thereof the complainant on or about 23rd December, 1997 lodged a complaint claiming a sum of Rs. 8,89,119.46 for the aforesaid loss. The complainant also claimed interest at the rate of 18% per annum on the said amount from the date of lodgment of the claim till the filing of the complaint, Rs. 25,00,000/- as damages and a further Rs. 25,00,000/- compensation for the mental harassment. Notice of this complaint was served on the opposite parties. The opposite party No. 1 i.e., the National Insurance Co. Ltd." filed its reply. In the reply, the Insurance Company had taken up the plea that it had vide its letter dated 24.6.1998 which was during the pendency of the present complaint, offered to the complainant a sum of Rs. 21,94,848/- minus Rs. 12,27,800/- towards the additional premium- payable by the complainants for higher risk rating necessary under the Policy No. 40/95. This offer was rejected by the complainant.

The main plea raised by the Insurance Company appears to be that a higher premium was not paid. It is not understood as to what made them realise this only after the complaint had been filed. It is surprised that not only at the time of insuring the risk but even when the coverage under the policy was enhanced twice and endorsements were issued after charging premium for additional coverage no such plea was raised or claim for any further additional premium was made by the insurer. It is all the more surprising that no such increased charges of premium were claimed even, though each enhancement of coverage had taken place after the fire accident. The Surveyors in their report which has since come on record had assessed the loss at Rs. 21,94,348/-. They have held that the quantum of loss held in the fire affected location was well in excess of 1% of the total value of the stocks held in this location and they have arrived at the aforesaid figure after bearing in mind all these factors. They had arrived at the net loss figure at Rs. 22,48,369/- and after making provision for under insurance at 2.40% had arrived at the figure of loss after application of the

average from which a further sum of Rs. 2,500/- being excess under fire policy had been reduced. This amount was duly accepted by the insurer, but never Communicated to the insured until after the filing of the complaint. The report of the Surveyor was available to the Insurance Company as early as March 25, 1996. The complaint was filed in December, 1997 and the aforesaid truncated offer was made by the Insurance Company only in June, 1998. It is contended by the opposite party-Insurance Company, that the Sanctioning Authority had duly approved, the settlement of the claim for a sum of Rs. 21,94,348/- minus additional premium of Rs. 11,69,333/- and service tax of Rs, 58,467/-. No regulations or tariff could be produced by Counsel at the time of hearing to justify such charge of additional premium. The tax, if any, may of course be payable if it is payable and has already not been paid. No explanation is forthcoming for such long delays on the part of the insurer in settlement of claims. We cannot but express our concern at the inordinate delay in settlement of claims which unfortunately is not uncommon these days. In I the present case also had the complaint not been filed, probably, the truncated offer of settlement may also have been further delayed, if not denied. The claim of additional premium does not appear to be bona fide. The classification of godown was also challenged successfully by the complainant. Because the walls of the godowns were pucca brick walls with a cement-sheet roof at the top.

3. IN the light of above discussion, we hold that the complainant, M/s. Ramesh Flowers Limited, is entitled to be paid a sum of Rs. 21,94,348/- minus the tax Rs. 58,467/-, if it is payable and has not so far been paid. It is ordered accordingly. The INsurance Company will also be liable to pay interest on the aforesaid sum at the rate of 12% p.a. for the period from two months after the receipt of the Surveyors Report i.e., 25.5.1995 upto the date of payment. They would also be entitled to costs quantified at Rs. 10,000/-. We are not inclined to consider the claim for damages or for mental agony as no evidence to that effect has been led and the claim for mental agony cannot be entertained in a case of the present nature. The said claims of Rs. 25 lakhs each are, therefore, rejected. The original petition is disposed of in the above terms. O.P. disposed of.