
(2013) 02 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO. LTD

APPELLANT

Vs

Lanco Rani Joint Venture

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Citation : 2013 0 NCDRC 388 : 2013 1 CPJ 718

Hon'ble Judges : ASHOK BHAN , VINEETA RAI , B.C.Gupta J.

Final Decision : dismissed allowed

Judgement

1. THIS order will dispose of the First Appeal No. 320/07 and the Consumer Complaint 21/07 as the facts and the question of law involved in both these cases are the same. To avoid confusion, we refer to the facts of each case separately.

2. APPELLANT Insurance Company which was the opposite party before the State Commission has filed this Appeal against the judgment and order dated 23.3.2007 passed by the State Consumer Disputes Redressal Commission, Andhra Pradesh (in short, "the State Commission ") in Complaint No. 46/05 whereby the State Commission allowing the complaint has directed the Appellant to pay Rs. 38,19,102 towards the loss incurred for Bridge Portion of the work and Rs. 34,04,979 towards loss incurred for Road Portion of the work to the Respondent along with interest @ 9% p.a. from 24.1.2005 till the date of payment together with costs of Rs. 5,000. M/s. National Highway Authority of India (opposite party No. 2 before the State Commission) awarded a contract to the Respondent/Complainant for widening/construction of 413 kms. road, bridges, flyovers and culverts in the State of Bihar. Under the said contract obtaining insurance cover as a hedge against possible losses was mandatory. Respondent sought quotations from various insurance companies and the following three quotations were received by it: Name of Insurance Company Quotation (i) The New India Assurance Company Ltd. Tirupati Division Office Rs. 76,89,309.00 (ii) The New India Assurance Co. Ltd. Begumpet Division Office Rs. 79,77,905.00 (iii) United India Insurance Co. Ltd. Rs. 71,64,272.00 (Appellant

herein)

3. SINCE the quotation given by the Appellant Insurance Company was the lowest, they were awarded the contract. Appellant issued a Contractor 's All Risk (CAR) policy bearing No. 050503/44/01/70003 which was valid for three years from 18.9.2001 to 17.9.2004. The sum insured under Section I was Rs. 204,20,66,226 and under Section II (Third Party Liability) was Rs. 10,00,00,000 and the premium of Rs. 71,64,272 was to be paid in eleven equated quarterly instalments. Respondent paid the two instalments due on 27.9.2001 and 18.12.2001.

4. ON 7th and 10th July, 2003, floods caused losses to the roads, bridges and culverts of the contractual work. On receipt of intimation, Appellant appointed Surveyor, S.K. Majumdar to conduct the survey and assess the loss. The said Surveyor assessed the loss at Rs. 38,19,102 for the bridge portion of the work and Rs. 34,04,979 for the road portion of the work. On receipt of the report of the Surveyor, it was noticed by the Appellant that the premium for covering the risk against the earthquake was not charged at the time of issuance of the policy and the excess clause had been wrongly shown as Rs. 40,000 instead of Rs. 10,00,000 in the policy. After deducting the excess of Rs. 10,00,000 per claim for works in water, the Appellant offered to settle the claim for Rs. 28,59,102 in respect of claim of 7.7.2003 and Rs. 29,99,697 for the claim of 10.7.2003. Subsequently, Respondent received a letter dated 2.8.2004 from the Appellant stating that the premium under the said policy was not as per the rates given in the CAR tariff and there was a shortfall in collecting the premium amounting to Rs. 31,73,014. However, vide letter dated 22.11.2004, Appellant increased the shortfall premium to Rs. 33,85,588. Respondent was asked to remit this shortfall of premium to settle the claims. Respondent agreed for adjustment under protest subject to settlement of the claims but the said request was rejected by the Higher Authorities of the Appellant. Complainant, being aggrieved, filed the complaint before the State Commission. Appellant, on being served, entered appearance and filed its written statement resisting the complaint on the grounds; that the peril of earthquake was slipped in and premium for the same could not be charged due to oversight as well as ignorance of the officer issuing the policy; that the excess of Rs. 40,000 was wrongly mentioned in the policy due to an oversight; that as per the Tariff, the excess should be Rs. 10,00,000; that the premium is fixed by the Tariff Advisory Committee and no person had any discretion to vary or contract for less or more than or paying less or more than the rates fixed by the Tariff Advisory Committee.

5. STATE Commission, after considering the pleadings and the evidence led by the parties, came to the conclusion that there was deficiency in service on the part of the Appellant in insisting to pay the short fall of premium of Rs. 31,73,014 after three years of issuance of policy and subsequent to one year of claim. State Commission allowed the complaint and directed the Appellant to pay Rs. 38,19,102 towards the loss incurred for Bridge Portion of the work and Rs.

34,04,979 towards loss incurred for Road Portion of the work to the Respondent along with interest @ 9% p.a. from 24.1.2005 till the date of payment together with costs of Rs. 5,000. State Commission observed as under: " ...Taking into consideration the material on record, pleadings and the facts and circumstance of the case, we are of the considered opinion that opposite party No. 1 cannot unilaterally revise or modify the terms of contract by increasing the rate of premium to the disadvantage of the complainant and further submit that only on acceptance of these terms and conditions i.e. to pay shortfall of premium of Rs. 31,73,014 which is almost equivalent to the claim made by the complainant towards loss of Bridge Portion of the work or for Road Portion of the work. It is pertinent to note that complainant had vide letter dated 15.10.2004 has conditionally accepted for adjustment to pay the premium under protest subject to settlement of pending four claims to be settled immediately with certain conditions for which opposite party No. 1 replied stating that their Head Office rejected the complainant 's terms for accepting the shortfall of premium. Therefore, we hold that there is deficiency in service on behalf of the opposite party No. 1 in insisting the complainant to pay the shortfall of premium of Rs. 31,73,014 after three years of issuance of policy and subsequently to one year of claim. " Appellant, being aggrieved, has filed the present Appeal.

6. M /s. National Highway Authority of India (Opposite Party No. 2) awarded a contract to the Complainant for widening/construction of 413 Kms. road, bridges, flyovers and culverts in the State of Bihar. Under the said contract obtaining insurance cover as a hedge against possible losses was mandatory. Complainant sought quotations from various insurance companies and the following three quotations were received by it - Name of Insurance Company Quotation (i) The New India Assurance Co. Ltd. Tirupati Division Office Rs. 76,89,309.00 (ii) The New India Assurance Co. Ltd. Begumpet Division Office Rs. 79,77,905.00 (iii) United India Insurance Co. Ltd. (Appellant herein) Rs. 71,64,272.00

Since the quotation given by the opposite party Insurance Company (for short, "the opposite party "), was the lowest, they were awarded the contract. Opposite party issued a Contractor 's All Risk (CAR) policy bearing No. 050503/44/01/70003 which was valid for three years from 18.9.2001 to 17.9.2004. The sum insured under Section I was Rs. 204,20,66,226 and under Section II (Third Party Liability) was Rs. 10,00,00,000 and the premium of Rs. 71,64,272 was to be paid in eleven equated quarterly instalments. Complainant paid the two instalments due on 27.9.2001 and 18.12.2001.

7. DURING July, 2004, the cyclonic flood caused huge losses to the contractual work of the Complainant. On receipt of intimation, opposite party appointed Surveyor, M/s. Mehta and Padamsey Surveyors Pvt. Ltd. to conduct the survey and assess the loss. The said Surveyor submitted its report on 6.8.2005 assessing the loss consequent to the flood in July, 2004 at Rs. 1,83,80,300 and after adjusting the excess of Rs. 40,000 as the per terms and conditions of the policy, the net loss was assessed at Rs. 1,83,40,300. Complainant received a

letter dated 30.1.2006 from the Opposite Party stating that though the claim had been approved for Rs. 1,74,61,297 as against Rs. 1,83,40,000 assessed by the Surveyor but there was a shortfall in calculation of the premium amounting to Rs. 65,24,937 (including the shortfall of Rs. 33,83,588 in respect of the claims of July, 2003) on the ground of wrong declaration of value of Road works (including flyovers and bridges) by the Complainant. Complainant was further directed either to pay Rs. 65,24,937 towards the shortfall in premium and to take the entire settled amount of three claims amounting to Rs. 2,33,20,096 or to permit the opposite party to deduct the shortfall and pay the balance amount of Rs. 1,67,95,159. Complainant, being aggrieved, has filed the present complaint seeking the following relief: (i) To direct the opposite party to pay the sum of Rs. 1,83,40,000 on account of loss suffered by the Complainant due to cyclonic rains in July, 2004; (ii) To grant interest @ 24% p.a. on the aforesaid amount from November, 2005, i.e. two months from the submission of the Surveyor 's report; (iii) To grant penal compensation for the illegal refusal to settle the claim by the opposite party; (iv) Costs throughout; (v) To direct the opposite party to release the admitted amount of Rs. 1,43,19,948 along with interest @ 24% p.a. from October, 2005 pending final adjudication of the complaint.

8. OPPOSITE party, on being served, has put in appearance and filed its written statement taking the preliminary objection regarding the maintainability of the complaint on the grounds that the Complainant is not a "consumer " as defined in Section (2)(d)(ii) of the Consumer Protection Act, 1986 as the services were availed of for "commercial " purpose; that the Tariff governing the rates of premium and the terms and condition of the policy are framed by the Tariff Advisory Committee, a Statutory body constituted under Section 64U of the Insurance Act, 1938. The same has to be followed by all the General Insurance Companies and any deviation or breach of Tariff would attract the provisions of Section 64VB of the Insurance Act; that any premium short charged at the time of issuance of the policy can always be recovered by the insurer at any point of time when the short premium comes to the notice of the insurer so as to the regularize the policy. On merits, it is stated that as per Tariff, premium @ 0.5% p.a. has to be charged on the entire sum insured to cover the risk of earthquake; that the premium was not charged for the earthquake as the policy was issued at Hyderabad which falls in Zone IV as per Tariff where no premium is required to be paid to cover earthquake risk; that the project was at Purnia, Bihar which falls under Zone II and attracts premium at 0.5%; that the Tariff provides that the policy would be subject to excess of 5% of the claim amount subject to minimum of Rs. 20,000 for work in plain areas and 5% of the claim amount or Rs. 5,00,000 for works in water; that since the insured in the proposal opted for higher excess, i.e. two times, the excess under the policy would be two times of Rs. 5,00,000 i.e. Rs. 10,00,000; that as the project was also in "works in water ", excess of Rs. 10,00,000 was applicable but by mistake the opposite party quoted the excess of Rs. 20,000 in the policy which is applicable to roads in plain area; that the Complainant has declared that the cost of bridges and flyovers fall

within 20% of the sum insured and accordingly the premium was charged; that an additional premium was required to be charged as it was found that the cost of bridges and flyovers was beyond 20% of the sum insured; that there was no deficiency in service on the part of the opposite party as all the three claims lodged by the Complainant were approved for Rs. 2,33,20,096 subject to deduction of Rs. 65,24,937 towards the shortfall in the premium.

9. IN the rejoinder, Complainant has controverted the objections and pleas raised by the Opposite Party Insurance Company in their written version and has generally reiterated the averments and allegations already made in the complaint.

10. TO substantiate their respective pleas, Parties have mostly relied upon the documentary evidence in the shape of correspondence exchanged between them during the relevant period. Parties have also filed supporting affidavits in support of their respective pleas. Mr. Kishore Rawat, learned Counsel appearing for the Insurance Company states that the admitted amount of Rs. 1,67,95,159 has already been paid to the Complainant on 7.6.2007 and the dispute remains only with regard to the balance amount of Rs. 87,69,222 which is payable to the Insurance Company on account of shortfall in the premium and the excess clause. We have heard the learned Counsel for the parties at length.

11. MS . Anjalli Bansall, learned Counsel appearing for Respondent No. 1 in F.A. No. 320/07 and for the Complainant in C.C. No. 21/07 contends that the alleged shortfall of premium of Rs. 87,69,222 exceeds the original premium demand of Rs. 71,64,222 which was the lowest quotation received by the Complainant Company and which induced the Complainant to place its business with the Respondent/Opposite Party; that the highest quotation received by the Complainant Company inclusive of earthquake cover was Rs. 79,77,905; that had the Complainant known that separate premium would be charged by the opposite party for the earthquake cover, it would never have taken the said cover from the opposite party and would have placed its business with another Insurance Company; that even otherwise the loss in the above cases had not occurred due to the peril of the earthquake but due to floods; that the requirement of earthquake cover was specifically mentioned in the proposal form against which the policy was issued by the opposite party; that the Insurance Company has admitted that the excess of Rs. 40,000 instead of Rs. 10,00,000 was wrongly mentioned in the policy; that for the omission of the Insurance Company, the Complainant cannot be held liable; that after the contract has been concluded the opposite party cannot take advantage of its wrong since internal and external audits every year of the company would clearly point out if there was a slip or mistake; that the percentage of Bridges and Culverts was 20% and nowhere in the policy it was stipulated that the premium was liable to be enhanced if such percentage exceeded 20%; that a perusal of Insurance Company 's letter dated 26.9.2001 would show that the 20% was limited to road work including bridges and flyovers and not the work in Water; that the letter does not talk of culverts which are basically arched structures to carry water.

12. -18. AS against this, learned Counsel appearing for the Insurance Company submits that because of deliberate misrepresentation on the part of the complainant in cleverly adding earthquake coverage in the covering letter issued along with the first cheque premium and also by misdescription of the extent of works under water vis-a-vis the value of culverts and road bridges that the short collection in premium took place; that the complainant had declared that the cost of bridges and flyovers fall within 20% of the sum insured and accordingly the premium was charged; that on submission of the report by the Surveyor it was found that the cost of bridges and flyovers was well beyond 20% of the total sum insured; that the additional premium was required to be paid as per Tariff provision; that the Tariff provides that the policy would be subject to excess of 5% of the claim amount subject to minimum of Rs. 20,000 for work in plain areas and 5% of the claim amount or Rs. 5,00,000 for works in water; that as the project was also in "works in water " and as the Complainant opted for higher risk, excess of Rs. 10,00,000 was applicable but by mistake the Opposite Party quoted the excess of Rs. 20,000 in the policy which was applicable to roads in plain area; that the Complainant is not a "consumer " since services were availed for commercial purpose; that the relief claimed in the complaint is directory in nature which cannot be granted in a complaint before the Consumer Fora. Findings: In The following facts are not disputed. Complainant, a partnership firm engaged in the construction business was awarded a contract by the Opposite Party No. 2, National Highway Authority of India for widening/construction of 413 kms. road, bridges, flyovers and culverts in the State of Bihar. AS per terms of the contract, Complainant was obliged to obtain a joint insurance policy for the duration of the contract in order to cover the loss to the building material and works executed at the construction site. Accordingly, Complainant invited the quotations from the insurance companies. Since the quotation of Rs. 71,64,272 given by the Opposite Party/Respondent Insurance Company was the lowest, they were awarded the contract. The Opposite Party/Respondent issued the Contractor "s All Risk (CAR) policy to the Complainant on payment of two instalments of the premium as the premium was to be paid in eleven equated quarterly instalments. 19. During July, 2003 there were unprecedented rains causing huge losses due to inundation and floods to the roads, bridges and culverts of the contractual work on 7th and 10th July, 2003. Complainant lodged two claims with the Opposite Party/Respondent Insurance Company which are the subject matter of First Appeal No. 320/07. Surveyor appointed by the Insurance Company assessed the loss at Rs. 38,19,102 to the Bridge Portion of the work and Rs. 34,04,979 to the Road Portion of the work. However, the Insurance Company offered to settle the claims at Rs. 28,59,102 and Rs. 29,99,967 respectively after deduction of Rs. 33,85,588 towards the shortfall in the premium as according to it at the time of issuing the policy the premium for earthquake was not charged and the excess clause was wrongly shown as Rs. 40,000 instead of Rs. 10,00,000. 20. Again in July, 2004, the cyclonic flood caused huge losses to the contractual work of the Complainant. A claim was lodged by the Complainant with the opposite party which is the subject matter of

the Consumer Complaint No. 21/2007. Surveyor assessed the net loss at Rs. 1,83,40,300. However, the Insurance Company increased the amount of shortfall in premium from Rs. 33,83,588 to Rs. 65,24,937 on the ground that the additional premium was required to be charged as there was wrong declaration of value of Road works (including Flyovers and Bridges) being limited to 20% of the sum insured. Insurance Company agreed to pay Rs. 2,33,20,096 towards the full and final settlement of the three claims subject to recovery of the difference of premium of Rs. 65,24,937. The admitted sum of Rs. 1,67,95,159 had already been paid to the Complainant on 7.6.2007. The dispute remains with regard to the balance amount of Rs. 87,69,222 only {Rs. 2,55,24,381 (ASsessed by Surveyor) minus Rs. 1,67,96,159 (already paid by the Insurance Company)}. 21. Contention of the Counsel for the opposite party that the complaint is not maintainable as the Complainant was carrying on commercial activities, cannot be accepted in view of decision of this Commission in Harsolia Motors v. National Insurance Company Ltd., I (2005) CPJ 27 (NC)=(2006) 5 CPR 1 (NC), in which this Commission has taken the view that contract of insurance is a contract of indemnity and, therefore, question of any of commercial activity does not arise. It has been held that the insured, who takes the insurance policy, does not trade or carry on any commercial activity with regard to the insurance policy taken by it. The policy is only for indemnification of the loss suffered. It is not intended to generate profit. Respectfully following the view taken in the aforesaid case, it is held that the Complainant had taken the Insurance Company for getting indemnified for the loss, if any, during the execution of the contract. This would not amount to any commercial activity. Complaint is held to be maintainable. 22. The issues involved in both, Consumer Complaint No. 21/07 and First Appeal No. 320/07 are identical. Complainant Company is seeking payment in accordance with the policy contract and the Surveyor 's report whereas the Insurance Company claims that if the policy and the Surveyor 's report is implemented, it would lead to violation of Tariff and Section 64 VB of the Insurance Act and law empowers it to recover the deficit premium at any time. The table below shows the difference between the Surveyor 's assessment and the Insurance Company 's offer:

Sl.	Date of Surveyor 's ASsess-	Insurance Company No.	Loss ment after
Rs.	settlement after Rs.	40,000	excess as 10,00,000
excess as	per policy	per	Tariff
1.	07.07.03	Rs. 38,19,102.00	Rs. 28,59,102.00
2.	10.07.03	Rs. 33,64,979.00	Rs. 29,99,697.00
3.	July 2004	Rs. 1,83,40,300.00	Rs. 1,74,61,297.00
Total	Rs. 2,55,24,381.00	Rs. 2,33,20,096.00	

23. The difference of Rs. 22,04,285 between the Surveyor 's assessment and the Insurance Company 's settlement appears to be on account of deduction of excess of Rs. 10,00,000 per claim instead of Rs. 40,000 given in the policy. In addition to the difference of Rs. 22,44,285, the Insurance Company is proposed to deduct Rs. 65,24,937 from the settled amount supra. Consequently, the difference between the Surveyor 's assessment as per contract of insurance and the amount the Opposite Party Insurance Company is willing to pay is Rs. 87,69,222 approximately. 24. It is worth mentioning that the alleged shortfall of

premium of Rs. 87,69,222 exceeds the original premium demand of Rs. 71,64,220 which was the lowest quotation received by the Complainant Company and which induced the Complainant to place its business with the Insurance Company. It is also worthwhile to mention that the higher quotation received by the Complainant Company inclusive of earthquake cover was Rs. 79,77,905.. Had the Complainant known that the separate premium would be charged for earthquake cover, it would never have taken the said cover or else would have placed the business with the other company which was inclusive of cover from the earthquake. Even otherwise, the loss in the above cases has not occurred due to the peril of earthquake but due to floods. 25. Insurance Company seeks to justify the recovery on the ground that the peril of earthquake was slipped in and the premium for the same could not be charged due to oversight as well as ignorance of the officer issuing the policy. This plea is contrary to the proposal forms dated 23.8.2001 and 26.9.2001 where the requirement for earthquake cover was clearly mentioned. The State Commission has rightly observed in its order that in view of the documents filed this plea of the Insurance Company is unsustainable. 26. The next contention of the Insurance Company is that the excess of Rs. 40,000 in the aforesaid policy was wrongly mentioned due to an oversight since as per the Tariff the excess should be Rs. 10,00,000. This is a very strange and ridiculous proposition. The Insurance Company issuing the policies for profit is expounding that their mistakes should be paid for by the consumer and they or their officers are not accountable for anything. The Insurance Company quotes a figure, induces the consumer to place business with it and then reneges on the said contract by claiming ignorance on its part or the protection of the tariff. State Commission has rightly observed that the Insurance Companies cannot unilaterally alter the terms of the contract to the disadvantage of the consumer by taking shelter behind the Tariff as if the same were sacrosanct and cemented. 27. The case of the Insurance Company is that the Complainant Company had wrongly declared that the value of the Road work portion (inclusive of bridges and culverts) would be limited to 20% of the sum insured whereas 18 months after the expiry of the policy it was discovered that actually the roadwork portion of the contract exceeded 20% of the sum insured. A bare perusal of the letter dated 26.9.2001 of the Insurance Company (Page 36 of the paper book of OP No. 21/07) shows that 20% is limited to road work including bridges and flyovers not work in water. The letter does not talk of culverts which are basically arched structures to carry water. Surveyor has included the cost of culverts while computing the figure of Rs. 75,63,53,445.00 (Page 178 of the paper book of CC No. 21/07). The best person to clarify this would have been their own Surveyor. However, for the reasons best known to it, the Insurance Company has chosen not to file the evidence of the Surveyor. 28. The next contention of the Insurance Company is that even if the mistake is theirs, the law as well as the Tariff empowers them to effect recovery from the consumer since the rates are prescribed by the Tariff and no one is above the law. Reliance has been placed on the ratio in the decision of Post Master Dargamitta, HPO, Nellore v. Raja Prameelamma, (1980) 9 SCC 706. The law laid

down by the said judgment is not applicable to the present case. Rate of interest has been changed in the said case short while earlier but in the present case there was no change in the rate of Tariff. Complainant has invited tenders in response to which the Opposite Party Insurance Company along with two other insurance companies quoted the rate for covering the risk sought for in the tender. Since the rate offered by the Opposite Party was the lowest, the Complainant Company was induced to place its business with them. For the ignorance on the part of the officers of the Insurance Company, the Complainant Company cannot be asked to pay the sum of Rs. 87,69,222. Plea taken by the Insurance Company that the violation of the Tariff amounted to violation of Section 64VB in the Insurance Act and, therefore, the shortfall in the premium can be recovered from the policy holder at any time is totally fallacious and in particular where the policy is taken after inviting quotations by way of competitive bidding. There has been no misrepresentation or any other sleight of hand on the part of the Complainant to justify the Insurance Company 's denial of its genuine claims and that too when the Complainant is only asking for the amount as assessed by the Company 's own Surveyor. 29. Dealing with a similar question, the Hon 'ble Supreme Court in the case of OIC v. Mantora Oil Products Pvt. Ltd., (2000) 10 SCC 26, held as under: "...If it was a mistake the same should have been pointed out to the respondent during the period of the policy but the appellant did not raise this objection at any time during the continuance of the policy cover. The respondent also fulfilled its obligations under the policy and paid the premium as was agreed to between the parties. If there was a mistake on the part of the Appellant in collecting the premium, the same should have been pointed out at the time of entering into the contract or immediately thereafter. After having received the benefit under the policy of insurance from the respondent by way of premium, it is not open to the appellant to contend that there was a mistake on their part in charging the premium at a rate lower than the rate at which it should have been charged by them. If the parties were not ad idem on this vital part of the contract of insurance, it would have an adverse effect on the contract itself. Since the period of policy is over, the appellant is under an obligation to refund the extra premium in terms of the policy. It cannot itself unilaterally make any adjustment from the amount of unutilized premium and retain a part of it on the ground that the premium charged was less than what it should have been charged. " (Emphasis Supplied)

30. Similarly, in the case of M/s. Hanil Era Textiles Ltd. v. OIC and Ors., I (2001) CPJ 1 (SC)=88 (2000) DLT 623 (SC)=VIII (2000) SLT 500=Civil Appeal No. 1112 of 2000, the Insurance Company has recovered the amount of Rs. 1,13,13,344 on account of the premium short charged. Complainant, being aggrieved, filed the complaint before the National Commission which was dismissed, aggrieved against which the Complainant went to the Supreme Court. Hon 'ble Supreme Court reversed the order of this Commission and held that the Insurance Company could not recover the amount on account of the premium short-charged. The Insurance Company was directed to refund the amount to the

Complainant with interest @ 12% p.a., i.e., from the date of filing of complaint till the date of payment. 31. Point as to whether the Insurance Company could recover the short charged premium on account of alleged or wrong information given by the Complainant regarding class of construction of building came for hearing in this Commission in the matter of New India ASsurance Co. Ltd. v. Him Ispat Ltd., IV (2008) CPJ 174 (NC). In the said case, the Insurance Company sought to deduct the amount of Rs. 1,52,008 out of amount of Rs. 4,09,390 assessed by the Surveyors towards the damage in fire on account of wrong information given by the Complainant regarding the class of construction of the building. Contention raised by the Insurance Company was negated by observing thus: "...Proposal forms would have thrown light as to the class of construction of building declared by the respondent at the time of purchase of policies. This apart, the Petitioner should have verified the class of construction before the issue of policies. Further, in absence of service of the letter dated 21.1.1992, the Insurance Company cannot be said to have afforded opportunity to the respondent of its having allegedly paid short premium in respect of the previous policies. Deduction of the said amount based on the inspection report dated 4.5.91 and the audit report was thus totally unjustified. There is no illegality or jurisdiction error in the order of the State Commission calling for interference in revisional jurisdiction under Section 21(b) of CP Act, 1986. "

32. Similarly, in the case of Esys Information Technologies Ltd. v. New India ASsurance Co. Ltd., IV (2008) CPJ 30 (NC), wherein on the basis of report given by the CAG it was discovered that the premium was short charged by the Insurance Company, this Commission held as under: "17. In our view, the deduction of such a large amount by the Insurance Company from the loss assessed by the Surveyor (and accepted by the Insurance Company) is, on the face of it, contrary to the Statutory Provisions of Section 64VB of the Insurance Act, 1938 which reads as under - "64VB. No risk to be assumed unless premium is received in advance - No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. (2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer. Explanation -Where the premium is tendered by postal money-order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be. (3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the

account of the agent (4)..... (5)..... 18. This would mean that under Sub-section (2) of Section 64VB of the Insurance Act, if there is short payment of premium, the Insurance Company cannot assume the risk. Similarly, under Sub-section (1), no Insurance Company can assume the risk until the premium payable is received. Therefore, it would be difficult to accept the contention of the Insurance Company that if there is alleged short payment of premium, it can recover the said amount at any time after the period of insurance cover is over. "

33. For the reasons stated in the aforesaid paragraphs and the law laid down by the Hon "ble Supreme Court and this Commission, we do not find any merit in the Appeal filed by the Insurance Company and dismiss the same. Consumer Complaint filed by the Complainant is allowed and the Insurance Company is directed to pay the amount, claimed with interest @ 9% p.a. 34. Out of the sum of Rs. 2,55,24,381 claimed by the Complainant under the three claims, the Insurance Company has already paid a sum of Rs. 1,67,95,159 to the Complainant on 7.6.2007. State Commission has awarded interest w.e.f. 24.1.2005. Insurance Company is directed to pay interest on the sum of Rs. 1,67,95,159 @ 9% p.a. w.e.f. 24.1.2005 till the date of payment, i.e. 7.6.2007. Insurance Company is also directed to pay the balance amount of Rs. 87,69,222 to the Complainant with interest @ 9% p.a. from 24.1.2005 till the date of payment within a period of eight weeks failing which the amount shall carry interest @ 12% p.a. 35. The Appeal and the Consumer Complaint stand disposed of in above terms along with consolidated costs Rs. 50,000. Registry is directed to refund the sum of Rs. 35,000 deposited by the Appellant towards statutory deposit along with accrued interest.