

2024:PHHC:143491



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

119

**CWP-28164-2024 (O&M).
Date of Decision: 05.11.2024.**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED

... Petitioner(s)

Versus

HARPREET KAUR AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Preet Harinder Singh Pannu, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 30.07.2024 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'NCDRC') whereby the petitioner-Insurance Company has been directed to pay an amount of Rs.22,00,000/-, subject to necessary deductions, as per the policy along with Rs.50,000/- towards litigation costs by reversing the award dated 24.12.2014 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as 'PSCDRC') in

2024:PHHC:143491



Complaint No.06 of 2011 which partly allowed the complaint and the petitioner-Insurance Company had been directed to pay only a sum of Rs.3,88,000/- to respondent No.1-applicant along with interest @ 9% per annum from the date of claim till its actual realization.

2 Briefly summarized, the facts of the present case are that respondent No.1-applicant (Harpreet Kaur since deceased) was proprietor of M/s Sohi Herbal Product which was established in the year 2006-2007 in village Sohian, District Ludhiana. The proprietorship was engaged in the manufacturing of crystals from Menthol Oil, which has widespread application in herbal products and medicines. An investment of about Rs.30 Lakhs had been carried out in the said business. A loan of Rs.22,80,000/- had been obtained by respondent No.1-applicant from the Punjab National Bank through a registered mortgage for which an insurance policy bearing No.OG-09-1203-4001-00002627, for the period commencing w.e.f. 28.02.2009 to 27.02.2010, against theft and fire had also been obtained from the petitioner-Insurance Company. The premium had been regularly paid by respondent No.1-applicant.

3 On 28.09.2009, respondent No.1-applicant along with her husband Parminder Singh had gone to village Saholi, District Ludhiana to meet one of their relative, when at about 11:00 P.M., her husband received a telephonic call from their labour that a blast had taken place in the said factory premises causing damage to the property and had resulted in a fire. The husband of respondent No.1-applicant immediately reached at the spot on 29.09.2009 at about 1:00 A.M. and found that the building had been

2024:PHHC:143491



severely damaged causing loss to the stock, plant and machinery etc. lying in the building. It was claimed that at that time of the incident, stock worth Rs.18,15,630/- and plant and machinery worth Rs.7,48,860/- was lying in the premises. The copy of the balance sheet and other documents were also furnished. The matter was also reported to the police and on 03.10.2009, DDR No.27 was registered.

4 A claim was also lodged with the petitioner-Insurance Company whereupon a Surveyor was nominated who visited the site of the incident and also collected the documents and the information required by them. It is submitted that despite the total loss, the net losses were computed at Rs.3,88,000/-, on the basis of a conjectural report. Vide letter dated 08.09.2010, the petitioner-Insurance Company called upon respondent No.1-applicant to sign a consent for the claim of Rs.3,88,000/-, as recommended by the Surveyor, towards full and final settlement of the dues which was not acceptable to the petitioner. Aggrieved thereof, respondent No.1-applicant served a legal notice and thereafter filed a complaint with the PSCDRC.

5 The petitioner-Insurance Company entered appearance before the PSCDRC and filed its reply wherein various objections were taken including that the surveyor appointed by the petitioner-Insurance Company is an IRDA approved surveyor and is duly licensed by the Central Government. Being a technically qualified person and having physically verified the record, books of accounts and physical inspection of the site, he assessed the loss at Rs.3,88,000/- and that the petitioner-

2024:PHHC:143491



Insurance Company had always remained ready and willing to transfer the said amount, however, respondent No.1-applicant refused to accept the same. Hence, there was no deficiency in so far as the petitioner-Insurance Company is concerned.

6 On consideration of the evidence led by the respective parties, the PSCDRC partly allowed the claim and directed the petitioner-Insurance Company to pay a sum of Rs.3,88,000/- along with interest 9% per annum from the date when the claim was reported by placing reliance on the surveyor's report. The operative part of the said report reads thus:-

“6. It was submitted by the learned counsel for the complainant that from the evidence produced by the complainant, the allegations as contained in the complaint stands proved. It can easily be made out from the balance sheet Ex.C-3 that at the time the blast took place in the factory the stock worth Rs. 18,15,630/- was lying therein and the value of the machinery fitted therein was Rs.7,48,807/- From the affidavit of the complainant and the photographs, it stands proved that whole of the stock and the machinery were damaged in the fire, the value of which was more than Rs.25,00,000/- Therefore, opposite party No. 1 was liable to pay the assured sum of Rs 22,00,000/- under the Policy. He further Submitted that the Surveyor gave a biased report Ex.OP-1/2 by ignoring the records, which were submitted to him by the complainant and he has not given any reasons in that report as to how he came to the conclusion that the loss suffered by the complainant was only to the tune of Rs.3,88,789/- The act of opposite party No.1 in not allowing whole of the claim of the complainant amounts to deficiency in service

2024:PHHC:143491



on its part. He prayed that direction be issued to opposite party No.1 to pay the total assured amount of Rs.22,00,000/-.

7. On the other hand, it was submitted by the learned counsel for opposite party No.1 that the evidence produced by the complainant in support of the allegations made in the complaint was duly rebutted by the evidence produced by this opposite party. From that evidence, it stands proved that the factory of the complainant was lying idle from the last three months of the alleged incident and she was not having the stock and machinery of the worth mentioned in the complaint and the documents submitted by her to the Surveyor. It was found by the Surveyor that in fact no such fire ever took place in the factory and the blast occurred on account of the act of the miscreants, who had entered the factory. The report of the Surveyor is most important document for determining the loss caused to the complainant and by virtue of that report, she is not entitled to the amount in excess of Rs.3,88,789/-.

8. In support of the allegations made in the complaint, the complainant proved on record her affidavit EXCA. For further corroborating the deposition made by her she proved on record the photographs Ex.C-2 and the balance sheet on 28.9.2009 Ex.C-3. As per her deposition, the stock and the machinery/plant lying inside the factory was totally damaged on account of the fire and the value thereof was Rs.30,00,000/-. However, as per the balance-sheet Ex.C-3, the closing stock as on 28.9.2009 was of the value of Rs 18,15,630/- and the machinery/plant was of the value of Rs.7,48,807/-,

2024:PHHC:143491



9. *Opposite party No.1 is relying upon the report of the Surveyor Ex. OP-1/2, for rebutting the evidence so produced by the complainant regarding the damage/loss caused to her in the alleged incident. It has also proved on the record the affidavit of Sachin Ohri, Manager, Ex.OP-1/A but that is of not much relevance for deciding the controversy between the parties. The report of the Surveyor was duly proved by that Surveyor by proving on record his affidavit Ex.OP1/B. A very detailed report was made by the Surveyor and as per the settled law the report of the Surveyor is very important document for deciding the damage/loss caused to the insured but at the same time, it cannot be the last word on that subject. The Surveyor detailed each and every fact in his report and also mentioned therein the circumstances of the loss. He stated that on the day of alleged incident the factory was not operational and only the compressor attached to Deep Freezer was in working condition. Under the heading" 'Cause of Fire, he stated that exact cause of fire was not known and that the insured was unable to provide any details on the cause of loss. On the basis of his observations at the site he reported that it appeared that some miscreants by taking the advantage of the situation that nobody was available in the factory might have entered inside the same and tried to steal the material and later on, they tried to change/cover up the situation by burning the material and they gave some ignition near the Deep Freezer and the vapours, which were present in the vicinity, caused the explosion and later on spread into fire. He also reported that the fire remained confined to near Deep Freezer as no marks of travel of fire were observed on the wall, ceiling and/or material kept on the floor and that the contention of the insured that the entire material had been burnt in the fire and/or*

2024:PHHC:143491



evaporated was not possible as there were no marks of the fire in the entire factory.

These observations of the Surveyor finds corroboration from the photographs, which were proved by the complainant herself as Ex.C2 and which are 8 in number. The sign of fire is not visible in any of these photographs nor any burnt material can be seen therein. As observed by the Surveyor, marks of the fire can be seen only on some parts of the Deep Freezer appearing in one of the photographs. This can be made out from the photographs that all the containers were totally empty. Those photographs belie the allegations of the complainant that stock worth Rs. 18,15,630/- was burnt in the fire. Similar is the position with respect to the machinery/plant, as no signs of fire appear, on any of those parts of the plant except the Deep Freezer

10 While calculating the loss caused in this incident, for which the complainant has submitted her claim under the Policy, the Surveyor took into consideration the balance sheet, which was proved on the record by the complainant as Ex.C-3. He took into consideration her allegation that there was stock worth Rs. 18,15,630/- In the factory on the day of incident, which had been duly certified by the Chartered Accountant. He mentioned in his report that the insured showed her inability to provide any base documents for the trading account except for the purchase and sale bills. He prepared the trading and manufacturing account for the period 1.4.2009 till the date of loss and tabulated the same in para 8.12 of his report. He analysed the manufacturing and trading account for the preceding three years and then mentioned the ratio thereof. He

2024:PHHC:143491



also mentioned in his report that as the factory was not operational for the last two-three months, so it was not correct to take the basis of gross profit percentage for the last financial year and that it was on that account that he prepared the trading and manufacturing account. After taking into view each and every aspect of the case and the documents made available to him by the complainant, he correctly assessed the net loss caused to the complainant in the alleged incident of fire at Rs.3,88,000/- The complainant has failed to make out any case, which may tend us to conclude that this report of the Surveyor, which is self-speaking and contains the detailed reasons for the findings arrived at by him, is not admissible and is to be ignored. To our mind, this report is the best piece of evidence on the record for concluding as to how much loss was caused to the complainant in the alleged incident of fire On the basis thereof, we conclude that the total loss caused to the complainant was Rs.3,88,000/- and not Rs.30,00,000/-, as alleged by the complainant.

11. In the result, the complaint is partly allowed and opposite party No.1 is directed to pay the sum of Rs.3,88,000/- to the complainant, along with interest at the rate of 9% per annum from the date when the claim was reported by the complainant to opposite party No.1 till the payment of that amount.”

7 Aggrieved thereof, an appeal was filed by respondent No.1-applicant before the NCDRC.

8 It was argued by respondent No.1-applicant before the NCDRC that the stock was hypothecated and regular statement used to be generated and verified by the Punjab National Bank after authenticating the same

2024:PHHC:143491



stood verified for the period pertaining to March to August 2009 as well and showed the stock at Rs.17,62,000/- as on 03.09.2009 i.e. three weeks before the incident. The claim of respondent No.1-applicant was that the stock in the factory on the date of fire was Rs.18,15,630/- and the value of the plant and machinery was Rs.7,48,860/- as per the recorded documents. Hence, the total loss was more than Rs.25 lakhs due to the fire incident but as per the insurance cover, the liability of the petitioner-Insurance Company was to indemnify the insured to the tune of Rs.22 lakhs only. It was also argued that the Surveyor's report was inadmissible as the last and final word and if the discrepancies are evident, the report may be disregarded by the Court.

9 The contentions of the petitioner-Insurance Company and its reliance on the Surveyors report were also noticed by the NCDRC along with its vehemence that there was no proof of any other loss.

10 On consideration of the entire evidence and the arguments, NCDRC recorded as under:-

“8. The issue for consideration is whether the State Commission erred in accepting the assessment of loss by the Surveyor which was the basis for the settlement of claim by the respondent no.1 (Insurance Company).

9. In Sri Venkateswara Syndicate Vs. Oriental Insurance Company Ltd. & Anr. in CA No. 4487 of 2004 dated 24.08.2009, (2009) 8 SCC 507, it has been held by the Hon'ble Supreme Court that:

2024:PHHC:143491



a surveyor's report in cases of claims under a valid policy is an essential requirement under Section 64UM and that the Surveyor's report constitutes an important document that must be considered.

10. However, it has also been held in New India Assurance Co. Ltd. Vs. Pradeep Kumar, (2009) 7 SCC 787, as under:

15. The object of the aforesaid provision is that where the claim in respect of loss required to be paid by the insurer is Rs.20,000/- or more, the loss must first be assessed by an approved surveyor (or loss assessor) before it is admitted for payment or settlement by the insurer. Proviso appended thereto, however, makes it clear that insurer may settle the claim for the loss suffered by insured at any amount or pay to the insured any amount different from the amount assessed by the approved surveyor (or loss assessor). In other words although the assessment of loss by the approved surveyor is a pre-requisite for payment or settlement of claim of twenty thousand rupees or more by insurer, but surveyor's report is not the last and final word. It is not that sacrosanct that it cannot be departed from; it is not conclusive. The approved Surveyor's report may be basis or foundation for settlement of a claim by the insurer in respect of the loss suffered by the insured but surely such report is neither binding upon the insurer nor insured.

[Emphasis added]

2024:PHHC:143491



11. In the instant case, the appellant has challenged that the Surveyor's report on the grounds that it did not consider the value of stock held which were supported by audited books of account by the Chartered Account, the stock position as authenticated by the Punjab National Bank from whom the loan had been obtained. It was contended that the Surveyor had based the report erroneously on the ground that the factory had not been in operation for 2-3 months and that there had been a concealment of fact with regard to the stock held as on the date of the incident. The Surveyor's report was also challenged on the grounds that it did not consider the nature of the stock and held that the loss was also on account of theft. From the material on record and the submissions made before us it is evident that the claim has been allowed for Rs.3,88,000/- against the claim of Rs.22,51,030/- on the basis of the Surveyor's report, which under normal circumstances should be considered as the basis for settlement of the claim. However, on examination of this report indicates that the surveyor's report is based upon conjectures and surmises and is qualified by terms such as 'might', and 'some material'. Its conclusion is not based on any investigation report of the police or any expert opinion such as a forensic report. While admitting that the stock insured at low evaporation points admittedly and on account of fire product might have been burnt or evaporated. It was held, on the basis of assumption that the loss was only to the extent of 50% on account of fire and 50% due to theft of stock.

12. From the above, it is manifest that while the claim of the appellant is based on the audited statements of stock certified by the Chartered Accountant as furnished to the financing

2024:PHHC:143491



Bank, the Surveyor has chosen to assess the quantity of stocks on the basis of a theft which has not been established through a Police report and the ratio of production. In the absence of cogent evidence regarding the theft and given the nature of product, it is difficult to accept the quantification of loss of stock as arrived at by the Surveyor. Since this quantification is not based on evidence and the construction of events leading to the fire was not supported by any report of the police or any other agency, the basis of the surveyor's report appears to be conjectural and speculative. For these reasons, in view of the judgment of Pradeep Kumar (supra), the report of the surveyor cannot be accepted to be the final word notwithstanding the provisions of Section 64 UM of the Insurance Act 1938 and must therefore, necessarily be disregarded. Respondent no.1 was obliged to consider the report the Surveyor keeping in view the fact that when neither the cause of fire itself nor the theft been established, and also the quantum of loss determined on a rational basis, it would have been fair to provide the benefit of doubt to the insured. In view of the above, the order of the State Commission upholding the quantum of claim as assessed by the surveyor cannot be sustained. The claim preferred by the appellant for Rs 3,88,000/- for Plant and Machinery needs to be considered afresh by the respondent insurance company after applying the standard provisions for salvage, etc.

13. For the aforesaid reasons, the appeal is allowed and the impugned order is set aside with directions to the respondent to allow the claim of Rs 22.00 lakh after considering the claim for Plant and Machinery, as above, subject to the necessary deduction as per the policy within a period of 45 days and to

2024:PHHC:143491



pay the same along with litigation cost of Rs 50,000/- to the appellant along with claim amount. Failure to comply with the order would attract interest @ of Rs.7.5% per annum on the claim amount payable from the date of submission of the claim till realization.”

11 Aggrieved thereof, the instant writ petition has been filed.

12 Learned counsel for the petitioner-Insurance Company has vehemently argued that the Surveyor had taken into consideration all the relevant factors and had submitted a comprehensive report quantifying the loss at Rs.3,88,000/-. He submits that without finding any fault in the surveyors report, the NCDRC has travelled beyond the surveyor's report in directing the petitioner-Insurance Company to pay a sum of Rs.22 lakhs along with litigation cost to the extent of Rs.50,000/- which such order is unsustainable being in conflict with the surveyor's report.

13 Learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the matter of **Khatema Fibres Ltd. Vs. New India Assurance Company Ltd. and another, Civil Appeal No.9050 of 2018 decided on 28.09.2021.** The relevant part of the same is extracted as under:-

*“38. A Consumer Forum which is primarily concerned with an allegation of deficiency in service cannot subject the surveyor's report to forensic examination of its anatomy, just as a civil court could do. **Once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities of the surveyor, in a manner***

2024:PHHC:143491



prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the jurisdiction of the Consumer Forum to go further would stop.

39. In the light of the above we are of the considered view that the Judgment of the National Commission does not call for any interference. Hence the appeal is dismissed. No costs.”

14 Relying on the same it is contended that the Consumer Forum could not have gone into the forensic examination of the surveyor's report and to discredit the same. The same has to be accepted as a proof of loss.

15 No other argument has been raised.

16 I have heard the learned counsel appearing on behalf of the petitioner-Insurance Company and have gone through the documents available on record.

17 Adverting to the judgment of the Hon'ble Supreme Court relied upon by the counsel for the petitioner-Insurance Company, first, it is evident from a perusal of the extract reproduced above that the Hon'ble Supreme Court held that once it is found that there was no inadequacy in the quality, nature and manner of performance of the duties and responsibilities by the surveyor, in a manner prescribed by the Regulations as to their code of conduct and once it is found that the report is not based on adhocism or vitiated by arbitrariness, then the, Consumer Fora would have no jurisdiction. The said judgment would come into play and aid of petitioner only when no error or defect is noticed by the Consumer Forum

2024:PHHC:143491



in the report submitted by the Surveyor. A perusal of the award passed by the NCDRC, however, shows that the said surveyor's report was challenged and discredited on the specific ground that the same was prepared erroneously and without taking into consideration the record and ground situation. The surveyor's report reported an assumed loss on account of theft as well. The NCDRC specifically observed that the Surveyor's report is based upon conjectures and surmises and is qualified by terms such as "might" and "some-material". The conclusions reached by the surveyor were not based on any investigation report of the police or any expert opinion, especially a forensic report. It was also recorded by the NCDRC that while admitting that the stock insured had a low evaporation point and the oil may have evaporated on account of the fire, yet, the surveyor furnished the report on an assumption that loss was only to the extent of 50% on account of fire and that the balance 50% loss was due to theft of the stock. It was also specifically noticed by the NCDRC that the surveyor had chosen to assess the quantity of stock by assuming occurrence of theft to the extent of 50% of the stock but which such assumption is not well founded and is not established either by the police report or any other document. Hence, in the absence of any evidence regarding the occurrence of theft or any report having been furnished in this regard by the police, the bifurcation/division of the loss equally in the ratio of theft as well as on account of fire was ill-founded. Hence, the surveyor's report was rightly not accepted as a correct assessment of the quantification of loss under the circumstances referred to above. I find that the judgment in question thus

2024:PHHC:143491



applies against the petitioner in appreciation of facts of the present case and noticing that there were numerous defects and deficiencies in the said report of the surveyor which was based on conjectures.

18 A specific query was also raised to the counsel for the petitioner-Insurance Company to refer to the part of the report of the surveyor on the basis whereof, it can be held that the findings recorded by the NCDRC suffers from misappreciation of the factual aspects or that the conclusions so drawn could not have been recorded on an objective and rational consideration of the report. He is, however, not in a position to refer to any such evidence collected by the surveyor on the basis whereof the findings recorded by the NCDRC declining to accept the surveyor's report as conclusive can be ignored. Thus, no fault in the finding recorded by the NCDRC has been established.

19 Further, the NCDRC noticed all the contentions of the petitioner-Insurance Company and noticed the authenticated record and balance sheets as authenticated by Punjab National Bank in the natural course of business and did not find any reason to disregard the stock.

20 A High Court while exercising its power of judicial review against the orders passed by the NCDRC exercise a limited revisional jurisdiction and to interfere only in a case when there is an illegality, impropriety or perversity in the impugned award. It would not ordinarily supplant its own opinion for that of the Statutory Tribunals merely because some other view may also be probable.

2024:PHHC:143491



21 Since no such latent or patent defect in the award passed by the NCDRC has been pointed during the course of arguments and there is no evidence to hold that the award suffers from any illegality, impropriety or perversity or non/incorrect appreciation of the evidence brought on record, I find that no sufficient grounds exist in the present writ petition that call for interference in the award passed by the NCDRC. The present writ petition is accordingly **dismissed in limine**.

November 05, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*