

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

Date of Decision: 16 October 2023

**REVISION PETITION NO. 2124 OF 2017**

(Against the Order dated 01/05/2017 in Appeal No. 167/2016 of the State Commission Rajasthan)

1. UNITED INDIA INSURANCE CO. LTD.

REGIONAL OFFICE NO. 1, 8TH FLOOR, KANCHANJUNGHHA BUILDING,  
12, BARAKHAMBA ROAD, NEW DELHI-110001

.....Petitioner(s)

Versus

1. M/S. CUREWEL PACKAGING PVT. LTD.

THROUGH DIRECTOR ASHOK GOYAL, 59-A, LAKSHMI NAGAR, TONK  
ROAD, JAIPUR

RAJASTHAN

.....Respondent(s)

**Sections, Acts, Rules, and Article:**

Section 21(b) of Consumer Protection Act, 1986

Insurance Act, 1938

Circular No. IRDA/NL/CIR/Misc/173/09/2015 dated 24.09.2015 by IRDA

Circular No. IRDA/NL/CIR/MISC/113/06/2016 dated 07.06.2016 by IRDA

Ministry of Finance, Department of Financial Services letter No.  
F.No.G14017/80/2014-Ins.II dated 04.09.2018

**Subject:** Consumer Protection Act – Revision Petition against the order of the State Consumer Disputes Redressal Commission – Assessment of insurance claim dispute – Appointment of second surveyor – Interpretation of relevant sections, circulars, and legal principles regarding insurance claims – Scope of Revision Petition under the Consumer Protection Act.

**Headnotes:**

*Consumer Protection Act – Revision Petition against the order of the State Consumer Disputes Redressal Commission – Appellant, an insurance company, challenges the order of the State Commission regarding a claim dispute – Appellant claims the State Commission erred in assessing the loss and appointment of a second surveyor – Respondent, the insured, accepts a*

*settlement amount under protest – State Commission’s order upheld as it found no jurisdictional error or material irregularity – Revision Petition dismissed. [Para 1-18]*

*Insurance Claims – Assessment of Loss – Discrepancy in surveyor reports – Appointing a second surveyor – Guidelines provided by the Insurance Regulatory and Development Authority of India (IRDA) and relevant judicial precedents considered – Second surveyor appointment should have valid reasons and must specify cogent reasons for not accepting the first surveyor’s report – No prohibition for a second surveyor, but it should be justified – Each case to be independently considered based on relevant facts – State Commission’s order upheld. [Para 10-17]*

*Scope of Revision Petition – Limited jurisdiction – Revisional powers to be exercised only when there is a prima facie jurisdictional error – No illegality or material irregularity found in the State Commission’s order – Revision Petition dismissed. [Para 18]*

**Referred Cases:**

- Sri Venkateshwara Syndicate Vs. Oriental Insurance Company Limited (2009) 8 SCC 507
- M/s New India Assurance Co Ltd. V/s M/s Luxra Enterprises Pvt. Ltd. (2019) 6 SCC 36
- New India Assurance Company Limited versus Sri Buchiyamma Rice Mill and Another (2020) 12 SCC 105
- Rubi Chandra Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269]
- Sunil Kumar Maity Vs. State Bank of India & Ors. [AIR (2022) SC 577]

**Representing Advocates:**

Insurance Company: Mr. V.S. Chopra, Advocate

Representing for Respondent (Complainant): Ms. Archana P Dave, Advocate, Mr. Annish Dave, Advocate, Mr. Aadhar Saha, Advocate

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**Dated : 16 October 2023**

**ORDER**

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21 (b) of Consumer Protection Act, 1986, against the order dated 01.05.2017 of the State Consumer Disputes Redressal Commission, Rajasthan (hereinafter referred to as the ‘State Commission’), in First Appeal (FA) No.167/2016 in which order dated 08.01.2016 of District Consumer Disputes Redressal Forum, Jaipur (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 188/2012 was challenged, inter alia praying for stay of order dated 01.05.2017 in FA No. 167/2017 till disposal of Revision Petition and may pass any other order as it may deem fit in the circumstances.

2. While the Revision Petitioner (hereinafter also referred to as OP/Insurance Company) was Respondent and the Respondent (hereinafter also referred to as Complainant) was Appellant in the said FA/167/2016 before the State Commission, the Revision Petitioner was OP and Respondent was complainant before the District Forum in the CC No. 188/2012. Notice was issued to the Respondent on 01.08.2017. Parties filed Written Arguments/Synopsis on 15.07.2019 (Petitioner) and 01.02.2022 respectively.
3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:
  - (i) The Respondent factory obtained insurance policy No. 140405/11/08/11/00000135 for one year period i.e. from 24.07.2008 to 23.07.2009 for amount of Rs.90,00,000/- covering stock, building, machine and equipment from the insurance company M/s United India Insurance Company Limited. The Respondent lodged a claim stating that he has suffered loss on 08.08.2008 due to flood. The Petitioner appointed M/s Protech Engineers and Loss Assessors to survey and assess the loss. The surveyors vide their Report dated 23.03.2009 assessed the loss of stock, building and machinery to the tune of Rs.7,48,909.39/-.
  - (ii) On considering the Report of the surveyor, the petitioner felt that the assessment of loss of stock as assessed by the surveyor was not fully substantiated and the assessment of loss of machinery was found to be on higher side. The petitioner appointed an investigator and hence, M/s S.K. Bakliwal & Co., Surveyors were appointed to investigate. M/s S.K. Bakliwal, Surveyor, assessed the loss of stock, plant and machinery to Rs.3,65,640/- instead of Rs.7,90,184/- as assessed by M/s Protech Engineers. The petitioner after consideration of Survey Report and the Investigation Report offered the Respondent a sum of Rs.3,81,170/- as full and final settlement of claim, which was not acceptable to the Respondent. Thereafter, the petitioner explained the Respondent, in details, as to how the petitioner has come to amount of loss at Rs.3,81,170/-. The Respondent accepted the amount and signed the discharge voucher. The claim of the Respondent was settled with their consent. After accepting the amount of Rs.3,81,170/- with consent without any undue influence, the Respondent filed complaint before the District Forum.
4. Vide Order dated 08.01.2016, in the CC No. 188/2012, the District Forum dismissed the complaint.
5. Aggrieved by the said Order dated 08.01.2016 of District Forum, Respondent/complainant appealed in State Commission and the State

Commission vide order dated 01.05.2017 in FA No. 167/2016 has allowed the Appeal and passed the following order:

*“Hence, in view of the above, the order of the Forum below is liable to be set aside and the claim is allowed in favour of the appellant. The appellant would get remaining amount of Rs.3,67,739/- along with 9% interest from the date of filing of the complaint. Further the appellant will get Rs.10,000/- as cost of proceedings. The order be complied within one month.”*

6. Petitioner has challenged the said Order dated 01.05.2017 of the State Commission mainly on following grounds:-
  - i. The State Commission in its impugned order dated 01.05.2017 has erred both on facts and law. State Commission failed to appreciate the evidence placed on record, that respondent has failed to establish/prove that stock worth Rs.302272/- (Bill No. 01364 dated 30.07.2008) was there on the site at the time of date of loss. The assessment made by the surveyor is also on the higher side in respect of machinery etc.
  - ii. The State Commission has grossly failed to negate the findings of District Forum that the Respondent has not been able to prove that the investigation report is false and or without any basis.
  - iii. The State Commission failed to appreciate the fact that the petitioner were well within their limits to appoint an Investigator because there were apparent anomalies in survey report. The order passed by the State Commission is bad in law and warrants to be set aside.
7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7.1 Petitioner in addition to repeating what has been stated in para 6 under the grounds, has contended in its written arguments that the State Commission has erred to appreciate the fact that Respondent has already accepted the assessed claim amount of Rs.3,81,170/- in full and final settlement and that Respondent has not alleged any fraud, undue influence misrepresentation on the part of Petitioner at the time of execution of vouchers and as such are not entitled to have any further claim as per the settled law.

7.2 It is contended by the Respondent that the Respondent entered into a contract of Insurance for safety of its factory building, machine & stock with the Petitioner Insurance company on 24.07.2008. During the insurance period, on 08.08.2008 there was flood due to heavy rain and water entered factory premises including basement by breaking the walls of the factory. Due to water in basement, substantial amount of Goods, Electric fittings & Machinery got damaged to the extent of making them redundant. Loss suffered by the complainant/Respondent to the tune of Rs.8,21,822/- and claimed it from the Insurance Company as compensation for damages due to flood which was covered and payable under the policy with sum insured value of Rs.150.00 lakhs. The insurance company was immediately intimated about the incident and Insurance Company appointed Surveyor, who did detailed assessment of the loss. The complainant without any delay provided all required information & documents to the petitioner. The surveyor assessed the loss of Rs.7,48,909.35. However, the claim was not settled by the Insurance Company. The Insurance Company on its own appointed M/s Bakliwal & Co. as second surveyor. The second surveyor assessed the loss to Rs.3,65,640/- as against Rs.7,48,909.35 as assessed by the first surveyor. After one and half year from the date of filing the claim, on 05.02.2010, the Insurance Company sent full & final settlement voucher of Rs.3,81,170/- to the claimant which was accepted by the Respondent under protest. This was due to the dire necessity of money on the part of the Respondent.

7.3 The behavior of the Insurance Company reveals their intention and deficiency of services by way of non-payment of the entire claim amount as assessed by the first Surveyor. The State Commission held that when the first Surveyor had assessed the loss it was not within the jurisdiction of the insurance company to appoint second surveyor without any rhyme or reason. Reliance was placed by the State Commission on the judgment of this Commission in Salem Textiles Ltd. Vs. United India Insurance Co. Ltd. II (2013) CPJ 444 (NC), where it was held in the said judgment that there is no provision in the insurance Act to appoint second surveyor and even investigator could be appointed only if claim is found to be fraudulent and as per report of the first surveyor the claim is found to be genuine and the opinion of the surveyor is that the appellant has suffered loss due to flood in premises and even second surveyor Mr. S.K. Bakliwal is of the opinion that loss sustained by the insured was due to flood. The Respondent has relied upon the judgments in Sri Venkateshwara Syndicate Vs. Oriental Insurance Company Limited (2009) 8 SCC 507, M/s New India Assurance Co. Ltd. V/s

M/s Luxra Enterprises Pvt. (9668 of 2014) and II 2013) CPJ 444 (NC) Salem Textiles Ltd. Vs. United India Insurance Co. Ltd.

8. We have carefully gone through the order of the State Commission, District Forum, other relevant records and rival contentions of the parties. As regards contentions of the petitioner/Insurance Company, the respondent has already accepted the assessed claim of Rs.3,81,170/- in full and final settlement, State Commission has observed in its order that amount receipts clearly speaks that the appellant (Respondent herein) has accepted it as part payment and under protest.
  
9. As regards appointment of second surveyor, State Commission has observed as follows:-

*“When first surveyor has assessed the loss at the tune of Rs.7,48,909/- it was not within the jurisdiction of the respondent to appoint second surveyor without any reason and counsel for the respondent could not show that what occasion has arisen to appoint second surveyor and the appellant has rightly relied upon II (2013) CPJ 444 (NC) Salem Textiles Ltd. Vs. United India Insurance Co. Ltd., where the National Commission has held that there is no provision in the Insurance Act to appoint second surveyor and even investigator could be appointed only if claim is found to be fraudulent and as per report of first surveyor the claim is found to be genuine and the opinion of the surveyor is that the appellant has suffered loss due to flood in premises and even the second surveyor Mr. S.K. Bakliwal is of the opinion that loss sustained by the insured was due to flood.”*

10. Regarding contention of petitioner/Insurance Company about stock worth Rs.3,02,272/- (Bill No. 01364 dated 30.07.2008) not being there on site at the time of date of loss, State Commission has observed as follows:-

*“The opinion of the second surveyor was that the stock of invoice dated 30.7.2008 and 9.8.2008 never reached to the premises but the appellant has submitted the certificate of Sidha Neelkanth Paper Industries which clearly speaks that material was received by the party on 30.7.2008. Hence, there was no occasion for the second surveyor to opine in contradiction to the first surveyor. Even the appointment of second surveyor was without jurisdiction in view of the law laid down in Salem Textiles Ltd. (supra).”*

On this issue, the second surveyor observes in its reports as follows:-

*“On verification of purchases of Craft Paper Reels from above parties we find that following invoices having discrepancy.*

1- *Bill No. 01364 dated 30-07-08, 12327 kg. Rs.*

*302272.00 Sidha Neel Kanth Paper Industries.*

*On seeing the bill we find that **invoice not disclosing** :-*

- (i) Challan No. under which material dispatched.*
- (ii) Truck/Tractor/Trolley number through which material sent to destination.*
- (iii) The invoice supposed to be attached with vehicle transporting the goods and on the invoice truck number, challan number should be mentioned but the Invoice not disclosing all above details and the same received by hand, as stated by insured on 13-08-08. Thus it is a conclusive evidence that material was received on 13-08-08 and not on 06-08-2008 i.e after the date of loss/flood.*
- (iv) On seeing the invoice number 01364 dated 30-07-2008 we find that invoice not disclosing GR number, Truck Number through which material was dispatched, local VAT Tax number but giving only CST number. The CST numbers are applicable only when transactions are inter-state.”*

In this regard, we have also gone through the letter dated 01.01.2010 issue by M/s Sidha Neelkanth Papers Industries Pvt. Ltd., relevant extract of which is given below:-

*“This is certify that the supply of kraft paper to M/S Curewell packaging (P) Ltd, 105-106 EPIP Jharmajri Baddi distt Solan Himachal Pardesh against Bill no. 01364 vide challan no. 1432 has been supply on 30th July 2008. The party have been received the material on 30<sup>th</sup> July 2008.”*

11. We have gone through the report dated 23.03.2009 of first surveyor. Relevant extract with respect to stock and assessment of loss are given below:-

**“6.3 STOCK**

*Sum insured for the stock is Rs. 40.00 Lacs. The insured provided the provisional balance sheets (duly verified) as on 08.08.2008.*

		DIRECT		GROSS PROFIT CLOSING		
OPENING PURCHASE EXPENSE		STOCK RS.		SALES		D
STK RS	RS	RS.	RS.			
A	B2	C		Rs.	%	A+B1+B2(CD)
794,998.00	7,214,560.00	211,849.00		6,561,637.62		103,738.62
						1,763,508.00
						1.58

*The closing stock is Rs17.64 Lacs. Thus stock is adequately insured.*

X X X X

*The assessment worked out is Rs.7,90,184.86, detail of which is as under:*

CLAIMED	ASSESSED
RS.	RS.
Assessment for Stock	574,734.00
Assessment for Plant & Machinery	187,698.25
Assessment for Cleaning Expenses	131,610.00
	894,042.25
	790,184.86



X X X X

### RECOMMENDATIONS

*In view of the above, we recommend the loss accessed for **Rs.7,48,909/-***

***(RUPEES SEVEN LAC FORTY EIGHT THOUSAND NINE HUNDRED NINE ONLY)** to the underwriter for their consideration subject to terms and condition of policy issued and underwriter accepting their liability. The insurer may ask for the proof of payment against water drainage charges against bill no. 122 dated 13.08.2008 issued by Surinder Singh Water Supplier.”*

12. Respondent has contended that he suffered a loss to the tune of Rs.8,21,822/- and claimed it from the Insurance Company as compensation for damages due to flood which was covered and payable under insurance policy with Sum Insured Value of 150.00 Lakhs. As per the survey report from M/s Protect Engineers, the loss worked out to the tune of Rs.7,48,909.35. However, in spite of the said survey report submitted by the Surveyor, the claim was not settled by the Insurance Company. M/S Bakliwal, Surveyors, in their Investigation report dated 01.01.2010 assessed the loss of Stock, Plant & Machinery to Rs.3,65,640/- as against Rs.7,48,909/- as per the assessment already done by the first Surveyor, M/s Protect Engineers more than one year back. After about one and a half years from the date of filing of Claim, on 05.02.2010, the Insurance Company sent full & final settlement voucher of Rs.3,81,170 to the claimant which was reluctantly accepted by the claimant under protest. This was due to the dire necessity of money on the part of the Claimant. Respondent further contended that as per the Insurance Act, 1938, reports of surveyors appointed by Insurance Company needs to be given due importance. Sufficient grounds have to be given to disagree with assessment made. Moreover, Insurer cannot go on appointing Surveyors without assigning reasons for appointing subsequent surveyor(s). In support of his contentions, respondent has relied upon judgment of Hon'ble Supreme Court in **Sri Venkateshwara Syndicate Vs Oriental Insurance Company Limited** (2009) 8 SCC 507, Respondent contends that in this case although Hon'ble Supreme Court has upheld the right of Insurance Company to appoint a Second Surveyor but such right can be exercised for valid reasons or if the report is found arbitrary and that Insurance Company must give cogent reasons without which it is not free to appoint the second Surveyor. In the present case, no valid reason was given by Insurance Company before discarding first report and appointing second surveyor for any second assessment. The Respondent has further argued that if the reports are prepared in good faith, with due application of mind and in the absence of any error or ill motive, the Insurance Company is not expected to reject the report of the surveyors. Respondent contends that it is an undisputed fact that both surveyors acknowledged that there was a flood and loss occurred due to heavy rain water in factory premises. Despite such observation, the claim was not settled for more than one and a half years where it was very much within the scope of Insurance policy without any exclusions.

13. Insurance Regulatory and Development Authority of India (IRDA) vide its Circular No. IRDA/NL/CIR/Misc/173/09/2015 dated 24.09.2015 have advised all General Insurance Companies regarding Discharge Vouchers in Settlement of Claim as follows:-

*“The Insurance Companies are using 'discharge voucher' or "settlement intimation voucher" or in some other name, so that the claim is closed and does not remain outstanding in their books. However, of late, the Authority has been receiving complaints from aggrieved policyholders that the said instrument of discharge voucher is being used by the insurers in the judicial fora with the plea that the full and final discharge given by the policyholders extinguish their rights to contest the claim before the Courts.*

*While the Authority notes that the insurers need to keep their books of accounts in order, it is also necessary to note that insurers shall not use the instrument of discharge voucher as a means of estoppel against the aggrieved policy holders when such policy holder approaches judicial fora.*

*Accordingly insurers are hereby advised as under:*

*Where the liability and quantum of claim under a policy is established, the insurers shall not withhold claim amounts. However, it should be clearly understood that execution of such vouchers does not foreclose the rights of policy holder to seek higher compensation before any judicial fora or any other fora established by law.*

*All insurers are directed to comply with the above instructions.”*

Subsequently vide Circular No. IRDA/NL/CIR/MISC/113/06/2016 dated 07.06.2016, IRDA has issued further directions as follows, relevant portion of which is reproduced below:

*“The Authority has reviewed the matter taking in to consideration the provisions of the Contract Act, PPI Regulations and Apex Court Judgements. Taking equal cognizance of the legal rights of the policy holders and insurers, the Authority hereby further directs that-*

- (i) *Wherever there are no disputes by the insured/s or claimant/s to the amount offered by the insurer towards settlement of a claim, the present system of obtaining the discharge voucher may be continued. However, the insurers*

*must ensure that the vouchers collected must be dated and complete in all respects while obtaining the signature/s of the insured/s or claimant/s.*

*(ii) If the amount offered is disputed by the insured/s or claimant/s, insurers would take steps to pay the amount assessed without waiting for the voucher discharged by the insured/s or claimant/s.*

*(iii) Under no circumstances the Discharge vouchers shall be collected under duress, by coercion, by force or compulsion.”*

14. As regards appointment of second surveyor, we note that Ministry of Finance, Department of Financial Services (Insurance Division) vide its letter No. F.No.G14017/80/2014-Ins.II dated 04.09.2018 has issued a revised Surveyors' Management Policy (SMP) of Public Sector General Insurance Cos. (PSGIC) relevant para of which is reproduced below:-

*“16. Normally, a second surveyor may not be appointed for a claim. However, in difficult and complex claims, a second surveyor may be deputed with the concurrence of the Insured duly recording the reasons for such appointment. The Competent Authority in this regard shall be the Claim Approving Authority.”*

15. In **Sri Venkateshwara Syndicate** (supra) Hon'ble Supreme Court has held that:-

*“32. There is no disputing the fact that the Surveyor/Surveyors are appointed by the Insurance Company under the provisions of Insurance Act and their reports are to be given due importance and one should have sufficient grounds not to agree with the assessment made by them. We also add, that, under this Section the Insurance Company cannot go on appointing Surveyors one after another so as to get a tailor-made report to the satisfaction of the officer concerned of the Insurance Company, if for any reason, the report of the surveyors is not acceptable, the insurer has to give valid reason for not accepting the report.*

*33. Scheme of Section 64-UM particularly, of sub-sections (2), (3) and (4) would show that the insurer cannot appoint a second surveyor just as a*

*matter of course. If for any valid reason the report of the surveyor is not acceptable to the insurer may be for the reason if there are inherent defects, if it is found to be arbitrary, excessive, exaggerated, etc., it must specify cogent reasons, without which it is not free to appoint the second surveyor or surveyors till it gets a report which would satisfy its interest. Alternatively, it can be stated that there must be sufficient ground to disagree with the findings of surveyor/surveyors.*

*There is no prohibition in the Insurance Act for appointment of second surveyor by the insurance company, but while doing so, the insurance company has to give satisfactory reasons for not accepting the report of the first surveyor and the need to appoint second surveyor.”*

16. In **M/s New India Assurance Co Ltd. V/s M/s Luxra Enterprises Pvt. Ltd.** (2019) 6 SCC 36, Hon’ble Supreme Court held that *“Thus we find that there was no valid reason for the Insurance Company not to accept the report of surveyor - M/s Sunil J. Vora & Associates nor there is any proof that such report is arbitrary & excessive. There are no cogent reasons to appoint Surveyor’s time & again till such time one Surveyor gives a report which could satisfy the report of Insurance Company. Hon’ble court in the same case further stated that “We find that in view of the judgement in Sri Venkateswara (Supra), it is not open to appoint another surveyor till such time, its get’s a report in its favour. In fact the appointment of the surveyors was to repudiate the claim of the complainant on one pretext or the other.”*

17. In **New India Assurance Company Limited versus Sri Buchiyyamma Rice Mill and Another** (2020) 12 SCC 105, Hon’ble Supreme Court held that:

*“17. While determining whether the appointment of a second or successive surveyor is justified, one must take into consideration the necessity of doing so and it must be weighed in the context of relevant facts and circumstances including the deficiencies or omissions in the report of the first surveyor. Each case must be independently considered based on relevant facts and circumstances. There ought to be cogent reasons for appointing a second surveyor.”*

18. In view of the foregoing, we find that State Commission has given a well-reasoned order to set aside the order of the District Forum. We find no reason to interfere with the order of State Commission. As was held by the Hon’ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577] held that *“the revisional jurisdiction of the National Commission under [Section 21\(b\)](#) of the said Act is extremely limited.*

*It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity.”* We find no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, the Revision Petition is dismissed.

19. The pending IAs in the case, if any, also stand disposed off.

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