

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1189 OF 2017

(Against the Order dated 09/01/2017 in Complaint No. 37/2008 of the State Commission West Bengal)

1. NATIONAL INSURANCE CO. LTD.

THROUGH ITS REGIONAL OFFICE , NATIONAL
LEGAL VERTICAL, 2E/9, JHANDEWALAN EXT.

NEW DELHI 110055

.....Appellant(s)

Versus

1. SHANKAL AGARWAL & 2 ORS.

H.C.L ROAD RANGAMATIA (EAST) PO
RUPNARAYANPUR BAZAR P.S. SALANPUR,
BURDWAN

WEST BENGAL

2. MRS. SUMITRA DEVI

H.C.L ROAD RANGAMATIA (EAST) PO
RUPNARAYANPUR BAZAR P.S. SALANPUR,
BURDWAN

WEST BENGAL

3. BANK OF INDIA

THROUGH BRANCH MANAGER CHITTARANJAN
BRANCH , P.O CHITTARANJAN

BURDWAN

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE V.K. JAIN, PRESIDING MEMBER

For the Appellant : Mr. Animesh Sinha, Advocate

For the Respondent : Mr. Sanjoy Kumar Ghosh, Advocate
Ms. Rupali S. Ghosh, Advocate

Dated : 01 Aug 2017

ORDER

IA/10845/2017 TO IA/10847/2017 (For early hearing)

Hearing of the matters is pre-poned. The date of 08.11.2017 be treated as cancelled. The applications stand disposed of.

FA/1187/2017

The complainant/respondent Sumitra Agarwal who is running business under the name and style of 'Amrit Flour Mills', obtained an insurance policy from the appellant company in respect of his business stock, furniture and fixtures. A fire broke out in the premises of the complainant in the night of 4th /5th June, 2006. A claim under the aforesaid policy was lodged by him with the insurance company. A surveyor was duly appointed to assess the loss but, the claim could not be settled since the appellant company wanted to settle the claim paying a lump-sum amount of Rs.5,59,000/- to the complainant, which he refused to accept. Being aggrieved from the failure of the insurer to pay the claim, the complainant approached the concerned State Commission by way of a consumer complaint.

2. The complaint was resisted by the appellant company primarily on the ground that while taking the insurance policy, the complainant had not disclosed what the insurer termed as the 'adjoining and intercommunicating risks'. By adjoining and intercommunicating risks, the appellant means risk of fire on account of the business or trade being carried out or the goods being stored in the adjoining/neighbouring premises. The State Commission having allowed the complaint and having directed the insurer to settle the claim of Rs.11,34,459/- in terms of the assessment made by the surveyor and interest the appellant is before this Commission by way of this appeal. Since there is a delay of 108 days in filing the appeal, an application seeking condonation of the said delay has also been filed.

FA/1188/2017

3. The complainants/respondents who are carrying out business under the name and style of M/s Sumitra Enterprise, obtained an insurance policy in respect of their business, stock, furniture and fixtures. In the fire which broke out on 4th /5th June, 2006, there was loss/damage to their business, stock etc. The claim lodged by them with the appellant company could not be settled since the insurer offered an amount of Rs.20,94,555/- as against the assessment of Rs.42,00,817/- made by the surveyor appointed by the insurance company. Being aggrieved, the complainant approached the concerned State Commission by way of a consumer complaint.

4. The complaint was resisted by the insurer on the same grounds on which it had resisted the claim in FA/1187/2017 i.e. the insured had not disclosed the adjoining and intercommunicating risks while taking the insurance policy. In their case also, the contention of the insurer did not find favour in the State Commission which directed it to settle the claim at Rs.42,00,817/- as per the assessment made by the surveyor and interest. Being aggrieved, the appellant is before this Commission by way of this appeal.

FA/1189/2017

5. The complainants namely Shankar Agarwal and Sumitra Devi had taken an insurance cover in respect of their residential building which got damaged in the fire which took place on 4th /5th June, 2006. The claim lodged by them was rejected on the ground that a business was being carried out on the ground floor of the building which was not disclosed to the insurer while taking the policy. Being aggrieved from the rejection of the claim, the complainant approached the concerned State Commission by way of a consumer complaint. The complaint was resisted by the insurer primarily on the ground that the building was being partly used for a commercial purpose which was not disclosed while taking the insurance policy. The State Commission having allowed the complaint partly by directing payment of Rs.3,69,739/- to the complainant alongwith

interest computed @ 9% per annum from the date of filing the complaint, the insurer is before this Commission.

FA/1187/2017 AND FA/1188/2017

6. The only issue involved in these appeals is as to whether the insured were under an obligation to disclose what is termed as adjoining and intercommunicating risks while applying for the insurance policy. No such obligation on the part of the insured could be pointed out by the learned counsel for the appellant. In fact, neither the copies of the insurance policies issued by the appellant nor the proposal forms submitted by the insured have been annexed to the appeal paper-books. The learned counsel for the appellant states that the proposal forms being quite old, were not annexed to the paper-book. The aforesaid contention however, cannot be accepted since the surveyor stated in his report that the proposal forms were almost blank, besides being undated. The aforesaid observation of the surveyor has been noted by the State Commission in the impugned order. The observations can be seen in the report of the surveyor on page no.117 of the paper-book.

7. In the absence of an obligation on the part of the insured to disclose what is termed as the adjoining and intercommunicating risks, the claim could not have been rejected or even reduced on account of the aforesaid alleged non-disclosure. If the insurer wanted the insured to disclose the adjoining and intercommunicating risks if any, an appropriate question to this effect ought to have been inserted in the proposal form. Had that been done and had the insured given a false answer to the said question, the insurer would have been justified not only in refusing the claim on a non-standard basis but altogether repudiating the claim on account of such a material non-disclosure. In the absence of such a requirement, the insured could not have been expected to disclose the alleged adjoining and intercommunicating risks while applying for the insurance policy.

8. For the reasons stated hereinabove, the view taken by the State Commission in FA/1187/2017 and FA/1188/2017 does not call for any interference by this Commission in exercise of its appellate jurisdiction. Since I do not find any merit in the appeals, the applications seeking condonation of delay in filing the said appeals need not even be considered. FA/1187/2017 and FA/1188/2017 are therefore, dismissed with no order as to costs.

FA/1189/2017

9. On a perusal of the report of the surveyor, I find that he had applied depreciation to the extent of 45% while assessing the loss to the complainants. No basis for applying depreciation @ 45% was given by the surveyor. The State Commission reduced the depreciation from 45% to 30%, but did not indicate on what basis, it was reducing the rate of depreciation. In my view, the State Commission should first find out what were the rules for depreciation applicable to such a claim and only thereafter, an appropriate deduction on account of depreciation could have been made. In the absence of the rules of depreciation in the insurance policy, the rules framed under the Income Tax Act would have been appropriate for the purpose. Since, no attempt was made to find out what would be the appropriate rules for application of the depreciation, the matter needs to be remitted back to the State Commission for deciding the matter afresh after re-working the quantum of compensation in the light of such rules. The impugned order is accordingly, set aside and the matter is remitted back to the concerned State Commission for deciding the matter afresh after ascertaining the rules of depreciation applicable under the Income Tax Act, applying those

rules and then quantifying the compensation which needs to be paid to the complainants for the loss suffered by them in respect of the dwelling unit. The parties are directed to appear before the concerned State Commission on 04.09.2017. The State Commission shall decide the matter afresh within three months of the parties appearing before it. The appeals stand disposed of.

.....J
V.K. JAIN
PRESIDING MEMBER