



STATE CONSUMER HELPLINE KNOWLEDGE RESOURCE MANAGEMENT PORTAL

Centre for Consumer Studies, Indian Institute of Public Administration, New Delhi



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CONSUMER BULLETIN

Role of Consumer Helpline in Media-

tion: Mr. S.K. Virmani, Project Manager, SCHKRMP took a session on "Role of Consumer Helpline in Mediation" on 19th July 2013 during Training Programme on Consumer Complaint Redressal and Mediation held at IIPA, New Delhi during July 15-19, 2013. 23 participants from different States attended the programme. The participants were explained the need and process of mediation and as to how the consumer helpline set up in various States could be helpful to the mediation for an expeditious settlement of consumer disputes.



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Editor-in-Chief

Prof. Suresh Misra
(Project Director)

Editor

Shri S. K. Virmani
(Project Manager)

Surveyor's Report on the assessment of loss is not the final and deduction on account of Excess Clause is not valid if the policy holder has not been supplied policy terms and conditions. National Consumer Disputes Redressal Commission in the judgement passed in a case of **Uni Ply Industries vs. New India Assurance Co. Ltd.** on 16th July 2013 upheld the findings of State Commission.



The Insurance Company had filed the revision petition No. 342 of 2013 (against the concurrent finding of both the District Consumer Forum and State Commission hold-

ing the insurance company liable for deficiency in service in terms of the impugned order passed on 10.10.2012 by the State Consumer Disputes Redressal Commission, Haryana, Panchkula in FA No.441/2008. By its order, the State Commission dismissed the appeal of the petitioner Co. and upheld the order dated 3.1.2008 passed by the District Forum, Yamuna Nagar in consumer complaint No.1115 of 2007. The District Forum had allowed the complaint of the respondent / complainant by granting the following reliefs:-

"Resultantly we allow the complaint of the complainant and direct the respondent to pay the balance amount of Rs.10,86,592/- along with interest at the rate of 12% per annum after three months of the causing of fire till realization and to pay Rs.11,000/- as litigation expense. Order be complied within one month."

The insured complainant had insured stock of its factory for a sum of Rs.30 lakhs vide cover note valid from 10.4.2005 to 9.4.2006 issued by the insurer Co. The insurance cover was renewed for next year also by the respondents and was valid upto 9.4.2007. According to the complainant, the Insurance Co. issued one page cover note only of the said policy and never issued the terms and conditions with this policy to the complainant. During the period of insurance policy, a fire broke out in factory premises resulting into huge loss of stock. The Insurer Company appointed surveyor for assessing the loss. While the complainant lodged a claim with the petitioner Co. for Rs.19,46,800/- along with necessary documents for settling the claim, the Insurer Company informed the complainant about the settlement of the claim at Rs.8,60,208/- for which a cheque dated 1.12.2006 was issued by the Insurer to the complainant after making certain deductions from the sum of Rs.10,86,592/- which had been assessed as loss by the surveyor. The complainant while acknowledging receipt of the cheque signed the

STATE CONSUMER HELPLINES

GUJARAT

1800-233-0222,
079-27489945 / 46

MADHYA PRADESH

155343, 0755-2559778

ORISSA

1800-345-6724,
1800-345-6760,
0674-2351990,
0674-2350209

TAMIL NADU

044-28592828

BIHAR

1800 -345- 6188

RAJASTHAN

1800 -180- 6030

MAHARASHTRA

1800 -22- 22 62

CHHATTISGARH

1800 -233 -3663

HARYANA

1800-180-2087

PROJECT MANAGER

Room No-7 Indian Institute of Public Administration , I.P. Estate , Ring Road , New Delhi- 110002

Phone - (011) 23705055 , 23705054 , FAX - (011) 23705054

Email - schkrmp.iipa@gmail.com , Website - www.consumereducation.in, www.consumeradvice.in

discharge voucher indicating it to be only a partial settlement and thereafter the respondent continued to represent against the deduction made from the sum of Rs.10,86,592/-. Since the differential amount which had been deducted from the figure of loss assessed by the surveyor was not allowed by the Insurer, the complainant filed a consumer complaint alleging it a case of deficiency in service on the part of the Insurer Company. The Insurer Company stated payment of Rs.8,60,208/- as full and final settlement and nothing remained due to the complainant by the Insurer and further submitted that the claim was settled as per the report of an IRDA approved independent surveyor and loss assessor who had arrived at a net loss figure of Rs.8,60,208/ subject to terms and conditions as well as limitations and exceptions provided in the insurance policy. Since certain amount was deducted as per excess clause and the net amount had been disbursed as per full and final settlement, the Insurer Company denied any kind of deficiency in service on its part.

The Insurer Company contended that the surveyor is the best person to assess and ascertaining the loss and its recommendations should have been accepted as provided in the Insurance Act. Another contention raised in the Revision Petition was that the payment made by the insurance co. was by way of full and final settlement of the claim lodged by the complainant and since he accepted the amount sent by cheque and signed the discharge voucher, the complainant is not entitled for any further relief. The Insurance Company prayed for setting aside of the impugned order and acceptance of the revision petition.

National Commission perused the reports of the surveyors as well as the orders of the District Consumer Forum and State Commission. The National Commission found that the submission of the Insurer regarding settlement of claim by way of full and final settlement is not correct since the complainant had accepted the cheque of Rs.8,60,208/- as partial relief and that too under protest. Besides this, it is settled law that surveyor's report cannot be treated as last word and a gospel truth. The District Forum after considering the report has given its cogent reasons to disagree with the final figure of loss while giving the desired relief to the complainant. The State Commission has agreed with the finding. The State Commission while dismissing the appeal of the petitioner has made the following observations in its impugned order:-

"After gone through the file as well as arguments of counsel for both the parties, we are of the considered view that it is admitted fact the factory of the complainant namely Unit Ply Factor was insured with the OP for amounting to Rs.30,00,000/- and the said factory was enjoying CC limit against the stock statement with Oriental Bank of Commerce, Yamuna Nagar. It is also admitted that on intervening night of 5/6.4.2006 the fire broke out in the said factory and intimation in this regard was given to the OP and the complainant also lodged DDR with the police. It is also admitted that on intimation the OP appointed two surveyors, one for spot survey and second for conduct the final survey. It reveals from the final survey report that maximum quantity of insured stock of material was burnt and mixed up beyond recognition and it was not possible to prepare inventory of the damage stock. The surveyor after inspect the stock statement which are issued by the bank, the surveyor observed that on an average the insured is having stock worth Rs.29 lacs comprising of finishing raw material and made clear that the statement of account dated 31.3.2006 is shown the stock of Rs.29,29,067/- vide which this is clear that after deducting the said stock which was not damaged the insured suffered a loss to the tune of Rs.19,46,800/- lying in the factory premises due to fire. The surveyor after using the excess clause deduct the 20% as is clear from the surveyor report. But in our view if the ambiguity in terms and surveyor apply the excess clause of the policy which were not supplied the OP cannot claim benefit of the said clause. Moreover, the full and final settlement was not matured because the complainant accepted the amount under protest and endorsement to this effect was made on the voucher that it is part payment. Thus, deficiency in service on the part of appellant/opposite party stands proved. District Consumer Forum after considering each and every aspect of the case, rightly allowed the complaint of complainant."

The National Commission while dismissing the revision petition of the Insurance Company stated it can interfere with the orders of the Fora below if they have exceeded their jurisdiction under law or failed to exercise their jurisdiction or have acted in exercise of its jurisdiction with illegality or material irregularity. National Commission found that both the District Consumer Forum and State Commission and further found that State Commission has based its finding on analysis of the evidence produced.

Consumer Alerts

- Internet banking at cyber café is highly unsecured. Avoid any transaction related to online payment at such café.
- Credit card issuers are not allowed to seek any details about credit card number, PIN, CVV etc. through telephone. Never share such details even if caller pretending to be bank employee.
- Merchants are not allowed to note 16 digit credit/debit card number when swiping the card at the outlets.
- Always remember PIN, password etc. instead of storing such details on paper and kept in your wallets.
- While making online payments, please ensure that payment is made through secured websites starting with <https://>.....
- It has come to notice that a mail/internet link is in circulation named from RBI Online asking for internet banking and/or credit/debit card details. Consumers are advised never to share internet banking and credit/debit card details credentials in response to any mail/link and in any other mode, no matter how appealing and official they may look. Bank never asks for such details.
- Several job-offers/interview letters are in circulation through mails named from reputed companies like Maruti, Bharat Petroleum etc. They advise recipients to deposit some money in their account as a security refundable on arrival at interview site or joining the company. Such mail letters are likely to dupe the recipients with their hard earned money. Please check from the company before making any payment.