

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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ADVANTAGE - II

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

The insurer can appoint a second surveyor for fresh estimation of loss, but has to record cogent reasons as provided under the Insurance Act, 1938.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1607 OF 2017

(Against the Order dated 25/10/2016 in Appeal No. 562/2007 of the State Commission Uttar Pradesh)

KAMALRAJ PALIWAL

S/O. SHRI PYARE LAL SHARMA, R/O. DHAKPURA
HATHRAS,

DISTRICT-MAHMAYA NAGAR
UTTAR PRADESH

.....Petitioner(s)

Versus

NATIONAL INSURANCE CO. LTD.

D.P. SINGH DIVISIONAL MANAGER, MARSIS ROAD,
SWAROOP MARKET,
ALIGARH

UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

Dated : 12 Oct 2022

ORDER

PER MR SUBHASH CHANDRA, PRESIDING MEMBER

This revision petition has been filed under section 21 of the Consumer Protection Act, 1986 (in short, 'the Act') assailing the order of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (in short, 'the State Commission') in appeal no. 562 of 2007 allowing the appeal filed by the respondent and setting aside the order of the District Consumer Disputes Redressal Forum, Mahamaya Nagar (in short, 'the District Forum') in OS no. 172 of 2003 dated 05.02.2007.

2. The facts in brief are that the revisionist is the Secretary of the Paliwal Politex Sansthan a registered unit under Khadi Gram Udyog Board. He had taken a fire insurance policy from the respondent for the period 19.11.2001 to 18.12.2002 for Rs.6 lakh covering raw material, machines, goods ready for sale and building. Due to a fire on 04.04.2002 midnight all the stock material including raw and ready material and machines were burnt. The respondent was intimated on 05.04.2002 and on the same evening a surveyor Mr Prem Prakash Mandal was deputed by the respondent for inspection. It is the petitioner's case that the surveyor's report that the entire stocks had been burnt except goods valued at Rs.5900/- was not provided to the revisionist. The respondent thereafter appointed another surveyor Mr A K Gumber who surveyed the premises on 30.06.2002 and prepared a loss report of Rs.2,80,000/-. The respondent pressurised the revisionists to accept a full and final settlement of Rs.2,74,701/- on 21.07.2003 which was accepted by him as he was in urgent need of money due to the losses incurred. However, on 25.07.2003, the petitioner contested the settlement and sought the settlement of his claim of the balance amount. As there was no response from the respondent, the revisionists filed a complaint before the District Forum, Hathras (UP) being complaint no.172 of 2003. Vide its order dated 05.02.2007, the District Forum allowed the complaint and directed the respondent to pay Rs.2,82,562/- to the revisionists with 9% interest. The respondent had challenged this order by way of appeal no. 562 of 2007 before the State Commission which decided on 05.02.2007 to set aside the order of the District Forum.

3. Revisionist has impugned this order on the grounds that value of the inventory and stock of the revisionists as on 04.04.2002 was Rs.5,64,255/- as approved by the Punjab National Bank, the financing bank. The Fire Brigade which responded to the fire incident had also estimated the damage at Rs.5,85,000/- in its report. It is also contended that respondent has filed a report of a Chartered Accountant, Mr Praveen Kumar Jain, before the District Forum showing that the stocks on 04.04.2002 was valued at Rs.5,65,163/-. The surveyor who inspected the loss on the day after the fire, Mr Prem Prakash Mandal, had also stated in his report that only goods worth Rs.5900/- could be salvaged and that huge quantity of cotton and synthetic yarn had been completely burnt. The revisionist has averred that he accepted the full and final settlement of the respondent in view of his financial condition on 21.07.2003 but had protested against this immediately thereafter on 25.07.2003. He has prayed that the impugned order be set aside and the order of the District Forum be restored along with any other relief in the interest of justice.

4. The respondent had been placed at *ex parte* on 17.05.2019. He has not filed any written submissions. However, before the State Commission he had argued that the appellant herein had accepted the full and final settlement of his claim on the basis of the report of the surveyor Mr A K Gumber which was based on the spot inspection and as per the terms and conditions of the policy, as per which the claim of finished and raw material had been quantified at Rs.2,80,000/-. It had been contended that there has been no deficiency in service and that the respondent had acted as per the terms and conditions of the policy. Reliance has been placed on this Commission's order in ***Kanta Mathur Vs. National Insurance Co. Ltd. &Ors.*** dated 17.12.2014 in RP 394 of 2010 which held that acceptance of a full and final settlement was considered as settlement of liability.

5. On behalf of the petitioner it has been contended that full and final settlement had been accepted by him under compulsion as a result of the dire financial position the loss caused by the fire had placed him in. It was immediately protested four days later. The receipt for the settlement had been obtained from him on a printed form. He is not fluent in English and so he did not realise the full import of the settlement. He submits that the settlement has not been fair as it has not been based on the loss estimation by the respondent's own surveyor deputed on 05.04.2002. It is also contrary to the loss estimate by the Fire Brigade and the assessment by the Punjab National Bank, the financing bank.

6. The respondent had been placed *ex parte* on 07.05.2019. He chose not to file any written submissions or arguments. Heard the learned counsel for the petitioner and perused the records carefully.

7. The petitioner has relied upon the judgments of the Hon'ble Supreme Court in ***Sangireddy Raman Murthy Vs. National Insurance Co. Ltd., - I*** (2003) CPJ 37 NC dated 08.03.2002 which held that

It cannot be disputed that the Insurance Company is the dominant party when it goes to the settlement of the claims and it is very often in a position to dominate the will of insured. A party is faced with the situation like a disaster and who is cash starved on account of calamity that has befallen it, is not in a position to resist the pressure of the Insurance Company to sign the receipts on the dotted lines in order to receive whatever payment is becoming available to it. Such receipt will have no meaning if the party has immediately refuted it and repudiated its receipt or discharge voucher if the circumstances show that the party protested soon after signing.

He also relies upon ***United India Insurance Co. Ltd. Vs. Ajmer Singh Cotton & General Mills & Ors.*** (1999) 6 SCC 400 which held that

The mere execution of the discharge voucher would not always deprive the consumer from preferring claim with respect to the deficiency in service or consequential benefits arising out of the amount paid in default of the service rendered. Despite execution of the discharge voucher, the consumer may be in a position to satisfy the Tribunal or the Commission under the Act that such discharge voucher or receipt had been obtained from him under the circumstances which can be termed as fraudulent or exercise of undue influence or by misrepresentation or the like. If in a given case the consumer satisfies the authority under the Act that the discharge voucher was obtained by fraud, misrepresentation, undue influence or the like, coercive bargaining compelled by circumstances, the authority before whom the complaint is made would be justified in granting appropriate relief. However, where such discharge voucher is proved to have been obtained under any of the suspicious circumstances noted hereinabove, the Tribunal or the Commission would be justified in granting appropriate relief under the circumstances of each case.

8. This Commission in exercise of its revisional jurisdiction is not required to re-assess and re-appreciate the evidence on record and substitute its own conclusion on facts. It can interfere with the findings of the *foras* below only on the grounds that the findings are either perverse or that the *fora* below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 26 (b) of the Consumer Protection Act, 1986 is therefore, limited to cases where some *prima facie* error appears in the impugned order and different interpretation of same sets of facts has been held to be not permissible by the Hon'ble Supreme Court in ***Rubi (Chandra) Dutta vs United India Insurance Co. Ltd.***, (2011) 11 SCC 269 and or when the lower *fora* "...has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity" as held in ***Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors*** – (2016) 8 SCC 286.

9. In the present case, the complainant while accepting the discharge voucher for a lesser amount compared to the claim amount presented by the Insurance Company after nearly 16 months of the fire accident on 21.07.2003, filed a claim for the balance amount on 25.07.2003. The discharge voucher for the amount settled by the respondent can, therefore, be considered to have been accepted under protest. The State Commission while deciding appeal no. 562 of 2007 against the order of the District Forum has clearly erred in not considering the fact that its own surveyor had ascertained a salvage value of only Rs 5,900/- on 05.04.2002. It is seen that the full and final settlement by the respondent has been worked out on the basis of loss assessed by the second surveyor Mr A K Gumbar at Rs 2,80,000/- and the salvage value of Rs 5900/- determined by the first Assessor, Mr Prem Prakash Mandal, has been deducted from this assessed amount.

10. In this connection, the law laid down by the Hon'ble Supreme Court in ***Sri Venkateswara Syndicate Vs. Oriental Insurance Company Ltd. & Anr.*** (2009) 8 SCC 507 in C.A. No. 4487 of 2004 decided on 24.08.2009 is instructive. The Hon'ble Apex Court held that while the insurer is not prohibited from appointing a second or another surveyor for fresh estimation of loss, appointment of surveyors one after another so as to get a tailor-made report to the satisfaction of the insurer is impermissible unless cogent and satisfactory reasons for not accepting the report of the first surveyor are provided under section 64-UM

of the Insurance Act, 1938. In the instant case, no reasons for the change in the surveyor have been provided. Further, while the salvage value of the loss is taken from the report of one surveyor, the estimated loss is based on the report of the other surveyor.

11. For the aforementioned reasons, it is apparent that the State Commission has been persuaded by the respondent on the basis of this Commission's orders in *Kanta Mathur* (supra) which is distinguishable from the present matter pertaining to fire loss. It has failed to appreciate that the principle of insurance is to indemnify loss and not to bargain on the quantum of loss assessed or to settle claims through coercive bargaining. In the result, there is merit in the appeal and is liable to succeed.

12. The revision petition is accordingly allowed. Impugned order of the State Commission is set aside and orders of the District Forum in OS no. 172 of 2003 dated 05.02.2007 affirmed. ■

IRCTC took swift action against a tea vendor and returned Rs. 10/- to a journalist after he shared his ordeal on Twitter while travelling on a train.

In a praiseworthy incident, IRCTC acted swiftly after a Twitter complaint against a tea vendor and returned the money back to a journalist after he narrated his ordeal of getting conned while taking a train journey. The journalist was travelling on an Indian Railways train when he asked for a cup of tea from a vendor. While the cup of tea costs Rs 10, the man paid the vendor a Rs 20 note. The tea seller said he doesn't have change and will return Rs 10 in a while, but failed to return back the money to the journalist. When chased for money, the journalist was informed by other vendors that this tea seller has a habit of conning people on the trains in the name of returning back the money. Since it's a small amount, travellers usually gave up the chase.

One of the tea vendors then asked the journalist to involve RPF and complain to the IRCTC about the incident. Following which, he narrated the matter on the Twitter, tagging IRCTC (@IRCTCofficial).

He was travelling on train no. 12312 Netaji Express from Ghaziabad to Howrah, on the 13th Jan., and the incident happened just ahead of Prayagraj Junction. After the incident was posted on the Twitter, IRCTC's official Twitter handle asked for his mobile number and PNR details. Upon sharing them, Pritam did receive his money back in a short time.

Not only did IRCTC take prompt action and returned the remaining amount to the journalist at his seat itself, a manager of the IRCTC personally came to meet Pritam Saha, the journalist and brought the said tea vendor with him, asking Saha to identify him.

The vendor then accepted his fault in front of the IRCTC manager, RPF and other passengers, following which, he was asked to get down from the train at the Prayagaraj Junction.

Courtesy : Zee News

Guidelines in respect of unfair levy of service charge in hotels and restaurants.

The Central Consumer Protection Authority (CCPA), has been established under the Consumer Protection Act, 2019 to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interest of public and consumers and to promote and enforce the rights of consumers as a class.

CCPA noting the grievances registered on the National Consumer Helpline that restaurants and hotels are levying service charge in the bill by default, without informing consumers that paying such charge is voluntary and optional. Further, service charge is being levied in addition to the total price of the food items mentioned in the menu and applicable taxes, often in the guise of some other fee or charge. It may be mentioned that a component of service is inherent in price of food and beverages offered by the restaurant or hotel. Pricing of the product thus covers both the goods and services component. There is no restriction on hotels or restaurants to set the prices at which they want to offer food or beverages to consumers. Thus, placing an order involves consent to pay the prices of food items displayed in the menu along with applicable taxes. Charging anything other than the said amount would amount to unfair trade practice under the Act. It is understood that a tip or gratuity is towards hospitality received beyond basic minimum service contracted between the consumer and the hotel management and constitutes a separate transaction between the consumer and staff of the hotel or restaurant, at the consumer's discretion. Only after completing the meal, a consumer is in a position to assess the quality and service and decide whether or not to pay tip and if so, how much. The decision to pay tip by a consumer does not arise merely by entering the restaurant or placing an order. Therefore, service charge cannot be added in the bill involuntarily, without allowing consumers the choice or discretion to decide whether they want to pay such charge or not. Thus, collection of service charge amounts to a trade practice which imposes an unjustified cost on the customer by way of forcing him/her to pay service charge as a condition precedent to placing order of food and beverages and falls under restrictive trade practice. Therefore, to prevent unfair trade practices and protect consumer interest with regard to levying of service charge, the CCPA issued the following guidelines –

regard to levying of service charge, the CCPA issued the following guidelines –

- a) No hotel or restaurant shall add service charge automatically or by default in the bill.
- b) Service charge shall not be collected from consumers by any other name.
- c) No hotel or restaurant shall force a consumer to pay service charge and shall clearly inform the consumer that service charge is voluntary, optional and at consumer's discretion.
- d) No restriction on entry or provision of services based on collection of service charge shall be imposed on consumers.
- e) Service charge shall not be collected by adding it along with the food bill and levying GST on the total amount.

If any consumer finds that a hotel or restaurant is levying service charge in violation to the above-mentioned guidelines, a consumer may:- (i) Make a request to the concerned hotel to remove service charge from the bill amount. (ii) Lodge a complaint on the National Consumer Helpline (NCH). (iii) File a complaint against unfair trade practice with the Consumer Commission. (iv) Submit a complaint to the District Collector of the concerned district for investigation and subsequent proceeding by the CCPA. The complaint may also be sent to the CCPA by e-mail at com-ccpa@nic.in.

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Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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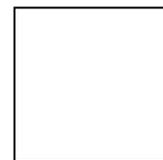
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