

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 - III

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.)

CONSUMER PROTECTION COUNCIL, ROURKELA CELEBRATED “WORLD CONSUMER RIGHTS DAY – 2023”



The “World Consumer Rights Day” was celebrated on Wednesday, 15th March 2023
At our Consumer Protection Council Office, Sector-7, Rourkela.

The programme inaugurated with lighting up the Ceremonial Lamp by Council Vice President, **P. RAVI KRISHNAN**, followed by two minutes silence prayer in memory of Late **P. Sankara Rao (1941-2023)**, former secretary of the council. CPC Rourkela deeply condoles the sad demise of Late Rao, who us on heavenly abode on 09.03.2023 at his native place. Joint Secretary, **Mr. Rajib Kumar Nayak** presented detailed report of the council. Our executive committee member **Mr. Bharat Kumar Behera** addressed the gathering. General Secretary, **Mr Bhimasen Pradhan** wished on the occasion of World Consumers Rights Day and elaborated this year theme “Clean Energy Transitions” and reason behind to raise awareness of consumer empowerment and push their role for a faster clean energy transition and gave some tips about the new Consumer Protection activity. Prizes were distributed to winners of online painting competition, which was held on Sunday, 05th March 2023. Later, members and audience participated in an open session for discussion and suggestion relating to solution of day to day activities against present challenges through CPC, Rourkela. At the end, Executive Member **Mr. B. C. Mishra**, proposed a formal Vote of Thanks. **Mr. Amitava Thakur** was Master of Ceremony of the function. Treasurer **Mr Arabinda Samantray**, many Members and council staff **Mr. Sanjay Senapati** participated in the event. Approximately 50 people including members, prize winners, guardians and guests were present. Our special thanks to Chief Mentor **Mr Vaidyanathan** and President **Mr Ajay Kumar Goswami** for their kind guidance and support.

An Insurance Company while settling a claim cannot find fault with the construction of a building or its structures, having insured it after due inspection and assessment.

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 401 OF 2013

(Against the Order dated 01/04/2013 in Complaint No. 02/2012 of the State Commission, Sikkim)

BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD.

HAVING ITS RGD. OFFICE AT, GE PLAZA, AIRPORT ROAD,
YERWADA,

PUNE-411006. MAHARASHTRA

.....Appellant(s)

Versus

DR. KUMAR BHANDARI

S/O. LATE TIKA RAM BHANDARI, R/O. BALUWAKHANI, P.O. &
P.S. GANGTOK,

EAST SIKKIM-737101

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT

Dated : 17 Oct 2022

ORDER

1. The present Appeal has been filed against the Order dated 01.04.2013 passed by the State Consumer Disputes Redressal Commission Sikkim, Gangtok (hereinafter referred to as State Commission), whereby the Complaint filed by the Complainant was allowed and Opposite Party Insurance Company was directed to pay Rs 42,05,408.56 ps. towards claim of the Complainant within 45 days and cost of Rs 20,000/- was also awarded.

2 Brief facts of the case are that the Complainant/Respondent obtained a Standard Fire and Special Perils Policy bearing No. 0G-08-2404-4030-00000022 from the Opposite Party Bajaj Allianz General Insurance Company (hereinafter referred to as 'Insurance Company') in respect of his 5½ storied building at 5th Mile, Tadong, Opposite Saraswati Mandir, East Sikkim for the period from 27.06.2007 to 26.06.2017. During the currency of the Policy, on 18.09.2011 due to a major earthquake of 6.8 on the Richter scale the insured building got severally damaged. Complainant informed the incident to the Insurance Company. Complainant submitted the claim with the Insurance Company with detailed estimate of Rs 42,05,408.56 ps. for repair and re-strengthening of the insured building prepared by a Consultant "M/s. B.K. Infrastructure". It is the case of the Complainant that on 08.05.2012, he received a letter from the office of the Town Planner II, Urban Development and Housing Department informing and directing him to immediately engage a Structural Engineer and take necessary action to either dismantle or retrofit the building in order to protect the surrounding areas from mishap. Complainant received a letter dated 01.06.2012 from Insurance Company reducing his claim to only Rs 3,37,866/-. It is the case of the Complainant that since the Town Planner has directed him to either dismantle or retrofit the building, he commenced with the repair work with retrofitting on the building at his own cost. Since Insurance Company offered a sum of Rs 3,37,866/- against a claim of Rs 42,05,408.56 ps., alleging deficiency in service on the part of the Opposite Party Insurance Company, Complainant filed a Complaint before the State Commission.

3. The Insurance Company submitted before the State Commission that they appointed an Independent IRDA Licensed surveyor M/s. S.N. & Associates to carry out the survey and assessment of the loss and damage caused by the earthquake to the Insured building. Surveyor in his report opined that the repairing estimates submitted by the Complainant which was prepared by M/s. B.K. Infrastructure, was an improvement/betterment of the existing structure and, therefore, not covered by the Insurance Policy being in violation of the principle of indemnity. Surveyor also opined that Insurance Policy covered only restoration of the damaged building to its original condition as it existed prior to the occurrence of the loss but not for any betterment/improvement of the condition of the building structure. Complainant's building was originally constructed with very poor or sub-standard materials as is evident from the report of Consultant Engineer M/s. B.K. Infrastructure, appointed by Complainant that the building structural columns and beams were found to be inadequate to sustain the design, earthquake resistant considering the earthquake forces as per Seismic Zone IV. It was further pointed out by the Insurance Company that as per Surveyor's report, Complainant's building had earlier been affected by the earthquake that had struck in the year 2006 and it was not properly repaired by the Complainant at that time and this fact was concealed by the Complainant at the time of taking the Policy. Insurance Company further submitted that as per Surveyor report only the repairing/cost of the estimate prepared by M/s. B.K. Infrastructure appointed by the Complainant himself amounting to Rs 3,37,866/- and this amount was offered to the Complainant as full and final settlement of the claim vide letter dated 19.07.2012 which was not acceptable to the Complainant. Accordingly, vide letter dated 26.07.2012 his claim was repudiated.
4. After hearing both the Parties and perusal of material on record, the State Commission with the consensus of the Parties, narrowed down the case to a limited question for determination as to whether 'retrofitting' measure applied in repairs of damaged structures would amount to improvement/betterment of the structure and observed as under: -

"26. As per the opening words of 'Standard Fire and Special Perils Policy', the Company agreed to pay to the insured, inter alia, the amount of damage at the happening of the destruction of the insured property by any of the perils specified there under. It is, therefore, surprising that the Respondents/OPs are now taking up such hyper technical pleas which are not at all envisaged in the Policy.

27. The plea that the insurance policy only covers for restoration of the damaged building to its original condition as it existed prior to the occurrence of the loss, in our view is extremely curious and difficult to fathom. The hyper technicality of the stand, in our view, is stretching the limit a bit too far. Assuming that the plea is correctly taken, then the natural thing for the building being restored to its original condition. We would have been convinced of the honesty in their stand, had they made such assessment by substituting the cost of retrofit with conventional materials and then made a counter offer to the Complainant. Instead, they have simply rejected the claim in totality. The stand of the Respondents/OPs appear to be like 'Shylock' in the reverse, i.e., not an ounce more than a pound of flesh shall be paid. But 'Shylock' though rigid in his stand, was honest, and honesty is a commodity that we find wanting in the case at hand. Such cannot be the spirit of the Insurance Policy. The nature and cause of the damage of the insured building, in our view, is fully covered by the policy of insurance and the Complainant remains fully indemnified for such damages thereby.

28. Sikkim is in a highly seismic area in the heart of higher Himalayas where the mountains are fragile. The structure design adopted in this region is a uniform one thus far. The concept of earthquake resistant building design is of a recent origin and an 'evolving practice' (per Prof. S.K. Thakkar). In the State it is not mandatory to "Incorporate the IS Codes for earthquake resistant building" and that "There is no such stipulation in the building bye-laws applicable to general public" (per Ashok Chhetri, Assistant Engineer). Had the excessive for uneven settlement not taken place, the insured building would not have suffered the damages even assuming that the concrete quality used in the building was poor. This is quite apparent from the fact that the insured building had remained undamaged until the earthquake that shook the State on 18.09.2011 the severity of which had caused colossal damage to lives and properties in the State. It is for this obvious reason that the Surveyor "M/s. S. N. & Associates" in paragraph 1.2.5 of their "Report on Finding Structural Analysis", inter alia, had suggested strengthening of the foundation for the stability of the building.

29. The opinion of “M/s. S.N. & Associates” in paragraph 12.2 of the report that retrofitting would amount to betterment/improvement of the condition for the building structure relied upon by the Respondent/OPs in rejecting the claims of the Complainant, appears to be based on their own perception and an observation of a general kind. Apart from being in conflict with the opinion of the Assistant Engineer and the writing of Prof. S.K. Thakkar in the journal Ext. ‘X’ alluded to earlier, the observation appears to be beyond the scope of their responsibility which was only to assess the losses and damages because the interpretation and scope of the insurance cover falls within the jurisdiction of the Respondents/OPs and not the Surveyors. We cannot help but get the feeling that the opinion/observation has been made at the behest of the Respondents/OPs as a device to avoid their liability. In any case, the observation obviously has no nexus with the circumstances under which the building in question was damaged, its cause and the necessity of adopting a newer technology now available for its repairs discussed above.

30. The discussions and observations made above, answer the sole question for determination agreed upon by the parties. The apart, it also displaces the other objections raised in the written objection but not pressed seriously during the arguments.

31. For these reasons the claim is allowed.”

5. Aggrieved by this order, the Appellant Insurance Company has filed the present Appeal before this Commission.
6. Learned Counsel for the Appellant Insurance Company submitted that the insured building was constructed with very poor or sub-standard materials, and it had earlier been affected by the earthquake in the year 2006 but this had not been disclosed while taking the Insurance Policy. He further submitted that according to the report of their Surveyor, M/s. S.N. & Associates after taking expert opinion of Dr. Debasish Bandhopadhy, Structural Engineering, repairing estimates submitted by the Complainant mostly consisted of retrofit which was an improvement/betterment of the existing structure and, therefore, this is not covered by the terms of the Insurance Policy. According to their Surveyor’s report dated 24.04.2012, the Insurance Company allowed only the repairing cost of the estimates prepared by M/s. B.K. Infrastructure appointed by Complainant amounting to Rs 3,37,866/- discounting the additional cost of retrofitting. Therefore, there is no deficiency in service on their part and Appeal be allowed.
7. On the other hand, learned Counsel for the Respondent/Complainant submitted that once the insurance company had issued the policy, the plea of defective structure is not available to the Insurance Company. He relied upon a judgment of Hon’ble Supreme Court in “**United India Insurance Co. Ltd. Vs. M/s. Kiran Combers and Spinners**” [AIR 2007 Supreme Court 393], in which it has been held as under:

“10.Normally when the company insures any factory, then their Officers and the Engineers used to inspect the building to find out whether there is any defect in the construction or the construction is of poor quality. More so, in the present case, as pointed out that because of defective structure i.e., column No.3, the building has collapsed but the question is what aggravated or accentuated this, factory is in place for more than 12 years & it is on account of flood water entering in factory that has caused this damage. So called defect was aggravated on account of flooding of the water in the premises of the factory, if the flood water had not entered into the factory, perhaps the construction which stood good for 12 years, would have lasted long. The cause of the damage to the column No.3 of the building was flood water. Therefore, the company cannot escape the liability to compensate the claimant for collapse of the building on account of floods.”

He further submitted that the only ground for repudiation of retrofitting expenses was that the retrofitting of structure amounted to improvement/betterment of the building which was not covered by the Insurance Policy. On the direction of the State Commission, Principal Chief Engineer-cum-Secretary, Building and Housing Department, Government of Sikkim, appointed Mr. Ashok Chettri to assist the State Commission. He was examined before the State Commission and clearly opined that, *“if this technology is used in buildings which have suffered extensive damages, be it columns, beam, walls, etc., for repairs it will result in such buildings regaining its original strength. The object of using this technology in extensively damaged structure is to ensure that the structures regain its original strength and this may also result in adding further to its strength of the building”*.

Applying retrofitting does not mean that old materials used are being substituted but it simply means that if there are void found in the structure which normally is filled up by grouping retrofitting is resorted to in its place.”

8. He further submitted that Insurance Policy does not exclude the use of retrofit technology for repair of earthquake damaged building. Accordingly, when the damaged building is required to be repaired by using retrofit technology, the Insurance Company cannot deny the same. He further submitted that the extensively damaged building could not have stood on its ground without the use of retrofitting technology, therefore, he used the said technology to repair the building. He further submitted that on the Insurance Policy bond it is mentioned, *“... the Company shall pay to the insured the value of the Property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof.”* Accordingly, the Appellant Insurance Company is bound to either pay the value of the property at the time of happening of its destruction or reinstate or replace such property. The surveyor has assessed the depreciated current value of the Building at Rs 42,00,000/-. Therefore, the Insurance Company should either pay the repairing cost or the building value.
9. I have heard Ms. Suman Bagga, learned Counsel appearing on behalf of the Appellant Insurance Company, Mr. A.K. Upadhyaya, Sr. learned Counsel appearing on behalf of the Respondent/Complainant, perused the material available on record and have given a thoughtful consideration to the various pleas raised by both the Parties.
10. The main issue in the present case is as to whether retrofitting measure applied in repairs of insured / damaged structure would amount to improvement / betterment of the structure.
11. On the direction of the State Commission, Principal Chief Engineer-cum-Secretary, Building and Housing Department, Government of Sikkim, appointed Mr. Ashok Chettri, Assistant Engineer, Buildings and Housing Department, Government of Sikkim, Gyalshing Sub-Division, West Sikkim, who is a qualified Structural Engineer having Masters Degree in the subject, to assist the State Commission. Counsel for both the Parties also put additional questions to him before the State Commission. He also referred a paper written by Prof. S.K. Thakker of Structural Dynamics for ‘retrofitting of buildings’. He clearly opined that, *“if this technology is used in buildings which have suffered extensive damages, be it columns, beam, walls, etc., for repairs it will result in such buildings regaining its original strength. The object of using this technology in extensively damaged structure is to ensure that the structures regain its original strength and this may also result in adding further to its strength of the building”*.
12. The State Commission after analysing the Independent Expert Opinion of Mr. Ashok Chettri, a qualified Structural Engineer, examining the Paper written by Prof S.K. Thakkar of Structural Dynamics for ‘Retrofitting of Buildings’ and going through the Surveyor’ Report, has rightly rejected the plea of the Opposite Party Insurance Company that the retrofitting in repairs would amount to betterment/improvement of the condition of the structure existing prior to the occurrence of the loss, by observing as under:-

To be concluded in the next issue....

Payment for Speed Post and others can be made through UPI, including BHIM

Thanks to the initiatives of the present union government, several revolutionary changes have been taking place. India is leading the way in Digital financial transactions, is well known to everyone.

It is in this direction, the Post Offices have started accepting UPI payments for Speed Post, Registered Post, etc. which is indeed making life easy for everyone, as one need not carry "change" all the time, and you also save some money. For example, a local Speed Post costs Rs. 17.70. If one has to pay in cash, he will be required to pay Rs. 18/-. Furthermore, quite often than not, when the individual concerned is unable to provide the exact amount, he is made to wait or bring change. All these unpleasant situations could become a thing of the past. ■

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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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